

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

February 1, 2016

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

RE: Electric Generation Supplier License Cancellations of
Companies with an Expired Financial Security
Docket No. M-2015-2490383

Secretary Chiavetta:

Enclosed please find Joint Comments of the Office of Consumer Advocate and Office of Attorney General Bureau of Consumer Protection, in the above-referenced proceeding.

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

Respectfully Submitted,

Candis A. Tunilo

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

Enclosure

cc: Kenneth Stark, Law Bureau
Office of Special Assistants
Certificate of Service

*216578

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Re: Electric Generation Supplier License : Docket No. M-2015-2490383
Cancellations of Companies with an :
Expired Financial Security :

JOINT COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE AND
OFFICE OF ATTORNEY GENERAL BUREAU OF CONSUMER PROTECTION

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

Margarita Tulman
Deputy Attorney General
PA Attorney I.D. 313514

Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
T: (717) 787-9707
F: (717) 787-1190
jabel@attorneygeneral.gov
mtulman@attorneygeneral.gov

Counsel for:

Bruce R. Beemer, First Deputy Attorney General
Office of Attorney General
Bureau of Consumer Protection

Date: February 1, 2016

Candis A. Tunilo
PA Attorney I.D. 89891

Kristine E. Marsilio
PA Attorney I.D. 316479
Assistant Consumer Advocates

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
T: (717) 783-5048
F: (717) 783-7152
ctunilo@paoca.org
kmarsilio@paoca.org

Counsel for:

Tanya J. McCloskey
Acting Consumer Advocate
Office of Consumer Advocate

I. INTRODUCTION

On December 17, 2015, the Pennsylvania Public Utility Commission (Commission) issued a Tentative Order in the above-captioned proceeding. In the Tentative Order, the Commission tentatively approved the cancellation of the Electric Generation Supplier (EGS) license of, *inter alia*, Blue Pilot Energy, LLC (Blue Pilot or the Company) for the failure to provide proof to the Commission that it has a bond or other approved security currently in effect. The Tentative Order provides for a thirty-day comment period after publication in the Pennsylvania Bulletin, which occurred on January 2, 2016.

The Commonwealth of Pennsylvania, Office of Attorney General, through the Bureau of Consumer Protection (OAG) and the Office of Consumer Advocate (OCA) (collectively, OAG/OCA) appreciate the opportunity to provide comments to the Tentative Order. OAG/OCA provides these Comments specifically with regard to Blue Pilot. OAG/OCA do not have any information regarding the other EGSs identified in the Tentative Order.

As the Commission is aware, the OAG/OCA filed a Joint Complaint against Blue Pilot on June 20, 2014, at Docket No. C-2014-2427655, 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, wherein the OAG/OCA allege that Blue Pilot violated Pennsylvania law and Commission regulations and Orders. 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) failing to comply with the Telemarketer Registration Act (TRA). With respect to relief, the OAG/OCA requested that the Commission find, *inter alia*, that Blue Pilot violated the Public Utility Code and the Commission's regulations

and orders; provide refunds to the Company's customers; impose a civil penalty; order Blue Pilot to make various modifications to its business practices; and revoke or suspend Blue Pilot's EGS license, if warranted. The proceeding initiated by OAG/OCA against Blue Pilot has not yet concluded. In addition, there are a number of other Formal Complaints filed by individual residential and business customers against Blue Pilot involving disputes surrounding terms, prices billed, and quality of service that remain unresolved by final Commission decision or settlement at this time.

Also related to the Comments of the OAG/OCA, on May 4, 2015, through its counsel, Blue Pilot filed a letter pursuant to 52 Pa. Code § 54.41(b), notifying the Commission of its intent to abandon service to Pennsylvania customers, (BPE Notice of Intent).¹ Through that letter, the Company also requested "cancellation of its EGS license, effective immediately." BPE Notice of Intent at 2. On May 18, 2015, OAG/OCA filed a Joint Answer to the BPE Notice of Intent. In their Answer, the OAG/OCA opposed Blue Pilot's request for immediate cancellation of its EGS license and requested that the Commission consider permanent revocation of Blue Pilot's EGS license as opposed to cancellation. OAG/OCA Answer at 3. The OAG/OCA also respectfully requested that the Commission act immediately to secure the proceeds of Blue Pilot's bond or letter of credit so that it is available to meet Blue Pilot's obligations to its Pennsylvania customers and the Commonwealth as finally determined by the Commission. *Id.* at 3-4.

In light of the pending Formal Complaints against Blue Pilot at the Commission, the OAG/OCA provide the following Comments to the Commission's Tentative Order and respectfully request the Commission to act on the OAG/OCA's Answer to the BPE Notice of

¹ See Docket No. A-2011-2223888.

Intent as follows: 1) immediately secure the proceeds of Blue Pilot's last posted bond or letter of credit so that it is available to meet Blue Pilot's Pennsylvania obligations; 2) refrain from cancelling or granting any abandonment of Blue Pilot's license until the Commission is assured that all obligations of Blue Pilot to Pennsylvania consumers and the Commonwealth have been properly met; and 3) reserve action on Blue Pilot's EGS license for the Joint Complaint proceeding, wherein OAG/OCA seek permanent revocation of Blue Pilot's EGS license.

II. COMMENTS

The OAG and OCA appreciate the opportunity to provide comments in to the Tentative Order. Given the pending Formal Complaints against Blue Pilot brought by numerous consumers² and the Joint Complaint brought by the OAG/OCA, the OAG/OCA submit that the Commission should immediately act to secure any available proceeds of the last viable Blue Pilot bond or letter of credit held by the Commission prior to making any determination regarding the cancellation of Blue Pilot's EGS license as set out in the Tentative Order. The Public Utility Code provides, in pertinent part, as follows regarding the requirement of an EGS to furnish a bond or other security:

(c) Financial responsibility.—

- (1) In order to ensure the safety and reliability of the generation of electricity in this Commonwealth, no energy supplier license shall be issued or remain in force unless the holder complies with all of the following:
 - (i) Furnishes a bond or other security approved by the commission in form and amount to ensure the financial responsibility of the electric generation supplier and the supply of electricity at retail in accordance with contracts, agreements or arrangements.

² See e.g. Enrico Partners L.P. v. Blue Pilot Energy, LLC, Docket No. C-2014-2432979. (Enrico Partners). In the ALJ's Initial Decision in Enrico Partners, the ALJ recommended that Blue Pilot be directed to pay refunds totaling \$27,168.48. Enrico Partners, Docket No. C-2014-2432979, Initial Decision at 22 (Feb. 12, 2015). The Initial Decision remains pending at the Commission.

66 Pa. C.S. § 2809(c). Furthermore, the bond requirement was established by the Commission to, among other things, ensure the licensee's financial responsibility and its obligations to the Commonwealth and Pennsylvania customers. See 52 Pa. Code §§ 54.40(b), (e), (f)(1)-(3).

The OAG/OCA submit that other than the bond proceeds, there is no information to suggest that Blue Pilot can, or will, meet any final obligation to provide refunds to customers.³ In fact, Blue Pilot has raised serious concerns about its financial ability or willingness to provide adequate relief to consumers should the OAG/OCA or individual formal complainants prevail in their Complaints against Blue Pilot. Specifically, in addition to Blue Pilot's May 4, 2015 letter to the Commission, seeking to surrender its EGS license, on May 14, 2015, Blue Pilot filed a Motion to Dismiss the OAG/OCA Joint Complaint, at Docket No. C-2014-2427655, pursuant to 52 Pa. Code § 5.103, asserting, *inter alia*, that the Company "can no longer defend itself in this proceeding."⁴ As such, the OAG/OCA respectfully submit that the Commission should immediately secure the proceeds of Blue Pilot's last posted bond or letter of credit so that it is available to meet Blue Pilot's Pennsylvania obligations.

Additionally, as requested by the OAG/OCA in their Answer to the BPE Notice of Intent, the OAG/OCA submit that the Commission should refrain from acting on Blue Pilot's EGS license until the Commission is assured that all obligations of Blue Pilot to the Commonwealth and Pennsylvania consumers have been properly met and reserve action on Blue Pilot's EGS license for the Joint Complaint proceeding, wherein OAG/OCA seek permanent revocation of Blue Pilot's EGS license. According to Blue Pilot, the Company ceased enrolling new

³ The OAG/OCA are without information as to whether Blue Pilot is in compliance with its obligations to pay gross receipts tax.

⁴ Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, Through the Bureau of Consumer Protection and Tanya J. McCloskey, Acting Consumer Advocate v. Blue Pilot Energy, LLC, Docket No. C-2014-2427655, Blue Pilot Motion to Dismiss at ¶¶ 3, 5 (May 14, 2015).

customers in Pennsylvania as of the first quarter of 2014.⁵ As of May 14, 2015, Blue Pilot asserted that it had 175 customers remaining in Pennsylvania.⁶ Furthermore, as noted above, in addition to the OAG/OCA Joint Complaint against Blue Pilot, there are several outstanding Formal Complaints against Blue Pilot at the Commission that have not been resolved by a final Commission decision or settlement. The allegations and facts of those Complaints may bear on the Commission's determination as to the appropriate action regarding Blue Pilot's license. Therefore, the Commission should not potentially compromise its jurisdiction over Blue Pilot until all matters concerning the Company have been brought to the forefront and resolved, as the allegations and facts in the outstanding Formal Complaint cases against Blue Pilot at the Commission may bear on the Commission's determination as to the appropriate action regarding Blue Pilot's EGS license.⁷

OAG/OCA have requested permanent revocation of Blue Pilot's EGS license, if warranted. In the Joint Complaint proceeding, the Commission will need to determine whether Blue Pilot's EGS license should be simply suspended or cancelled, whether it should be suspended or revoked with conditions or whether it should be permanently revoked. In light of the Formal Complaints pending against Blue Pilot at the Commission, OAG/OCA submit that the Commission should reserve action on Blue Pilot's EGS license for the Joint Complaint proceeding, wherein OAG/OCA seek permanent revocation of Blue Pilot's EGS license.

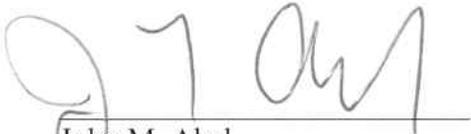
⁵ Id. at ¶¶ 5-6.

⁶ Id. at ¶ 6.

⁷ Hearings in the OAG/OCA Joint Complaint proceeding are scheduled for February 3-5, 2016. It is expected that Main and Reply Briefs will be submitted several weeks thereafter.

III. CONCLUSION

On the basis of the foregoing, the OAG/OCA respectfully request that the Commission act immediately to secure any proceeds of Blue Pilot's last viable bond or letter of credit so that it is available to meet Blue Pilot's obligations to the Commonwealth and to the Company's Pennsylvania customers as finally determined by the Commission. Additionally, the OAG/OCA submit that the Commission should assure that all obligations of Blue Pilot to Pennsylvania consumers and the Commonwealth have been properly met. Finally, the OAG/OCA respectfully request that the Commission reserve action on Blue Pilot's EGS license for the Joint Complaint proceeding, wherein OAG/OCA seek permanent revocation of Blue Pilot's EGS license.



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

Margarita Tulman
Deputy Attorney General
PA Attorney I.D. 313514

Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
T: (717) 787-9707
F: (717) 787-1190
jabel@attorneygeneral.gov
mtulman@attorneygeneral.gov
Counsel for:

Bruce R. Beemer, First Deputy Attorney General
Office of Attorney General
Bureau of Consumer Protection
Date: February 1, 2016

Respectfully submitted,



Candis A. Tunilo
PA Attorney I.D. 89891

Kristine E. Marsilio
PA Attorney I.D. 316479
Assistant Consumer Advocates

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
T: (717) 783-5048
F: (717) 783-7152
ctunilo@paoca.org
kmarsilio@paoca.org
Counsel for:

Tanya J. McCloskey
Acting Consumer Advocate

*216522

CERTIFICATE OF SERVICE

Re: Electric Generation Supplier License : Docket No. M-2015-2490383
Cancellations of Companies with an :
Expired Financial Security :

I hereby certify that I have this day served a true copy of the foregoing document, the Joint Comments of the Office of Consumer Advocate and Office of Attorney General Bureau of Consumer Protection, in the manner and upon the persons listed below:

Dated this 1st day of February 2016.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Michael Swindler, Esq.
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

SERVICE BY E-MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

John R. Evans
Office of Small Business Advocate
Commerce Building, Suite 202
300 North Second Street
Harrisburg, PA 17101

Karen O. Moury, Esq.
Buchanan Ingersoll & Rooney PC
409 N. Second Street
Harrisburg, PA 17101-1357



Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. # 89891
E-Mail: CTunilo@paoca.org

Kristine E. Marsilio
Assistant Consumer Advocate
PA Attorney I.D. # 316479
E-Mail: KMarsilio@paoca.org

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
216585