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February 10, 2016

VIA E-FILING

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

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

Dear Secretary Chiavetta:

On behalf of Blue Pilot Energy, LLC ("Blue Pilot Energy"), enclosed for electronic filing are the Reply Comments of Blue Pilot Energy, LLC to Joint Comments of the Office of Consumer Advocate and Office of Attorney General, Bureau of Consumer Protection, 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: Kenneth Stark, Law Bureau
Office of Special Assistants
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY COMMENTS OF BLUE PILOT ENERGY, LLC
TO JOINT COMMENTS OF THE OFFICE OF CONSUMER ADVOCATE
AND OFFICE OF ATTORNEY GENERAL, BUREAU OF CONSUMER PROTECTION**

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Dated: February 10, 2016

I. INTRODUCTION

These Reply Comments are proffered by Blue Pilot Energy, LLC (“BPE”) in response to the Joint Comments filed by 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”) on February 1, 2016 concerning the Commission’s Tentative Order entered on December 17, 2015 in the above-captioned proceeding. Although the Tentative Order did not contemplate the filing of Reply Comments, BPE proffers this pleading due to the content of the Joint Comments filed by OAG/OCA, particularly with respect to the requests for Commission action that far exceed the scope of the relief proposed by the Tentative Order.

By the Tentative Order, the Commission included BPE on a list of electric generation suppliers (“EGSs”) who had not provided proof to the Commission, as of December 8, 2015, that they have bonds or other approved security in the amount directed by the Commission to replace expired bonds. Tentatively concluding that BPE and other listed EGSs were not in compliance with Section 54.40(a) and (d) of the Commission’s regulations, 52 Pa. Code § 54.40(a) and (d), the Commission found that “it is appropriate to initiate the cancellation process for each EGS license of each company listed in the Supplier Table, without the necessity of a formal complaint, as being in the public interest.” Tentative Order at 3. Absent the filing of adverse public comment or the filing of approved security within 30 days after publication in the *Pennsylvania Bulletin*, the Commission directed its Bureau of Technical Utility Services to prepare a Final Order for entry by the Secretary cancelling the licenses and closing the cases. Tentative Order, Ordering Paragraph No. 3. Upon entry of a Final Order, the Commission

further directed each electric distribution company in which the EGSs were licensed to do business to return the customers to default service. Tentative Order, Ordering Paragraph No. 5.

The Tentative Order was published in the *Pennsylvania Bulletin* on January 2, 2016, with comments due by February 1, 2016. BPE did not file comments to the Tentative Order. However, OAG/OCA filed Joint Comments on February 1, 2016, requesting that the Commission: “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.” OAG/OCA Comments at 4.¹

By these Reply Comments, which BPE respectfully requests the Commission to consider, BPE contends that the requests for relief made by the OAG/OCA Joint Comments go well beyond the scope of the remedies proposed by the Tentative Order. Specifically, the Tentative Order only proposed to cancel BPE’s license. To grant any other relief would violate BPE’s fundamental rights of due process.

II. REPLY COMMENTS

By Tentative Order entered on December 17, 2015, the Commission tentatively concluded that BPE had not submitted a bond or other approved security and proposed to cancel BPE’s license absent the filing of adverse public comment or the filing of approved security within 30 days after publication in the *Pennsylvania Bulletin*, which occurred on January 2,

¹ The OAG/OCA reference to the Joint Complaint proceeding is *Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655 (Joint Complaint filed June 20, 2014) (“Joint Complaint proceeding”).

2016. BPE did not file comments to the Tentative Order, particularly since the remedy proposed by the Tentative Order mirrors the relief requested by BPE on May 4, 2015 when it filed a letter at its application docket providing notice that was exiting the Pennsylvania retail market and requesting a cancellation of its license, effective immediately.² Although at that time BPE was still serving 218 customers, it explained that it was in the process of returning them to default service. BPE had voluntarily stopped enrolling new electric generation service customers during the first quarter of 2014 and is currently serving no customers in Pennsylvania.³

OAG/OCA filed Joint Comments to the Tentative Order on February 1, 2016. Because the requests for relief made by OAG/OCA's Joint Comments far exceed the scope of the remedies proposed by the Tentative Order, BPE proffers these Reply Comments and respectfully requests that the Commission consider them even though replies were not contemplated by the Tentative Order.

While the Tentative Order merely proposed to cancel BPE's license, OAG/OCA request that the Commission immediately act to secure any available proceeds of the BPE's last bond or letter of credit. As this remedy was not proposed by the Tentative Order, it would be a violation of BPE's fundamental rights of due process for the Commission to entertain this proposal submitted by the Joint Comments. *See Cmwlth. v. Thompson*, 444 Pa. 312, 316, 281 A.2d 856, 858 (1971); *Pocono Water Co. v. Pa. Pub. Util. Comm'n.*, 630 A.2d 971 (Pa. Cmwlth. 1993).

Section 2809(c)(1)(i) of the Public Utility Code provides that no energy supplier license shall remain in force unless the license holder, *inter alia*, furnishes a bond or other security approved by the Commission in a form and amount to ensure the financial responsibility of the EGSs and the supply of electricity at retail in accordance with contracts, agreements or

² *Application of Blue Pilot Energy, LLC*, Docket No. A-2011-2223888 (Letter dated May 4, 2015).

³ The last customer drop occurred on September 22, 2015.

arrangements. 66 Pa. C.S. § 2809(c)(1)(i). Pursuant to its statutory authority and its obligation to ensure that EGSs maintain a bond or other approved security, the Commission issued the Tentative Order on December 17, 2015 proposing to cancel BPE's license for failure to file proof of a bond or other approved security.

While such an enforcement action would typically require the filing and service of a formal complaint on BPE,⁴ or the initiation of an informal investigation,⁵ the Commission found that the Tentative Order approach was in the public interest. Through issuance of the Tentative Order and its publication in the *Pennsylvania Bulletin*, the Commission afforded BPE notice and an opportunity to be heard prior to taking the proposed action of cancelling its license.⁶ However, the Commission gave BPE no notice of any other possible outcomes that may result from the issuance of the Tentative Order. Therefore, to take any action other than the cancellation of BPE's EGS license would violate its due process rights. *See, e.g., Office of Consumer Advocate et al. v. Utility.com*, 96 Pa.P.U.C. 125, 2001 WL 1402072 (Pa.PUC), 212 P.U.R. 4th 255 (2001) (Commission addressed requests for filing a claim with the surety company in the context of an on-the-record proceeding initiated by the filing of formal complaints against the EGS, which had an opportunity to respond).

OAG/OCA would also have the Commission forego cancellation of BPE's EGS license while a determination is made as to whether BPE has fulfilled its obligations to Pennsylvania customers and the Commonwealth. Although the Commission can easily verify with the Department of Revenue that BPE is current on its payment of gross receipts taxes, it is unclear

⁴ 66 Pa. C.S. §§ 701-702.

⁵ 52 Pa. Code § 3.113.

⁶ The Tentative Order also sought to cancel the licenses of several other EGSs on the same grounds. Indeed, the Commission has issued similar tentative orders at this docket on July 8, 2015, October 22, 2015 and January 28, 2016. As a result of the earlier tentative orders at this docket, numerous EGS licenses have been cancelled through this process.

what process OAG/OCA envision for determining whether BPE has fulfilled any obligations to Pennsylvania consumers. This is especially true since BPE is currently serving no customers in Pennsylvania. Moreover, even if the Commission would forego cancellation of BPE's EGS license pending such a determination, this delay would not change the status of BPE's bond.

In addition, OAG/OCA ask the Commission to reserve any action on BPE's EGS license for the Joint Complaint proceeding wherein OAG/OCA seek permanent revocation of BPE's EGS license. The Joint Complaint involves a wholly different set of allegations relating to variable price increases during the Polar Vortex of 2014 and BPE's associated sales, marketing and business practices. None of the counts in the Joint Complaint include any averments concerning BPE's bond or other approved security.

While OAG/OCA seek revocation of BPE's EGS license in the Joint Complaint proceeding on the basis of other allegations unrelated to BPE's bond, they have failed to explain how consumers would be adversely affected by the issuance of a Final Order in this proceeding that cancels BPE's license. If OAG/OCA wish to pursue further relief as part of the Joint Complaint proceeding, in addition to license cancellation, they are free to do so.⁷

Also, OAG/OCA has created a fiction that does not exist in terms of the cancellation, revocation or permanent revocation of an EGS license. Regardless of what the Commission calls its actions, the cancellation, revocation and permanent revocation of an EGS license all have the same effect. Whether that result occurs imminently because of the issuance of a Final Order in this Commission-initiated proceeding, or occurs months from now resulting from the issuance of

⁷ For example, in a pleading filed in the Joint Complaint proceeding, OAG/OCA proposed that BPE's owners, officers, directors, managers and shareholders be permanently barred from affiliations with EGSs licensed in Pennsylvania or from seeking approval of an EGS license in Pennsylvania.

a Commission Order in a separate and unrelated proceeding initiated by OAG/OCA, the outcome is the same -- BPE will no longer be authorized to serve as an EGS in the Commonwealth.

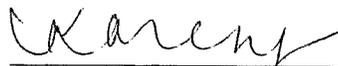
Therefore, the OAG/OCA Joint Comments should be disregarded by the Commission. Not only do they seek remedies that go well beyond the scope of the Tentative Order, they also propose meaningless relief, without any valid basis, by seeking to forego the cancellation of BPE's EGS license several months after BPE voluntarily surrendered its license and exited the Pennsylvania retail market.

III. CONCLUSION

Blue Pilot Energy, LLC respectfully requests that the Commission consider these Reply Comments submitted in response to the Joint Comments filed by the Office of Attorney General and the Office of Consumer Advocate; decline to grant the relief requested by the Joint Comments since it far exceeds the scope of the proposed remedies set forth in the Tentative Order entered on December 17, 2015; and grant such other relief as may be just and appropriate.

Respectfully submitted,

Dated: February 10, 2016



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Electric General Supplier License :
Cancellations of Companies with an : **Docket No. M-2015-2490383**
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CERTIFICATE OF SERVICE

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

Via Email and First-Class Mail

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Dated this 10th day of February, 2016.



Karen O. Moury, Esq.