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October 13, 2014

VIA E-FILING

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

Re: Alan Haulman c/o AJH Pizza, Inc v. Blue Pilot Energy, LLC
Docket Nos. C-2014-2415273

Dear Secretary Chiavetta:

On behalf of Blue Pilot Energy, LLC, I have enclosed for electronic filing the Motion of Blue Pilot Energy, LLC for Summary Judgment 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/tlg
Enclosure
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALAN HAULMAN C/O AJH PIZZA, INC.	:	
	:	Docket Nos. C-2014-2415273
v.	:	
	:	
BLUE PILOT ENERGY, LLC	:	

MOTION OF BLUE PILOT ENERGY, LLC FOR SUMMARY JUDGMENT

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Blue Pilot Energy, LLC (“BPE”), by and through its counsel, Karen O. Moury, and Buchanan Ingersoll & Rooney PC, files this Motion for Summary Judgment (“Motion”), pursuant to Section 5.102(a) of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.102(a), and in connection therewith avers as follows:

I. Introduction and Background

1. BPE is an electric generation supplier (“EGS”) licensed by the Commission since June 10, 2011 at Docket No. A-2011-2223888 to supply electricity or electric generation services to residential, small commercial, large commercial and industrial customers in electric distribution company service territories throughout the Commonwealth of Pennsylvania.

2. On April 2, 2014, Alan Haulman c/o AJH Pizza, Inc. (“Complainant”) filed a Formal Complaint (“Complaint”) alleging that it was not billed correctly in February and March 2014, that it did not authorize a switch to BPE and that it has no written contract with BPE. By way of requested relief, the Complainant sought a refund/credit for the difference between what it would have paid PPL Electric Utilities Corporation (“PPL”) and what it was billed by BPE. The Complaint also named PPL as a respondent.

3. On April 28, 2014, BPE filed an Answer to the Formal Complaint generally denying any wrongdoing and asserting numerous affirmative defenses, including: 1) the Complaint fails to state a claim upon which relief can be granted; 2) BPE has fulfilled its contractual and legal obligations to the Complainant; and 3) the Complainant is not entitled to any relief since the Complainant has breached its agreement with BPE; and 4) the variable rates that the Respondent charged the Complainant were lawful. The Answer with New Matter requests the Commission to dismiss the Complaint with prejudice.

4. On May 7, 2014, the Complainant filed a Reply to New Matter.

5. On June 7, 2014, the Commission issued a Notice scheduling an initial telephonic hearing on August 27, 2014 at 1:30 p.m. before Administrative Law Judge (“ALJ”) Dennis J. Buckley.

6. On August 27, 2014, the Commission issued a Notice cancelling the initial telephonic hearing scheduled for August 27, 2014 and rescheduling the hearing to November 4, 2014 at 1:30 p.m.

7. On September 26, 2014, PPL filed a Request for Relief, seeking the issuance of an order directing the parties to file written testimony or alternatively to extend the procedural schedule. BPE supports PPL’s Request for Relief.

8. Because the Complainant has twenty days to respond to this Motion for Summary Judgment, BPE recognizes that there is virtually no time between the response date and the hearing date to allow for disposition of this Motion. Although BPE does not seek a continuance to allow more time for a ruling, BPE is not opposed to a continuance. BPE further submits that even if the Motion is not disposed of prior to hearing, its intention will be to renew the Motion at the hearing. Therefore, by filing the Motion today, BPE is affording the Complainant advance

notice of its intention to seek dismissal of the Complaint on the basis of the pleadings and other documentation.

9. Through this Motion, BPE seeks dismissal of the Formal Complaint on the basis that they allege no violations of the Public Utility Code (“Code”), 66 Pa.C.S. §§101 *et. seq.* or Commission regulations. Specifically, BPE was not required to have a written contract with the Complainant and a third party verification recording clearly establishes that that the switch to BPE was authorized. Moreover, BPE was permitted to increase the Complainant’s variable rates pursuant to the written Disclosure Statement that it provided, and the Commission has no jurisdiction to establish or review prices charged by EGSs or to order EGSs to issue refunds.

10. Because the pleadings, as well as the attached Affidavit of Raymond Perea, General Counsel/Manager for BPE, (“Perea Affidavit”),¹ demonstrate that there is no genuine issue of fact and that BPE properly followed the terms of its contract with the Complainant, BPE is entitled to relief as a matter of law. Accordingly, BPE requests that this Motion be granted and that the Complaint be dismissed.

II. Argument

A. Summary Judgment Standard

11. The Commission’s Rules of Administrative Practice and Procedure permit parties to file preliminary motions. 52 Pa. Code §§ 5.101-103. Specifically, the Commission’s regulations at 52 Pa. Code § 5.102(a) permit any party to move for summary judgment after the pleadings are closed, but within such time as not to delay a hearing. A motion for summary judgment must be based on the pleadings, depositions, answers to interrogatories, admissions and supporting affidavits. 52 Pa. Code § 5.102(c). The presiding officer must grant a motion for

¹ The Perea Affidavit is attached hereto and expressly incorporated herein, along with Respondent Exhibit A attached to the Affidavit, which consists of the Welcome Letter and Disclosure Statement.

summary judgment if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

12. Summary judgment is properly granted where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Pennsylvania State Univ. v. County Of Centre*, 532 Pa. 142, 144 - 145, 615 A.2d 303, 304 (1992).

13. In the case of a motion for summary judgment, the moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Mertz v. Lakatos*, 381 A.2d 497 (Pa. Cmwlth. 1978). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Thomson Coal Company v. Pike Coal Company*, 412 A.2d 466 (Pa. 1979). Summary judgment will be granted only where the right is clear and free from doubt.

14. The non-moving party in a motion for summary judgment must allege facts showing that an issue for trial exists. *Stover v. The UGI PennTelephone Co. of Pennsylvania*, Docket No. C-00923833 (Order entered July 21, 1992). The Commission has interpreted 52 Pa. Code Section 5.102(c) in conformity with Rule 1035 (now Rule 1035.1) of the Pennsylvania Rules of Civil Procedure. *South River Power Partners, L.P. v. West Penn Power Company*, Docket No. C-00935287 (Order entered November 6, 1996). In civil practice, a non-moving

party may not rely solely upon denials in its pleadings, but must submit some materials to establish that a genuine issue of material fact exists. *Nicastro v. Cuyler*, 467 A.2d 1218 (Pa. Cmwlth. 1983); *Pennsylvania Gas & Water Co. v. Nenna & Frain, Inc.*, 467 A.2d 330 (Pa. Super. 1983); *Geriot v. Council of Borough of Darby*, 457 A.2d 202 (Pa. Cmwlth. 1983); *see also*, Pa. R.C.P. 1035.3, providing that “[s]ummary judgment may be entered against the non-moving party who does not respond.” Pa. R.C.P. 1035.3(d).

15. The provision at 52 Pa. Code § 5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. P.U.C.*, 563 A.2d 557 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. P.U.C.*, 540 A.2d 1006 (Pa. Cmwlth. 1988); *White Oak Borough Authority v. Pa. P.U.C.*, 103 A.2d 502 (Pa. Super. 1954).

B. No Requirement for Written Contract And Third Party Verification Recording Demonstrates That Switch Was Authorized

16. The Complaint alleges that the Complainant did not enter into a written contract with BPE and that the switch to BPE was not authorized. Neither the Code nor the Commission regulations require an EGS to execute a written contract with a customer. BPE sent a welcome letter on December 19, 2012 along with a Disclosure Statement which fully explained all of the terms and conditions of the contract and complied with the Commission’s regulations. Perea Affidavit at ¶ 7, Respondent Exhibit A. Moreover, a third-party verification process was used for the Complainant’s transaction, which clearly demonstrates that the switch to BPE was authorized. Perea Affidavit at ¶ 6. In any event, in order to avoid responsibility for EGS bills, a switch needs to be disputed within the first two billing cycles, when the customer should have reasonably known of a change of the EGS. *See* 52 Pa. Code §57.177 (b). Here, the Complainant

did not claim an unauthorized switch until sixteen months later. Therefore, no material issues of fact are in dispute and BPE is entitled to judgment as a matter of law.

17. The Commission's regulations provide that an EGS may "establish a written, or electronic transaction process for a customer to authorize the transfer of the customer's account." 52 Pa. Code § 111.7(a). The Commission's regulations further require EGSs to issue written disclosure statements to residential and small business customers setting forth the terms and conditions of service. 52 Pa. Code § 54.5. The disclosure statement may be provided by United States mail. 52 Pa. Code § 111.11(b).

18. The Commission has held that no written agreement following a telemarketing call is required where there is a recorded third-party verification ("TPV") call followed by the provision of a written disclosure statement. *See, e.g., Dawes v. Pa. Gas & Elec.*, Docket No. F-2013-2361655 (January 14, 2014).

19. Indeed, in specifically considering whether a consumer must sign and return an EGS's disclosure statement, the Commission has "emphasize[d] that written contracts are not required but both oral and written sales agreements are 'contracts.'....[W]e offer that 'terms of service' best describes an agreement between a customer and a supplier." *In re Elec. Generation Customer Choice and Competition Act – Customer Information*, 180 Pa. P.U.R. 4th 61 (Pa. PUC 1997), 1997 WL 678174 ("1997 Customer Information Order"). *See also Mackey v. Mackey*, 984 A.2d 529, 534 (Pa. Super. Ct. 2009) (it is axiomatic that Pennsylvania courts recognize oral agreements as valid and enforceable contracts). In the *1997 Customer Information Order*, the Commission concluded, "we will not require a customer to sign a written disclosure statement, as doing so would essentially require all contracts to be in writing. The required disclosure

statement becomes the agreement of the parties unless the customer cancels the agreement by invoking the right of rescission prior to the starting date.” *Id.*

20. In *Pa. PUC v. PECO Energy Co.*, 88 Pa. P.U.C. 402, Docket No. R-00984298, 1998 WL 442683 (May 28, 1998), the Commission was called upon to decide the issue of whether suppliers should be able to enroll customers without obtaining such agreement in writing. The respondent argued that a conversation between an EGS and a customer followed by a written confirmation was sufficient. The Office of Consumer Advocate (“OCA”) disagreed, arguing that an EGSs must provide a written contract following telephonic enrollment. Both the Administrative Law Judge and the Commission expressly rejected OCA’s argument.

21. BPE’s telephonic enrollment process followed by the provision of its Disclosure Statement and Agreement for Electric Service to consumers is identical to the practice utilized by the respondent and endorsed by the Commission in *Dawes, supra*. In fact, BPE uses the exact third-party verification service – Trusted TPV – as the respondent in *Dawes*. Perea Affidavit ¶ 6.

22. In short, the Complainant received a Disclosure Statement from BPE that contains all the material terms of the parties’ contract for service being provided, including all relevant variable rate disclosures in a clear and conspicuous manner. Further, the Complainant was made aware of its right to rescind the contract and cancel at any time for any reason without incurring a penalty. Since BPE provided all of the necessary documentation and followed the appropriate procedures for enrolling the Complainant, the Complaint should be dismissed.

C. No Jurisdiction Over EGS Prices or to Direct Issuance of Refund/Credit

23. The Complaint alleges that the variable prices charged by BPE were in error because they were higher than the prices that would have been charged by PPL. The relief requested by the Complaint is a refund/credit for the difference between the price charged by

BPE and what would have been charged by PPL. Because the Commission does not have jurisdiction over EGS prices and does not have statutory authority to direct the issuance of a refund/credit, the Complaint fails to state a claim that may be reviewed by the Commission or upon which relief may be based.

24. As a creation of the General Assembly, the Commission has only the powers and authority granted to it by the General Assembly and contained in the Code. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967) (“*Roberts*”). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), alloc. denied, 637 A.2d 293 (Pa. 1993).

25. Nothing in the Code authorizes the Commission to regulate the prices of EGSs or to consider whether rates charged by EGSs are unjust, unreasonable or illegal or to direct the issuance of a refund. To the contrary, Code Section 2806(a) provides that the “generation of electricity shall no longer be regulated as a public utility service or function except as otherwise provided for in this chapter.” 66 Pa. C.S. § 2806(a).

26. The Pennsylvania Supreme Court has found that the definition of “public utility” in Code Section 102 does not include EGSs except for the limited purposes set forth in Code Sections 2809 and 2810, 66 Pa. C.S. §§ 2809 and 2810. *Delmarva Power & Light Co. v. Pa. Pub. Util. Comm'n*, 870 A.2d 901 (Pa. 2005). Those sections have no bearing on prices charged by EGSs. Code Section 2809 establishes the requirement for EGSs to be licensed, 66 Pa. C.S. §

2809(e), and Code Section 2810 requires EGSs to pay state taxes so as to ensure revenue neutrality to the Commonwealth of Pennsylvania. 66 Pa.C.S. § 2810.

27. The Commission has recognized its lack of jurisdiction to limit prices charged by EGSs. For instance, the Commission’s regulations require bills of customers purchasing electric generation services from EGSs to include a statement noting that generation prices and charges are set by the EGS chosen by the customer. 52 Pa. Code § 54.5(b)(10). *See also* *Petition of PECO Energy Company for Approval of its Default Service Plan*, Docket No. P-2012-2283641 (March 6, 2014) (“*PECO Default Service Plan Order*”).² In the *PECO Default Service Plan Order*, the Commission heard from numerous parties with competing interests on this issue, in the context of whether the Commission may cap the prices that low-income customers pay to EGSs, and concluded that “we have not found any arguments that convince us that we have statutory authority to limit prices charged by EGSs.” *Id.* at 11.

28. In an Order adopted on February 20, 2014, responding to significant variable price increases in the retail market, the Commission sought comments from interested parties on the adequacy of disclosure and notice requirements, as well as the speed with which a consumer may switch to a different EGS. *See Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134 (February 20, 2014) (“*Variable Rate Order*”). In the *Variable Rate Order*, the Commission noted that the rates consumers pay in the retail electric market are governed by the terms of their contract with their EGS and that some variable price contracts have no ceiling on the rate that could be charged. The Commission further observed that while a variable rate may offer substantial savings when wholesale market prices are low, customers may experience very high

² Order is currently on appeal to the Commonwealth Court of Pennsylvania, *CAUSE-PA v. Pa. Pub. Util. Comm’n.*, 445 C.D. 2014 and *McCloskey v. Pa. Pub. Util. Comm’n.*, 596 C.D. 2014.

bills during periods of market volatility such as occurred in early 2014. For that reason, the Commission emphasized the importance of consumers on variable rates “to carefully review the terms and conditions of their contracts to determine if they are at risk for large rate increases at any given time.” *Variable Rate Order* at 3.

29. Likewise, several ALJs have concluded that the Commission does not regulate EGS prices and may not order the issuance of refunds by EGS. For example, in *Yaglidereliler Corp. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2413732 (Initial Decision dated June 18, 2014) (“*Yaglidereliler Initial Decision*”), ALJ Salapa dismissed a complaint that sought a refund of “excessive rates,” finding that “the Commission lacks the authority to order the Respondent to provide either a refund or credit to the Complainant.” *Id.* at 9. ALJ Salapa reasoned as follows:

The Commission may not regulate the rates that the Respondent charged the Complainant for electric generation service since it is not a public utility except for the limited purposes of 66 Pa. C.S. §§ 2809 and 2810. Therefore, the Commission has no jurisdiction over the Respondent to the extent that the Complainant contends that the Respondent has charged it an unreasonable, unjust or illegal rate for electric generation service. Since the Commission lacks the authority to regulate rates charged for electric generation service, it lacks the authority to order a refund or credit to the Complainant.

Id. at 9. In dismissing the complaint, ALJ Salapa referred to the Commission’s regulations governing disclosure statements and marketing practices, noting that violations of those rules subject EGSs to penalties imposed by the Commission. *Id.* at 10.

30. The Code provisions addressing just, reasonable and legal rates and providing for refunds when rates do not comply with these standards apply solely to public utilities, and not to EGSs. For instance, Code Section 1301 requires that every “rate made, demanded, or received by any *public utility*...shall be just and reasonable, and in conformity with regulations or orders” of the Commission. 66 Pa. C.S. § 1301 (*emphasis added*). Similarly, Section 1312 authorizes the Commission to direct the issuance of refunds by “public utilities” in any proceeding

involving rates upon a determination that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the Commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility. 66 Pa.C.S. § 1312. Since EGSs are not public utilities for the purposes of pricing, these provisions are not applicable.

31. The Complainant has requested that a refund (or credit) be made for the difference between the price he was charged by BPE and the price that would have been charged by PPL. That is not consistent, however, with the clear terms of his contract with BPE. Moreover, as the Commission is aware, PPL's price is a regulated rate that varies on a quarterly basis to reconcile with what has actually occurred in the market. At any given time, it bears no resemblance to actual market conditions. *See Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237962 (February 14, 2013 at 14-15). By contrast, BPE's rate varies on a monthly basis to reflect current market conditions. No basis exists to direct a refund of the difference between those two rates, which are developed using different methodologies.

32. As has been well-documented in the media and acknowledged by the Commission, the Polar Vortex in January 2014 caused wholesale prices for hourly energy supply in the day ahead and the real time markets to increase exponentially, which resulted in significant increases in the prices paid by EGSs to secure the supply needed for their end-use retail customers. *February 20 Variable Rate Order*. Specifically in the *February 20 Variable Rate Order*, the Commission noted that new records were set for winter electricity use in Pennsylvania and throughout the service area of PJM Interconnection, LLC ("PJM"), with PJM recording 8 of the top 10 highest hourly usage periods ever observed. The Commission further

referred to this high demand, in combination with particularly high forced outage rates for a number of generators, as producing record high costs in the PJM-administered energy markets. By way of example, the Commission explained that average wholesale day-ahead LMP prices for Pennsylvania in January 2014 were estimated at \$148 per MWh, compared to \$44 per MWh in December 2013. Additionally, the Commission noted that energy uplift charges, which are energy related charges billed to EGSs in addition to LMP costs, were estimated at \$631 million in the month of January 2014, which is equivalent to a full year of uplift charges for the period 2010-2012.

33. To serve its retail customers in Pennsylvania, BPE incurred, at various times during the winter months, increases in excess of ten times its typical costs. Perea Affidavit at ¶ 9. BPE then increased the Complainant's prices in a manner that was consistent with the Disclosure Statement, which clearly provides that the price may vary on a month-to-month basis after the first ninety days of service, to reflect several factors including changes in wholesale energy market prices in the PJM market. Since the Complainant initially enrolled with BPE in November 2012, the increases imposed by BPE occurred well after the first ninety days of service. Perea Affidavit at ¶ 8.


34. The variable rate increases imposed by BPE on the Complainant in the February and March 2014 bills for electric usage were consistent with the terms of the Disclosure Statement. Because Complainant has not stated a claim upon which relief can be granted by the Commission and has requested relief that is beyond the Commission's statutory authority to award, BPE is entitled to judgment in its favor as a matter of law and the Complaint should be dismissed.

III. Conclusion

WHEREFORE, for the foregoing reasons, Blue Pilot Energy LLC respectfully requests that the Commission grant its Motion for Summary Judgment, dismiss the Formal Complaint of Alan Haulman c/o AJH Pizza, Inc. and grant BPE such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: October 13, 2014



Karen O. Moury
BUCHANAN INGERSOLL & ROONEY PC
409 North Second Street
Suite 500
Harrisburg, PA 17101
(717) 237-4820

Attorneys for Blue Pilot Energy LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALAN HAULMAN C/O AJH PIZZA, INC.	:
	:
v.	:
	:
BLUE PILOT ENERGY, LLC	:
	:

Docket No. C-2014-2415273

**AFFIDAVIT OF RAYMOND PEREA IN SUPPORT OF
BLUE PILOT ENERGY, LLC's MOTION FOR SUMMARY JUDGMENT**

I, Raymond Perea, being duly sworn according to law, depose and say the following:

1. My name is Raymond Perea, and my business address is 250 Pilot Road, Suite 300, Las Vegas, Nevada 89119.
2. I am General Counsel and Manager of Blue Pilot Energy, LLC ("BPE").
3. As General Counsel and Manger for BPE, I am responsible for regulatory compliance, which includes addressing and responding to formal complaints.
4. As part of my job responsibilities, I am familiar with the Disclosure Statements issued by BPE and with the third party verification process that BPE uses to ensure that consumers understand that they are being switched to an electric generation supplier ("EGS") for electric generation services, as well as the terms and conditions under which they will receive that service.
5. On April 2, 2014, the Complainant filed a Formal Complaint with the Commission regarding variable rate increases for electric generation service that were imposed in Complainant's February and March 2014 bills.
6. On November 19, 2012, the Complainant telephonically enrolled with BPE for electric generation service, and a third party verification ("TPV") was conducted by Trusted

TPV, which confirmed that this enrollment was authorized. Through the TPV, the Complainant was advised that a Disclosure Statement would be mailed.

7. On December 19, 2012, BPE mailed a Welcome Letter and Disclosure Statement to the Complainant, which is appended as Respondent Exhibit A. Under the Disclosure Statement, the Complainant's starting price was set at 8.9 cents per kWh and would remain in effect for at least the first ninety days of service. After ninety days, the disclosure statement explained that the price could vary on a month-to-month basis due to several factors, including changes in wholesale energy market prices in the PJM market. The disclosure statement contained no percentage or dollar caps on the amount by which the variable rate could change.

8. BPE began providing service to the Complainant on January 3, 2013. The Complainant was billed at the rate of 8.9 cents per kWh for the first ten months of service. For the next two billing periods of November 1, 2013 to December 3, 2013 and December 4, 2013 to January 3, 2014, the Complainant was billed at the rate of 10.9 cents per kWh.

9. Starting in January 2014, due to the Polar Vortex and accompanying exponential increases in the wholesale prices for hourly energy supply in PJM's day ahead and the real time markets, BPE incurred, at various times during the winter months, increases in excess of ten times its typical costs, to serve end-use retail customers.

10. For bills issued in February and March 2014, due to the exponential prices in the PJM wholesale energy market and consistent with the disclosure statement provided to Complainant, BPE increased Complainant's variable rate to 44.9 cents per kWh. For bills issued in April and May 2014, BPE decreased Complainant's variable rate to 24.9 cents per kWh.

11. Upon request, Complainant was returned to PECO Energy Company for default generation service on May 5, 2014.

12. I am authorized to submit this Affidavit for and on behalf of BPE and represent that the facts set forth herein are true and correct to the best of my knowledge, information and belief.



Raymond A. Perea, General Counsel

Sworn and subscribed before me this 8th day of October 2014.



Notary Public

My Commission expires on: March 12, 2015



RESPONDENT
EXHIBIT A



250 Pilot Rd. Suite 300
Las Vegas, NV 89119

Phone 800.451.6956
Fax 800.451.5685

www.bluepilotenergy.com

December 19, 2012

Al's Pizza & Subs
6581 Carlisle Pike
Mechanicsburg, PA 17050

Dear Ms. Ashley Killinger,

Welcome to Blue Pilot Energy, LLC! Thank you for choosing Blue Pilot for your energy needs! The team at Blue Pilot Energy has been in the utility industry for over 20 years and prides itself in providing service at competitive prices along with knowledgeable and courteous customer service. Attached, you will find a copy of Blue Pilot's disclosure statement for your review. Please keep a copy of this statement for your records.

At Blue Pilot Energy, our Customer Care representatives stand ready to answer all of your questions regarding the services that we provide. Feel free to give us a call at 877.513.0246 or log on to www.bluepilotenergy.com.

Thank you for the opportunity to earn your business - now and in the future!

Sincerely,

Your Blue Pilot Energy Customer Care Department

Blue Pilot Energy, LLC * 250 Pilot Road, Suite 300, Las Vegas, NV 89119
800.451.6956 * www.bluepilotenergy.com

Blue Pilot Energy, LLC
Disclosure Statement and Agreement for Electric Service

This Disclosure Statement and Agreement (the “Agreement”) sets forth the terms and conditions that apply to your purchase of electric services from Blue Pilot Energy, LLC (“Blue Pilot” or the “Company”). In this Agreement, the terms “you,” “your” and “Customer” shall mean: (a) for residential service, the account holder and/or the person whose name appears on the invoice for service under this Agreement; (b) for small business/commercial service, the account holder and/or the person and/or entity whose name appears on the bill for service under this Agreement, or an authorized agent thereof.

Right of Rescission. You may rescind your election of service from Blue Pilot, this Agreement, and any related agreements without penalty at any time before 6:00 PM Eastern Time of the 3rd business day after receiving this Agreement. Please provide Blue Pilot with the following information when requesting rescission: Customer name, address and phone number(s); and account/ meter number(s). To rescind, you must contact Blue Pilot by 6:00 PM Eastern Time of the 3rd business day: Phone at 1- 877-513-0246.

Background: Blue Pilot is licensed by the Pennsylvania Public Utility Commission (“PA PUC”) to offer and supply electric generation and related services in Pennsylvania. Blue Pilot’s PA PUC license number is A-2011-2223888. Blue Pilot sets the generation prices and charges that you pay. The PA PUC regulates distribution prices and services. The Federal Energy Regulatory Commission regulates transmission prices and services. You will receive a single bill from your Electric Distribution Company (hereinafter, “EDC”) that will contain the EDC’s charges and Blue Pilot’s charges.

Definitions:

- Generation Charge – Charge for production of electricity.
- Transmission Charge(s) – Charge(s) for moving high voltage electricity from a generation facility to the distribution lines of an Electric Distribution Company.
- Distribution Charge(s) – Charge(s) for delivering electricity over a distribution system to your home or business from the transmission system.

1. CONTACT INFORMATION

Blue Pilot Energy, LLC
250 Pilot Rd., Ste. 300
Las Vegas, NV 89119
1-800-451-6956 Corporate Office
1-877-513-0246 Customer Service

Pennsylvania Public Utilities Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Choice Hotline Number: 1-800-692-7380

Any formal notices to Blue Pilot shall be sent to the address stated above (the “Notice Address”). Customer has the right to additionally receive this Agreement or any notices related to this Agreement or the services provided hereunder via electronic communications at Customer’s request.

2. **Price per Kilowatt Hour.** You have a variable rate plan with a starting price set at 8.9 cents per kWh. This initial rate will be effective for at least the first ninety (90) days of service. Thereafter, 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 after ninety (90) days of service, 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. Please log on to www.bluepilotenergy.com or call Customer Service at 877-513-0246 for additional information and updates.
3. **Cancellation Provisions.** Customer may cancel service at any time and for any reason. The cancellation will become effective on a date determined by the EDC. Cancellation will not relieve the Customer of any payment obligations for service. In the event of a Customer bankruptcy, late payment or nonpayment, fraud or misrepresentation, Blue Pilot has the right to cancel Customer’s account, this Agreement and/or any related agreements. If Blue Pilot cancels Customer’s account, this Agreement or any related agreements for any reason other than for Customer non-payment, Blue Pilot will follow applicable rules in providing notice to you.
4. **Billing.** Customer will receive one monthly electric bill processed and provided by Customer’s local EDC. Customer consents to the EDC disclosing basic account information to Blue Pilot. Payment is due to Customer’s local EDC in accordance with the EDC’s standard billing practices. Billing cycles may change from time to time without notice. Customers may contact their EDC for information about Universal Service Programs that may be available to them. Allegheny/West Penn at 800-207-1250, Duquesne Light at 888-393-7600, or PPL at 800-342-5775.

5. **Purchase of Electric Service from Blue Pilot.** Customer agrees to purchase electric generation and related services from Blue Pilot for the service address(es) identified by Customer (the "Service Address"). Service from Blue Pilot will begin on the next regularly scheduled meter read date after your EDC has switched your account to Blue Pilot and will continue on a month to month basis until either you or Blue Pilot cancels service as provided in Section 3 above. Customer shall not resell electricity to any third party. If your electric service is terminated by your EDC, then your account, this Agreement and any related agreements with Blue Pilot shall be cancelled on the date that your electric service is terminated. You will owe Blue Pilot for amounts unpaid for its charges of electric generation service up to the date of termination. If you move from one address to another, your service may be cancelled.
6. **Security Deposit.** Blue Pilot does not require a security deposit from its Customers. If the Customer has paid a deposit to his/her current supplier, it is the Customer's responsibility to request a refund from his/her/its current supplier.
7. **Discrimination.** Blue Pilot does not discriminate, deny service, or require prepayment or a deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, sexual orientation, disability, familial status, location of customer in an economically distressed geographic area or qualification for low income or energy efficiency services.
8. **Dispute Resolution and Mandatory Agreement to Arbitrate On An Individual Basis.** Blue Pilot will work with you to answer/resolve any questions or concerns that you may have regarding the terms of this Agreement, the service you receive from Blue Pilot, or any other aspect of your relationship with Blue Pilot. If you are not satisfied after discussing any issue with Blue Pilot, you are welcome to contact the PA PUC at 1-800-692-7380.

You and Blue Pilot both agree to resolve Disputes (as defined below) only by arbitration or in small claims court (for qualifying claims), subject to specific exceptions listed herein. There is no judge or jury in arbitration, the procedures may be different, and is subject to very limited review by court, but an arbitrator can award you the same damages and relief, and must honor the same terms in this Agreement, as a court would. If the law allows for an award of attorneys' fees, an arbitrator can award them too. In addition, you and Blue Pilot also both agree that:

- (a) "Disputes" are any claims or controversies against each other related in any way to, or arising from Blue Pilot's services, this Agreement, or any related agreements, including but not limited to, billing, services and practices, policies, contract practices (including enforceability), service claims, privacy, or advertising, even if it arises after your services with Blue Pilot have terminated. Disputes include any claims that: (a) you bring against Blue Pilot or any of its employees, agents, affiliates, or other representatives; (b) you bring against a third party that are based on, relate to, or arise from Blue Pilot's services, this Agreement or any related agreements; or (c) that Blue Pilot brings against you. It also includes, but is not limited to, claims related in any way to, or arising from any aspect of the relationship between Customer and Blue Pilot, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory.
- (b) The Federal Arbitration Act ("FAA") applies to this agreement to arbitrate, and this agreement to arbitrate is intended to be broadly interpreted. The arbitrator's decision and award is final and binding, with some exceptions under the FAA, and judgment on the award may be entered in any court with jurisdiction.
- (c) A party who intends to seek arbitration must first send to the other, by certified mail, a written notice of dispute ("Dispute Notice"). The Dispute Notice to Blue Pilot should be addressed to the Notice Address listed in Paragraph 1 above. The Dispute Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If Blue Pilot and you do not reach an agreement to resolve the claim within 30 days after the Dispute Notice is received, you or Blue Pilot may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Blue Pilot or you shall not be disclosed to the arbitrator.
- (d) Unless we each agree otherwise, the arbitration will be conducted by a single neutral arbitrator and will take place in the county (or parish) of the Service Address.
- (e) The arbitration will be conducted by: (a) a neutral third party arbitrator mutually agreed upon by Customer and Blue Pilot; or (b) the American Arbitration Association (the "AAA"). The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the AAA, as modified by this Agreement. Where the terms of this agreement to arbitrate conflict with the AAA Rules, the terms of this agreement to arbitrate shall override and govern. The AAA Rules are available online at adr.org, by calling the AAA at 1-800-778-7879, or by writing to the Notice Address for Blue Pilot. The arbitrator is bound by the terms of this agreement to arbitrate. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide. If your claim is for \$10,000 or less, we agree that you may choose whether the arbitration will be

conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. Except as otherwise provided for herein, Blue Pilot will pay all AAA filing, administration, and arbitrator fees for any arbitration initiated in accordance with this agreement to arbitrator. If, however, the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. However, nothing in this paragraph will require or allow you or Blue Pilot to arbitrate on a class-wide, representative or consolidated basis.

You and Blue Pilot each agree that arbitration will only be pursued on an individual basis, and will not be pursued on a classwide, representative or consolidated basis. This Agreement does not allow class, representative or collective arbitrations even if the AAA procedures or rules would. If for any reason any court or arbitrator holds that this restriction is unconscionable or unenforceable, then this agreement to arbitrate doesn't apply and the dispute must be brought in court.

- (f) You and Blue Pilot agree that notwithstanding this agreement to arbitrate, either party may bring qualifying claims in a small claims court located in Pennsylvania. In addition, this arbitration provision does not prevent you from bringing your dispute to the attention of federal, state, or local government agencies (including the PA PUC), and if the law allows, they can seek relief against Blue Pilot on your behalf.
- (g) If for any reason a claim proceeds in court rather than through arbitration, you and Blue Pilot agree that there will not be a jury trial. You and Blue Pilot unconditionally waive any right to trial by jury in any action, proceeding or counterclaim arising out of or relating in any way to this Agreement or the services provided by Blue Pilot. In the event of litigation, this paragraph may be filed to show a written consent to a trial by the court.

9. **EMERGENCY: In the event of an emergency, such as a power failure or a downed power line, Customers should contact their EDC. Allegheny/West Penn at 800-255-3443, Duquesne Light at 888-393-7000, or PPL at 800-342-5775.**

10. **Force Majeure.** Except for your obligation to make payments when due, neither party shall be liable to the other for any delay or failure to perform caused by an occurrence of *Force Majeure*. *Force Majeure* means occurrences beyond a party's reasonable control, including, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of terrorism, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, civil disturbances, explosions, breakage, shortage or unavailability of transmission facilities, and actions of any governmental authority or your EDC that result in conditions, limitations, rules, or regulations that materially impair either party's ability to perform hereunder. The affected party shall give to the other, reasonably prompt and detailed notice of the occurrence of any Force Majeure relied upon.

11. **Limitation Of Liability.** Blue Pilot will endeavor to provide service in a commercially reasonable manner; however, the Company does not guaranty a continuous supply of electrical energy. Blue Pilot does not generate or transport electricity and the Company does not provide services in connection with Customers' meters. Customer agrees that Blue Pilot is not responsible for actions of (or inaction by) regional transmission organization(s), independent system operator(s), or other third parties involved in the production and delivery of Customer's electrical supply. In addition, Blue Pilot's liability in connection with this Agreement or the services that it provides to Customer is limited to direct actual damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS OR REVENUE), INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES FOR CLAIMS ARISING UNDER THIS AGREEMENT.

11. **Representations and Warranties.** Blue Pilot makes no other representations or warranties, express or implied, except as expressly stated in this Agreement and expressly disclaims all other warranties, express or implied, including warranties of merchantability and fitness for a particular purpose. Electricity sold by Blue Pilot will be obtained from a number of generating sources, at the discretion of the Company. Blue Pilot does not commit to deliver electricity to Customer from any particular source, unless expressly agreed in writing between Customer and the Company.

12. **Assignment.** Customer may not assign any agreements or accounts with Blue Pilot, in whole or in part, or any of Customer's rights or obligations hereunder, without the prior written consent of Blue Pilot. Blue Pilot may, without Customer's consent: (i) transfer, sell, pledge, encumber or assign any agreement or the accounts, revenues or proceeds thereof in connection with any financing or other financial arrangement; (ii) transfer or assign agreements or accounts to an affiliate of Blue Pilot; (iii) transfer or assign agreements or accounts to any person or entity succeeding to all or substantially all of the assets of Blue Pilot; and/or (iv) transfer or assign agreements or accounts to a certified retail

electric provider. In the case of (ii), (iii) or (iv), any such assignee shall agree in writing to be bound by the terms and conditions hereof. Upon any such assignment, Customer agrees that, upon such assignment, Blue Pilot shall have no further obligations to Customer.

13. **Title, Risk of Loss and Indemnity.** Customer acknowledges that Blue Pilot does not have care, control or custody of Customer's property or premises, or of any electrical facilities, including, but not limited to, lines, wires, or the meter, located on or near Customer's property or premises. Customer further acknowledges that Customer is in exclusive control of (and responsible for any damages or injury caused by) electricity at and/or from the lines, wires, or the meter, located on or near Customer's property or premises. Title to electricity and risk of loss related to electricity shall transfer from Blue Pilot to Customer at the respective meter or the Service Address. **CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD BLUE PILOT HARMLESS FROM ANY CLAIMS, INCLUDING CLAIMS FOR PERSONAL INJURY, DEATH, PROPERTY DAMAGE AND ATTORNEYS' FEES, ARISING FROM ANY ACT OR INCIDENT OCCURRING WHEN TITLE TO ELECTRIC SERVICE IS DEEMED TO BE IN THE EXCLUSIVE CONTROL OF THE CUSTOMER, DESPITE THE COMPANY'S NEGLIGENCE OR STRICT LIABILITY.**
14. **Waiver.** No waiver of any provision contained in this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure of the Company to exercise any right hereunder shall not constitute a waiver hereunder and shall not impair the exercise of such rights at any later time.
15. **Governing Law.** With the exception of Paragraph 8 hereof, which is governed by the FAA, the terms of service under this Agreement are made under, and shall be governed by and construed in accordance with the laws of the State of Pennsylvania, exclusive of any conflict of laws provisions thereof that would apply the laws of another jurisdiction. Except as otherwise expressly provided herein, the Pennsylvania Uniform Commercial Code ("UCC") shall apply to the terms of service and electricity shall be considered a "good" (and not a "service") for purposes of the UCC.
16. **Complete Agreement.** This Agreement contains the complete understanding between Blue Pilot and the Customer and supersedes all other written or oral communications and representations. Modifications to the terms and conditions of service set forth in this Agreement will only be deemed effective when documented in a re-issued Disclosure Statement and Agreement for Electric Service approved and provided to Customer by the Company.
17. **Customer Information Release Authorization:** You agree that your EDC may release to Blue Pilot certain information that it needs to provide service to you, including your address, telephone number, account numbers, historical usage information and peak electricity demand. Blue Pilot will not give or sell your personal information to any unaffiliated party without your consent unless we are required to do so by law or except as necessary to enforce this Agreement.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALAN HAULMAN C/O AJH PIZZA, INC.	:	
	:	
v.	:	Docket No. C-2014-2415273
	:	
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

Administrative Law Judge Dennis J. Buckley
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Dated this 13th day of October, 2014.



Karen O. Moury, Esq.