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December 3, 2014

**(Via E-Filing)**

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

**RE: Enrico Partners v. Blue Pilot Energy, LLC- Docket # C-2014-2432979**

Dear Ms. Chiavetta:

Enclosed please find the Post Hearing Brief of Enrico Partners, L.P. in the above captioned matter which has been previously filed electronically.

A copy been served on the other party as indicated in the attached certificate of service

Sincerely,



W. Kent Silvers, Jr., Esq.

Enclosure

Cc: Judge Joel H. Cheskis (via email and regular mail)  
Karen Moury, Esq. (via email and regular mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ENRICO PARTNERS**

vs.

**BLUE PILOT ENERGY, LLC**

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:  
:

**Docket No. C-2014-2432979**

**CERTIFICATE OF SERVICE**

I hereby certify that on December 3, 2014, I have served the attached Post Hearing Brief by electronic mail and by depositing the same in the US Mail, postage prepaid addressed to the following attorney:

Karen Moury, Esq.  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>ENRICO PARTNERS,</b>	:	
	:	
<b>Complainant</b>	:	
	:	<b>Docket No. C-2014-2432979</b>
vs.	:	
	:	
<b>BLUE PILOT ENERGY, LLC</b>	:	
	:	
<b>Respondent</b>	:	

**POST HEARING BRIEF OF ENRICO PARTNERS, L.P. IN SUPPORT OF ITS  
COMPLAINT AGAINST BLUE PILOT ENERGY, LLC**

ENRICO PARTNERS, L.P

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**Website:**

[http://www.puc.state.pa.us/about\\_puc.aspx](http://www.puc.state.pa.us/about_puc.aspx)-“About the PUC”

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I. INTRODUCTION-STATEMENT OF CASE

On July 18, 2014, Enrico Partners, L.P. ("Enrico") filed a complaint against Blue Pilot Energy ("Blue Pilot") with the Pennsylvania Public Utility Commission (the "Commission"). On August 8, 2014, Blue Pilot filed an Answer to the Complaint. On August 18, 2014 the Commission scheduled a hearing ("Hearing") in front of Administrative Law Judge Joel H. Cheskis (the "ALJ") to be held on October 6, 2014. On October 6, 2014, the Hearing was held in which Enrico through its one witness Gerald Holtz, introduced undisputed testimony and offered exhibits that set forth fraudulent practices by Blue Pilot to solicit business from Enrico in violation of 52 Pa. Code § 54.43, the failure of Blue Pilot to provide a disclosure statement to Enrico Partners pursuant to 52 Pa. Code § 54.5, and the creation of an unauthorized, fraudulent agreement with unconscionable electric generation rates. None of the facts were denied or opposed by Blue Pilot or any witness at the hearing. At the conclusion of the Hearing, the ALJ determined that briefs should be filed.

II. SUMMARY OF ARGUMENT

The Commission has the jurisdiction and authority to act upon fraudulent practices of an electric generation supplier, Blue Pilot, and the Commission can provide a refund to Enrico if Blue Pilot has acted in a fraudulent manner, and without authorization changed the service or "slammed" Enrico in violation of 52 Pa. Code § 57. Blue Pilot failed to provide the required disclosure statement and has violated the standards of conduct in violation of 52 Pa. Code § 54 and as such is liable for civil penalties and restitution to Enrico.

### III. ARGUMENT

#### A. The Commission has jurisdiction and the authority to grant a refund to Enrico.

It has been established that the Commission does have subject matter jurisdiction to regulate its own regulations and certain aspects of the services provided by EGSs. The Electricity Generation Customer Choice and Competition Act clearly vests the Commission with unquestionable, albeit limited jurisdiction, over EGSs and certain EGS activities to protect the public interest and realize the Commonwealth's policy objectives. *See PECO Energy Co. v. Pa. Public Utility Commission*, 791A.2d 1155 (Pa. 2002). Under 66 Pa.C.S § 2807 (d)(2), the Commission has the duty to protect the public and make sure that EGSs provide accurate and adequate information to customers.

(2) The commission shall establish regulations to require each electric distribution company, electricity supplier, marketer, aggregator and broker to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider. Information shall be provided to consumers in an understandable format that enables consumers to compare prices and services based on a uniform basis. 66 Pa.C.S § 2807 (d)(2)

Furthermore, the Commission's own Mission Statement, states that the Public Utility Commission balances the needs of consumers and utilities, ensures safe and reliable utility service at reasonable rates; **protects the public interest**; educates consumers to make independent and informed utility choices; furthers economic development; and fosters new technologies and competitive markets in an environmentally sound manner (PUC Website [http://www.puc.state.pa.us/about\\_puc.aspx](http://www.puc.state.pa.us/about_puc.aspx)-“About the PUC”). EGSs are required to abide by the Commission's regulations, including its Chapter 54 regulations on bill format, disclosure statements, marketing and sales activity....*Commonwealth of Pennsylvania v. Blue Pilot*, No. C-2014-2427655, Motion of Vice Chairman John F. Coleman, Jr., Public Meeting November 13, 2014.

In our case, the facts are undisputed. Enrico was solicited with multiple calls by Timothy Espinoza, a representative of Blue Pilot to switch their electrical service (Enrico Testimony, Record p .7-10). After multiple attempts and solely based upon Blue Pilot's historical claims to provide power generation at a lower rate, through a variable rate contract, Enrico agreed to switch its service from PECO Energy to Blue Pilot. Blue Pilot supplied its Service Agreement for the Purchase of Electric Power and Enrollment Form (hereinafter the “Contract”) to Enrico but did not provide a disclosure statement (Enrico Testimony, Record p.11-13, Enrico's Exhibit #1). On January 7, 2014, Enrico executed the two page Contract (Enrico Exhibit #5). At no time prior to the filing of its Complaint in this action did Enrico receive any disclosure statement or enter into an amendment or addendum to the Contract. The Contract that Enrico entered into with Blue Pilot provided for a specifically definable, monthly variable rate. The initial two month rate (60 days) was set at \$0.079 per KWH (Enrico Testimony, Record p.14, Enrico Exhibit #5). After the initial 60 days, the Contract states “**Your** (meaning Enrico) **variable rate**

**will be based upon PJM wholesale market conditions”** (Enrico Testimony, Record p.14, Enrico Exhibit #5). Pursuant to the testimony of Enrico’s representative, Mr. Holtz and the Exhibits presented in the hearing, Blue Pilot did not adhere to, follow or honor the terms of this Contract with Enrico. Specifically, commencing on the 4<sup>th</sup> month of the Contract (June 14, 2014), Blue Pilot effectively voided the bilateral Contract dated January 7, 2014, and ”slammed” Enrico with its own warped unilateral agreement, increasing the rate 215% from the original variable rate (Enrico Testimony, Record p. 15). Under the specific terms of the Contract, Enrico has provided the calculations and the hourly raw data disseminated by the PJM to calculate and determine changes in the PJM market conditions to determine the respective monthly KWH rate under the Contract (Enrico Exhibit #7). Mr. Holtz testimony showed and Enrico’s Exhibit #7 confirmed that the Blue Pilot’s rate increase was not “based upon the PJM wholesale market conditions”. Blue Pilot presented no testimony or conflicting information to the results provided by Enrico, nor did Blue Pilot object to the validity, completeness or information source of Exhibit #7. Under any basis of interpretation of the PJM data supplied, the PJM market conditions improved from the initial 60 day period for each of the three successive monthly billing periods. (Enrico Testimony, Record p. 17-23, Enrico Exhibit #7). Exhibit #7 confirms that Enrico should have been entitled to a rate decrease of 24.56% in billing period #3; a rate decrease of 14.99% in billing period #4 and a rate decrease of 24.25% in billing period #5 (Enrico Exhibit #7). Despite the PJM market data to the contrary, Blue Pilot charged Enrico 24.9 cents per KWH for both the June 14-July 14 and July 14-August 14 billing periods. (Enrico Testimony, Record p. 14, Enrico Exhibit #7).

Although there is some authority that states the Commission shall not interfere with a private contract. *Allport Water Authority v. Winburne Water Co.*, 393 A.2d 673 (Pa. Super. 1978), this

action has nothing to do with the terms within the Contract. Blue Pilot is perpetrating a fraud under the guise of a contract and trying to hide behind the Commission's limited jurisdiction. Enrico is not asking this Commission to interpret the terms of the Contract. Enrico was always willing to abide by the terms of the Contract they agreed to with Blue Pilot. Under such, any increase or decrease in the \$0.079 KWH rate would be determined and ascertainable" based upon the PJM wholesale market conditions". Instead, it was Blue Pilot who decided that it could not abide by the Contract and needed a new, more favorable agreement. Blue Pilot was no longer "writing any new business in the Commonwealth of Pennsylvania" because they were no longer "market competitive". (Enrico Testimony, p.15). When Blue Pilot realized they were leaving the marketplace and they were no longer "market competitive", Blue Pilot decided not to honor the Contract and instead structured, unilaterally, another new, totally separate and different "deal". One that was never authorized or agreed to by Enrico, had no fixed set of rate criteria, just an arbitrarily exorbitant rate in an attempt to maximize its profit from Enrico until Enrico discovered the fraud and could switch back to PECO. Blue Pilot without any authority or consent changed Enrico's supplier from the Blue Pilot Enrico had contracted with to a new "Blue Pilot supplier". One who could charge any rate it wanted without Enrico's consent. In other words, Blue Pilot "slammed" Enrico with a totally different, unwritten and unauthorized deal. In so doing, Blue Pilot unjustly profited in the amount of \$27,169.04 (Enrico Testimony, Record p.23) with unauthorized charges against Enrico.

The Commission is granted with the authority to deal with such "slamming". 66 Pa. C.S. § 2807 (d) (1). Moreover, 52 Pa. Code §57.177, allows for a full refund to customers of all generation charges resulting from an unauthorized switch. Enrico never authorized a change in its service from the Contract. This unauthorized switch by Blue Pilot resulted in Enrico being

damaged in the amount of \$27,169.04. (Enrico Testimony, Record p.23). “It is well settled that EGSs may be required to provide refunds to retail customers in appropriate circumstances”. *Nadav v. Respond Power LLC*, No.2014-2429159, Motion of Vice Chairman John F. Coleman at the Public Meeting November 13, 2014. This is certainly “appropriate circumstances”. Blue Pilot is conducting nefarious business practices and utilizing the Commissions guidelines to employ the power distributor and billing agent (PECO) as its unwitting accomplice to take advantage of the Commonwealth’s consumers. In order to protect the public’s interest and prevent such future fraudulent and illicit behavior, the Commission should at a minimum refund Enrico’s \$27,169.04.

B. Blue Pilot failed to provide a disclosure statement to Enrico in violation of 52 PA. Code §54.5 and violated 52 PA. Code §54.43 (f) with its fraudulent deceptive acts.

Under 66 Pa.C.S. § 2807 (d)(2), the Commission has the duty to ensure that EGSs provide accurate and adequate information to customers so that customers may compare prices and services. Under 52 PA. Code §54.5, “ The EGS shall provide the customer written disclosure of the terms of service at no charge whenever: (1) The customer requests that an EGS initiate service, (2) The EGS proposes to change the terms of service”. Under 52 PA. Code §54.43 Standards of conduct and disclosure for licensees, subsection (f):

A licensee is responsible for any fraudulent deceptive or other unlawful marketing or billing acts performed by the licensee, its employees, agents or representatives.  
52 Pa. Code §54.43 (f)

It is undisputed from the record that Blue Pilot misled Enrico into entering into the Contract. Blue Pilot espoused cheaper rates (Enrico Testimony, Record p.9). They told Mr. Holtz, the representative of Enrico that that had been in business for 20 years (Enrico Testimony, Record p.9) and that Enrico should “expect to save approximately 20 percent or more on our annual electric costs versus what PECO was charging (Enrico Testimony, Record p.9). In reality, Blue Pilot had formed in November of 2010, not even 4 years earlier (Enrico Exhibit #4.) and it remains unclear when they actually began to solicit and enroll consumers in Pennsylvania. Furthermore, despite these representations, Blue Pilot did not save Enrico money. As the record indicates, they charged exorbitant rates that were not derived or indicative of the PJM wholesale market.

Pursuant to 52 Pa. Code § 54.4 (a), the “EGS prices billed must reflect the market prices and the agreed upon prices in the disclosure statement”. Furthermore, under 52 Pa. Code § 54.5 (b) Blue Pilot was required to “provide the customer written disclosure of the terms at no charge whenever: (1) The customer requests that an EGS initiate service”. All that was ever sent to Enrico was the Contract (Enrico Testimony, Record at P.11-12). It was only after Blue Pilot’s counsel sent documents to Enrico that she intended to present at the October 6<sup>th</sup> hearing, did Enrico even know that such a disclosure statement existed. This failure to provide Enrico with a customer disclosure is a clear violation of the Commissions Regulations. To the extent an EGS fails to comply with the standards of conduct and disclosures set forth in 52 Pa. Code §54.43, it is subject to penalties imposed by the Commission including suspension or revocation of their license or fines. 52 Pa. Code §54.42. In 66 Pa.C.S. §3301(a), the fine for a violation shall not exceed \$1,000.00, but “each and every day’s continuance in the violation of any regulation... shall be a separate and distinct offense. 66 Pa.C.S. §3301(b). No disclosure was ever provided to

Enrico through the entire term of this Agreement which lasted from the initial contact between the parties and their execution of the Contract on or about January 7, 2014 (Enrico Testimony, Record p.13) through the time when the power was changed back to PECO on or about August 14, 2014 (See Plaintiff Exhibit #7) or 219 days. As such, the Commission has the right to issue a substantial penalty in order to curb this type of future behavior. Moreover, this does not account for Blue Pilot's other aforementioned violations of engaging in misleading and deceptive conduct in violation of the Commission's regulations at 52 PA. Code §54.43(f).

By way of remedies for Blue Pilot's misleading and deceptive promises of savings, Enrico seeks restitution from Blue Pilot in the amount of \$27,169.04, the imposition of civil penalties against Blue Pilot, and if warranted, the suspension or revocation of its license.

#### IV. CONCLUSION

There is a compelling interest in the Commission monitoring EGSs. The Commission has the authority to be able to prevent unauthorized action by the EGSs. In this case through the uncontested testimony of Enrico, it was established that Blue Pilot acted outside the terms of any agreed upon deal it had with Enrico. It charged Enrico not pursuant to the Contract that they had entered into with rates, "based upon the PJM wholesale market conditions", but instead took it upon themselves to unilaterally act upon a different deal. In other words, Blue Pilot "slammed" Enrico. Blue Pilot has just attempted to hide it behind an initial valid Contract in which they had no intention of honoring. Thereafter, Blue Pilot's completely ignored the Contract and replaced it with another agreement that solely suited Blue Pilot. There can be no other explanation for the rates charged by Blue Pilot during the period in questions. In such instances, this Commission has the authority to order a refund or credit to the Enrico. In addition, the testimony also

demonstrated that there were multiple violations under to 52 Pa. Code § 54.5 (b) and 52 PA. Code §54.43(f). Blue Pilot failed to provide any type of disclosure statement and acted in a fraudulently and deceptive manner.

WHEREFORE, Enrico respectfully requests the Pennsylvania Public Utility Commission rule in their favor and order Blue Pilot to refund to Enrico amounts they fraudulently acquired in the amount of \$27,169.04. Enrico also seeks restitution from Blue Pilot and respectfully requests this Commission to institute civil penalties, for (i) its fraudulent, misleading and deceptive actions towards Enrico and (ii) its failure to provide a disclosure statement to Enrico.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'W. Kent Silvers, Jr.', with a long horizontal flourish extending to the right.

W. Kent Silvers, Jr., Esq.  
Attorney for Enrico Partners, L.P.  
Attorney # 62335

V. FINDINGS OF FACT

1. The Complainant in this case is Enrico Partners, L.P.
2. The Respondent in this case is Blue Pilot Energy, LLC
3. On July 18, 2014, Enrico filed a Complaint against Blue Pilot.
4. On August 8, 2014, Blue Pilot filed an Answer to the Complaint
5. On October 6, 2014, a hearing was held in front of Joel H. Cheskis.
6. Enrico was solicited with multiple calls by Timothy Espinoza, a representative of Blue Pilot to switch their electrical service (Enrico Testimony, Record p .7-10).
7. Blue Pilot supplied its Contract to Enrico but did not provide a disclosure statement (Enrico Testimony, Record p.11-13, Enrico's Exhibit #1).
8. Enrico entered into a specifically definable, variable rate Contract which rate was initially set at \$0.079 per KWH. (Enrico Testimony, Record p.14, Enrico's Exhibit #5)
9. Under the Contract, Enrico's variable rate was to be based upon PJM wholesale market conditions (Enrico Testimony, Record p.14, Enrico Exhibit #5)
10. Blue Pilot's rate change was not based the upon the PJM wholesale market conditions. (Enrico Testimony, Record p. 17-23, Enrico Exhibit #7)
11. The wholesale PJM market rate declined in price during the term of the Contract. (Enrico Testimony, Record p. 17-23, Enrico Exhibit #7).
12. Enrico's variable rate should have declined during the term of the Contract (Enrico Testimony, Record p. 17-23, Enrico Exhibit #7)
13. Blue Pilot "slammed" Enrico with a totally different, unwritten and unauthorized deal.

14. Blue Pilot's Contract did not reflect its disclosure statement because no disclosure statement was provided.

15. This unauthorized change in service by Blue Pilot resulted in Enrico being damaged in the amount of \$27,169.04. (Enrico Testimony, Record p.23).

16. Blue Pilot espoused cheaper rates (Enrico Testimony, Record p.9).

17. Blue Pilot told Mr. Holtz, the representative of Enrico that that had been in business for 20 years (Enrico Testimony, Record p.9).

18. Blue Pilot had formed in November of 2010, not even 4 years earlier (Enrico Exhibit #4)

19. Blue Pilot told Enrico it should expect to save approximately 20 percent or more on our annual electric costs versus what PECO was charging (Enrico Testimony, Record p.9).

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this proceeding.
2. Blue Pilot is a public utility for purposes of 66 Pa.C.S. § 2809 with regard to licensing requirements.
3. The regulation at 52 Pa. Code §54.43 (l) requires the licensed EGSs provide accurate information about their services.
4. The regulation at 52 Pa. Code §54.43 (f) makes the licensed EGSs responsible for any fraudulent, deceptive or unlawful marketing or billing acts performed by its employees, agents or representatives.
5. The regulation at 52 Pa. Code § 54.4 (a), requires the EGS prices billed must reflect the market prices and the agreed upon prices in the disclosure statement.
6. Under 52 Pa. Code §54.5, the EGS shall provide the customer written disclosure of the terms of service at no charge whenever: (1) The customer requests that an EGS initiate service, (2) The EGS proposes to change the terms of service.
7. Under 66 Pa.C.S. § 2807 (d)(2), the PUC has the duty to ensure that EGSs provide accurate and adequate information to customers so that customers may compare prices and services.
8. Pursuant to the regulation 52 Pa. Code §54.42 (6), the Commission may impose fines on a licensed EGS or suspend or revoke its license if it fails to follow the principles set forth in 52 Pa. Code §54.43.
9. Under 52 Pa.Code §57.177, this Commission has the authority to refund or credit Enrico \$27,169.04.

**ORDER**

THEREFORE,

AND NOW, upon consideration of the October 6, 2014 hearing and the requested post trial briefs, it is ordered:

1. That a Judgment is entered in favor of Enrico Partners, L.P. and against Blue Pilot Energy, LLC in the Docket No C-2014-2432979.
2. Blue Pilot shall refund to Enrico the amount of \$27,169.04.
3. Blue Pilot shall pay \$ \_\_\_\_\_ in civil penalties for its failure to comply with 52 Pa. Code §54.4. and §54.5
4. Blue Pilot shall pay \$ \_\_\_\_\_ in civil penalties for its failure to comply with 52 Pa. Code §54.43.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joel H. Cheskis  
Administrative Law Judge