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December 12, 2014

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

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

Dear Ms. Chiavetta:

Enclosed please find the Reply 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,	:	
	:	
Complainant	:	
	:	Docket No. C-2014-2432979
vs.	:	
	:	
BLUE PILOT ENERGY, LLC	:	
	:	
Respondent	:	

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

ENRICO PARTNERS, L.P

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Complainant, Enrico Partners, L.P. (“Enrico”), by and through its undersigned counsel, respectfully submits the following Reply Brief against Blue Pilot Energy, LLC (“Blue Pilot”)

I. The Commission has jurisdiction.

The Competition Act (66 §2801 et. al) and more specifically §2807(d)(2), §2809(b) and the associated regulations of Chapter 54 provide the Commission the jurisdiction over this matter. These provisions are designed to ensure that the Commission monitors the billing practices of an EGS’s and that the authorized service of the EGS is consistent with the public interest and stated policies within the Act. 66 Pa. C.S. §2807. The Competition Act also establishes licensing and other such requirements deemed necessary for the protection of the public and it requires an EGS “to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services”. 66 Pa. C.S. §2807 (d)(2).

Blue Pilot did not “provide adequate and accurate current information”. In fact, they provided no information whatsoever. Enrico never received a disclosure statement. The Commission has emphasized repeatedly the importance of a disclosure statement and the disclosure regulations at 52 Pa. Code § 54.5. Disclosures need to be clear, well organized and in plain language so that consumers have the information they need to make informed decision. See *Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause*. Docket No. M-2013-2362961 (November 14, 2013). In this case, Blue Pilot’s disclosure statement was non-existent and as such clearly a violation of the Statute and Regulations.

The Contract between the parties states that Enrico's "variable rate will be based upon PJM wholesale market conditions" (Enrico Testimony, Record p. 14, Enrico Exhibit #5). Blue Pilot's attorney focuses the Commission on the sentence in the Contract immediately preceding that sentence which provides supplemental or descriptive information. It states, "At any time after 60 days of service, but not more frequently than monthly, we may increase or decrease your rate based on several factors, including changes in wholesale market prices in the PJM Markets". Then as mentioned before the subsequent sentence says "YOUR" variable rate will be based upon PJM wholesale market conditions. Blue Pilot's attorney mistakenly uses the first sentence as a defense against her client's behavior of the uncertainty of a variable rate. However, in reality the first sentence describes and establishes "several factors" that go into determining the PJM rate. It doesn't alter or create less objectivity as to the rate. The second sentence then actually clarifies how **Enrico's** rate will be specifically determined. Irregardless, Blue Pilot's increase rate was not determined by any of the market "factors" other than their desire to maximize profits or recoup past losses. It was an imaginary calculation which is unsupported by any PJM wholesale market data whatsoever. Blue Pilot then cites the Commission's comments in *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") when this Commission observed that variable prices may offer substantial savings when the wholesale market prices are low, customers may experience very high bills during periods of market volatility. This Variable Rate Order was promulgated by a spike in wholesale energy prices during the sustained cold weather of January of 2014 (commonly referred to as the "Polar Vortex") and the accompanying rise in the variable rate contracts of consumers due to the higher energy costs. *See pp. 1 and 2 of Review of Rules, Policies and Consumer Education Measures*

Regarding Variable Rate Retail Electric Products, Docket No. M-2014-2406134 (February 20, 2014). In our situation, Blue Pilot’s unilateral change in the variable rate with Enrico occurred in June and July of 2014 when the geographic area was undergoing a very mild summer season. There was no “market volatility” which would cause a spike in energy prices. In fact, the market improved and prices decreased as clearly evidenced by Plaintiff’s Exhibit #7*. Blue Pilot is simply perpetrating fraud. They truly believe that a “variable rate” means charging whatever they want based on their own arbitrary and greedy desires. Blue Pilot has never provided any evidence of their rate calculation despite Enrico’s requests. I guess that explains why no “disclosure statement” was ever provided to Enrico.

II. Enrico is not asking the Commission to interpret its contract with Blue Pilot.

Enrico is not asking for this Commission to interpret its Contract with Blue Pilot. Blue Pilot in its brief points out that the Commission has recognized, consumers bear some responsibility to make choices that are appropriate for their individual circumstances. *William Towne v. Great American Power, LLC*, Docket No. C-2012-2307991 (Opinion and Order entered October 18, 2013) and Consumers must be aware of the terms of service they agree to when

*Information From Enrico’s Exhibit #7

Source: PJM Hourly LMP MW Pricing for Peco Energy	Billing Period				
	1	2	3	4	5
Actual Average Daily Hourly MW Rate for Billing Period	\$54.87	\$38.38	\$35.44	\$39.94	\$35.59
Actual Average Daily Hourly MW Rate for 60 Day Fixed Period- (Enrico Initial Rate)		\$46.99			
What the PJM Equivalent Market Calculation for MW Rate would have had to have been to validate the Blue Pilot’s Rate Increase				\$147.55	\$147.55

entering into a contract with an EGS (*MacLuckie v. Palmco Energy PA, LLC* Docket No. C-2014-2402558 (Initial Decision dated June 16, 2014). Enrico was quite aware of the terms of the Contract with Blue Pilot. It understood that Enrico's variable rate could fluctuate up or down (Enrico Testimony p. 14) during the term of the Contract, but would be "based upon PJM wholesale market conditions". It was understood that the rate may move, but it was always tied to an objective index or standard (the PJM Wholesale Indices).

What Enrico was not prepared for was fluctuations in the contracted rate based upon the whim and fraud of Blue Pilot. There is nothing for this Commission to interpret. Blue Pilot did not act under the Contract. Blue Pilot acted contrary to the Contract and instead, unilaterally and fraudulently switched or "slammed" Enrico with a deal from a supplier who charged rates not based upon a market based index. This supplier was not constrained by or performing under a bilateral contract, but instead one who sought to charge whatever it wanted with no rationale or objective criteria. The words "variable rate" do not give an EGS free reign to charge whatever rate it desires and then turn to this Commission and say you have no jurisdiction over our fraudulent behavior. That makes no sense. The rates whether, fixed or variable, must be based upon some objective criteria. In Enrico's Contract, the objective criteria was the PJM wholesale market conditions. This "variable rate" does not mean charging an arbitrary rate to recoup lost revenue from the "polar vortex" or elevating the rate because of the possibility of a summer vortex. It has to be based on an objective standard and determinable index. The PJM market conditions refer to the readily determinable and daily published locational energy rates provided by the PJM to the industry. How else will a consumer be able "to make informed choices regarding the purchase of all electricity services".⁶⁶ Pa. C.S. §2807 (d)(2). Indeed, it would become an impossible task for a consumer to compare pricing between two EGSs if an EGS

could ultimately change its rate arbitrarily and not be tied to any definable independent third party index.

III. Blue Pilot slammed Enrico, and as such the Commission may grant a refund.

The Commission has the authority to deal with Blue Pilot's fraudulent behavior and grant a refund to Enrico. Pursuant to 52 Pa Code § 57.177, a full refund is permitted to customers of all generation charges resulting from an unauthorized switch. Blue Pilot changed the service or "slammed" Enrico without its consent. Blue Pilot contends that since Enrico did not complain for three (3) months it is precluded from asserting this claim. Blue Pilot's unauthorized switch did not occur until the billing period of June-July of 2014 (Enrico Complaint) when it abandoned its desire to be dictated under the bilateral Contract and slammed Enrico with a new, unauthorized service. As soon as Enrico learned of that unauthorized switch they immediately called Blue Pilot (Enrico Testimony p. 15) and shortly thereafter sent a letter to PECO and requested to be returned to its service (Enrico Testimony p. 16). The amount of the full refund is clear and undisputed. Enrico is not responsible for the EGS bills rendered during the period 52 § 57.177(b) or \$27,169.04 (Enrico Testimony p. 23). Those amounts were provided to the Commission at the hearing and were not disputed by Blue Pilot.

IV. CONCLUSION

Under The Competition Act (66 §2801 et. al), an EGS has among other duties to provide adequate and accurate information and establish licensing and other such requirement

deemed necessary to protect the public 66 Pa. C.S. §2807 (d)(2) and §2809(b). This oversight doesn't stop upon the issuing of a license to an EGS but must continue throughout their doing business in Pennsylvania in order to be consistent with and protect the public interest. Clearly, this Commission has jurisdiction over this matter. Moreover, pursuant to 52 Pa Code § 57.177, a full refund is permitted to customers of all generation charges resulting from an unauthorized switch. Blue Pilot is attempting to commit a fraud upon a customer of the Commonwealth of Pennsylvania and then arguing that this Commission has no jurisdiction since they cannot interpret a "variable rate" contract. In this case, the Commission has the ability to stop it. No interpretation of the Contract between the parties is necessary. Blue Pilot did not follow the original terms of the Contract in which the variable rate was upon a fixed index (the PJM wholesale market conditions). Instead, Blue Pilot unilaterally changed the service and charged a rate with no basis on anything except the pursuit of maximum profit. They "slammed" Enrico.

WHEREFORE, Enrico respectfully requests the Pennsylvania Public Utility Commission for the reasons set forth above, that the Commission enter an Order in the form annexed hereto and ruling in their favor.

Respectfully Submitted,



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

**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 12, 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:

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