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February 23, 2015

VIA E-FILING

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

Re: Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC
Docket No. C-2014-2427655

Dear Secretary Chiavetta:

On behalf of Blue Pilot Energy, LLC, I have enclosed for electronic filing the Answer of Blue Pilot Energy, LLC, to Motion to Compel of Joint Complainants Relating to Set VI-1 and VI-7 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: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

COMMONWEALTH OF	:
PENNSYLVANIA, ET AL.,	:
	:
Complainants,	:
	:
v.	: Docket No. C-2014-2427655
	:
BLUE PILOT ENERGY, LLC,	:
	:
Respondent.	:

**ANSWER OF BLUE PILOT ENERGY, LLC, TO MOTION TO COMPEL OF JOINT
COMPLAINANTS RELATING TO SET VI-1 AND VI-7**

TO: ADMINISTRATIVE LAW JUDGES BARNES AND CHESKIS

Pursuant to 52 Pa. Code § 5.342(g)(1), Blue Pilot Energy, LLC (“BPE”), by and through its counsel, files this Answer to the Motion to Compel filed by the Joint Complainants, Commonwealth of Pennsylvania and the Office of Consumer Advocate, relating to the Interrogatories and Requests for Production of Documents – Set VI-1 and VI-7 (“Interrogatories”), and in support hereof, avers as follows:

INTRODUCTION

The Interrogatories seek BPE’s confidential financial information related to profits, losses, costs, expenses, and revenues. *See* Interrogatories Nos. 1 and 7, attached as Exhibit 1 (“Please provide Respondent’s Pennsylvania profits and losses from June 1, 2013 to September 30, 2014” and “Please describe in detail the records compiled or maintained by Respondent which concern, refer, or relate to costs, expenses, profits, losses, revenues, and billing for Respondent’s Pennsylvania operations.”). On February 6, 2015, BPE objected to these Interrogatories on the basis that they seek privileged material, call for information that is not

relevant to the subject matter of this action, and would cause unreasonable annoyance and burden to BPE. *See* BPE's Objections to Complainants' Interrogatories and Requests for Production (Set VI), attached as Exhibit 2. BPE further objected to Interrogatory VI-7 on the basis that it is vague and ambiguous. *Id.*

On February 17, 2015, Joint Complainants served their Motion to Compel.¹ Joint Complainants argue: (1) the financial information will be protected by the Protective Order; (2) the financial information is relevant to Joint Complainants' request for a civil penalty; (3) the financial information is relevant to determining whether Blue Pilot's charged prices conformed with Blue Pilot's Disclosure Statement; and (4) the financial information is not sought in bad faith.

The Joint Complainants' arguments fail to address BPE's objections on several fronts. First, the Protective Order is insufficient to protect BPE from disclosing confidential information that is not relevant to the subject matter of this proceeding. Second, the Joint Complainants' argument that the information is relevant for determining a civil penalty requires a prejudicial assumption that BPE will be found to have violated the Commission's regulations before any of the evidence is before the Commission, a determination that only the Commission can make after weighing all of the evidence. Accordingly, to the extent this information is ever relevant, it is premature at this stage in the proceeding. Third, the Joint Complainants provide no basis for their assertion that BPE's rate-setting has anything to do with BPE's financial information. Assuming it does, the Commission does not have traditional ratemaking authority over competitive electric generation suppliers ("EGSs") and does not regulate competitive rates. Stated differently, jurisdiction to consider whether an EGS has billed its customers in accordance

¹ Joint Complainants served a Motion to Compel on February 13, 2015, but omitted two pages from the motion and subsequently reserved the motion.

with its disclosure statement does not include authority to review the expenses incurred by the EGS in purchasing electricity, consider the reasonableness of the EGS's profit margin, or determine a "just and reasonable" price on the basis of those factors. Finally, the Interrogatories in no way limit the requests to factors that go into BPE's ratemaking, but instead seek all information relating to BPE's costs, expenses, profits, losses, revenues, and billing. None of that information is relevant to the issues raised in this proceeding. Because BPE's sensitive information is privileged, not relevant to this proceeding, and would constitute an undue burden to produce, BPE respectfully requests that the Commission deny Joint Complainants' Motion to Compel.

ARGUMENT AND AUTHORITY

I. Legal Standards

The Commission's regulations provide that "a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa. Code § 5.321(c). The regulations further state that while the inadmissibility of evidence at a hearing may not be a ground for objection, the information sought must be "reasonably calculated to lead to the discovery of admissible evidence." *Id.* Further, discovery is not permitted which is sought in bad faith; would cause unreasonable annoyance, embarrassment, oppression, burden, or expense to the party; relates to a matter which is privileged; or would require the making of an unreasonable investigation by the party. 52 Pa. Code § 5.361(a).

II. BPE's Financial Information Is Privileged

Joint Complainants aver that the Protective Order sufficiently protects the sensitive information sought by the Interrogatories. Joint Complainants base part of this conclusion on the allegation that "the requested information is within the permissible scope of discovery." Joint

Complainants' Motion to Compel at 6 and 11. It is BPE's position, however, that BPE's confidential financial information is not within the permissible scope of discovery. Because the discovery is not relevant, the Protective Order is not sufficient to safeguard BPE's commercially sensitive, confidential, and proprietary information.

III. BPE's Financial Information Is Not Relevant

A. BPE's Financial Information Is Not Relevant at This Stage of the Proceeding

Joint Complainants allege that BPE's financial information "is relevant to Joint Complainants' request for a civil penalty." Joint Complainants' Motion to Compel at 7 and 11. This argument is prejudicial in its basis, because it assumes that BPE will be found in violation of the Commission's regulations – a determination that only the Commission can make after weighing all of the evidence presented in this proceeding and hearing all argument – and that the violation will be such that a civil penalty will be warranted. At this point in the proceeding, the inquiry is whether there has been any violative conduct in the first place – not what type of a civil penalty should be imposed. Joint Complainants carry the burden of proving any alleged violation. 66 Pa.C.S. § 332(a). This means that Complainants must prove every fact by a preponderance of the evidence, and that evidence must be more convincing than the evidence presented by BPE. *Se-Ling Hoisery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950). Therefore, it is entirely inappropriate to shift the burden to BPE to prove that its conduct did not violate any of the Commission's regulations. Because the Interrogatory assumes that BPE will be civilly liable, Joint Complainants' Motion to Compel should be denied.

B. The Commission Lacks Ratemaking Authority

Joint Complainants next argue that BPE's financial information is relevant "to the issue of whether Blue Pilot charged prices that conformed to the Company's Disclosure Statement."

Joint Complainants' Motion to Compel at 7 and 12. Joint Complainants argue that the Disclosure Statement appearing in paragraph 20 of their Joint Complaint provides that "[a]t any time ... Blue Pilot may increase or decrease your rate based on several factors, including changes in wholesale energy market prices in the PJM Markets." Motion to Compel at 8 and 12. Joint Complainants then posit – with absolutely no evidence or support – that “several factors” includes BPE’s profit levels: “Joint Complainants submit that ‘several factors’ may include the Company’s then-existing profit levels.” Joint Complainants’ Motion to Compel at 8. *See also* Joint Complainants’ Motion to Compel at 12. Joint Complainants fail to provide the basis for this assertion. Under Joint Complainants reasoning, they could allege that **anything** contributed to those “factors” and demand production of sensitive information on the basis that Joint Complainants had alleged that the information contributed towards BPE’s determination of its rates. Because Joint Complainants have absolutely no basis for assuming that BPE’s sensitive financial information has anything to do with the rates BPE charges, the Joint Complainants’ Motion to Compel should be denied.

Even assuming that the financial information is a factor in determining the rates, the Commission does not have traditional ratemaking authority over EGSs and cannot regulate competitive supply rates. *See Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655 at 18-19 (Order adopted November 13, 2014) (“[T]he Commission does not have traditional ratemaking authority over competitive suppliers and does not regulate competitive supply rates. The Commission also does not have subject matter jurisdiction to interpret the terms and conditions of a contract between an EGS and a customer to determine whether a breach of the contract has occurred.”). 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 Public Utility Code, 66 Pa. C.S. §§ 101 *et seq* (“Code”). *See Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 794 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. *Roberts v. Martorano*, 235 A.2d 602, 604 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390, 393 (Pa. Commw. Ct. 1992), appeal denied, 637 A.2d 293 (Pa. 1993).

Nothing in the Code authorizes the Commission to regulate or establish EGS prices. 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.” In enacting Chapter 28 of the Code, the General Assembly made it clear that the price of generation supply is exempt from regulation, noting that “[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity.” 66 Pa. C.S. § 2802(5).

In considering whether an EGS has billed its customer in accordance with its disclosure statement, the Commission is limited by statute to determinations that do not require it to engage in ratemaking or place limitations on prices charged by EGSs. For instance, the review could entail a consideration of whether the disclosure statement permitted variable prices, or whether the initial prices that were charged matched any initial prices included in the disclosure statement. While the Commission’s statutory authority might also extend to considering whether an EGS’s prices complied with any ceiling or specific index contained in the disclosure statement, there is no factual dispute in this case that the Disclosure Statement cited in the Joint Complaint does not contain a specific index or a ceiling price. Moreover, those inquiries tread into the area of contract interpretation, for which the Commission has no jurisdiction. *See*

Allport Water Auth. v. Winburne Water Co., 393 A.2d 673, 675 (Pa. 1978) (“It is equally well-settled ... that the PUC is not jurisdictionally empowered to decide private contractual disputes between a citizen and a utility.”).

The Commission’s statutory authority does not extend to reviewing wholesale market conditions, considering expenses incurred by an EGS to purchase electricity, determining a reasonable profit margin for the EGS to recover, or performing any of the other traditional ratemaking functions that are applicable to rates charged by public utilities. Therefore, it is inappropriate for BPE to be compelled to provide the financial information sought by the Interrogatories.

IV. The Interrogatories Are Overbroad and Would Cause Unreasonable Burden to BPE

The Interrogatories do not limit their scope to information that is factored into determining the variable rate. Instead, they seek all information regarding BPE’s “costs, expenses, profits, losses, revenues, and billing.” See Interrogatory No. 7, Ex. 1. See also Interrogatory No. 1, Ex. 1. There is no basis to request such information based on the allegations contained in Complainants’ Complaint. Because the Interrogatories in no way seek to limit the information to factors in BPE’s ratemaking, the Interrogatories are overly broad and “[w]ould cause unreasonable annoyance, embarrassment, oppression, burden [and] expense” to BPE. 52 Pa. Code § 5.361(a).

CONCLUSION

Based on the foregoing, BPE respectfully requests that the Commission deny Joint Complainants’ Motion to Compel.

February 23, 2015

BUCHANAN INGERSOLL & ROONEY PC

By: 

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Attorneys for Blue Pilot Energy, LLC

EXHIBIT 1



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

KATHLEEN G. KANE
ATTORNEY GENERAL

Bureau of Consumer Protection
Public Protection Division
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
Telephone: (717) 787-9707
Fax: (717) 705-3795
January 28, 2015

SENT VIA USPS FIRST CLASS MAIL & ELECTRONIC MAIL

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Mark R. Robeck, Esq.
Daniel S. Blynn, Esq.
Kelley Drye & Warren LLP
3050 K Street, NW, Suite 400
Washington, DC 20007

Re: Commonwealth of Pennsylvania and the Office of Consumer Advocate v. Blue Pilot Energy, LLC, Docket Nos. C-2014-2427655

Dear Ms. Moury, and Messrs. Robeck and Blynn:

Enclosed please find Request for Production of Documents of the Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate directed to Blue Pilot Energy, LLC Set VI. Kindly provide responses within 20 days pursuant to the Commission's rules.

Kindly produce your responses as they become available and provide copies of all responses to:

John M. Abel
Senior Deputy Attorney General
Bureau of Consumer Protection
15th Floor, Strawberry Square
Harrisburg, PA 17120

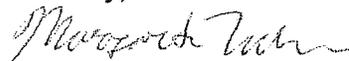
Candis A. Tunilo
Assistant Consumer Advocate
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101

Margarita Tulman
Deputy Attorney General
Bureau of Consumer Protection
21 South 12th Street, 2nd Floor
Philadelphia, PA 19107

We also request that you send a copy of the answers directly to our consultant, as listed below:

Barbara R. Alexander
83 Wedgewood Drive
Winthrop, Maine 04364
Telephone: 207-395-4143
E-Mail: barbalex@ctel.net

Sincerely,



Margarita Tulman
Deputy Attorney General

Enclosures

cc: All parties of record
Rosemary Chiavetta, Secretary (Certificate of Service)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

COMMONWEALTH OF PENNSYLVANIA, by
Attorney General KATHLEEN G. KANE,
Through the Bureau of Consumer Protection

And

TANYA J. McCLOSKEY, Acting Consumer
Advocate

Complainants
v.

BLUE PILOT ENERGY, LLC
Respondent

Docket No. C-2014- 2427655

**INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS OF
JOINT COMPLAINANTS COMMONWEALTH OF PENNSYLVANIA AND THE
OFFICE OF CONSUMER ADVOCATE DIRECTED TO BLUE PILOT ENERGY, LLC**

SET VI

The Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (Attorney General) and the Acting Consumer Advocate Tanya J. McCloskey (OCA) (collectively referred to as Joint Complainants), pursuant to 52 Pa. Code § 5.349, hereby propound the following request for production of documents upon Blue Pilot Energy, LLC (Respondent or Blue Pilot). In accordance with 52 Pa. Code § 5.349(d), the documents are to be furnished and served in-hand upon the undersigned within the time period prescribed by the Commission for this docket.

INSTRUCTIONS

1. These data requests shall be construed as a continuing request. The Respondent is obliged to change, supplement and correct all answers to data requests to conform to available information; including such information as first becomes available to the Respondent after the answers hereto are filed.
2. If after exercising due diligence to secure the information requested by any one of the following data requests the Respondent cannot answer or provide the information requested, so state and answer to the extent possible specifying Respondent's inability to answer the remainder, providing whatever information or knowledge Respondent has concerning the unanswered portion and detailing what attempts Respondent made to secure the unknown information.
3. Restate the data request immediately preceding each response and begin each data request and response on a new page.
4. Identify the name, title, and business address of each person(s) providing each response.
5. Provide the date on which the response was created.
6. Divulge all information that is within the knowledge, possession, control, or custody of Respondent or may be reasonably ascertained thereby. The term "Blue Pilot Energy, LLC" or "Blue Pilot," or "you," as used herein includes Blue Pilot Energy, LLC, its attorneys, agents, employees, contractors, or other representatives, to the extent that the Respondent has the right to compel the action requested herein.
7. Provide verification by the responsible witness that all facts contained in the response are true and correct to the best of the witness' knowledge, information and belief.

8. As used herein, but only to the extent not protected by 52 Pa. Code Section 5.323, the word "document" or "workpaper" includes, but is not limited to, the original and all copies in whatever form, stored or contained in or on whatever media or medium including computerized memory, magnetic, electronic, or optical media, regardless of origin and whether or not including additional writing thereon or attached thereto, and may consist of:

- a) notations of any sort concerning conversations, telephone calls, meetings or other communications;
- b) bulletins, transcripts, diaries, analyses, summaries, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys;
- c) worksheets, and all drafts, preliminary versions, alterations, modifications, revisions, changes, amendments and written comments concerning the foregoing.

9. If Respondent claims any information requested herein is protected pursuant to 52 Pa. Code Section 5.323 or pursuant to any other rule of discovery, provide a general description of the information sought to be protected and the exact nature of the protection claimed.

10. The singular of any word used here in shall be deemed to include the plural of such word, and the plural shall include the singular.

DEFINITIONS

1. In answering these data requests, assume that all words used have their ordinary meanings in normal English usage, except as provided below or where context requires other interpretation.

2. "Document" or "documents" means all writings of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, notes,

diaries, statistics, letters, telegrams, minutes, contracts, reports, summaries, pamphlets, books, inter-office and intra-office communication, notation of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, fax, work sheets, all drafts, alterations, modifications, changes and amendments of any of the foregoing, graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotapes, records) and any electronic, mechanical or electric records or representations of any kind (including, without limitation, tapes, cassettes, discs, records, and computer memories) now in the possession, custody or control of the Respondent, his agents, employees, attorneys and all other persons acting on their behalf.

3. "Communication" means any transmission or exchange of information or meaning between two or more persons in any form.

4. "You" or "Your" shall refer to Blue Pilot Energy, LLC and all other names under which En Blue Pilot Energy, LLC does business or trades, any subsidiaries, agents, employees, representatives, attorneys and all other persons acting on their behalf.

INTERROGATORIES & REQUESTS FOR PRODUCTION SET VI

1. Please provide Respondent's Pennsylvania profits and losses from June 1, 2013 to September 30, 2014.

2. Please provide auto-recordings of all calls made or received by Duane R. Gonzales to Pennsylvania consumers during the period of December 15, 2013 to December 19, 2013.

3. Please provide a representative sampling of auto-recordings of calls made or received by Duane R. Gonzales to Pennsylvania consumers during the months of October 2013 to December 2013.

4. With regard to the documents provided in response to Joint Complainants' Request for Production of Documents Set V, Nos. 10 and 11, please provide the date each of the documents was prepared and the date and to whom the documents were issued with respect to Respondent's employees.

5. Please describe in detail Respondent's policy for recording sales and other calls with Pennsylvania consumers.

6. Please describe in detail Respondent's policy for maintaining and retaining sales and all other calls with Pennsylvania consumers.

7. Please describe in detail the records compiled or maintained by Respondent which concern, refer or relate to costs, expenses, profits, losses, revenues, and billing for Respondent's Pennsylvania operations.

8. Please describe in detail all filings Blue Pilot is obligated to make to government entities regarding its Pennsylvania operations.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

COMMONWEALTH OF PENNSYLVANIA, by :
Attorney General KATHLEEN G. KANE, :
Through the Bureau of Consumer Protection :

And :

Docket No. C-2014- 2427655

TANYA J. McCLOSKEY, Acting Consumer :
Advocate :

Complainants :

v. :

BLUE PILOT ENERGY, LLC :
Respondent :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, the Request for Production of Documents of Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate directed to Responses to Blue Pilot Energy, LLC Set VI, in the manner and upon the persons listed below:

Michael Swindler, Esq.
Stephanie M. Wimer, Esq.
Wayne T. Scott, Esq.
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
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wascott@pa.gov
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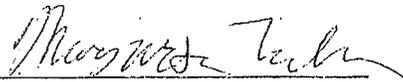
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(Electronic Mail & First-Class Mail)

DATE: 1/28/15



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EXHIBIT 2

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February 6, 2015

VIA EMAIL AND FIRST CLASS MAIL

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Candis A. Tunilo
Christy M. Appleby
Kristine E. Robinson
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555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101

Re: Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC
Docket Nos. C-2014-2427655

Dear Counsel:

On behalf of Blue Pilot Energy, LLC, I am providing Objections to Complainants' Interrogatories and Requests For Production, Set VI, 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: Rosemary Chiavetta, Secretary (*letter and Certificate of Service only via eFiling*)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

COMMONWEALTH OF	:
PENNSYLVANIA, ET AL.,	:
	:
Complainants,	:
	:
v.	: Docket No. C-2014-2427655
	:
BLUE PILOT ENERGY, LLC,	:
	:
Respondent.	:

**RESPONDENT BLUE PILOT ENERGY, LLC’S OBJECTIONS TO
COMPLAINANTS’ INTERROGATORIES AND REQUESTS FOR PRODUCTION
(SET VI)**

Pursuant to 66 Pa.C.S. § 333(d) and 52 Pa. Code § 5.342, Respondent Blue Pilot Energy, LLC (“BPE”) hereby objects to two of the Interrogatories and Requests for Production – Set VI (“Discovery Requests”) propounded by the Complainants on January 28, 2015. The specific objections, along with a description of the facts and circumstances justifying the objections, are set forth below.

Legal Standards

The Commission’s regulations provide that “a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” 52 Pa. Code § 5.321(c). The regulations further state that while inadmissibility at the hearing is not a ground for objection, the information sought must be “reasonably calculated to lead to the discovery of admissible evidence.” *Id.* Further, discovery is not permitted which is sought in bad faith; would cause unreasonable annoyance, embarrassment, oppression, burden, or expense to the party; relates to a matter which is privileged; or would require the making of an unreasonable investigation by the party. 52 Pa. Code § 5.361(a).

Specific Objections

Discovery Request No. 1: Please provide Respondent's Pennsylvania profits and losses from June 1, 2013 to September 30, 2014.

Objection: BPE objects to Discovery Request No. 1 on the grounds that it (i) seeks privileged material; (ii) calls for information that is not relevant to the subject matter of this action; and (iii) would cause unreasonable annoyance and burden to BPE.

BPE's financial information constitutes commercially sensitive, confidential and proprietary information. This information is privileged because if BPE's competitors obtained in this information, it would place BPE at an economic disadvantage. Accordingly, it is outside the bounds of permissible discovery because the Commission's regulations do not permit discovery relating to any matter that is privileged. See Pa. Code § 5.321(c); 52 Pa. Code § 5.361(a).

Moreover, BPE's financial information is not relevant to the allegations in the Complaint filed by Complainants in this proceeding. This commercially sensitive, confidential and proprietary information has no probative value pertaining to Complainants' allegations that BPE failed to provide accurate pricing information, charged prices not conforming with the disclosure statement, made misleading or deceptive promises of saving, lacked good faith in handling complaints, or failed to comply with the Telemarketer Registration Act. The Commission's regulations do not permit discovery of information that is not relevant to the subject matter of the action. See 52 Pa. Code § 5.321(c). Discovery Request No. 1 seeks information unrelated to the legal and factual contentions regarding the claims in this case proceeding.

In addition, Request No. 1 is vague, overbroad, and/or sweeping, and harassing. Therefore, furnishing a response to this request would cause unreasonable annoyance and burden to BPE and would require the making by BPE of an unreasonable investigation. As such,

Discovery Request No. 1 exceeds the permissible bounds of discovery. See 52 Pa. Code § 5.361(a).

BPE reserves the right to supplement its response to this request.

Discovery Request No. 7: Please describe in detail the records compiled or maintained by Respondent which concern, refer or relate to costs, expenses, profits, losses, revenues, and billing for Respondent's Pennsylvania operations.

Objection: BPE objects to Discovery Request No. 7 on the grounds that it (i) seeks privileged material; (ii) calls for information that is not relevant to the subject matter of this action; (iii) would cause unreasonable annoyance and burden to BPE; and (iv) is vague and ambiguous.

BPE's financial information constitutes commercially sensitive, confidential and proprietary information. This information is privileged because if BPE's competitors obtained in this information, it would place BPE at an economic disadvantage. Accordingly, it is outside the bounds of permissible discovery because the Commission's regulations do not permit discovery relating to any matter that is privileged. See Pa. Code § 5.321(c); 52 Pa. Code § 5.361(a).

Moreover, BPE's financial information is not relevant to the allegations in the Complaint filed by Complainants in this proceeding. This commercially sensitive, confidential and proprietary information has no probative value pertaining to Complainants' allegations that BPE failed to provide accurate pricing information, charged prices not conforming with the disclosure statement, made misleading or deceptive promises of saving, lacked good faith in handling complaints, or failed to comply with the Telemarketer Registration Act. The Commission's regulations do not permit discovery of information that is not relevant to the subject matter of the action. See 52 Pa. Code § 5.321(c). Discovery Request No. 7 seeks information unrelated to the legal and factual contentions regarding the claims in this case proceeding.

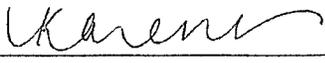
In addition, Request No. 7 is vague, overbroad, and/or sweeping, and harassing. Therefore, furnishing a response to this request would cause unreasonable annoyance and burden to BPE and would require the making by BPE of an unreasonable investigation. As such, Discovery Request No. 7 exceeds the permissible bounds of discovery. See 52 Pa. Code § 5.361(a).

Finally, this discovery request is vague and ambiguous as it is unclear what is meant by the request that BPE “describe” its documents.

BPE reserves the right to supplement its response to this request.

February 6, 2015

BUCHANAN INGERSOLL & ROONEY PC

By: 
Karen O. Moury
409 North Second Street, Suite 500
Harrisburg, PA 17101
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**COMMONWEALTH OF
PENNSYLVANIA, ET AL.**

v.

BLUE PILOT ENERGY, LLC

:
:
:
:
:
:

Docket Nos. C-2014-2427655

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).

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, et al.	:	
	:	
v.	:	Docket No. C-2014-2427659
	:	
Respond Power LLC	:	
	:	
Pennsylvania Public Utility	:	
Commission, Bureau of Investigation	:	
and Enforcement	:	
	:	
v.	:	Docket No. C-2014-2438640
	:	
Respond Power LLC	:	

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