

COMMONWEALTH OF PENNSYLVANIA



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March 26, 2015

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

RE: 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

Secretary Chiavetta:

Enclosed please find the Joint Answer of the Commonwealth of Pennsylvania, Bureau of Consumer Protection, and the Office of Consumer Advocate to Blue Pilot Energy, LLC's Motion to Strike Consumer Direct Testimony, in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

Kristine E. Robinson

Kristine E. Robinson
Assistant Consumer Advocate
PA Attorney I.D. #316479

Enclosure

cc: Honorable Elizabeth Barnes, ALJ
Honorable Joel Cheskis, ALJ
Certificate of Service

*185199

2241, *et seq.* (TRA). The Joint Complaint includes five separate counts and alleges that Blue Pilot Energy, LLC (Respondent or Blue Pilot) violated Pennsylvania law and Commission Orders and regulations.¹ With respect to relief, the Joint Complainants request that the Commission find that Respondent violated the Public Utility Code, the Consumer Protection Law, and the TRA, and the Commission's regulations and Orders; provide restitution to Respondent's customers; impose a civil penalty; order Respondent to make various modifications to its practices and procedures; and revoke or suspend Respondent's Electric Generation Supplier (EGS) license, if warranted.²

Pursuant to the litigation schedule adopted at the August 25, 2014, Prehearing Conference in this matter, Joint Complainants timely served the ALJs and the parties on October 17, 2014, with consumer direct testimony, consisting of questions, answers, and exhibits of 97 consumer witnesses and encompassing two volumes, totaling 584 pages. The testimony relates to each consumer's firsthand experience with Blue Pilot's marketing, billing and customer service practices. Hearings for the cross-examination of the consumer witnesses are scheduled for March 30 through April 3, 2015. A second Prehearing Conference was convened on February 4, 2015, at which time the ALJs adopted a further litigation schedule for the submission of, *inter alia*, Joint Complainants' expert testimony regarding Blue Pilot's marketing and billing practices.

On March 18, 2015, Respondent filed its Motion, seeking to strike and to have ruled inadmissible all or certain customer witness statements and exhibits pre-served by the Joint

¹ Specifically, the five counts in the Joint Complaint are: I) failing to provide accurate pricing information; II) prices nonconforming to disclosure statement; III) misleading and deceptive promises of saving; IV) lack of good faith handling of complaints; and V) failure to comply with the Telemarketer Registration Act (TRA).

² For the sake of brevity, Joint Complainants have not included the lengthy and complicated procedural history in its entirety.

Complainants on October 17, 2014. In light of the fact that the hearings in this matter are to begin on March 30, 2015, the ALJs directed that Joint Complainants submit their Answer to Respondent's Motion by March 26, 2015. Joint Complainants therefore submit this Answer in compliance with that directive.

Blue Pilot moves to strike parts of Joint Complainants' customer witness testimony and exhibits on several different grounds, all of which lack merit. First, Respondent asserts that to the extent that Joint Complainants are relying on the consumer statements to prove any of their causes of action, they have failed. Motion at 4-5. In support of its position, Blue Pilot asserts that Joint Complainants must prove all essential elements of their complaint in which they have the burden of proof during their case-in-chief. Motion at ¶ 12. Blue Pilot asserts that Joint Complainants may not introduce evidence in rebuttal that is properly part of their case-in-chief. Id. Blue Pilot submits that "to the extent that the consumer statements are infirm, [Joint] Complainants are bound to them in their current form." Motion at ¶ 14.

Joint Complainants submit that Blue Pilot's assertion that Joint Complainants should not be permitted to introduce evidence in rebuttal that should have been included in their case-in-chief is premature. At this time, Joint Complainants have not attempted to introduce any evidence in rebuttal. Moreover, Joint Complainants have not completed their case-in-chief, as Joint Complainants will have an opportunity to submit direct testimony from expert and other non-consumer witnesses on June 12, 2015.

Furthermore, to the extent that Blue Pilot is seeking an Order to strike or have ruled inadmissible the consumer testimony based on its assertion that Joint Complainants have failed to prove the allegations in their Joint Complaint, Joint Complainants submit that this argument is invalid and improper. Joint Complainants note that Blue Pilot has not provided any facts in

support of this assertion. Additionally, it is not grounds for a Motion to Strike testimony that the witness does not provide evidence in support of each and every count in the Joint Complaint, so long as the evidence is relevant and material. See 52 Pa. Code § 5.401. The consumer testimony provides evidence of Blue Pilot’s marketing, billing and customer service practices, which is directly relevant to the counts in the Joint Complaint. Thus, Joint Complainants submit that they have not failed in relying, in part, on the consumer statements in support of their causes of action. As noted above, Joint Complainants’ case-in-chief will also include the direct testimony of expert and other non-consumer witnesses in support of the causes of action.

Second, Blue Pilot asserts that the vast majority of the consumer statements fail to comply with the written testimony requirements of the Commission’s regulations. Motion at 5-6. In another case filed by Joint Complainants against Respond Power, LLC (Respond Power), where Joint Complainants submitted consumer testimony in a similar manner, Respond Power made this same argument, and the ALJs rejected it. The ALJs stated:

Respond’s argument will be rejected. To begin, the Commission’s regulations grant the presiding officer “all necessary authority to control the receipt of evidence.” 52 Pa.Code § 5.403(a). The Commission’s regulations also encourage the use of written testimony. 52 Pa.Code § 5.412(a). Although, as Respond correctly notes, the Commission’s regulations also require written testimony to be prepared in question and answer format and include line numbers in the left-hand margin on each page, 52 Pa.Code § 5.412(e), the Commission’s regulations also allow Presiding Officers the authority to “regulate the course of the proceeding.” 52 Pa.Code § 5.483(a). Most significantly, however, the Commission’s regulations allow for liberal construction to “secure the just, speedy and inexpensive determination of every action or proceeding” and that the “presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.” 52 Pa.Code § 1.2(a); *see also*, 52 Pa.Code § 1.2(c)

The Joint Complainants and I&E have sought the admission of testimony from over 200 hundred witnesses. Initially, the Joint Complainants requested that public input hearings be held throughout the Commonwealth to facilitate receipt of such testimony. The logistics of such an endeavor, including allowing for a similar process in related cases, warranted the alternative process that has been

established for this case that involves the admission of pre-served consumer testimony, subject to cross examination and timely motions. Although the number of consumers providing testimony has increased since the original request was made, the process established for this proceeding involving pre-served, written consumer testimony has greatly facilitated an efficient and effective development of the record. To the extent that the process may be hindered as a result of the omission of line numbering or the inclusion of narratives, among other things, that do not strictly conform to the Commission's regulations, those hindrances are outweighed by the substantial due process benefits to all parties as a result of the process that is being followed in this proceeding. Respond has had the pre-served written consumer testimony for four months and the Company's substantive rights have been preserved.

Furthermore, as noted by I&E, the consumer testimony is generally readable and comprehensible and any questions regarding decipherability could have been addressed through the Commission's regulations regarding discovery or can be addressed on cross-examination.

Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection, And TANYA J. McCLOSKEY, Acting Consumer Advocate v. Respond Power LLC, Docket No. C-2014-2427659, Order Granting in Part and Denying in Part Motion to Strike, 4-5 (March 6, 2015) (Respond Power Order). Similarly, the process established in this proceeding involved pre-served written consumer testimony. Joint Complainants have sought the admission of testimony of 97 consumer witnesses. Blue Pilot had the written testimonies 152 days prior to filing its Motion to Strike, allowing for ample time to raise any issues of form, such as the lack of line-numbering or handwritten responses, and it did not do so. Also, at the prehearing conference where the idea of written direct testimony was first discussed by the ALJs and the parties, the ALJs stated only that the consumer testimony was to be prepared in question-and-answer form and counsel for Blue Pilot indicated agreement to that suggestion. TR. 8-9. No other requirements were discussed or imposed with regard to the consumer statements. Additionally, as acknowledged by the ALJs in the Respond Power

proceeding, any questions regarding decipherability could have been addressed through the Commission's regulations regarding discovery or can be addressed on cross-examination.

Third, Blue Pilot asserts that the unauthenticated consumer statements are not admissible. Motion at 6-31. Blue Pilot makes several allegations in support of this position. First, Blue Pilot asserts that the consumer statements constitute uncorroborated hearsay and cannot support a factual finding, and Pennsylvania does not recognize the residual exception to hearsay. Motion at 6- 21. The ALJs should deny this part of the Motion as well. It is common knowledge within Commission practice that Presiding Officers are not bound by the technical rules of evidence in administrative hearings under the Pennsylvania Administrative Procedure Act. 2 Pa. Code § 505. Even if they were so bound, some of the examples Respondent has offered of third-party statements "offered for the truth of the matter asserted" do not actually meet the definition of "hearsay" that Respondent cites – or they fall within one of the established exceptions to the rule against admitting hearsay. It is also common knowledge that Commission ALJs generally accept even statements that meet the definition of hearsay and are not within any of the exceptions to the hearsay rule into the record and accord such evidence appropriate weight. Hearsay so admitted may not, standing alone, support a finding of fact, however; admitted hearsay statements may support findings of fact in conjunction with other corroborative non-hearsay evidence. London v. Viridian Energy PA, LLC, Docket No. C-2011-2244309, I.D. (Feb. 2, 2012) (Final Order entered March 29, 2012); Davis v. Equitable Gas Co., LLC, 2012 PaPUC LEXIS 2068 (April 27, 2012), at *21-22. For all of these reasons as more fully set forth below, the ALJs should deny this Motion.

Next, Blue Pilot asserts that the consumer statements are not based on personal knowledge and the attachments are not authenticated. Motion at 21-26. Specifically, Blue Pilot

asserts that the signed verification provided at the end of the consumers' testimonies is insufficient, because it does not specify that the declarant had the requisite "personal knowledge" to provide testimony in the first instance. Motion at ¶¶ 44-46. Joint Complainants submit that this argument is unsound. First, the fact that the verification does not distinctly identify the knowledge as personal does not mean that the witness lacks personal knowledge. In their verifications, the witnesses verify that the facts provided in their statements are "true and correct to the best of [their] knowledge, information and belief." It is evident from many of the consumer statements that the consumers have personal knowledge. It is customary practice at the Commission for witnesses to sign verifications that do not distinguish personal knowledge from knowledge. Furthermore, Joint Complainants submit that to the extent the consumer who provided the testimony is not the individual with firsthand knowledge, they can make available for cross-examination both individuals. Thus, the ALJs should deny this Motion.

Blue Pilot also asserts that the Joint Complainants' Questions 3, 6, 7, 12, 14, 19, 20, and 21 are leading and/or assume facts not in evidence. Motion at 26-29. This part of the Motion should also be denied. First, as a matter of procedure, if opposing counsel objects to a leading question in the course of a hearing, the remedy is not to strike the witnesses' answers; rather, a Presiding Officer would allow counsel to rephrase the question and allow the witness to answer. Striking the testimony in this context would be an inappropriately harsh result, especially given the time constraints imposed upon Joint Complainants to procure, to organize, to reproduce and to serve the written testimonies of 97 witnesses who called to complain about Blue Pilot.

Additionally, Joint Complainants submit that the questions are not unduly leading. As discussed in more detail below, the variety of responses to these questions supports Joint

Complainants' position that the consumers were not led by the question to answer in a particular manner. Thus, the ALJs should deny this Motion.

Blue Pilot next asserts that Joint Complainants' Questions 9, 10, 11, and 21 are not relevant. Motion at 29-30. Blue Pilot asserts that because there is no claim alleging fraud in this proceeding, Questions 9, 10, and 11, which ask about the consumer's "understanding" of the price, how the price would be set, and how the price would be charged, are not relevant. Motion at ¶ 65. Joint Complainants submit that Questions 9, 10, and 11 are relevant to Counts I, II, and III, and the ALJs should deny Blue Pilot's Motion. Counts I, II, and III of the Joint Complaint allege as follows: I) failing to provide accurate pricing information; II) prices nonconforming to disclosure statement; and III) misleading and deceptive promises of saving. Thus, any information regarding the consumers' understanding of the price, how it would be set, or how it would be charged is relevant to the issues of whether Blue Pilot provided consumers with accurate pricing information, charged prices in accordance with its disclosure statement, and promised savings in a misleading and deceptive manner.

Blue Pilot also asserts that Question No. 21, which asks the consumer to provide any additional important information about his/her experience, including payment arrangements or termination notices, is not relevant. Joint Complainants submit that additional information provided by customers of Blue Pilot at the time of the alleged violations about their experiences as a Blue Pilot customer could be relevant to any of the counts in the Joint Complaint, which all relate to Blue Pilot's marketing, billing, and customer service practices. See Joint Complaint at Counts I-V. Additionally, Joint Complainants submit that information regarding the customers' payment arrangements or termination notices is relevant to Count IV of the Joint Complaint, lack

of good faith handling of complaints. Thus, Blue Pilot's Motion to Strike Questions 9, 10, 11, and 21 should be denied.

Additionally, Blue Pilot asserts that many of the answers are non-responsive. Motion at 30-31. The ALJs should deny this part of the Motion. Joint Complainants would acknowledge that the consumer statements are imperfect in certain respects; however, Joint Complainants engaged in an intensive good faith effort to obtain the information from affected consumers in the short time allowed for this purpose and in the format directed by the ALJs. In the 53 days following the Prehearing Conference, Joint Complainants were required to prepare questions, first-class mail them to consumers, who had contacted their offices concerning Blue Pilot, receive the answers back via U.S. mail, review, organize, reproduce and serve the statements, which were received in numbers far exceeding Joint Complainants' expectations. All of this was done to avoid the inordinate expenses to the Commission and all of the parties, including Blue Pilot, of scheduling and attending hearings in various parts of the state or expending a great amount of telephonic hearing time to receive the testimony orally, which would have otherwise been required. For all of these reasons as more fully set forth below, the ALJs should deny this Motion.

Blue Pilot's Motion also provides that any consumer who received a refund should be stricken and that consumers who are pursuing separate actions should be stricken. Motion at 31. Joint Complainants submit that the fact that a consumer may have already received a refund from Blue Pilot or is pursuing a separate action before the Commission against Blue Pilot does not prevent the consumer from being a witness in this proceeding, and, therefore, the ALJs should deny Blue Pilot's Motion. In another Joint Complaint case brought against Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric (PaG&E), the ALJs held the following:

It would be against public policy to allow [PaG&E] to be relieved of all future liability for its regulatory violations through the satisfaction of individual complaints. The mere fact that some consumer complaints have been satisfied in no way absolves [PaG&E] for its conduct under the law to the extent [PaG&E] engaged in a broader array of unfair and deceptive practices.

In this case, evidence of the underlying consumer complaints is not being used to relitigate those complaints. [PaG&E] has been relieved of responsibility for those underlying complaints as it pertains to those underlying complainants. Evidence of the underlying consumer complaints is being used in this case for purposes of supporting the Joint Complainants allegations (i.e., that [PaG&E] engaged in misleading and deceptive promises of savings, slamming, misleading and deceptive welcome letter, lack of good faith handling of complaints, etc.). Furthermore, the relief sought in the underlying complaints is likely different than the relief sought by the Joint Complainants. As such, Section 703 does not prohibit the Joint Complainants from seeking to admit into the record of this proceeding evidence of formal complaints filed by consumers against ESP.

[T]he OCA and OAG are acting in their representative capacities as government agencies on behalf of the public interest as a whole, not on behalf of the specific individual consumers whose prior complaints may be referenced in the record of this case. As we noted in the August 20, 2014 Order Granting In Part And Denying In Part Preliminary Objections, and as the Joint Complainants argued in their Answer to [PaG&E's] Motion, both the OCA and the OAG are authorized to represent consumer interests before the Commission. *See*, 71 P.S. § 309-4(a) and (b); 73 P.S. § 201-4. Neither the OCA nor the OAG act as a private attorney for any given customer and are not seeking to do that in this case. Rather, the Joint Complainants are proceeding in this matter on behalf of the public interest ... The Joint Complainants are able to bring complaints based on the public interest that an individual consumer alone would not be able to bring. This is the opportunity to do that.

Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection, And TANYA J. McCLOSKEY, Acting Consumer Advocate v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric, Docket No. C-2014-2427656, Order Denying Motion In Limine, (Entered December 1, 2014) (PaG&E Order).

In this proceeding, Joint Complainants are also acting in their representative capacities, and evidence of the underlying consumer complaints is not being used to relitigate those cases. Thus, the mere fact that some consumers may have received refunds or are pursuing separate

actions does not absolve Blue Pilot of its conduct. Therefore, the ALJs should deny Blue Pilot's Motion.

ANSWER

1. Admitted in part and denied in part. Joint Complainants admit that they served Blue Pilot with 97 statements from consumers. To the extent that Blue Pilot is implying that Joint Complainants gathered the consumer testimony in an improper manner, however, Joint Complainants deny that assertion. Joint Complainants engaged in an intensive, good faith effort to obtain the information from affected consumers in the short time allowed for this purpose and in the format directed by the ALJs. Joint Complainants were instructed to serve written, consumer testimony in question/answer format. In the 53 days following the prehearing conference, Joint Complainants were required to prepare questions, first-class mail them to consumers, who had initially contacted their offices concerning Blue Pilot, receive the answers back via U.S. mail, review, organize, reproduce and serve the statements, which were received in numbers far exceeding Joint Complainants' expectations. All of this was done to avoid the inordinate expenses to the Commission and all of the parties, including Blue Pilot, of scheduling and attending hearings in various parts of the state or expending a great amount of telephonic hearing time to receive the testimony orally, which would have otherwise been required.

2. Denied. Joint Complainants deny that the reasons stated in support of the Motion are in any way valid.

3. Admitted in part and denied in part. Joint Complainants would acknowledge that the consumer statements are imperfect in certain respects. Joint Complainants, however, deny that reasons stated support a Motion to Strike. As stated above, Joint Complainants engaged in an intensive, good faith effort to obtain the information from affected consumers. Paragraph 1 is

incorporated herein. Moreover, Blue Pilot has had ample time since October 17, 2014 to review the statements and engage in discovery to obtain more information from the consumers. Blue Pilot will have an opportunity to cross-examine the consumer witnesses to gather more information.

Joint Complainants also deny that the consumer attachments have been unauthenticated or sworn. The attached documents respond to a final question in the verified consumer questionnaires, which provides, “please provide any additional information.” The consumer attachments are responsive to this request and are an elaboration of individual consumers’ testimony. See Respond Power Order at 5. Thus, Joint Complainants submit that the signed verifications provided at the end of the consumer questionnaires encompass the attached documents. Additionally, Joint Complaints submit that they will authenticate the attached exhibits prior to admitting the Consumer Testimony into the record. Blue Pilot will have any opportunity to cross-examine the consumers on these attachments to the extent that Blue Pilot wants additional information.

Joint Complainants admit that some questionnaires were signed by multiple individuals. In such cases, Joint Complainants submit that they will make a reasonable effort to have both individuals available for cross-examination.

4. Joint Complainants are without sufficient information to form a belief as to the veracity of the averments herein. The averments are, therefore, denied.

5. Admitted only that Blue Pilot moves to strike the testimony for the reasons asserted; it is denied that any of the stated reasons are valid.

ARGUMENT

II. LEGAL STANDARD FOR A MOTION TO STRIKE

A. Applicable Legal Standards.

6. This paragraph states a conclusion of law to which no response is required.

7. This paragraph states a conclusion of law to which no response is required.

8. This paragraph states a conclusion of law to which no response is required.

9. This paragraph states a conclusion of law to which no response is required. By

way of further answer, Joint Complainants submit that the Commission, as an administrative entity with quasi-judicial functions, is not limited by the strict rules relating to the admissibility of evidence. It is denied that any of the “essential principles” that must be observed, as noted by the courts in Pittsburgh and Lake Erie Railroad Company v. Pa. Public Utility Commission, 85 A.2d 646, 653, (Pa. Super. 1952) and Bleilevens v. State Civil Service Commission, 312 A.2d 109, 111 (Pa. Commw. 1973), support granting the Blue Pilot Motion to Strike in this Commission proceeding.

III. JOINT COMPLAINANTS HAVE NOT FAILED IN RELYING, IN PART, ON THE CONSUMER STATEMENTS TO PROVE THEIR CAUSES OF ACTION.

10. This paragraph states conclusions of law to which no response is required.

11. This paragraph states conclusions of law to which no response is required. By

way of further answer, Joint Complainants submit that to the extent that Blue Pilot is seeking an Order to strike or have ruled inadmissible the consumer testimony based on its assertion that Joint Complainants have failed to prove the allegations in their Joint Complaint through the testimony of the consumer witnesses, Joint Complainants submit that this argument is invalid and improper. Joint Complainants note that they have not completed their case-in-chief, as they will have an opportunity to submit direct testimony from expert and other non-consumer

witnesses. Joint Complainants further note that Blue Pilot has not provided any facts in support of this assertion. Additionally, it is not grounds for a Motion to Strike testimony that the witness does not provide evidence in support of each and every count in the Joint Complaint, so long as the evidence is relevant and material. See 52 Pa. Code § 5.401. The consumer testimony provides evidence of Blue Pilot's marketing, billing and customer service practices, which is directly relevant to the counts in the Joint Complaint.

12. This paragraph states conclusions of law to which no response is required. By way of further answer, Joint Complainants submit that Blue Pilot's assertion that Joint Complainants should not be permitted to introduce evidence in rebuttal that should have been included in their case-in-chief is premature. At this time, Joint Complainants have not attempted to introduce any evidence in rebuttal. Moreover, Joint Complainants have not completed their case-in-chief, as Joint Complainants will have an opportunity to submit direct testimony from expert and other non-consumer on June 12, 2015.

13. This paragraph states conclusions of law to which no response is required. By way of further answer, Joint Complainants incorporate Paragraphs 11 and 12 herein.

14. This paragraph states conclusions of law to which no response is required. By way of further answer, Joint Complainants incorporate Paragraphs 11 and 12 herein.

IV. BLUE PILOT'S OBJECTIONS AS TO THE FORM OF THE CONSUMER TESTIMONY DO NOT JUSTIFY STRIKING THE STATEMENTS IN WHOLE OR IN PART.

15. Denied as stated. Respondent's allegations include conclusions of law which require no response. To the extent that an answer may be required, Joint Complainants submit that the Rules of Administrative Practice and Procedure "shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is

applicable.” 52 Pa. Code § 1.2. That subpart continues: “The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.” Id.

Joint Complainants submit that the ALJs in similar proceedings have already determined that the logistics of presenting the consumer testimony of a large number of consumer witnesses, including allowing for a similar process in related cases, warrants the alternative process that has been established for these case that involve the admission of pre-served consumer testimony, subject to cross examination and timely motions. See Respond Power Order at 4. The ALJs have stated that the process established for these proceedings involving pre-served, written consumer testimony has greatly facilitated efficient and effective development of the record. Id. at 4-5. “To the extent that the process may be hindered as a result of the omission of line numbering or the inclusion of narratives, among other things, that do not strictly conform to the Commission’s regulations, those hindrances are outweighed by the substantial due process benefits to all parties as a result of the process that is being followed in this proceeding.” Id. at 5. Furthermore, Joint Complainants submit that the consumer testimony is generally readable and comprehensible and the questions are numbered in all of the statements, which allows for virtually the same ease of reference as line numbers. Any questions regarding decipherability could have been addressed through the Commission’s regulations regarding discovery or can be addressed on cross-examination. See Id. at 5.

16. Admitted in part and denied in part. It is admitted that consumer witnesses are not necessarily aware of the requirements set forth in the Commission’s rules. The Joint Complainants submit that the consumer witnesses are, in fact, individually unrepresented, as Complainants Attorney General and the Office of Consumer Advocate represent the public

interest and the interest of ratepayers, respectively. It is admitted that the Joint Complainants are government entities that are accustomed to engaging in litigation before the Commission and other tribunals.

17. Admitted in part and denied in part. Joint Complainants engaged in an intensive effort within the time allowed to ensure that the written testimony submitted in support of the Joint Complaint substantially complied with Commission and the ALJs' requirements, with the objective to conserve the Commission's and the parties' resources that would have otherwise been expended in scheduling hearings in various parts of the state or receiving oral direct questions and answers telephonically. See TR. 8; see also Respond Power TR. 16-17. It is admitted that the Joint Complainants are seeking license revocation and suspension, civil penalties and the issuance of refunds. Joint Complainants submit further that had Blue Pilot had an issue with the form or legibility of the consumer statements, as it now asserts, it could have engaged in informal or formal discovery -- or at least could have raised the issue sooner than twelve days prior to the hearings in this proceeding, in light of the fact that the testimonies were served on October 17, 2014.

18. Denied. None of the issues as to form raised by the Respondent justify striking the consumer statements in their entirety. 52 Pa. Code § 1.2.

V. THE VERIFIED CONSUMER STATEMENTS ARE ADMISSIBLE.

A. The Third Party Statements in the Customer Testimonies Are Not Inadmissible Hearsay.

19. Denied as stated. Respondent's allegations include conclusions of law which require no response. To the extent a response may be required, Joint Complainants submit that Pennsylvania Rule of Evidence 801 defines "hearsay" as an out-of-court statement offered to prove the truth of the matter asserted. Joint Complainants deny that out-of-court statements

made by Blue Pilot sales representatives to the testifying consumer are inadmissible, as they are an admission by a party opponent. See Pa. R. Evid. 803(25); See also Commonwealth of Pennsylvania, by Attorney General KATHLEEN G. KANE, Through the Bureau of Consumer Protection, And TANYA J. McCLOSKEY, Acting Consumer Advocate v. HIKO Energy, LLC, Docket No. C-2014-2427652, Order Granting in Part and Denying in Part Motion to Strike, 5-6 (March 18, 2015) (HIKO Order) (“Testimony from consumer witnesses regarding what they were told by agents, employees, or independent contractors of HIKO during these business transactions is admissible under Pa. R. Evid. 803(25) ...”). Whether consumers specifically identified the Blue Pilot representative who made the statement has no bearing on the application of this exception. Blue Pilot should have access to records that identify which of its own representatives had contact with each of its own consumers. Additionally, many of the third party out-of-court statements contained in the consumer statements, including statements made by Blue Pilot’s sales representatives to other individuals, do not fall within the definition of hearsay, as many are not offered “to prove the truth of the matter asserted.” Joint Complainants admit only that the statements were not made while testifying at a hearing in this matter. Joint Complainants further deny that the Commission is bound by the Pennsylvania Rules of Evidence and that hearsay statements are inadmissible and must be stricken from the testimonies pursuant to Pennsylvania Rule of Evidence 802. See 2 Pa.C.S. § 505.

20. Denied as stated. Joint Complainants deny that hearsay is not admissible as evidence in Public Utility Commission proceedings. Presiding Officers are not bound by the rules of evidence and routinely admit hearsay if relevant to develop the evidentiary record; however, it may not be given the same weight as non-hearsay evidence and, if properly objected to, may only support a finding if corroborated by other non-hearsay evidence. These principles

govern decisions on hearsay objections at proceedings of the Commission and are explained in the London v. Viridian Energy PA, LLC, Docket No. C-2011-2244309, I.D. (Feb. 2, 2012) (Final Order entered March 29, 2012), referenced by the Respondent. Joint Complainants would also point out that the decision also expresses another principle applicable to the instant Motion, *i.e.*, that “agent acts or declarations ...when made in the course of one’s business and within the scope of one’s authority, either express or implied, are admissible against one even if they are hearsay.” Id. at 7. Thus, to the extent that the testimonies and exhibits the Respondent moves to strike contain statements of Blue Pilot’s own agents and employees, such statements are clearly admissible.

21. Denied as stated. Respondent’s allegations include conclusions of law which require no response and are, therefore, deemed denied. By way of further answer, Joint Complainants submit that hearsay statements may support findings of fact in conjunction with other corroborative non-hearsay evidence. London v. Viridian Energy PA, LLC, Docket No. C-2011-2244309, I.D. (Feb. 2, 2012) (Final Order entered March 29, 2012); Davis v. Equitable Gas Co., LLC, 2012 PaPUC LEXIS 2068 (April 27, 2012), at *21-22. Joint Complainants submit that many of the third party out-of-court statements contained in the consumer statements either do not fall within the definition of hearsay, or they fall within one of the established exceptions to the rule against admitting hearsay. Additionally, Joint Complainants note that many of the statements contained in the consumer testimony are not out-of-court statements, and Joint Complainants will be have the opportunity to submit additional direct testimony on June 12, 2015, all of which may corroborate any out-of-court statements. Joint Complainants incorporate Paragraph 20 herein.

22. Denied as stated. Respondent's allegations constitute conclusions of law which require no response and are, therefore, deemed denied. By way of further answer, Joint Complainants incorporate Paragraphs 20 and 21 herein.

23. Denied as stated. Respondent's allegations include conclusions of law which require no response and are, therefore, deemed denied. It is denied that the exceptions noted do not apply to the consumer statements submitted by Joint Complainants.

24. Admitted in part and denied in part. Joint Complainants admit only that some statements contained in the consumer testimony were not made while testifying at a hearing in this matter. Joint Complainants submit that the third party out-of-court statements contained in the consumer statements do not fall within the definition of hearsay, or they fall within one of the established exceptions to the rule against admitting hearsay.

25. Denied as stated. Respondent's allegations constitute conclusions of law which require no response and are, therefore, deemed denied. By way of further answer, Joint Complainants incorporate Paragraphs 20 and 21 herein.

26. Denied as stated. Respondent's allegations constitute conclusions of law which require no response and are, therefore, deemed denied. By way of further answer, Joint Complainants incorporate Paragraphs 20 and 21 herein.

27. Denied as stated. Respondent's allegations constitute conclusions of law which require no response and are, therefore, deemed denied. By way of further answer, Joint Complainants incorporate Paragraphs 20 and 21 herein.

28. Denied as stated. Respondent's allegations include conclusions of law which require no response and are, therefore, deemed denied. As for Blue Pilot's statement that it has only been able to identify one case where the Commission admitted hearsay testimony, Joint

Complainants are without sufficient information to form a belief as to the veracity of that averment. By way of further answer, Joint Complainants incorporate Paragraphs 20 and 21 herein.

29. Admitted in part and denied in part. It is admitted that the Joint Complainants are not pro se litigants, but are seasoned government attorneys. It is denied that Joint Complainants are attempting to admit uncorroborated, hearsay statements into the record, which would amount to harmless error. Joint Complainants incorporate Paragraphs 20 and 21 herein. Joint Complainants also note that Blue Pilot has failed to identify a single, specific example of consumer statements that constitute hearsay and do not fall within one of the exceptions.

B. The Consumer Statements are Admissible Without Applying the “Residual Exception” to the Hearsay Rule.

30. Denied as stated. Respondent’s allegations constitute conclusions of law which require no response and are, therefore, deemed denied. Joint Complainants submit that their consumer statements are admissible without applying the “residual exception” to the hearsay rule. By way of further answer, Joint Complainants incorporate Paragraphs 20 and 21 herein.

31. Denied as stated. Respondent’s allegations constitute conclusions of law which require no response and are, therefore, deemed denied. Joint Complainants submit that their consumer statements are admissible without applying the “residual exception” to the hearsay rule. By way of further answer, Joint Complainants incorporate Paragraphs 20 and 21 herein.

32. Denied as stated. Respondent’s allegations constitute conclusions of law which require no response and are, therefore, deemed denied. Joint Complainants submit that their consumer statements are admissible without applying the “residual exception” to the hearsay rule. By way of further answer, Joint Complainants incorporate Paragraphs 20 and 21 herein.

33. Denied as stated. Joint Complainants submit, as discussed in Paragraph 34, below, that the FTC v. Figgie International, Inc., 994 F.2d 595 (9th Cir. 1993) (Figgie) proceeding is not controlling in this case.

34. Denied as stated. Respondent's allegations constitute conclusions of law which require no response and are, therefore, deemed denied. By way of further answer, to the extent Blue Pilot is asserting that all of the consumer statements constitute inadmissible "out-of-court" statements, because of the manner in which they were gathered and submitted, Joint Complainants submit that they obtained the information from affected consumers in the format directed by the ALJs. Joint Complainants were instructed to serve written, consumer testimony in question-and-answer format to avoid the inordinate expenses to the Commission and all of the parties, including Blue Pilot, of scheduling and attending hearings in various parts of the state or expending a great amount of telephonic hearing time to receive the testimony orally, which would have otherwise been required.

Figgie is not applicable here, as that case did not involve the submission of pre-served, written testimony before the Commission. The Commission's regulations encourage the use of written testimony. 52 Pa.Code § 5.412(a). Here, the verified consumer statements are a direct substitution for oral testimony, and, thus, have the same "guarantee of trustworthiness" as if the statements were made orally during a hearing. Furthermore, before Joint Complainants offer the statements into the record during the hearings for cross-examination of the consumer witnesses, Joint Complainants submit that they will authenticate those statements. Joint Complainants also note that if Blue Pilot had objections to the manner in which Joint Complainants were directed to submit consumer testimony, it should have raised those objections at the Initial Prehearing Conference when the idea of written direct testimony was first discussed by the ALJs and the

parties, and it did not do so. Joint Complainants also deny that the statements are leading and incorporate Paragraphs 51 through 64, below.

35. Denied as stated. Respondent's allegations constitute conclusions of law which require no response and are, therefore, deemed denied. By way of further answer, Joint Complainants submit that cases cited by Respondent are not applicable here, for the reasons discussed in Paragraph 34.

36. Denied as stated. Respondent's allegations constitute conclusions of law which require no response and are, therefore, deemed denied. By way of further answer, Joint Complainants incorporate Paragraph 34 herein. Joint Complainants further note that Blue Pilot has not provided any factual support for its blanket statement that the consumers expect Joint Complainants to seek money on their behalf.

37. Denied. As discussed in Paragraph 19 above, many of the statements Blue Pilot refers to do not fall within the definition of hearsay, as many are not offered "to prove the truth of the matter asserted."

38. Denied. Out-of-court statements made by Blue Pilot employees, representatives, or contractors are admissible as an admission by a party opponent. See HIKO Order at 5-6 ("Testimony from consumer witnesses regarding what they were told by agents, employees, or independent contractors of HIKO during these business transactions is admissible under Pa. R. Evid. 803(25) ..."). Whether consumers specifically identified the Blue Pilot representative who made the statement has no bearing on the application of this exception. Blue Pilot should have access to records that identify which of its own representatives had contact with each of its own consumers.

39. No response is required, as the Consumer Testimony statements are of record in this matter and speak for themselves.

40. No response is required, as the Consumer Testimony statements are of record in this matter and speak for themselves.

41. No response is required, as the Consumer Testimony statements are of record in this matter and speak for themselves.

42. Denied. Joint Complainants submit that Blue Pilot should have access to records or recordings that identify which of its own representatives had contact with each of its own consumers. Blue Pilot will have the opportunity to cross-examine the consumer witnesses to the extent that it wants additional information from the consumers.

43. The Consumer Testimony is of record in this matter and speaks for itself. Joint Complainants deny that consumer testimony should be stricken if the consumer fails to identify the Blue Pilot representative with whom he or she spoke. Joint Complainants incorporate Paragraph 38 herein.

C. **The Consumer Statements are Based on Personal Knowledge and the Attachments will be Authenticated.**

44. No response is required, as the Consumer Testimony is of record in this proceeding.

45. Denied as stated. Respondent's allegations constitute conclusions of law which require no response and are, therefore, deemed denied. By way of further answer, Joint Complainants submit that Blue Pilot's argument is unsound. First, the fact that the verification does not distinctly identify the knowledge as "personal" does not mean that the witness lacks personal knowledge. In their verifications, the witnesses verify that the facts provided in their statements are true and correct "to the best of [their] knowledge, information and belief", and it

is evident from many of the consumer statements that the consumers have personal knowledge of their interactions with Blue Pilot agents. Furthermore, Joint Complainants submit that to the extent the consumer who provided the testimony is not the individual with firsthand knowledge, they can make available for cross-examination both individuals.³

46. Denied as stated. Respondent's allegations constitute conclusions of law which require no response and are, therefore, deemed denied. By way of further answer, Joint Complainants incorporate Paragraph 45 herein.

47. Denied. No response is required to the extent this Paragraph contains conclusions of law. Joint Complainants specifically deny that the attached documents constitute hearsay and incorporate Paragraphs 19 through 43 herein. Joint Complainants submit the consumer attachments respond to a final question in the verified consumer questionnaires, which provides, "please provide any additional information." The consumer attachments are responsive to this request and are an elaboration of individual consumers' testimony. See Respond Power Order at 5. Joint Complainants will authenticate the attachments prior to offering the testimony into the record at the hearings for cross-examination of consumer witnesses.

48. Denied. Joint Complainants incorporate Paragraph 47 herein.

49. Denied as stated. Respondent's allegations constitute conclusions of law which require no response and are, therefore, deemed denied. By way of further answer, Joint Complainants incorporate Paragraph 47 herein.

³ Additionally, Joint Complainants note that the cases cited by Blue Pilot did not set a standard requiring that all sworn testimony affidavits include the word "personal." Unlike this case, in Muller v. Midstate Equipment Serv., Inc., 11 Pa. D. & C.3d 115 (Pa. Com. Pl. 1973) (Muller) the affidavit specifically verified the accuracy of information that was within the personal knowledge of another. Muller at 117, n. 1. Additionally, Joint Complainants note that the determinations in Muller and Phaff v. Gerner, 303 A.2d 826 (Pa. 1973) (Phaff) were limited to affidavits supporting summary judgments. See Muller at 117, n.1; See also Phaff at 829-30.

50. The attachments to the consumer testimony are of record in this proceeding and speak for themselves. By way of further answer, Joint Complainants incorporate Paragraph 47 herein.

D. The Questions Are Not Leading and Do Not Assume Facts Not in Evidence.

51. Joint Complainants deny that the questions are leading, as discussed in more detail in Paragraphs 52 through 64, below.

52. The Consumer Testimony statements are of record in this proceeding and speak for themselves. Joint Complainants deny that Question No. 3 is improperly leading and assumes facts not in evidence. Question No. 3 provides, “a. Which electric generation supplier (EGS) did you have a problem with, if any? b. Please describe the problem.” (Emphasis added). The use of the phrase “if any” conveys to consumers that it is possible that they have not had a problem with any EGS. Additionally, asking the consumer to “describe the problem” is an open-ended question, and the variety of responses to this question supports Joint Complainants position.

As a matter of procedure, Joint Complainants also note that if opposing counsel objects to a leading question in the course of a hearing, the remedy is not to strike the witnesses’ answers; rather, a Presiding Officer would allow counsel to rephrase the question and allow the witness to answer. Striking the testimony in this context would be an inappropriately harsh result, especially given the time constraints imposed upon Joint Complainants, as noted above, to procure, to organize, to reproduce and to serve the written testimonies of the hundreds of witnesses who called to complain about Blue Pilot. Moreover, Respondent will have the same opportunity to cross-examine the witnesses as if the statement had been offered orally in the hearing room.

53. The Consumer Testimony statements are of record in this proceeding and speak for themselves. Joint Complainants deny that Question No. 6 is improperly leading and assumes facts not in evidence. Question No. 6 provides, “How did you sign up with the EGS? For example, was it a telemarketing call, a door-to-door marketer, through a website or mailing, or some other method?” This question is entirely open-ended. Joint Complainants included examples to clarify the question. The use of the phrase “or some other method” at the end of the list of examples conveys to consumers that their response is not limited to the examples provided. Furthermore, the variety of responses to this question underscores that these consumer witnesses were not led by the question to answer in a particular manner. As discussed in Paragraph 52, Joint Complainants also note that if opposing counsel objects to a leading question in the course of a hearing, the remedy is not to strike the witnesses’ answers

54. The Consumer Testimony statements are of record in this proceeding and speak for themselves. Joint Complainants deny that Question No. 7 is improperly leading and assumes facts not in evidence. Question No. 7 provides, “Please describe the sales contacts that you had with the EGS’s representatives when you signed up for the service.” The question asks consumers to describe an event. A request for a description implies an open ended question. The variety of responses to this question underscores that these consumer witnesses were not led by the question to answer in a particular manner. As Blue Pilot notes, several of the consumers stated that their entire sales experience was through the internet. The very fact that consumers testified that they signed up entirely through the internet shows that the consumers were not led by this question. As discussed in Paragraph 52, Joint Complainants also note that if opposing counsel objects to a leading question in the course of a hearing, the remedy is not to strike the witnesses’ answers.

55. The Consumer Testimony statements are of record in this proceeding and speak for themselves. Joint Complainants deny that Question No. 12 is improperly leading and assumes facts not in evidence. Question No. 12 provides, “a. Did the EGS salesperson guarantee savings? b. If yes, please explain.” This second part cues the reader that the answer to the first question, *i.e.*, “Did the EGS salesperson guarantee savings?” may well be either affirmative or negative. Moreover, the ALJs have already determined that these questions are not leading. See HIKO Order at 4; See also Respond Order at 6-7.

56. The Consumer Testimony statements are of record in this proceeding and speak for themselves. Joint Complainants deny that Question No. 14 is improperly leading and assumes facts not in evidence. Question No. 14 provides, “When, if at all, did you receive a disclosure statement?” The use of the phrase “if at all” conveys to the consumer that he/she may either state when he/she received a disclosure statement or state that he/she did not receive one. The variety of responses to this question underscores that these consumer witnesses were not led by the question to answer in a particular manner. As discussed in Paragraph 52, Joint Complainants also note that if opposing counsel objects to a leading question in the course of a hearing, the remedy is not to strike the witnesses’ answers.

57. The Consumer Testimony statements are of record in this proceeding and speak for themselves. Joint Complainants deny that Question No. 19 is improperly leading and assumes facts not in evidence. Question No. 19 provides, “Please describe any contacts that you had with the EGS agents concerning your problem.” First, Joint Complainants note that this question appears after Joint Complainants ask the consumer to identify which EGS he/she had a problem with, if any. So, by the time the consumer responds to this question, he/she has already provided evidence as to whether or not he/she had a problem. Second, Joint Complainants note

that the question is open-ended, since it asks the consumers to describe the problem. The variety of responses to this question supports Joint Complainants position. As discussed in Paragraph 52, Joint Complainants also note that if opposing counsel objects to a leading question in the course of a hearing, the remedy is not to strike the witnesses' answers.

58. The Consumer Testimony statements are of record in this proceeding and speak for themselves. Joint Complainants deny that Question No. 20 is improperly leading and assumes facts not in evidence. Question No. 20 provides, "If you were able to contact your EGS, please describe the relief, if any, the EGS offered you." The use of the word "if" and the term "if any" conveys to the consumer that they may or may not have been able to contact their EGS and they may or may not have been offered relief. Thus, the question is not leading. The variety of responses to this question supports Joint Complainants position. As discussed in Paragraph 52, Joint Complainants also note that if opposing counsel objects to a leading question in the course of a hearing, the remedy is not to strike the witnesses' answers.

59. The Consumer Testimony statements are of record in this proceeding and speak for themselves. Joint Complainants deny that Question No. 21 is improperly leading and assumes facts not in evidence. Question No. 21 provides, "Please provide any additional important information about your experience, including payment arrangements or termination notices." This question is clearly open-ended, as it requests consumers to provide any additional information about their unique experiences. Thus, the question is not leading. The variety of responses to this question supports Joint Complainants' position. As discussed in Paragraph 52, Joint Complainants also note that if opposing counsel objects to a leading question in the course of a hearing, the remedy is not to strike the witnesses' answers.

60. Denied as stated. Respondent's allegations constitute conclusions of law which require no response and are, therefore, deemed denied. By way of further answer, Joint Complainants would point out that Pennsylvania Rule of Evidence 611(c) specifically states, "leading questions should not be used on direct or redirect examination, except as necessary to develop the witness's testimony." Considering the unusual nature of this case and the stringent time constraints, Joint Complainants submit that presenting consumers with a standard set of questions to assist in developing their testimony was necessary in this matter.

61. Denied as stated. Respondent's allegations constitute conclusions of law which require no response and are, therefore, deemed denied. To the extent a response is required, Joint Complainants incorporate Paragraph 55 herein.

62. Denied. It is impossible for Respondent to know what was in the minds of the consumers answering the questions received from the Joint Complainants. More important, a review of the series of the many different answers to Question No. 12 demonstrates that consumers were not rotely answering "Yes" to that question. Counsel for Respondent is entitled to explore the consumers' perception and recollection of the interaction with the EGS salesperson on cross-examination. Further, counsel for Blue Pilot could have explored consumers' perception and recollection through timely discovery, as the Company has had this testimony since October 17, 2014, but it did not do so.

63. Denied. Joint Complainants deny that their questions signaled a desired answer. Joint Complaints incorporate Paragraphs 51 through 62 above.

64. Denied as stated. Respondent's allegations constitute conclusions of law which require no response and are, therefore, deemed denied. By way of further answer, Joint Complainants incorporate Paragraphs 51 through 63, above.

E. Questions 9, 10, 11, and 12 Seek Relevant Information.

65. Denied as stated. Respondent's allegations include conclusions of law which require no response and are, therefore, deemed denied. To the extent a response is required, Joint Complainants submit that Questions 9, 10, and 11 seek information relevant to Counts I, II, and III of this proceeding, and the ALJs should deny Blue Pilot's Motion. Counts I, II, and III of the Joint Complaint allege as follows: I) failing to provide accurate pricing information; II) prices nonconforming to disclosure statement; and III) misleading and deceptive promises of saving. Thus, any information regarding the consumers' understanding of the price, how it would be set, or how it would be charged is relevant to the issues of whether Blue Pilot provided consumers with accurate pricing information, charged prices in accordance with its disclosure statement, and promised savings in a misleading and deceptive manner.

66. Denied as stated. Respondent's allegations include conclusions of law which require no response and are, therefore, deemed denied. To the extent a response is required, Joint Complainants submit that additional information provided by customers of Blue Pilot at the time of the alleged violations about their experiences as a Blue Pilot customer could be relevant to any of the counts in the Joint Complaint, which all relate to Blue Pilot's marketing, billing, and customer service practices. See Joint Complaint at Counts I-V. Additionally, Joint Complainants submit that information regarding the customers' payment arrangements or termination notices is relevant to Count IV of the Joint Complaint, lack of good faith handling of complaints.

F. The ALJs Should Not Strike Incomplete Answers.

67. As explained above, Joint Complainants engaged in an intensive effort within the time allowed to ensure that the written testimony submitted in support of the Joint Complaint

substantially complied with Commission and the ALJs' requirements, with the objective to conserve the Commission's and the parties' resources that would have otherwise been expended in scheduling hearings in various parts of the state or receiving oral direct questions and answers telephonically. Joint Complainants submit further that had Blue Pilot had an issue with the legibility or completeness of the consumer statements, as it now asserts, it could have engaged in informal or formal discovery -- or at least could have raised the issue sooner than 12 days prior to the hearings in this proceeding, in light of the fact that the direct testimonies were served 152 days prior to filing this Motion. With earlier notice, Joint Complainants could have attempted to make clearer what the Respondent refers to as incomplete or indecipherable statements. Blue Pilot will have an opportunity to cross-examine the consumer witnesses to gather more information regarding the consumers' testimony.

G. The ALJs Should Not Strike the Consumer Testimony of Consumers Who Received Refunds .

68. Denied as stated. Respondent's allegations include conclusions of law which require no response and are, therefore, deemed denied. Joint Complainants submit that the fact that a consumer may have already received a refund from Blue Pilot does not prevent the consumer from being a witness in this proceeding, and, therefore, the ALJs should deny Blue Pilot's Motion. In the PaG&E Order, the ALJs held that the relief sought in the underlying complaints is likely different than the relief sought by the Joint Complainants. PaG&E Order at 6. The ALJs further noted that in these proceedings, the Joint Complainants are acting in their representative capacities as government agencies on behalf of the public interest as a whole, not on behalf of the specific individual consumers whose prior complaints may be referenced in the record of this case. Id.

In this proceeding, Joint Complainants are also acting in their representative capacities, and evidence of the underlying consumer complaints is not being used to relitigate those cases. Thus, any relief offered to the individual complainants regarding their individual complaints is not relevant to this proceeding. Additionally, Joint Complainants note that just because a consumer has obtained some relief from the Company does not mean that the consumer has been made whole. Thus, the mere fact that some consumers may have received refunds does not absolve Blue Pilot of its conduct. Therefore, the ALJs should deny Blue Pilot's Motion.

H. The ALJs Should Not Strike the Consumer Testimony of Consumers Who Are Pursuing Separate Actions.

69. Denied. Joint Complainants submit that the fact that a consumer may be pursuing separate actions does not prevent the consumer from being a witness in this proceeding, and, therefore, the ALJs should deny Blue Pilot's Motion. In the PaG&E Order, the ALJs held that evidence of the underlying consumer complaints was not being used to relitigate those complaints, but was being used for purposes of supporting the Joint Complaint. Id. As such, Joint Complainants are not prohibited from seeking to admit into the record evidence of formal complaints filed by consumer. Id. The ALJs further noted that Joint Complainants are acting in their representative capacities as government agencies on behalf of the public interest as a whole, not on behalf of the specific individual consumers whose prior complaints may be referenced in the record of this case. Id.

In this proceeding, Joint Complainants are also acting in their representative capacities, and evidence of the underlying consumer complaints is not being used to relitigate those cases. Thus, the ALJs should deny Blue Pilot's Motion.

70. Joint Complainants are without sufficient information to form a belief as to the veracity of the averments herein.

VI. CONCLUSION.

On the basis of the foregoing, Joint Complainants respectfully request that the Administrative Law Judges deny the Blue Pilot Motion to Strike Pre-Served Consumer Direct Testimony.


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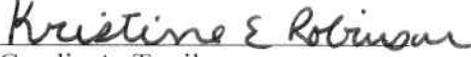
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CERTIFICATE OF SERVICE

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Through the Bureau of Consumer Protection, :
: :
And : :
: :
TANYA J. McCLOSKEY, Acting Consumer :
Advocate, :
Complainants : Docket No. C-2014-2427655
v. :
: :
BLUE PILOT ENERGY, LLC :
Respondent :

I hereby certify that I have this day served a true copy of the foregoing document, the Joint Answer of the Commonwealth of Pennsylvania, Bureau of Consumer Protection, and the Office of Consumer Advocate to Blue Pilot Energy, LLC Motion to Strike Consumer Direct Testimony in the manner and upon the persons listed below:

Dated this 26th day of March 2015.

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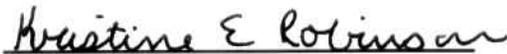
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