

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

ALAN HAULMAN C/O AJH PIZZA :  
INC., :  
Complainant :

vs. :

NO. C-2014-2415273

PPL ELECTRIC UTILITIES CORP., :  
and BLUE PILOT ENERGY LLC, :  
Respondents :

NOTICE TO PLEAD

TO: Karen O. Moury, Esq.  
Buchanan Ingersoll & Rooney PC  
409 N. Second Street  
Suite 500  
Harrisburg, PA 17101

Jessica R. Rogers, Esq.  
Post & Schell PC  
17 N. Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101

Pursuant to 52 Pa. Code § 5.102(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion for Summary Judgment of Alan J. Haulman, c/o AJH Pizza, Inc., within **twenty (20) days** from service of this Notice, the facts set forth by Alan J. Haulman, c/o AJH Pizza, Inc., in the Motion for Summary Judgment may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Alan J. Haulman, c/o AJH Pizza, Inc., and where applicable, the Administrative Law Judge presiding over the case.

**File with:**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Dated: 07/31/15

**With a copy to:**

Darrell C. Dethlefs, Esquire  
Dethlefs Pykosh Shook & Murphy  
2132 Market Street  
Camp Hill, PA 17011

  
\_\_\_\_\_  
Darrell C. Dethlefs, Esq.

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

ALAN HAULMAN C/O AJH PIZZA  
INC.,  
Complainant

vs.

NO. C-2014-2415273

PPL ELECTRIC UTILITIES CORP.,  
and BLUE PILOT ENERGY LLC,  
Respondents

**MOTION OF COMPLAINANT, ALAN HAULMAN C/O AJH PIZZA, INC., FOR  
SUMMARY JUDGMENT**

AND NOW COMES the Complainant, Alan Haulman C/O AJH Pizza, Inc., by and through his attorneys, **Dethlefs Pykosh Shook & Murphy**, by and through Darrell C. Dethlefs, Esquire, and respectfully submits the following Motion for Summary Judgment pursuant to 52 Pa. Code § 5.102(a), and avers as follows:

**I. Introduction and Background**

1. On April 2, 2014, Complainant, Alan J. Haulman, c/o AJH Pizza, Inc., filed a Formal Complaint with the Public Utility Commission, alleging improper billing for the February and March, 2014, billing periods, that Complainant's electrical services were improperly switched from a flat-rate service with PPL Electric Utilities to a variable-rate service with Blue Pilot Energy, and that the Complainant had no signed contract with Blue Pilot.

2. On April 28, 2014, Blue Pilot Energy filed an Answer to the Formal Complaint, denying any wrongdoing and raising affirmative defenses, and requesting that the Formal Complaint be dismissed with prejudice.

3. On May 7, 2014, the Complainant filed a Reply to Respondent, Blue Pilot

Energy's, New Matter.

4. On June 7, 2014, the Commission issued a Notice scheduling an initial telephonic hearing for August 27, 2014, before Administrative Law Judge Dennis J. Buckley.

5. On August 27, 2014, the Commission issued a Notice cancelling the initial telephonic hearing scheduled for August 27, 2014, and rescheduled the hearing for November 4, 2014 at 1:30 PM.

6. On September 26, 2014, Respondent, PPL Electric Utility Corporation, filed a Request for Relief, requesting that the parties be required to file written testimony or, alternatively, to extend the procedural schedule.

7. On October 13, 2014, Respondent, Blue Pilot Energy, filed a Motion for Summary Judgment in the above-captioned action.

8. On October 16, 2014, Complainant filed a response to Respondent, PPL Electric Utility Corporation's, Request for Relief.

9. On October 23, 2014, an Order was entered continuing the telephonic hearing scheduled for November 4, 2014, until a ruling was made on Respondent, Blue Pilot Energy's, Motion for Summary Judgment.

10. On October 24, 2014, Complainant filed a response to Respondent, Blue Pilot Energy's, Motion for Summary Judgment.

11. On May 14, 2015, at PUC Docket No. C-2014-2427655, a Formal Complaint brought by the Attorney General of Pennsylvania and the Office of the Consumer Advocate against Respondent, Blue Pilot Energy, Respondent filed a Motion to Dismiss Joint Complaint (**Exhibit "A,"** attached).

12. In their Motion to Dismiss Joint Complaint, Respondent, Blue Pilot Energy, alleged that it was in the process of surrendering its license to offer electricity generating services in the Commonwealth of Pennsylvania,<sup>1</sup> and that it was financially unable to continue litigation<sup>2</sup> or support ongoing operations in the Commonwealth.<sup>3</sup>

13. On June 11, 2015, Administrative Law Judges Elizabeth Barnes and Joel H. Cheskis denied Respondent, Blue Pilot Energy's, Motion to Dismiss Joint Complaint (**Exhibit "B,"** attached).

14. Because the record reflects that Respondent, Blue Pilot Energy, LLC, is effectively defunct, and reflects that Complainant never entered into an agreement with Respondents, PPL Electric Utilities Corporation and Blue Pilot Energy, LLC, to have the electrical service for AJH Pizza, Inc., provided under a variable-rate service plan by Blue Pilot Energy, Complainant, Alan J. Haulman, c/o AJH Pizza, Inc., is entitled to judgment as a matter of law.

## **II. Argument**

### **a. Summary Judgment Standard**

15. Pursuant to 52 Pa. Code §5.102(a), any party may move for summary judgment after the pleadings are closed, but within a time so that the hearing is not delayed. The motion for summary judgment must be based on the pleadings, depositions, answers to interrogatories, admissions and supporting affidavits. 52 Pa. Code §5.102(c). The presiding officer must grant a motion for summary judgment if the

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<sup>1</sup> See Respondent Blue Pilot Energy, LLC's Motion to Dismiss Joint Complaint, at ¶3.

<sup>2</sup> *Id.* at ¶5. ("Simply put, Blue Pilot no longer has the resources to continue litigating this proceeding.")

<sup>3</sup> *Id.* ("The expense and resources incurred by Blue Pilot in responding to the Complaint and litigating the issues that it has been presented with in this proceeding have forced Blue Pilot to shut down its business.")

pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code §5.102(d)(1). No hearing date has been set in the instant case.

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

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

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

*v. West Penn Power Company*, Docket No. C-00935287 (Order entered November 6, 1996). In civil practice, a non-moving party may not rely solely upon denials in its pleadings, but must submit some materials to establish that a genuine issue of material fact exists. *Nicastro v. Cuyler*, 467 A.2d 1218 (Pa. Cmwlth. 1983); *Pennsylvania Gas & Water Co. v. Nenna & Frain, Inc.*, 467 A.2d 330 (Pa. Super. 1983); *Geriot v. Council of Borough of Darby*, 457 A.2d 202 (Pa. Cmwlth. 1983); see also, Pa. R.C.P. 1035.3, providing that “[s]ummary judgment may be entered against the non-moving party who does not respond.” Pa. R.C.P. 1035.3(d).

19. The provision at 52 Pa. Code § 5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. P.U.C.*, 563 A.2d 557 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. P.U.C.*, 540 A.2d 1006 (Pa. Cmwlth. 1988); *White Oak Borough Authority v. Pa. P.U.C.*, 103 A.2d 503 (Pa. Super. 1954).

**b. Respondent, Blue Pilot Energy, LLC, has Surrendered its License to Operate in Pennsylvania and Ceased All Business Operations**

20. On May 4, 2015, Blue Pilot Energy, LLC abandoned its License and ceased all of its business operations.<sup>4</sup>

21. Because Blue Pilot Energy, LLC is effectively defunct and has ceased all business operations, it is no longer capable of maintaining a defense in the instant action, and is no longer capable of arguing in this proceeding that Complainant owes it over \$20,000.00 for the disputed electrical bills for the February and March, 2014 terms.

22. Because Respondent, Blue Pilot Energy, LLC, ceased business

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<sup>4</sup> See Motion to Dismiss, *supra* Note 1, at ¶6.

operations and appears to have no further intention of litigating the instant case, Complainant, Alan Haulman, c/o AJH Pizza, Inc., submits that the entry of judgment in his favor as against Respondent, Blue Pilot Energy, LLC, is appropriate.

23. Because Respondent, Blue Pilot Energy, LLC, charged the disputed rates, entry of judgment against Blue Pilot Energy, LLC would effectively end the instant action.

**c. Complainant Never Entered Into a Service Agreement with Blue Pilot Energy, LLC**

24. The act of switching a customer's electric service supplier without the customer's consent, or "slamming," is prohibited by 66 Pa. C.S. § 2807(d)(1). "The commission shall establish regulations to ensure that an electric distribution company does not change a customer's electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier."

25. Respondent's, PPL Electric Utilities Corporation, records reflect that electrical service for the Premises was connected on or about September 12, 2012, in the name of AJH Pizza, Inc., with Complainant, Alan Haulman, registered as the sole account owner/customer of record. Complainant's Federal Tax Identification Number was added to the account, to verify his ownership of the account.<sup>5</sup> Complainant paid for electricity charges with an account drawn in the name of AJH Pizza, Inc.<sup>6</sup>

26. On December 10, 2012, Respondent's, PPL Electric Utilities Corporation, records reflect that [sic] "Ashley Jillinger" was then considered the customer of record

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<sup>5</sup> See Complainant's Exhibit G, filed October 22, 2014, at 3.

<sup>6</sup> See Complainant's Exhibit F, filed October 22, 2014, at 6.

for account. The mailing address for the account was changed from the corporate offices of AJH Pizza, Inc., to the Premises.<sup>7</sup> Respondent's records reflect no attempt to verify this change in account ownership with Complainant, or that any further notice of any account activities was provided to the Complainant until late October, 2013.<sup>8</sup>

27. On or about December 19, 2012, Respondent, Blue Pilot Energy, LLC, drafted and sent a welcome letter to Ashley Killinger, welcoming her as a Blue Pilot customer.<sup>9</sup> Ms. Killinger paid for electricity charges using accounts drawn in either her own name, or in the name of J&A Pizza, LLC.<sup>10</sup>

28. On or about October 18, 2013, Respondent's, PPL Electric Utilities Corporation, records reflect that Ashley Killinger called Respondent to ensure that electrical services were no longer being billed in her name.<sup>11</sup>

29. On October 28, 2013, Respondent's, PPL Electric Utilities Corporation, records reflect that Brett Haulman, son of the Complainant, called to request that electrical service for the Premises be restarted under the AJH Pizza, Inc. account. Respondent's records reflect that Mr. Haulman was informed that the AJH Pizza, Inc., account was already active and was in arrears. At that time, Complainant's son disputed the arrears, and was referred to Respondent's, PPL Electric Utilities Corporation, billing department.<sup>12</sup>

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<sup>7</sup> See Exhibit G, *supra* note 5, at 3.

<sup>8</sup> See *generally id.*

<sup>9</sup> See Complainant's Exhibit H, filed October 22, 2014.

<sup>10</sup> See Complainant's Exhibit F, filed October 22, 2014, at 1 – 5.

<sup>11</sup> See Exhibit G, *supra* note 5, at 4.

<sup>12</sup> *Id.* at 2.

30. Complainant, when he received the February 2014 electrical bill, in an amount in excess of \$12,000.00, learned for the first time that he was not being charged for electricity on a fixed-rate basis.

31. Complainant filed his Formal Complaint on April 2, 2014, within the two billing cycle window provided by 52 Pa. Code §57.177(b).

32. Respondent's, PPL Electric Utilities Corporation, own records demonstrate that the Respondents treated Ashley Killinger, not the Complainant, as the account owner/customer of record, with the sole authority to enter into new electrical service contracts, when the account was switched to a variable rate agreement with Respondent, Blue Pilot Energy, LLC.

33. Respondent's, PPL Electric Utilities Corporation, own records demonstrate no attempt to contact Complainant to provide him with any notifications regarding account changes, despite Respondents' contentions that Complainant was always the customer of record. Rather, from November 2012 through October 2013 Respondent cut out Complainant from any involvement whatsoever with the account.

34. Respondents have taken no action to rebut Complainant's evidence that Ashley Killinger had no authority to bind AJH Pizza, Inc. to any contracts. Rather, Respondents simply asserted that Ashley Killinger was an employee of AJH Pizza, Inc., despite their own records demonstrating conclusively that Ms. Killinger actively asserted her independence from AJH Pizza, Inc.

### III. Conclusion

WHEREFORE, for the foregoing reasons, Complainant, Alan Haulman, c/o AJH Pizza, Inc., respectfully requests that this Commission grant his Motion for Summary Judgment, enter judgment against Respondents, Blue Pilot Energy, LLC and PPL Electric Utilities Corporation, and grant Complainant such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: 07/31/15



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Darrell C. Dethlefs, Esquire  
PA ID# 58805  
Dethlefs Pykosh Shook & Murphy  
2132 Market Street  
Camp Hill, PA 17011  
(717) 975-9446  
Attorney for Complainant

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

ALAN HAULMAN C/O AJH PIZZA :  
INC., :  
Complainant :

vs. :

NO. C-2014-2415273

PPL ELECTRIC UTILITIES CORP., :  
and BLUE PILOT ENERGY LLC, :  
Respondents :

CERTIFICATE OF SERVICE

I, Matthew S. Kudrick, Esq., the undersigned, hereby certify that a true and correct copy of the foregoing document, the Motion of Complainant, Alan Haulman, c/o AJH Pizza, Inc., for Summary Judgment , was served by United States first class mail, postage prepaid, on the following:

Jessica R. Rogers  
Post & Schell PC  
17 N. Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor North  
PO Box 3265  
Harrisburg, PA 17105-3265


Karen O. Moury  
Buchanan Ingersol & Rooney PC  
409 N. Second Street, Suite 500  
Harrisburg, PA 17101-1357

Honorable Dennis J. Buckley  
PO Box 3265  
Harrisburg, PA 17105-3265

Nazario J. Jureidini, Esq.  
Blue Pilot Energy, LLC  
250 Pilot Road, Suite 300  
Las Vegas, NV 89119

BY:

Date: 07/31/15

  
Matthew S. Kudrick, Esquire  
PA ID# 314514  
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May 14, 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 Nos. C-2014-2427655

Dear Secretary Chiavetta:

On behalf of Blue Pilot Energy, LLC, I have enclosed for electronic filing Blue Pilot Energy, LLC's Motion to Dismiss Joint Complaint, in the above-captioned proceeding.

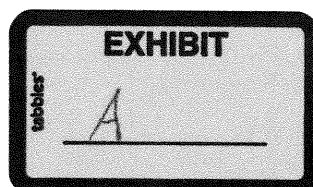
Copies have been served on all parties as indicated in the attached Certificate of Service.

Very truly yours,



Karen O. Moury

KOM/bb  
Enclosure  
cc: Certificate of Service



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**RESPONDENT BLUE PILOT ENERGY, LLC'S  
MOTION TO DISMISS JOINT COMPLAINT**

TO ADMINISTRATIVE LAW JUDGES BARNES AND CHESKIS:

Respondent Blue Pilot Energy, LLC (“Blue Pilot”), by and through its undersigned counsel, files this Motion to Dismiss the Joint Complaint (the “Complaint”) filed by Attorney General Kathleen G. Kane, Through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer Advocate (the “Complainants”), pursuant to the Commission’s regulations at 52 Pa. Code § 5.103. Through this Motion, BPE respectfully requests an Order dismissing the Complaint, and in support hereof, states as follows.

**INTRODUCTION**

1. Blue Pilot is a competitive energy provider, which served business and residential consumers in three deregulated utility markets, including Pennsylvania. Blue Pilot has been approved for market-based rate authority by the Federal Energy Regulatory Commission (“FERC”), thereby allowing for the sale of energy, capacity, and ancillary services at market-based rates. Blue Pilot was licensed by the Pennsylvania Public Utility Commission (“Commission”) to offer electricity supply services as an electric generation supplier (“EGS”)

in Pennsylvania pursuant to a license granted by the Commission in June 2011 (the “License”). Blue Pilot is a member of PJM Interconnection LLC (“PJM”).

2. Blue Pilot offered electricity service to Pennsylvania customers from in or about January 2012 to May 4, 2015, when it surrendered its License to the Commission and requested that the Commission immediately cancel its License.<sup>1</sup> (A copy of Blue Pilot’s correspondence to the Commission filed on May 4, 2015 is attached hereto as Exhibit A.) As of the date of this motion, Blue Pilot currently has 175 customers in Pennsylvania. Blue Pilot began selling energy in Pennsylvania in or about January 2012. As a result of a severe and unanticipated storm that occurred in December 2013, Blue Pilot was forced to increase its rates due to increased costs from PJM. In addition, in January, February, and March 2014, extreme cold weather plus a series of generating facility shut-downs caused unprecedented electricity costs. Demand rose to all-time highs, while some generating facilities were inexplicably shut down for maintenance. This forced seldom-used and high-priced generators to come on line in order to meet that demand. Natural gas suppliers raised their rates to record highs, causing record electricity costs from generators. The market conditions that existed in the first quarter of 2014 were unprecedented; even PJM did not predict the impact of these events on consumers’ prices. Blue Pilot was unable to control any of these market forces or other unforeseeable events.

3. The Complainants filed their Complaint on June 20, 2014. Since then, Blue Pilot has defended itself in this proceeding. While Blue Pilot did not, and still does not believe that the record in this matter can support a finding that any of Blue Pilot’s marketing, advertising,

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<sup>1</sup> On May 4, 2015, when it surrendered its license to the Commission, Blue Pilot had only 218 remaining customers in Pennsylvania.

or trade practices violated any Pennsylvania law, any of the Commission's regulations, or any Commission Order, Blue Pilot can no longer defend itself in this proceeding.

4. On May 5, 2015, Blue Pilot began sending notice to its remaining 218 customers in Pennsylvania and advised them that "based on a change in our business direction, we will no longer be servicing electricity supply customers in Pennsylvania."

## II.

### **THE COMPLAINT SHOULD BE DISMISSED**

#### **A. Blue Pilot Has Notified Its Remaining Customers**

5. As of the first quarter of 2014, Blue Pilot had effectively ceased enrolling new customers in Pennsylvania. The expense and resources incurred by Blue Pilot in responding to the Complaint and litigating the issues that it has been presented with in this proceeding have forced Blue Pilot to shut down its business. Simply put, Blue Pilot no longer has the resources to continue litigating in this proceeding.

6. Blue Pilot abandoned its License on May 4, 2015, and has ceased all of its business operations.<sup>2</sup> On May 5, 2015, Blue Pilot mailed written notice to all of its remaining Pennsylvania customers informing them that Blue Pilot was ceasing its business in Pennsylvania and that they should begin taking steps to fill their electric service needs through other sources. (Exhibit A contains a true and correct copy of the form of notice that Blue Pilot sent to its remaining Pennsylvania customers.) As of this date, Blue Pilot has only 175 customers remaining in Pennsylvania and expects that the remaining customers will move their service to other EGSs by the end of this month, if not before.

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<sup>2</sup> The only other states in which Blue Pilot held a license to supply electric were Connecticut and Maryland. Blue Pilot is in the process of surrendering its Connecticut license and notified the Maryland Public Service Commission that it surrendered its license there on May 13, 2015.

**B. Blue Pilot Has Resolved Nearly Every Customer Complaint**

7. Independent of this proceeding, Blue Pilot has resolved nearly every complaint that it received from a Pennsylvania customer, whether they were complaints that Blue Pilot received directly from a customer or those that were referred to Blue Pilot through a Pennsylvania state agency. The only complaints that Blue Pilot has not resolved are the remaining few complaints that were filed directly with the Commission, all of which are still pending and which involve issues relating to rates that were raised during the extreme weather events of last year.

**C. Blue Pilot Has Attempted to Resolve This Proceeding**

8. Blue Pilot has discussed a possible resolution of this proceeding with the Complainants. While those discussions have been cordial, they have not resulted in a settlement. In light of the current procedural schedule, it is not likely that a settlement will be forthcoming in the near future.

**III.**

**CONCLUSION**

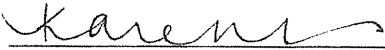
9. Blue Pilot does not believe that the record in this proceeding can support a finding that any of Blue Pilot's marketing, advertising, or trade practices violated any Pennsylvania law, any of the Commission's regulations, or any Commission Order. Blue Pilot continues to hold that belief.

WHEREFORE, on the basis of the foregoing, and in light of the fact that it has surrendered its License and no longer conducts business in Pennsylvania, BPE respectfully requests that the Administrative Law Judges grant this Motion to Dismiss to the Joint Complaint.

Dated: May 14, 2015

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

By: 

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Telephone: (717) 237-4820  
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Facsimile: (973) 503-5950

*Attorneys for Blue Pilot Energy, LLC*

# EXHIBIT A

# Buchanan Ingersoll & Rooney PC

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[www.buchananingersoll.com](http://www.buchananingersoll.com)

May 4, 2015

## VIA E-FILING

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

Re: Blue Pilot Energy, LLC, Docket No. A-2011-2223888

Dear Secretary Chiavetta:

On behalf of Blue Pilot Energy, LLC ("BPE"), this is to provide notice pursuant to the Commission's regulations at 52 Pa. Code § 54.41(b) of BPE's plans to abandon service to customers in Pennsylvania. BPE is a licensed electric generation supplier ("EGS") at the above-captioned docket number, authorized to serve all customer classes throughout Pennsylvania.

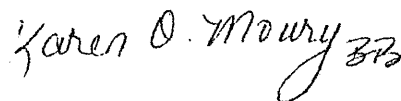
By this letter, BPE also requests that the Commission waive the 90-day notice requirement of 52 Pa. Code § 54.41(b) and accept the approximate 30-45 day notice that is being afforded to customers and affected electric distribution companies ("EDCs"). From a financial perspective, BPE is regrettably unable to continue serving its customers and is taking this measure to afford as much notice as possible to facilitate an orderly exit of the market. Given the ability of consumers to now switch to EGSs within three business days under the Commission's new rules, BPE believes that this shorter notice will not adversely affect consumers.

As of this date, BPE is serving a total of 218 customers, which includes 153 residential customers and 63 commercial customers in the service territories of Duquesne Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company and PPL Electric Utilities. Individual notices are being sent over the next few days to each of those customers, following the template shown in Exhibit A, to inform them that they are being returned to their respective EDCs consistent with their month-to-month agreements with BPE. By copy of this letter, BPE is informing all EDCs of this abandonment of service and the return of customers to default service during the month of June 2015.

May 4, 2015  
Page - 2 -

BPE therefore requests cancellation of its EGS license, effective immediately. If you have any questions or need any additional information regarding this matter, please let me know.

Very truly yours,

A handwritten signature in black ink that reads "Karen O. Moury" followed by a stylized flourish.

Karen O. Moury

KOM/bb  
Enclosure

cc: Office of Competitive Market Oversight  
Bureau of Technical Utility Services  
Citizens' Electric Company  
Duquesne Light Company  
Metropolitan Edison Company  
PECO Energy Company  
Pennsylvania Electric Company  
Pike County Light and Power Company  
PPL Electric Utilities  
UGI Utilities, Inc.  
Wellsboro Electric Company  
West Penn Power Company



250 Pilot Rd. Suite 300  
Las Vegas, NV 89119

Phone 800.451.6956  
Fax 800.451.5685

[www.bluepilotenergy.com](http://www.bluepilotenergy.com)

April XX, 2015

Company  
Name  
Address  
City, State, Zip

Dear Blue Pilot Energy Customer:

Thank you for being a loyal customer of Blue Pilot Energy, LLC (Blue Pilot). We are writing to inform you about an upcoming change to your electricity supply account.

Based on a change in our business direction, we will no longer be servicing electricity supply customers in Pennsylvania. Accordingly, you should immediately select an alternative provider for your electricity supply service. Unless you choose another electric supplier, your electricity supply service will be transferred to your incumbent electric distribution company for your June 2015 billing cycle.

For information regarding offers available from other electric suppliers, please visit: [www.papowerswitch.com](http://www.papowerswitch.com).

If you have any questions about this transition, please contact Blue Pilot at 877.513.0246.

Blue Pilot appreciates your past business.

Sincerely,

The Blue Pilot Customer Care Department

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**COMMONWEALTH OF  
PENNSYLVANIA, ET AL.**

**v.**

**BLUE PILOT ENERGY, LLC**

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:  
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:  
:

**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).

**Via Email and First Class Mail**

Elizabeth Barnes  
Joel Cheskis  
Administrative Law Judges  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

John M. Abel  
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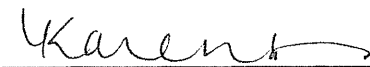
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Dated this 14<sup>th</sup> day of May, 2015.

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, by Attorney	:	
General KATHLEEN G. KANE, Through the	:	
Bureau of Consumer Protection	:	
	:	
And	:	C-2014-2427655
	:	
TANYA J. McCLOSKEY, Acting Consumer	:	
Advocate	:	
	:	
Complainants,	:	
	:	
v.	:	
	:	
BLUE PILOT ENERGY, LLC,	:	
Respondent.	:	
	:	

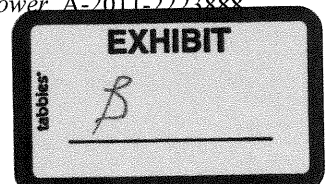
**ORDER DENYING MOTION TO DISMISS**

Presently before us for consideration is Blue Pilot Energy, LLC's (Blue Pilot) Motion to Dismiss Complaint (Motion to Dismiss) filed on May 14, 2015, pursuant to 52 Pa. C.S. § 5.103.

Procedural History

By way of background, on May 4, 2015 at Docket No. A-2011-2223888<sup>1</sup>, the Commission received notice pursuant to 52 Pa. Code § 54.41 from Blue Pilot of its intention to abandon service to its customers in Pennsylvania. The notice requested a waiver of the Commission's regulatory requirement of a 90-day notice requirement pursuant to 52 Pa. Code §54.41(b) and requested acceptance of a 30-45 day notice to its customers and affected electric distribution companies (EDCs).

<sup>1</sup> *In Re: License Application of Blue Pilot Energy, LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as an Aggregator and Broker/Marketer of Retail Electric Power* A-2011-2223888



On May 14, 2015, at Docket No. C-2014-2427655, Blue Pilot filed a Motion to Dismiss pursuant to 52 Pa. Code § 5.103; however, there was no notice to plead attached as is required by Section 5.103(b). By e-mail, we notified the other parties they had twenty days from the date of filing within which time to respond. Blue Pilot requests the joint complaint be dismissed in light of Blue Pilot's surrender of its electric generation supplier license on or about May 4, 2015, and its decision to effectively cease enrolling new customers and operating its business in Pennsylvania. Blue Pilot contends it is in the process of abandoning service in Maryland and Connecticut as well.

On May 18, 2015, the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection (OAG), and Tanya J. McCloskey, Acting Consumer Advocate (OCA) (collectively referred to as "Joint Complainants") filed notices of intervention and a Joint Answer to Blue Pilot's Letter Notice to Abandon at A-2011-2223888. Joint Complainants contend there are several outstanding formal complaints against Blue Pilot pending at the Commission including the instant complaint. Joint Complainants opposed an immediate cancellation of license and requested the Commission act to secure the proceeds of Blue Pilot's surety on file at the Commission.

On May 19, 2015, the Bureau of Investigation and Enforcement (I&E) filed a Notice of Intervention at A-2011-2223888, seeking to ensure that all of Blue Pilot's obligations to Pennsylvania's consumers are met prior to the cancellation of Blue Pilot's EGS license.

On May 29, 2015, Joint Complainants requested we "place the schedule for serving testimony in the instant case on hold until at least such time as the Motion to Dismiss and any other forthcoming motion(s) or actions from the Joint Complainants in light of these circumstances are resolved." Blue Pilot, I&E, and the Office of Small Business Advocate (OSBA) concurred in the request.

On June 1, 2015, we issued Procedural Order #6, which suspended the deadlines for testimony until further notice, but kept the evidentiary hearing dates as previously scheduled on September 16-18, 2015.

### Disposition

In its Motion, Blue Pilot makes three primary arguments including: 1) Blue Pilot no longer has the resources to continue litigating this proceeding, and it has notified its remaining Pennsylvania customers that it will cease business operations in Pennsylvania<sup>2</sup>; 2) Blue Pilot has resolved nearly every customer complaint; and 3) Blue Pilot has attempted to resolve this proceeding through settlement discussions.

To begin, Commission regulations do not specifically provide for Motions to Dismiss. *William MacLuckie v. Palmco Energy, LLC*, Docket No. C-2014-2402558 (Opinion and Order entered Dec. 4, 2014). Blue Pilot's Motion was filed pursuant to Section 5.103 which is a general provision for motions. The Motion is neither a Motion for Summary Judgment nor a Motion for Judgment on the Pleadings pursuant to Section 5.102. Generally, a motion may seek dismissal of a complaint prior to a hearing when: 1) the Commission lacks jurisdiction to hear the formal complaint; 2) the complainant has failed to prosecute the formal complaint or maintain counsel throughout the proceeding; or 3) the complainant has failed to state a claim upon which relief can be granted. *See* 52 Pa. Code §§ 1.22, 5.101, 5.102, 5.371, 5.372.

Blue Pilot does not assert in its Motion that the Joint Complaint should be dismissed because of lack of jurisdiction or on the grounds that Joint Complainants failed to state a claim upon which relief may be granted. These assertions are more properly raised in Preliminary Objections. *See* 52 Pa. Code § 5.101.

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<sup>2</sup> As of May 14, 2015, Blue Pilot represented that it had 175 remaining customers in Pennsylvania. This number has likely decreased in the intervening four weeks since consumers were provided notice of Blue Pilot's intent to discontinue service in Pennsylvania.

There has already been extensive litigation in this case and initial hearings took place on March 30 – April 1, 2015. At that time, approximately 83 consumer witnesses’ testimonies with accompanying exhibits were admitted into the record. Some cross examination exhibits were also admitted into the record. The Commission ruled that it has jurisdiction and that the Joint Complainants have properly raised certain causes of action upon which relief may be granted by this agency.

Further, Joint Complainants wish to continue pursuing the prosecution of their Joint Complaint before the Commission. No party has requested we hold the Motion to Dismiss in abeyance pending the Commission’s disposition of Blue Pilot’s Notice of Abandonment dated May 4, 2015 at Docket No. A-2011-2223888. There is no contention by Blue Pilot that Joint Complainants have failed to maintain counsel or obey any interim orders in this case. See 52 Pa. Code §§ 5.371, 5.372.

Additionally, Joint Complainants aver that they are willing to abide by a reinstated procedural schedule and serve the testimony of expert and other non-consumer witnesses regarding Blue Pilot’s marketing and billing practices. Further hearings are scheduled for September 16-18, 2015. Joint Complainants anticipate that after all of their witnesses’ testimonies are submitted for admission into the record, Joint Complainants may file a motion for default judgment or judgment on the pleadings.

We agree with Joint Complainants that Blue Pilot’s Motion to Dismiss Joint Complaint should be denied. Although Blue Pilot may have ceased enrolling new customers, it admits to having approximately 175 customers currently. The fact that the company asserts it no longer has the resources to continue litigation or its business is insufficient to dismiss the complaint. There has been no notice of withdrawal of appearance by Blue Pilot’s counsel. There has been no averment that the company filed for bankruptcy. Although the company claims it “mailed written notice to all of its remaining Pennsylvania customers informing them that Blue Pilot was ceasing its business in Pennsylvania and that they should begin taking steps to fill their electric service needs through other sources” it is unknown whether the customers

have switched to other EGSs or reverted back to default service providers. Blue Pilot could still have customers in Pennsylvania.

The Commission has not yet addressed Blue Pilot's May 4<sup>th</sup> notice of abandonment/petition for waiver pursuant to 52 Pa. Code § 54.41 at A-2011-2223888. We will monitor the abandonment of license proceeding closely; however, the fact that Blue Pilot filed the letter with the Commission is insufficient reasons to dismiss the pending cause of action. The filing of the letter does not moot the relief requested in the Joint Complaint.

Blue Pilot claims that its motion should be granted because it has resolved nearly every customer complaint independent of this proceeding. A cursory review of assignments pending in OALJ shows the following other outstanding active formal complaints pending against Blue Pilot: *Yagliderililer Corp. v. Blue Pilot Energy LLC* (Docket No. C-2014-2415275); *Irfan Isik and Mehmet Isik v. Blue Pilot Energy, LLC* (Docket Nos. C-2014-2415275 and C-2014-2415276). *Enrico Partners v. Blue Pilot* (Docket No. C-2014-2432979); *Smith v. Blue Pilot and PPL Electric Utilities* (Docket No. F-2015-2472890); and *Gruelle v. PPL Electric Utilities and Blue Pilot Energy LLC*, (Docket No. C-2015-2463573). The complainants in these cases have not yet exhausted their administrative remedies. The cases have neither been fully resolved nor closed. Further, we do not know the number of informal complaints pending at the Commission's Bureau of Consumer Services or elsewhere.

Blue Pilot is reminded it has an obligation to maintain representation of counsel throughout the course of this proceeding pursuant to 52 Pa. Code §§1.21-1.24, and to comply with interim order directives, including the order dated May 1, 2015, compelling Blue Pilot to provide complete answers to interrogatory VIII-1 and 2, which were due on or about May 11, 2015.

Finally, Blue Pilot's argument that its Motion to Dismiss should be granted because it has attempted to resolve this proceeding through settlement discussions is without merit and will be rejected as well. We reiterate that the Commission strongly encourages settlements and the parties are encouraged to continue their settlement discussions. As Blue

Pilot is willing to relinquish its EGS license and cease operations in Pennsylvania, that should satisfy a main portion of the relief requested by Joint Complainants. Nonetheless, the fact that Blue Pilot has attempted to resolve this matter through settlement discussions but, apparently has not been successful, is not sufficient reason to grant the Motion to Dismiss.

As a result, Blue Pilot's Motion to Dismiss will be denied. The parties will be directed below to establish within ten (10) days of the date of this Order a schedule for the submission of pre-served testimony while maintaining the Hearing dates currently scheduled for September 16-18, 2015, or a schedule will be established by the Presiding Officers in a future order.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Blue Pilot Energy LLC's Motion to Dismiss Complaint at Docket Number C-2014-2427655 is denied.

2. That the parties are directed to provide within ten (10) days from the date of this Order a procedural schedule for the remainder of this proceeding concluding with

Evidentiary Hearings scheduled for September 16-18, 2015 or the remaining schedule will be established by the Presiding Officers.

Date: June 11, 2015

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Elizabeth Barnes  
Administrative Law Judge

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Joel H. Cheskis  
Administrative Law Judge

C-2014-2427655 - ATTORNEY GENERAL PA & OFFICE OF CONSUMER ADVOCATE v. BLUE PILOT ENERGY LLC

REVISED 05/04/15

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