

**FLAMM WALTON PC**

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Attorneys for Complainant

**BEFORE THE PENNSYLVANIA UTILITY COMMISSION**

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<b>Toll Diversified Properties, Inc.</b>	:	
	:	
Complainant,	:	
	:	
v.	:	Complaint Docket
	:	No.: C-2015-2463573
<b>PPL Electric Utilities Corp., and</b>	:	
	:	
<b>Blue Pilot Energy, LLC,</b>	:	
	:	
Respondent.	:	

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Complainant Toll Diversified has little to add in response to Blue Pilot Energy, LLC’s brief other than to note that much, if not all, of the authority cited by Blue Pilot for its jurisdictional arguments addressed a different legal argument than that presented here. The cases cited by Blue Pilot involve arguments where customers believed that the variable rate charge by a provider was just too unreasonably high and that the PUC should essentially put a cap on what a provider may reasonably charge under a variable rate agreement. In some of those cases, but not others, the Commission found that it lacked the ability to restrict rates in that fashion.

Although it is probably true in this case, Toll Diversified is not arguing that it should receive a refund because the excessiveness of the rate charge in and of itself required a refund. Toll Diversified argues that it did not receive the benefit of the bargain that it reached with Blue

Pilot and that if Blue Pilot never intended to honor this agreement, then Blue Pilot misled Toll

Diversified into entering into the agreement at issue. Indeed, in a similar case to the present one, the Commission has just recently concluded that Section 501 provided authority to issue a refund where a sales representative made oral misrepresentations as to what the pricing would be under a variable rate plan. *Kiback v. IDT Energy, Inc.*, C-2014-2409676 (Aug. 20, 2015) (“oral representations made to a consumer during the time of sale are important.”)

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September 21, 2015

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Complainant's Responsive Brief was sent by e-filing and first class mail addressed to all parties as follows:

Administrative Law Judge Susan D. Colwell Pennsylvania Utility Commission P.O. Box 3265 Harrisburg, PA 17105	Karen O. Moury 409 North Second Street Suite # 500 Harrisburg, PA 17101-1357
Ms. Deborah Gruelle Toll Diversified Properties, Inc. 20 Estates Drive Doylestown, PA 18902	

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A handwritten signature in cursive script that reads "Matthew A. Foley". The signature is written in black ink and is positioned above a horizontal line.

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