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January 12, 2016

VIA E-FILING

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

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

Dear Secretary Chiavetta:

On behalf of Blue Pilot Energy, LLC ("Blue Pilot Energy"), enclosed for filing is the Answer of Blue Pilot Energy, LLC to Motion to Compel of Joint Complainants Relating to Set XIII, in the above-captioned matter.

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

Very truly yours,



Karen O. Moury

KOM/bb
Enclosure
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF BLUE PILOT ENERGY, LLC TO MOTION TO COMPEL
OF JOINT COMPLAINANTS RELATING TO SET XIII**

TO: ADMINISTRATIVE LAW JUDGES BARNES AND CHESKIS:

Pursuant to 52 Pa. Code § 5.342(g)(1), Blue Pilot Energy, LLC (“BPE”), by and through its counsel, Karen O. Moury and Buchanan Ingersoll & Rooney PC, files this Answer to the Motion to Compel (“Motion”) filed by the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection, and Acting Consumer Advocate Tanya McCloskey (“Joint Complainants”) on January 7, 2016 relating to the Joint Complainants’ Interrogatories and Requests for Production – Set XIII (“Discovery Requests”), and in support hereof, avers as follows.

I. INTRODUCTION

Through the Discovery Requests, the Joint Complainants seek information regarding BPE’s bond or other security, unpaid bills related to participation in the PJM wholesale market and payment of gross receipts taxes. This information has no relevance to the allegations set forth in the Joint Complaint, which relate to the provision of accurate pricing information to consumers, charging prices that conform to BPE’s disclosure statement, honoring any promises

of savings that were made by BPE, the handling of consumer complaints and compliance with the Telemarketer Registration Act. Indeed, no allegations are included in the Joint Complaint regarding BPE's bonds, the status of participation in the PJM wholesale market or the payment of gross receipts taxes. As the information sought by Set XIII is not relevant to the allegations set forth in the Joint Complaint, the Commission's rules do not permit the discovery of such information.

Moreover, the information sought through the Discovery Requests cannot lead to the discovery of admissible evidence given the procedural status of this proceeding. The only remaining opportunities for the Joint Complainants to introduce evidence into the record consist of Surrebuttal Testimony and during any cross-examination of Mr. Raymond Perea concerning his Rebuttal Testimony. As Mr. Perea's Rebuttal Testimony is limited to one topic -- BPE's disclosure statement -- no opportunity exists for the introduction of evidence related to BPE's bonds, the status of participation in the PJM wholesale market or the payment of gross receipts taxes in this proceeding.

For these reasons, and as more fully discussed below, the Motion should be denied.¹

II. ARGUMENT

A. Legal Standards

The Commission's regulations provide that "a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa. Code § 5.321(c). The regulations further state that while inadmissibility at the hearing is not

¹ The Joint Complainants note that BPE did not attempt to informally resolve its objections prior to serving them. Given the service of the Discovery Requests shortly before the holidays, such that objections were due on the first business day following the official Christmas holiday, BPE had very little opportunity to make what would almost certainly have been a futile attempt, and therefore opted not to waste limited resources.

a ground for objection, the information sought must be “reasonably calculated to lead to the discovery of admissible evidence.” *Id.*

B. The Information Sought by the Discovery Requests Is Not Relevant

The Discovery Requests do not relate to any of the factual or legal allegations in the Joint Complaint. By their Motion, the Joint Complainants do not contend otherwise. Rather, they claim that the information sought by the Discovery Requests is relevant to the relief they have requested in this proceeding in the form of refunds to BPE’s customers and a civil penalty.² Referring to BPE’s filing at its application docket surrendering its electric generation supplier (“EGS”) license,³ and the Commission’s Tentative Order at a miscellaneous docket tentatively approving the cancellation of BPE’s license for failure to provide proof of a bond or other security,⁴ the Joint Complainants express concerns about the financial ability of BPE to provide refunds and pay a civil penalty.⁵

They also suggest, citing *Pa. Pub. Util. Comm’n., Bureau of Investigation and Enforcement v. HIKO Energy Company*, Docket No. C-2014-2431410 (Order entered December 3, 2015), that a higher civil penalty may be warranted if it is proven that BPE’s bond or other approved security lapsed.⁶ The Joint Complainants further note that whether BPE’s bond or other approved security has lapsed is relevant to whether its license should be revoked as part of this proceeding.⁷

Any concerns of the Joint Complainants about BPE’s financial ability to comply with any Commission orders in this proceeding do not render information about BPE’s bond, status of

² Motion at 6.

³ BPE letter dated May 4, 2015 filed at Docket No. A-2011-2223888.

⁴ Tentative Order entered on December 17, 2015 at Docket No. M-2015-2490383.

⁵ Motion at 3, 6-7.

⁶ Motion at 10.

⁷ Motion at 10.

participation in PJM's wholesale market or payment of gross receipts taxes relevant to the allegations set forth in the Joint Complaint or appropriate for discovery in this proceeding.⁸ Moreover, their arguments about the possible effect on this proceeding of a lapse in the bond or other approved security are not relevant to the Joint Complaint's allegations. Very clearly, this information has nothing to do with the allegations in the Joint Complaint concerning the provision of accurate pricing information to consumers, charging prices that conform with BPE's disclosure statement, honoring any promises of savings that were made by BPE, the handling of consumer complaints and compliance with the Telemarketer Registration Act. *See* Order Granting in Part and Denying in Part Motion to Compel Responses to Joint Complainant Interrogatories VI-1 and VI-7, dated March 3, 2015, at 6 ("Joint Complainants' request for Blue Pilot's profits, losses and revenues are not likely to lead to the discovery of admissible evidence because profits, losses and revenue are not...otherwise relevant to an issue raised in the Joint Complaint").

BPE further notes that the Joint Complainants have not amended the Joint Complaint to include any allegations about BPE's bond or other approved security, any unpaid bills resulting from participation in PJM's wholesale market or the payment of gross receipts taxes. Any concerns they have about these issues should have been raised through an amendment of the Joint Complaint, to which BPE would have an opportunity to respond. *See* Order Granting in Part and Denying in Part Motion for Entry of Judgment, dated August 4, 2015, at 10 ("Joint Complainants should more properly amend their Complaint in a separate pleading, not as part of this Motion").

⁸ The Joint Complainants have both intervened in the application proceeding and are free to file comments in the Commission's miscellaneous proceeding, which are referenced in footnotes 3 and 4, respectively, on page 3 of this Answer.

In addition, from the outset of this proceeding, the Joint Complainants have never known whether BPE would have the funds available to pay any civil penalty or issue any refunds that may be ordered. This is especially true since the Joint Complaint proposed no specific amount for either type of relief. Indeed, they have cited to no precedent suggesting that an entity's financial wherewithal to fulfill a complainant's request for relief is relevant to any determinations of whether the entity violated the Public Utility Code or Commission regulations. Nor have they cited to any precedent showing that a complainant has an entitlement to know the entity's financial wherewithal to fulfill such requests.

While a bond may be used to pay a private individual, the Commission's regulations clearly note that payment of gross receipts tax is the first priority. 52 Pa. Code § 54.40 (f)(3). *See also Public Utility Commission Bonding/Security Requirements for Electric Generation Suppliers; Acceptable Security Instruments*, Docket No. M-2013-2393141 (Order entered July 24, 2014), at p. 5 ("As to the prioritization of claims for payment under the security, the Commonwealth of Pennsylvania has top priority"). Therefore, there was never any guarantee or expectation that BPE's bond would be available for the payment of any refunds that the Commission might order as part of this proceeding; as such, its status is of no relevance now.

C. The Discovery Requests Are Not Reasonably Calculated to Lead to the Discovery of Admissible Evidence

The Discovery Requests likewise seek information that could not possibly lead to the discovery of admissible evidence. The procedural posture of this proceeding is that Surrebuttal Testimony is due on January 20, 2016 and that evidentiary hearings on all Direct, Rebuttal and Surrebuttal Testimony of expert witnesses are scheduled for February 3-5, 2016. The purpose of Surrebuttal Testimony is to respond to Rebuttal Testimony. The only Rebuttal Testimony served in this proceeding was BPE Statement No. 1 of Mr. Raymond Perea, and it addresses one topic

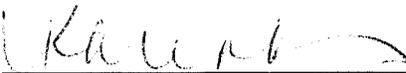
and one topic only -- BPE's disclosure statement. Therefore, the only subject that may be addressed in the Surrebuttal Testimony or during any cross-examination of Mr. Perea is BPE's disclosure statement. No Surrebuttal Testimony (or exhibits) or cross-examination (or cross-examination exhibits) may properly be offered on any of the topics of the Discovery Requests -- BPE's bond or other approved security, BPE's status of participation in the PJM wholesale market or BPE's payment of gross receipts taxes. As the Discovery Requests are not reasonably calculated to lead to the discovery of admissible evidence in this proceeding, the Motion should be denied.

III. CONCLUSION

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

January 12, 2016

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Counsel for Blue Pilot Energy, LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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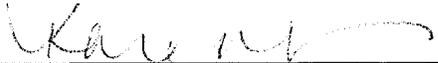
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Dated this 12th day of January, 2016.



Karen O. Moury, Esq.