

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Loni Durante
v.
Blue Pilot Energy, LLC, &
PPL Electric Utilities Corporation

Public Meeting held February 11, 2016
2487082-ALJ
Docket No. F-2015-2487082

**JOINT MOTION OF CHAIRMAN GLADYS M. BROWN &
COMMISSIONER JOHN F. COLEMAN, JR.**

Before the Commission is the Complaint of Loni Durante (Complainant) against Blue Pilot Energy, LLC (Company, Respondent, or Blue Pilot) alleging, *inter alia*, that there were incorrect charges on her bill.¹

The Complainant alleges Blue Pilot over charged her for electric supply service. For February 2014, the Complainant alleges Blue Pilot increased her rate from the initially-quoted rate of 6.75 cents per kWh to 44.9 cents per kWh. For March 2014, the Complainant alleges Blue Pilot failed to keep a verbal agreement to charge her 24.0 cents per kWh, pending a return to her electric utility's default supply service. The Complainant requests that the Commission direct Blue Pilot to refund the difference between the quoted commodity rates and the 44.9 per kWh rate actually charged to her for the period in question.

By Initial Decision, entered December 2, 2015, the Administrative Law Judge (ALJ) concluded that the Complainant did not meet her burden of proof to show that Blue Pilot is responsible or accountable for the problem described in her complaint. Consequently, the ALJ dismissed the Complaint.

Upon review of the proceeding, we agree with dismissing the part of the Complaint addressing electric supply charges for February 2014. The substantial evidence of record establishes that the Complainant entered into an agreement with Blue Pilot at a rate she knew was variable and could change. Moreover, the Complaint did not allege that Blue Pilot engaged in any fraudulent or deceptive marketing at the time the Complainant entered into the variable rate contract, and the Complainant did not claim at the hearing that she was misled about her rate when she enrolled with Blue Pilot. For these reasons, we view the claim regarding the February 2014 charges as an excessive rate claim over which the Commission lacks subject matter jurisdiction.²

Nevertheless, we wish to highlight a concern of ours with dismissing the Complaint in its entirety. Specifically, we focus our attention to Findings of Fact 12 and 13, which read:

¹ Although Complainant originally filed her complaint against Blue Pilot and PPL Electric Utility Corporation, PPL Electric Utilities Corporation filed a Certificate of Satisfaction on June 18, 2015 and did not participate in these proceedings.

² It is well-settled under Pennsylvania law that the Commission does not have traditional ratemaking authority over electric generation suppliers and does not regulate competitive supply rates.

12. When Complainant called to terminate her contract with Respondent, Respondent offered to charge Complainant at a lower rate (24.0 cents per kWh) until PPL could switch Complainant back to using PPL as the electricity supplier, and Complainant verbally accepted that offer.³
13. Respondent charged Complainant the same rate (44.9 cents per kWh) in March 2014 instead of using the offered rate (24.0 cents per kWh), which Complainant had accepted in February 2014.

Based on these findings of fact, it is clear the Company did not bill the Complainant a rate that matched the rate marketed and subsequently accepted by the Complainant for March 2014. In the Initial Decision the ALJ recognized these circumstances but ultimately concluded that the Commission could not offer a remedy, stating:

It should be noted Blue Pilot did not keep its verbal agreement to bill Complainant at the lower rate (24 cents per kWh) in March 2014 but the Commission lacks authority to order a refund.

We respectfully disagree that there is no remedy here. Consistent with the Commission's decision in the *Herp v Respond Power* case,⁴ we submit that the Company's failure to bill the Complainant at the rate offered and accepted constitutes a violation of Sections 54.4(a) and 54.7(a) of our Regulations.⁵ As we noted in *Herp*, these provisions are companion consumer protections that, together with Section 54.5(a) of our Regulations, mandate consistency among the prices an electric generation supplier (EGS) markets, discloses, and bills.

To address this violation, we direct the Company to refund the Complainant the net difference between the rate charged for the March 2014 billing period (44.9 cents per kWh) and the rate offered and agreed upon (24.0 cents per kWh). This remedy is consistent with the Commission's plenary authority under Section 501 of the Public Utility Code (Code), 66 Pa. C.S. § 501, to order EGS refunds.⁶ Specifically, for March 2014, we direct the Company to calculate what the Complainant's bill would have been under a 24.0 cent per kWh rate and subtract this amount from the actual billed amount to determine the net difference.

³ At the time of the call Blue Pilot was charging the Complainant a rate of 44.9 cents per kWh.

⁴ *Herp v Respond Power*, C-2014-2413756 (Opinion and Order entered January 28, 2016).

⁵ 52 Pa. Code §§ 54.4(a) and 54.7(a).

⁶ Although the Commission does not have authority to order EGS refunds under Section 1312 of the Code applicable to public utilities only, the Commission can, under its Code Section 501 plenary powers, enforce the consumer protection provisions of the Electric Competition Act, 66 Pa. C.S. §§ 2801-2815, and order refunds for violating the Commission's marketing and billing regulations and, in turn, Code Section 2809(b). See *Commonwealth of Pennsylvania, et al. v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Opinion and Order entered December 18, 2014); see also *Stephen Kiback, Jr. v. IDT Energy, Inc.*, Docket No. C-2014-2409676, (Opinion and Order entered August 20, 2015). This includes the authority to order refunds when an EGS' billed price does not match the marketed price as required by Sections 54.4(a) and 54.7(a) of our Regulations.

Further, we direct this refund methodology for any subsequent billing periods in which the Company did not bill the Complainant in accordance with its marketed and agreed upon prices, to the extent the Complainant's EGS of record still remained Blue Pilot. We believe Blue Pilot should provide this refund within 60 days of the entry date of the Final Order in this proceeding.

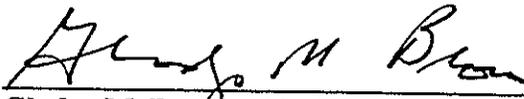
Last, we remind Blue Pilot that when offering service in Pennsylvania, it must comply with all applicable Statutes, Regulations, and Commission Orders.

THEREFORE, WE MOVE THAT:

1. The Formal Complaint filed by Loni Durante at Docket No. F-2015-2487082 be sustained, in part, and dismissed, in part, consistent with this Motion.
2. The Initial Decision be modified consistent with this Motion.
3. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

February 11, 2016

Date


Gladys M. Brown, Chairman


John F. Coleman, Jr., Commissioner