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January 24, 2017

Via Electronic Filing

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

Re: Alan Haulman c/o AJH Pizza, Inc. v. PPL Electric Utilities Corporation and Blue Pilot
Energy, LLC, Docket No. C-2014-2415273

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Main Brief of Blue Pilot Energy, LLC with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Karen O. Moury

KOM/lww
Enclosure

cc: Hon. Dennis Buckley w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Blue Pilot Energy's Main Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: January 24, 2017



Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALAN HAULMAN C/O AJH PIZZA, INC.

v.

BLUE PILOT ENERGY, LLC

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:
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Docket No. C-2014-2415273

MAIN BRIEF OF BLUE PILOT ENERGY, LLC

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Dated: January 24, 2017

Attorney for Blue Pilot Energy, LLC

I. STATEMENT OF THE CASE

On April 2, 2014, Alan Haulman c/o AJH Pizza, Inc. (“Complainant” or “Mr. Haulman” or “AJH Pizza”) filed a Formal Complaint against Blue Pilot Energy, LLC (“BPE”), claiming that its electric account had been switched without consent. Complainant seeks a refund for the difference between the amount Complainant would have paid PPL Electric Utilities Corporation (“PPL”) and what was billed by BPE for the months of February and March 2014.

At the relevant time, BPE was operating as a licensed electric generation supplier (“EGS”). BPE served Complainant’s account from January 3, 2013 through May 5, 2014, during which time BPE’s charges appeared on Complainant’s PPL bills.

BPE filed an Answer to the Complaint on April 29, 2014. An evidentiary hearing was held on December 15, 2015. By Interim Order dated December 30, 2016, Administrative Law Judge (“ALJ”) Buckley closed the evidentiary record and established a briefing schedule. This Main Brief is filed pursuant to that Interim Order.

II. SUMMARY OF ARGUMENT

BPE fully complied with the Commission’s regulations in enrolling Complainant’s account. The problem described by Complainant – of having its PPL account switched without its authorization – was not caused by BPE. Rather, Complainant brought these issues upon itself through inattentiveness to its PPL account, bills and correspondence.

The relevant facts are not in dispute. Complainant’s PPL account was opened on September 6, 2012, with a mailing address of 409 North Enola Road, Enola Pennsylvania (“North Enola Road”) and a service address of 6581 Carlisle Pike, Mechanicsburg, Pennsylvania (“6581 Carlisle Pike”). In October 2012, Mr. Haulman was operating Al’s Pizza & Subs at 6581 Carlisle

Pike. In November 2012, Mr. Haulman sold the assets of Al's Pizza & Subs to James Killinger and Ashley Killinger ("Killingers" or "purchasers"), who then began operating Al's Pizza & Subs.

Complainant took no steps to require the purchasers to obtain their own PPL account, to close the pre-existing PPL account for the 6581 Carlisle Pike location, or even to notify PPL of the sale. Rather, the purchasers effectively assumed control of the PPL account, which included paying the bills for nearly one year and requesting that PPL change the billing address for the account from 409 North Enola Road to the service address of 6581 Carlisle Pike.

Similarly, on November 19, 2012, using the account number that she had been provided by Complainant, Ms. Ashley Killinger enrolled the account with BPE, which was confirmed through a third party verification process. During that call, Ms. Killinger indicated that she was authorized to make the switch. BPE had no further obligation under the Commission's regulations to verify Ms. Killinger's authority to enroll the account. Consistent with the Commission's regulations, BPE mailed a disclosure statement to 6581 Carlisle Pike – the address provided by Ms. Killinger during enrollment. Also consistent with the Commission's regulations, PPL sent a confirmation letter to the 409 North Enola Road address, which the purchasers had not yet changed for mailing purposes.

Mr. Haulman resumed control of Al's Pizza & Subs in October 2013 when the Killingers defaulted on the asset purchase agreement. At that time, Complainant began paying the PPL bills containing BPE charges. Complainant raised no dispute regarding BPE providing electric supply until the filing of this Complaint on April 2, 2014.

By failing to require the purchasers of its business assets to secure their own PPL account number for the facility and by failing to close the pre-existing account, Complainant allowed the purchasers to take over the account, effectively making them de facto agents and permitting them

to make changes to its account. Complainant also ignored the confirmation letter that PPL sent to the 409 North Enola Road address. Complainant further aggravated the situation by failing to review PPL bills for several months after it reacquired the business due to the purchasers' default on the asset purchase agreement in October 2013. Rather, Complainant merely took over paying the PPL bills, which prominently showed BPE's charges as the EGS, and did not claim an unauthorized switch until five months later. Had Complainant reviewed the PPL bill upon resuming operation of the business in October 2013, a switch could have been implemented prior to the variable price increases that occurred in February 2014.

The Commission's regulations do not require EGSs to obtain proof from a person enrolling the account that they are authorized to do so. In fact, the Commission has found that an EGS can refute a slamming allegation by producing a third-party verification recording that contains an indication that the person enrolling the account is authorized to make changes. The Commission's regulations also do not require EGSs to obtain a signature on a contract. Rather, EGSs are only obligated to mail a disclosure statement setting forth the terms and conditions of service.

As to the relief requested by Complainant, the Commission does not have statutory authority to award monetary damages. Even under the Commission's slamming regulations which relieve a customer of responsibility for paying EGS charges in the event of an unauthorized switch, the customer's dispute must be filed within the first two billing periods when the customer should have reasonably known of the EGS change. Here, Complainant did not dispute the enrollment for over fifteen months; and even after Complainant started receiving and paying PPL bills in October 2013 containing BPE charges, this Complaint was not filed until five months later. Therefore the Complaint should be dismissed.

III. ARGUMENT

A. Applicable Legal Standards

1. Burden of Proof

Section 332(a) of the Public Utility Code (“Code”) provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.¹ It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”² Preponderance of the evidence means evidence which is more convincing, by even the smallest amount, than that presented by the other party.³ Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence.⁴ More information is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁵

As the moving party, Complainant has the burden of proving that BPE violated the Commission’s regulations in switching its account. In order to satisfy this burden, Complainant must establish that BPE breached some duty owed to it in violating the Public Utility Code, or a regulation or order of the Commission.⁶

¹ 66 Pa. C.S. § 332(a).

² *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990).

³ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁴ *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Commw. Ct. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Commw. Ct. 1993).

⁵ *Norfolk and Western Ry. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. Ct. 1960); *Murphy v. Commonwealth, Dep’t. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Commw. Ct. 1984).

⁶ *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98; 66 Pa.C.S. § 701.

2. Commission's Switching Regulations

Under the Commission's regulations, EGSs are required to notify electric distribution companies ("EDCs") when a customer has selected the EGS for service.⁷ This notification occurs through the transmission of an electronic transaction.⁸ The EDC then sends the customer a confirmation letter noting the proposed selection and makes the switch.⁹ If a customer is switched without consent, the customer may contact the EDC or the EGS to register a dispute. If the customer's dispute is filed within the first two billing periods – when the customer should reasonably have known of a change of the EGS – and the dispute investigation establishes that the change occurred without the customer's consent, the customer is not responsible for EGS bills rendered during that time period.¹⁰

The Commission's regulations do not require EGSs to obtain proof from the person enrolling the account that they are authorized to do so. When promulgating the switching regulations, the Commission provided a means by which a customer could authorize other persons to switch their accounts.¹¹ However, the Commission has not imposed a requirement on EGSs to obtain any document or otherwise verify with the EDC or the customer who is authorized to change the customer's EGS. Rather, the Commission has found that an EGS can refute a slamming allegation by producing a third-party verification recording that contains an indication that the

⁷ 52 Pa. Code §57.173.

⁸ Tr. 69; *See Standards for Electronic Data Transfer and Exchange between Electric Distribution Companies and Electric Generation Suppliers*, Docket No. M-00960890, F.0015 (Order entered October 15, 1999).

⁹ 52 Pa. Code §57.174.

¹⁰ 52 Pa. Code §57.177.

¹¹ 52 Pa. Code § 57.175.

person enrolling the account is authorized to make changes.¹² Indeed the practical effect of an additional authorization step would be contrary to the Commission’s stated policy of streamlining the enrollment process.¹³

3. Commission’s Disclosure Statement Regulations

The Commission’s regulations also do not require EGSs to obtain a signature on a contract. Rather, the regulations applicable to residential and small business customers require EGSs to issue written disclosure statements setting forth the terms and conditions of service.¹⁴ The disclosure statement may be mailed to the customer and there is a rebuttable presumption that it is received after it has been properly deposited in the mail.¹⁵ Additionally, the regulations provide that an EGS may “establish a written, or electronic transaction process for a customer to authorize the transfer of the customer’s account.”¹⁶

When electric choice was launched in Pennsylvania, the Commission considered whether a consumer should be required to sign and return an EGS’s disclosure statement. Rejecting that proposal, the Commission “emphasize[d] that written contracts are not required but both oral and written sales agreements are ‘contracts.’...[W]e offer that ‘terms of service’ best describes an agreement between a customer and a supplier.”¹⁷ In that order, the Commission concluded that

¹² *Tran v. Respond Power LLC*, Docket No. C-2014-2417540 (Order entered July 30, 2015), at 9.

¹³ *See Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 57 Regulations Regarding Standards for Changing a Customer’s Electricity Generation Supplier*, Docket No. L-2014-2409383 (Final-Omitted Rulemaking Order adopted April 3, 2014).

¹⁴ 52 Pa. Code §54.5.

¹⁵ 52 Pa. Code § 111.11.

¹⁶ 52 Pa. Code § 111.7(a).

¹⁷ *In re Elec. Generation Customer Choice and Competition Act – Customer Information*, 1997 Pa. PUC LEXIS 46, Docket No. M-00960890 (Order entered July 11, 1997), *22.

“we will not require a customer to sign a written disclosure statement, as doing so would essentially require all contracts to be in writing. The required disclosure statement becomes the agreement of the parties unless the customer cancels the agreement by invoking the right of rescission prior the starting date.”¹⁸ This notion was later confirmed by the Commission in rejecting an argument advanced by the Office of Consumer Advocate that EGSs must provide a written contract following a telephonic enrollment.¹⁹

4. Commission’s Lack of Jurisdiction to Award Damages

As a creation of the General Assembly, the Commission has only the powers and authority granted to it by the General Assembly and contained in the Public Utility Code.²⁰ It is well-settled that the Commission must act within, and cannot exceed, its jurisdiction.²¹ Jurisdiction may not be conferred by the parties where none exists.²² Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.²³

Nothing in the Public Utility Code²⁴ confers jurisdiction on the Commission to regulate EGS prices. To the contrary, in enacting the Competition Act, the General Assembly made it

¹⁸ *Id.* at *23.

¹⁹ *Pa. PUC v. PECO Energy Co.*, 88 Pa. P.U.C. 402, Docket No. R-00984298, 1998 WL 442683 (Order entered May 28, 1998). *See also Mackey v. Mackey*, 984 A.2d 529, 534 (Pa. Super. 2009) (it is axiomatic that Pennsylvania courts recognize oral agreements as valid and enforceable contracts).

²⁰ *See City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984) (“We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom...It is axiomatic that the Commission’s power is statutory; and the legislative grant of power in any particular case must be clear.”); *see also Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008).

²¹ *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945).

²² *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

²³ *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

²⁴ 66 Pa.C.S. §§ 101 *et seq.*

clear that the price of generation supply is exempt from regulation, noting that “[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity.”²⁵ Indeed, the Commission has recognized its lack of jurisdiction to regulate prices charged by EGSs.²⁶ It logically follows that since the Commission does not regulate EGS prices, it does not have authority to direct the issuance of refunds.²⁷

As recognized by the Administrative Law Judge in the interim order dated December 30, 2016 in this proceeding, the Commission does not have jurisdiction to award money damages.²⁸ In *Feingold*, the Pennsylvania Supreme Court found that the remedial and enforcement powers vested in the Commission by the Code were designed to allow the Commission to enforce its orders and regulations, but not to empower the Commission to award damages or to litigate a private action for damages on behalf of a complainant. Under the *Feingold* holding, the Commission is authorized by the Code to determine whether an EGS has violated its orders or regulations and to

²⁵ 66 Pa. C.S. § 2802(5).

²⁶ See *Commonwealth of Pennsylvania, et al. v. IDT Energy, Inc.*, Docket No. C-2014-2427657, Docket No. C-2014-2427657 (Order entered December 18, 2014) (“*IDT Interloctuary Order*”); *CRH Catering Company, Inc. v. Blue Pilot Energy, LLC*, Docket No. P-2014-2451865 (Order entered February 24, 2015), at 16 (it is “well-settled that the Commission does not have traditional ratemaking authority over competitive supplies and cannot regulate competitive supply rates”).

²⁷ See *Yaglidereliler Corp. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2413732 (Initial Decision served June 24, 2014), at 9. Although the *Yaglidereliler Corp.* Initial Decision was later remanded for a different purpose and the parties ultimately settled the matter, it is offered for its persuasive value to support the argument regarding the logical nexus between a lack of statutory authority to regulate rates and a lack of statutory authority to direct the issuance of refunds. Other Administrative Law Judges have also endorsed this logical nexus and employed similar reasoning in cases that were later settled by the parties. See, e.g., *Tustin v. Respond Power LLC*, Docket No. C-2014-2417552 (Interim Order dated June 26, 2014); *Russell v. Respond Power LLC*, Docket No. C-2014-2417551 (Interim Order dated July 3, 2014). See also 66 Pa.C.S. § 1312 (Commission’s authority to award refunds is limited to situations where public utilities’ rates are found to be unjust or unreasonable).

²⁸ *Poorbaugh v. Pa. PUC*, 666 A.2d 744 (Pa. Cmwlth. 1995); Briefing Order dated December 30, 2016 at 4-5.

impose remedies prescribed by the Code, but it must leave any determination regarding restitution or refunds to the courts.²⁹

Although the Commission has found that it has “plenary authority” under Code Section 501³⁰ to direct an EGS to issue a credit or refund under limited circumstances, those decisions have not yet been appealed and those limited circumstances are not alleged here. Specifically, the situations in which the Commission has found that it may direct an EGS to issue a refund are limited to scenarios where an EGS’s prices did not conform to the disclosure statement or the EGS’s prices did not match the alleged statements of the EGS salesperson.³¹

The Commission has also referenced its slamming regulations as providing a presumption of reasonableness for its authority to direct EGSs to issue refunds under limited circumstances.³² However, the Commission’s statutory authority to promulgate that provision in the regulations is unclear (or nonexistent), and the application of that provision to an EGS has not been challenged through the appellate review process. Notably, that particular regulation requires a customer to register a dispute within two billing periods in order to be relieved of responsibility for the EGS charges.³³ The rationale for the two billing periods is that a customer should reasonably have known that EGS charges were on the bill within that timeframe.³⁴

²⁹ The Commission has acknowledged its lack of statutory authority to award equitable remedies including restitution. *IDT Interlocutory Order* at 25-26.

³⁰ 66 Pa. C.S. § 501.

³¹ See *IDT Interlocutory Order*; *Kiback v. IDT Energy, Inc.*, Docket No. C-2014-2409676 (Order entered August 20, 2015).

³² *Nadav v. Respond Power LLC*, Docket No. C-2014-2429159 (Order entered December 19, 2014).

³³ 52 Pa. Code § 57.177.

³⁴ *Id.* See also *Gruelle c/o Toll Diversified Properties, Inc. v. PPL Electric Utilities Corporation and Blue Pilot Energy, LLC*, Docket No. C-2015-2463573 (Initial Decision served November 18, 2015; Final Order entered November 22, 2015) (a business owner’s inattentiveness cannot be attributed to the EGS as a violation of any Commission order, regulation or statute), at 12.

B. The Factual Evidence Shows That Complainant's Circumstances Were Caused By Its Own Inattentiveness to its PPL Account, Bills and Correspondence and that BPE Complied with the Commission's Regulations.

In this proceeding, the essential facts relevant to a determination of whether BPE switched Complainant's account without authorization are not in dispute. The evidence of record shows that Complainant's circumstances were caused by its own inattentiveness to its PPL account, bills and correspondence. Further, it is clear that BPE's actions fully complied with the Commission's regulations.

BPE provided electric service to Complainant at the 6581 Carlisle Pike address from January 3, 2013 through May 5, 2014.³⁵ Following enrollment on November 19, 2012, BPE performed a third party verification process, during which Ms. Killinger confirmed authorization to make the switch,³⁶ and BPE mailed a disclosure statement to the address given by Ms. Killinger.³⁷ This disclosure statement explained the terms and conditions of service, including the initial price for a 90-day period and a variable price thereafter.³⁸ In pricing Complainant's electric supply, BPE honored the initial price for a period of ten months, a full seven months longer than required by the contract.³⁹ BPE did not violate any regulations in enrolling Complainant's account.

The relevant facts are not in dispute. Mr. Haulman is the owner of Complainant, AJH Pizza, Inc.⁴⁰ He is the sole shareholder and the only corporate officer, and the address is 409 North

³⁵ Tr. 55.

³⁶ BPE Exhibits 1 and 1-A; Tr. 56-58.

³⁷ Tr. 59-60; BPE Exhibits 2 and 3.

³⁸ Tr. 60; BPE Exhibit 3.

³⁹ Tr. 61-62; BPE Exhibits 4 and 5.

⁴⁰ Tr. 14.

Enola Road, Enola, Pennsylvania.⁴¹ AJH Pizza is affiliated with the service location of 6581 Carlisle Pike, Mechanicsburg, Pennsylvania, which is operated as Al's Pizza & Subs.⁴² Mr. Haulman also owns other pizza shops, including a different Al's Pizza & Subs, which operates at a location at 409 North Enola Road.⁴³

Complainant opened the PPL account in question, which is account number 49830-79049, on September 6, 2012, with a mailing address of North Enola Road and a service address of 6581 Carlisle Pike.⁴⁴ In October 2012, Complainant was operating Al's Pizza & Subs at 6581 Carlisle Pike.⁴⁵ In November 2012, Complainant sold the assets of Al's Pizza & Subs at 6581 Carlisle Pike to the Killingers.⁴⁶

Upon executing the asset purchase agreement, Complainant ceased operating the shop at 6581 Carlisle Pike in Mechanicsburg.⁴⁷ Nothing in the asset purchase agreement required the Killingers to establish their own PPL electric account for the location, and Complainant merely assumed that the purchasers would do that.⁴⁸ The Killingers continued using the account number previously assigned to AJH Pizza because they did not set up a new account and Complainant took

⁴¹ Tr. 15; Complainant's Exhibit A.

⁴² Tr. 15, 25; PPL Electric Exhibit 1.

⁴³ Tr. 15.

⁴⁴ PPL Electric Exhibits 2 and 3 (entries for September 5, 2012 and December 10, 2012); Tr. 14-15, 25, 71.

⁴⁵ Tr. 16.

⁴⁶ Tr. 16-17; Complainant's Exhibit D. The Killingers are no longer married and Ms. Killinger now goes by Ms. Ashley Bowersox. Tr. 36-37. Most references herein are to Ms. Killinger since that was her name during the events that are relevant to the Complaint. However, references to her testimony in this proceeding are to Ms. Bowersox.

⁴⁷ Tr. 18.

⁴⁸ Tr. 32; Complainant's Exhibit D. Notably, the agreement does address the transfer of telephone service. Paragraph 3(a)(ii).

no steps to close the pre-existing account or to even notify PPL of the sale.⁴⁹ The purchasers' use of the account included paying the bills for nearly a year and changing the mailing address from 409 North Enola Road to 6581 Carlisle Pike in December 2012.⁵⁰ Specifically, starting in October 2012, Ms. Killinger sent checks to PPL containing Complainant's account number, effectively assuming responsibility for the electric account for the business she was operating at the same location which Complainant previously operated as Al's Pizza & Subs.⁵¹ Indeed, those payments paid down a balance on Complainant's account.⁵²

Similarly, using the same PPL account number (49830-79049) for the 6581 Carlisle Pike facility, the purchasers enrolled the account with BPE, on November 19, 2012.⁵³ During the third-party verification process, Ms. Killinger indicated that she was authorized to make a switch for the facility at this location.⁵⁴ BPE had no further obligation under the Commission's regulations to verify Ms. Killinger's authority to enroll the account or to confirm the name on the PPL account.⁵⁵ Also, the telephone number during for the verification matches the telephone number on Complainant's current account with PPL.⁵⁶ In short, Ms. Killinger was authorized as an owner to

⁴⁹ Tr. 32, 45, 48.

⁵⁰ PPL Electric Exhibits 3 and 9; Tr. 28-33, 41-46, 71.

⁵¹ Tr. 20-21, 28-31, 41-44, 45-46; Complainant's Exhibit F; PPL Electric Exhibit 9.

⁵² Tr. 30.

⁵³ Tr. 45; BPE Exhibits 1 and 1-A.

⁵⁴ BPE Exhibits 1 and 1-A; Tr. 56-58. *See also* PPL Electric Exhibit 3 (entry for November 19, 2012 indicates that BPE representative and "Ashley" called PPL regarding access to usage information).

⁵⁵ Tr. 62. BPE's reliance on Ms. Killinger having the account number to enroll the account is no different than PPL relying on Ms. Killinger having the account number to make a change in the billing address for the account. PPL would have actually had more information available due to its pre-existing relationship with the customer and yet apparently did not question Ms. Killinger's authority to change the billing address.

⁵⁶ BPE Exhibit 1-A (lines 3 and 16); PPL Electric Exhibit 1.

make a change for Al's Pizza & Subs, which was operating at the same location as when it was owned by Mr. Haulman, using the same PPL account number and using the same telephone number.⁵⁷

Using the account number provided by Ms. Killinger, BPE sent an electronic transaction to PPL to effectuate the switch.⁵⁸ Since Ms. Killinger had not yet changed the billing address for the account, PPL sent a confirmation letter to the mailing address associated with Complainant's account at that time, where Mr. Haulman spends most of his time.⁵⁹ BPE mailed a disclosure statement to the mailing address provided by Ms. Killinger, which is also the service address associated with Complainant's PPL account.⁶⁰ BPE thereby fulfilled all of its legal obligations in the enrollment of Complainant's account. Ms. Killinger thereafter paid the PPL bills containing BPE charges without raising any questions about BPE serving as the EGS.⁶¹

In October 2013, the Killingers defaulted on the asset purchase agreement and Mr. Haulman resumed running the business of Al's Pizza & Subs at 6581 Carlisle Pike.⁶² In November 2013, Mr. Haulman started making the electric payments to PPL for the shop that was continuing to operate at 6581 Carlisle Pike under Complainant's PPL account.⁶³ During that time, Mr. Haulman received the PPL bills at 6581 Carlisle Pike and his son paid the bills with his authority

⁵⁷ Tr. 40-41, 44.

⁵⁸ PPL Electric Exhibit 3 (entry for November 21, 2012); Tr. 69.

⁵⁹ PPL Electric Exhibit 4; Tr. 27, 69.

⁶⁰ BPE Exhibits 2 and 3; Tr. 14-16, 29, 59-60.

⁶¹ PPL Electric Exhibits 2, 7 and 9.

⁶² Tr. 19.

⁶³ At that time, it appears that Mr. Haulman did not assume that the Killingers had set up a new PPL account, the way he previously assumed when he sold the assets to them. Tr. 21-22; 26-27, 31-32, 34-35.

in November 2013, December 2013 and January 2014; those bills contained BPE charges.⁶⁴ In February 2014, Mr. Haulman personally examined a bill and determined that BPE was providing generation supply to Al's Pizza & Subs at 6581 Carlisle Pike.⁶⁵ Mr. Haulman contacted BPE to terminate service on March 26, 2014; Complainant made no contact with BPE prior to that time.⁶⁶

The problem described by Complainant – of having its PPL account switched without its authorization – was not caused by BPE. Rather, Complainant brought these issues upon itself through inattentiveness to its PPL account, bills and correspondence. The alleged unauthorized switch occurred because Mr. Haulman permitted the Killingers to assume control over his PPL electric account.⁶⁷ As Ms. Bowersox testified, “[t]hat was the account that was already prior established there....It was just a pre-existing – the electric bill kept coming every month and when I took over, I started paying it.”⁶⁸ BPE would have had no way of knowing that the account number provided by Ms. Killinger in November 2012 had previously belonged to AJH Pizza or even that AJH Pizza existed.⁶⁹ BPE's interactions with Ms. Killinger appropriately centered on Al's Pizza & Subs – the entity that was seeking to enroll with BPE.⁷⁰ Using the account number provided by Ms. Killinger during the enrollment process, BPE sent an EDI transaction to PPL to lawfully effectuate the switch.⁷¹

⁶⁴ PPL Electric Exhibit 9; Tr. 33-35

⁶⁵ PPL Exhibit 3; Tr. 24.

⁶⁶ Tr. 60, 62.

⁶⁷ Tr. 25, 45.

⁶⁸ Tr. 45.

⁶⁹ Tr. 62.

⁷⁰ BPE Exhibits 1 and 1-A.

⁷¹ PPL Electric Exhibit 3 (entry for November 21, 2012).

By failing to require the purchasers of its business assets to secure their own PPL account number for the facility and to close the pre-existing account, Complainant effectively allowed the purchasers to take over that account, making them de facto agents and permitting them to make changes to the account. Complainant also ignored the confirmation letter that PPL sent to the 409 North Enola Road address before the change in the billing address was made by the purchasers, even though that is where Mr. Haulman spent most of his time. Complainant further aggravated the situation by failing to review PPL bills for several months after it reacquired the business due to the purchasers' default on the purchase agreement in October 2013. Rather, Complainant merely took over paying the PPL bills, which prominently showed BPE's charges as the EGS, and did not dispute BPE's status as the EGS until April 2, 2014, more than five months later. Had Complainant reviewed the PPL bill upon resuming operation of the business in October 2013, a switch could have been implemented prior to the increases that occurred in February 2014.⁷²

In all aspects of the enrollment, BPE fully complied with the Commission's regulations, which do not require EGSs to obtain proof from the person enrolling the account that they are authorized to do so. By asking Ms. Killinger to indicate whether she had authority to make the switch and by mailing the disclosure statement, BPE fulfilled its regulatory obligations.⁷³ BPE was not required by the Commission's regulations to further inquire as to her authority or to obtain a written signature on the contract.⁷⁴ Therefore, the Complaint should be dismissed.

⁷² At that time, switches took up to 45 days. *See Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 57 Regulations Regarding Standards for Changing a Customer's Electricity Generation Supplier*, Docket No. L-2014-2409383 (Final-Omitted Rulemaking Order adopted April 3, 2014).

⁷³ *See* Brief at p. 5.

⁷⁴ *See* Brief at pp. 5-6.

C. The Commission Does Not Have Jurisdiction to Grant the Requested Relief.

Complainant seeks monetary damages in the form of a refund for the difference between what it would have paid PPL in February and March 2014 and what it was charged by BPE. Even if the Commission would find that BPE violated its regulations in the enrollment of Complainant's account, the Commission does not have statutory authority to award monetary damages to Complainant.⁷⁵ The Commission's slamming regulations, which relieve a customer of responsibility for paying EGS bills in the event of an unauthorized switch, require the customer to dispute the change within the first two billing periods since the customer should have reasonably known of the change of the EGS.⁷⁶ Here, Complainant did not dispute the enrollment for over fifteen months; and even after Complainant started receiving PPL bills in October 2013 containing BPE charges, this Complaint was not filed until five months later.⁷⁷ Therefore, even if the Commission had statutory authority to direct an EGS to issue a refund, Complainant did not timely register a dispute and none of the circumstances under which it has suggested it may do so are applicable in in this proceeding.

⁷⁵ See Brief at pp. 7-9.

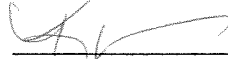
⁷⁶ 52 Pa. Code §57.177.

⁷⁷ Although Complainant appears to have contacted PPL in February 2014, Complainant did not contact BPE until March 26, 2014. PPL Electric Exhibit 3; Tr. 24, 60. Therefore, at least three months elapsed from the time Complainant took over responsibility for the account until Complainant raised *any* question about its enrollment with BPE.

III. CONCLUSION

Based on the foregoing, Blue Pilot Energy, LLC respectfully requests that the Complaint be dismissed.

Respectfully submitted,



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