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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17120** | |  |
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|  | | Public Meeting held October 7, 2021 | | |
| Commissioners Present: | |  | | |

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| Gladys Brown Dutrieuille, Chairman  John F. Coleman, Jr.  Ralph V. Yanora | |  | |
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| Electric Generation Supplier License Cancellation for Failure to Maintain an Adequate Financial Security | M-2015-2490383  A-2011-2223888 | |

**TENTATIVE ORDER**

**BY THE COMMISSION:**

On December 17, 2015, the Pennsylvania Public Utility Commission (Commission) adopted a Tentative Order, at Docket No. M‑2015-2490383, that tentatively approved the cancellation of certain electric generation suppliers’ (EGS) Licenses for non-compliance with 52 Pa. Code § 54.40(a) and (d). The Tentative Order listed 10 EGSs as non-complaint.[[1]](#footnote-1) The Tentative Order required that absent the filing of adverse public comment or the filing of an approved security within 30 days after publication in the *Pennsylvania Bulletin*, the Bureau of Technical Utility Services shall prepare a Final Order for entry by the Secretary.[[2]](#footnote-2)

On February 1, 2016, the Office of Attorney General Bureau of Consumer

Protection (OAG) and the Office of Consumer Advocate (OCA) filed Joint Comments to the December 17, 2015 Tentative Order with regard to one EGS, Blue Pilot Energy LLC (Blue Pilot). In their Joint Comments, OAG/OCA indicated that they had filed

a Joint Complaint against Blue Pilot on June 20, 2014, at Docket No. C-2014-2427655. OAG/OCA stated that the Joint Complaint includes five separate counts, alleging Blue Pilot violated Pennsylvania law and Commission regulations and Orders. The OAG/OCA further submitted that given the pending Joint Complaint, the Commission should refrain from cancelling or granting an abandonment of Blue Pilot’s EGS license, until the Commission is assured that all obligations of Blue Pilot to Pennsylvania consumers and the Commonwealth have been properly met.

On March 14, 2016, the Commission issued a Final Order at M-2015-2490383, which provided a disposition regarding all 10 EGSs included in the December 17, 2015 Tentative Order. Eight of the 10 EGSs filed approved financial securities within the 30-day *Pennsylvania Bulletin* publication period, one EGS failed to provide an approved financial security within the 30-day *Pennsylvania Bulletin* publication period and had its EGS license cancelled, and the final EGS, Blue Pilot, had its EGS license suspended until final resolution of the pending OAG/OCA Joint Complaint and Blue Pilot was instructed not to enroll any new customers for the duration of the suspension.

On July 7, 2016, Administrative Law Judges Barnes and Cheskis issued their Initial Decision concluding that Blue Pilot failed to comply with several Commission regulations and assessed a civil penalty of $2,554,000 and ordered Blue Pilot to deposit $2,508,449 into a refund pool administered by a third-party chosen by the OAG and the OCA. On July 19, 2018, this Commission issued an Opinion and Order on exceptions by reducing the assessed penalty on Blue Pilot to $1,066,900 and denying all other exceptions. On July 11, 2019, this Commission issued an Opinion and Order denying Blue Pilot’s Petition for Reconsideration. On August 9, 2019, Blue Pilot filed a Petition for Review of the Commission’s Opinions and Orders with the Commonwealth Court that was Docketed

at 1054 C.D. 2019. On October 27, 2020, the Commonwealth Court issued its Opinion concluding that the Commission acted within its jurisdiction in adjudicating the matter, upheld the civil penalty of $1,066,900, and reversed the Commission’s refund remedy. No party sought review of the Commonwealth Court Opinion.

On June 10, 2011, at Docket No. A-2011-2223888, Blue Pilot was licensed as an EGS Supplier to serve residential, small commercial, large commercial, and industrial customers in all of the jurisdictional electric distribution company (EDC) service territories throughout the Commonwealth of Pennsylvania. The Commission does not currently hold a valid financial security instrument due to Lexon Insurance Company cancelling Blue Pilot’s bond with an effective date of August 11, 2015.

The Commission’s regulations require that a licensee shall comply with the applicable requirements of the code and Commission regulations and orders. Consistent with due process, a license may be suspended or revoked, and fines may be imposed against the licensee for failure to furnish and maintain a bond or other security approved by the Commission in the amount directed by the Commission. *See* 52 Pa. Code § 54.42(a)(2). In addition, a license will not remain in force until the licensee furnishes a bond or other security approved by the Commission.

Section 2809(c) of the Code, 66 Pa. C.S. § 2809(c), specifically states that “no energy supplier license shall be issued or remain in force unless the holder complies with the following: (i) Furnishes a bond or other security approved by the commission in form and amount to ensure the financial responsibility of the electric generation supplier….” As Blue Pilot has no Commission approved bond or other security, its license cannot remain in force. Accordingly, the Commission is tentatively revoking Blue Pilot’s electric generation supplier license.

As of September 28, 2021, the Commission finds that Blue Pilot has not provided proof to the Commission that is has a bond or other approved security in the amount directed by the Commission which is non-compliant with Commission regulations.

Due to OAG/OCA’s Joint Complaint against Blue Pilot Energy LLC being resolved on October 17, 2020 and the fact that the Commission has not held a valid financial security instrument from Blue Pilot Energy LLC since 2015, we tentatively conclude that Blue Pilot is not in compliance with 52 Pa. Code § 54.40(a) and (d) and therefore it is appropriate to initiate the cancellation process for Blue Pilot’s EGS license, without the

necessity of a formal complaint, as being in the public interest; **THEREFORE,**

**IT IS ORDERED:**

1. That cancellation of the Blue Pilot Energy LLC’s Electric Generation Supplier License is hereby tentatively approved as being in the public interest.

2. That the Secretary (i) serve a copy of this Tentative Order upon Blue Pilot Energy LLC, the Office of Attorney General, the Office of Consumer Advocate, the Office of Small Business Advocate, the Bureau of Investigation & Enforcement, the Department of Revenue – Bureau of Corporation Taxes, all electric distribution companies; (ii) publish a copy of this Tentative Order in the *Pennsylvania Bulletin* with a 15-day comment period; and (iii) file a copy of this Tentative Order at Blue Pilot Energy LLC’s Docket No. A‑2011‑2223888.

3. That to the extent Blue Pilot Energy LLC challenges the cancellation of its license, Blue Point Energy LLC must file comments within fifteen (15) days after publication of this Tentative Order in the *Pennsylvania Bulletin.* Written comments referencing Docket No. M-2015-2490383 must be eFiled to the Pennsylvania Public Utility Commission through the Commission’s eFiling System per the Commission’s Emergency Order dated March 20, 2020, at Docket No. M‑2020‑3019262. You may set up a free eFiling account with the Commission at [https://efiling.puc.pa.gov/](https://efiling.puc.pa.gov/%20) if you do not have one.  Filing instructions may be found on the Commission’s website at <http://www.puc.pa.gov/filing_resources.aspx>.  Comments containing confidential information should be emailed to Commission Secretary Rosemary Chiavetta at [rchiavetta@pa.gov](file:///C:\Users\jorlawson\Downloads\rchiavetta@pa.gov) rather than eFiled.

4. That, alternatively, Blue Pilot Energy LLC may provide the Commission an approved security up to and within fifteen (15) days after publication in the *Pennsylvania*

*Bulletin*.  Blue Pilot Energy LLC must file an original bond, letter of credit, continuation certificate, amendment, or other approved financial instrument displaying a

“wet” signature or digital signature, preferably in blue ink, and displaying a “raised seal” or original notary stamp with Rosemary Chiavetta, Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, PA, 17120.

5. That absent the filing of adverse public comment or the filing of approved security within fifteen (15) days after publication in the *Pennsylvania Bulletin*, this Tentative Order becomes Final by operation of law and Blue Pilot Energy LLC’s Electric Generation Supplier license shall be cancelled, stricken from all active utility lists maintained by the Commission’s Bureau of Technical Utility Services and the Assessment Section of the Bureau of Administration, removed from the Commission’s website, and notifications be sent to all electric distribution companies in which Blue Pilot Energy LLC is licensed to do business.

6. That upon completion of Ordering Paragraph 5, this proceeding at Docket

Nos. M-2015-2490383 and A-2011-2223888 be closed.

**A picture containing letter

Description automatically generatedBY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: October 7, 2021

ORDER ENTERED: October 7, 2021

1. Supplier Table – List of Electric Generation Suppliers, page 2, Tentative Order at M-2015-2490383, entered December 17, 2015. [↑](#footnote-ref-1)
2. Page 3, Tentative Order at M-2015-2490383, entered December 17, 2015. [↑](#footnote-ref-2)