

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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September 2, 2015

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

RE: Commonwealth of Pennsylvania, by Attorney General
KATHLEEN G. KANE, Through the Bureau of Consumer
Protection,
And
TANYA J. McCLOSKEY, Acting Consumer Advocate,
Complainants

v.
Blue Pilot Energy, LLC

Respondent

Docket No. C-2014-2427655

Secretary Chiavetta:

Enclosed please find the Motion of Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate to Impose Sanctions for Blue Pilot's Failure to Serve Full and Complete Responses to Joint Complainants' Interrogatories and Requests for Production of Documents Set VIII and Set IX, in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Candis A. Tunilo".

Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. #89891

Enclosure

cc: Honorable Elizabeth Barnes, ALJ
Honorable Joel Cheskis, ALJ
Certificate of Service

*185199

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, by	:	
Attorney General KATHLEEN G. KANE,	:	
Through the Bureau of Consumer Protection,	:	
	:	
And	:	
	:	
TANYA J. McCLOSKEY, Acting Consumer	:	
Advocate,	:	
Complainants	:	
	:	Docket No. C-2014-2427655
v.	:	
	:	
BLUE PILOT ENERGY, LLC,	:	
Respondent	:	

MOTION OF JOINT COMPLAINANTS COMMONWEALTH OF PENNSYLVANIA
AND THE OFFICE OF CONSUMER ADVOCATE
TO IMPOSE SANCTIONS FOR BLUE PILOT’S FAILURE TO SERVE FULL AND
COMPLETE RESPONSES TO JOINT COMPLAINANTS’ INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS SET VIII AND SET IX

Pursuant to 52 Pa. Code §§ 5.371(a)(1) and 5.372, the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (BCP or OAG) and the Acting Consumer Advocate Tanya J. McCloskey (OCA) (collectively Joint Complainants) respectfully move the Administrative Law Judges Elizabeth Barnes and Joel H. Cheskis (ALJs) to enter an Order imposing sanctions on Blue Pilot Energy, LLC (Blue Pilot or the Company) for the failure to provide the full and complete responses to Joint Complainants’ eighth and ninth Sets of Interrogatories and Requests for Production of Documents (Joint Complainants’ Set VIII and Set IX), as required by the ALJs’ Order Granting in Part and Denying in Part Motion for Entry of Judgment dated August 4, 2015. Joint Complainants seek

that the following sanctions be imposed upon Blue Pilot for the Company's failure to fully and completely answer Joint Complainants' Set VIII:

- The ALJs direct that it is established in this matter that Blue Pilot's "desired rate of return" utilized in calculating rates for Pennsylvania consumers is high, and that this fact is not disclosed to consumers in Blue Pilot's marketing statements or the Company's Disclosure Statement and that Blue Pilot shall not be permitted to rebut these findings at hearings or in briefs as a sanction for the failure to fully and completely answer Joint Complainants' Set VIII-1;
- The ALJs direct that it is established in this matter that Blue Pilot had a high rate of return during the winter of 2013-2014 and that Blue Pilot shall not be permitted to rebut this finding at hearings or in briefs as a sanction for the failure to fully and completely answer Joint Complainants' Set VIII-1;
- The ALJs direct that it is established in this matter that Blue Pilot had positive income after expenses during the months of January, February, March and April 2014 and that Blue Pilot shall not be permitted to rebut this finding at hearings or in briefs as a sanction for the failure to fully and completely answer Joint Complainants' Set VIII-1; and
- The ALJs direct that it is established in this matter that Blue Pilot's prices charged to Pennsylvania consumers do not match the pricing description in the Company's Disclosure Statement and that Blue Pilot shall not be permitted to rebut this finding at hearings or in briefs as a sanction for the failure to fully and completely answer Joint Complainants' Set VIII-2.

Joint Complainants also respectfully request that the ALJs direct Blue Pilot to pay a civil penalty for each discovery request in Joint Complainants' Set IX not fully and completely answered by

Blue Pilot per the ALJs' Order of August 4, 2015,¹ from August 14, 2015 until such date as the Company provides full and complete responses without impermissible objections to Joint Complainants' Set IX. In support of this Motion, Joint Complainants aver as follows:

I. INTRODUCTION

On June 20, 2014, the OAG and the OCA filed a Joint Complaint with the Public Utility Commission (Commission) pursuant to, *inter alia*, the Public Utility Code, 66 Pa. C.S. Ch. 28 and the Commission's regulations, 52 Pa. Code Ch. 54, 56 and 111. The Joint Complaint includes five separate counts and alleges that Blue Pilot violated Pennsylvania law and Commission orders and regulations. Specifically, the five counts in the Joint Complaint are: I) failing to provide accurate pricing information; II) prices nonconforming to disclosure statement; III) misleading and deceptive promises of saving; IV) lack of good faith handling of complaints; and V) failure to comply with the Telemarketer Registration Act (TRA). Specifically related to this Motion, in Count II, Joint Complainants allege that Blue Pilot's prices charged to its customers did not conform to its Disclosure Statement. With respect to relief, the Joint Complainants request that the Commission find, *inter alia*, that Blue Pilot violated the Public Utility Code and the Commission's regulations and orders; provide restitution to the Company's customers; impose a civil penalty; and order Blue Pilot to make various modifications to its practices and procedures; and revoke or suspend Blue Pilot's Electric Generation Supplier (EGS) license, if warranted.

¹ As detailed in this Motion, Joint Complainants request that the ALJs direct Blue Pilot to pay civil penalties in the amount of \$100 per day from August 14, 2015 until such date as full and complete responses are provided without impermissible objections regarding Joint Complainants Set IX-1, 2, 3, 4, 5, 6 and 8. Joint Complainants request that the ALJs direct Blue Pilot to pay a civil penalty in the amount of \$200 per day from August 14, 2015 until such date as full and complete responses are provided without impermissible objections regarding Joint Complainants Set IX-7.

On July 10, 2014, Blue Pilot filed Preliminary Objections to the Joint Complaint. In its Preliminary Objections, Blue Pilot asserted, *inter alia*, that Count II of the Joint Complaint should be dismissed, because the Commission lacks the jurisdiction to regulate the rates that Blue Pilot charged its customers. On July 21, 2014, the Joint Complainants filed an Answer to Preliminary Objections. By Order dated August 20, 2014, the ALJs found that the Commission lacks jurisdiction to determine if the prices charged to customers conformed to the disclosure statement provided to the customer. On September 8, 2014, Joint Complainants filed a Petition for Interlocutory Review and Answer to Material Questions with the Commission. Joint Complainants sought for the Commission to answer, *inter alia*, the following question: Does the Commission have the authority and jurisdiction to determine whether the prices charged to customers by an EGS conform to the EGS disclosure statement regarding pricing? On September 18, 2014, the Joint Complainants filed a Brief in Support of their Material Questions, and Blue Pilot filed a Brief in Opposition. On December 11, 2014, the Commission issued an Order (December 11 Order) in which it determined, *inter alia*, that it has the authority and jurisdiction to determine whether the prices charged to customers by an EGS conform to the EGS disclosure statement regarding pricing. See Dec. 11, 2014 Order at 18-21.

Throughout the proceeding, the Joint Complainants have attempted to engage in discovery by serving interrogatories and requests for production of documents on Blue Pilot. Specific to this Motion, on April 7, 2015, Joint Complainants served Joint Complainants' Set VIII upon Blue Pilot. On April 17, 2015, Blue Pilot served Objections to Joint Complainants' Set VIII, numbers 1 and 2, asserting that the requested information is (1) privileged; (2) not relevant to the subject matter of this proceeding; and (3) would cause unreasonable annoyance and burden to Blue Pilot. On April 23, 2015, Joint Complainants filed a Motion to Compel Blue

Pilot's responses to Joint Complainants' Set VIII. By Order entered May 1, 2015, the ALJs entered an Order granting Joint Complainants' Motion to Compel, overruled Blue Pilot's objections, and directed Blue Pilot to provide complete answers to Joint Complainants' Set VIII within ten days. When Blue Pilot did not provide full and complete responses by May 11, 2015,² as required by the ALJs' May 1, 2015 Order, by email on May 12, 2015, counsel for OCA requested from Blue Pilot's counsel a date upon which Joint Complainants could expect to receive responses to Set VIII. See Exhibit A attached hereto. No response was received to OCA counsel's email. On May 14, 2015, counsel for OCA sent another email to counsel for Blue Pilot to determine if and when Blue Pilot would provide responses to Joint Complainants' Set VIII, as required by the ALJs' Order of May 1, 2015. Counsel for Blue Pilot responded that the Company did not intend to provide responses to Joint Complainants' Set VIII. See Exhibit A attached hereto. Also on May 14, 2015, Blue Pilot filed a Motion to Dismiss Complaint because, *inter alia*, Blue Pilot "can no longer defend itself in this proceeding."³

On May 13, 2015, Joint Complainants served Set IX on Blue Pilot. Set IX consists of eight interrogatories and requests for production of documents. Blue Pilot did not file timely objections to Joint Complainants' Set IX. Responses were due on June 2, 2015. On June 5, 2015, in response to an inquiry by OCA, counsel for Blue Pilot advised Joint Complainants that the Company did not intend to provide responses to Joint Complainants' Set IX. See Exhibit B attached hereto.

On June 22, 2015, Joint Complainants' filed a Joint Motion for Entry of Judgment Against Blue Pilot based on Blue Pilot's assertion that the Company did not intend to further

² Blue Pilot served a partial response to Joint Complainants' Set VIII-2 on April 27, 2015.

³ See Blue Pilot Motion to Dismiss Complaint at ¶ 3. See also Blue Pilot Motion to Dismiss Complaint at ¶ 5. The ALJs denied Blue Pilot's Motion to Dismiss Complaint by Order dated June 11, 2015.

defend itself against the Joint Complaint in its Motion to Dismiss Complaint and the Company's refusal to provide responses to Joint Complainants' discovery requests Sets VIII and IX.⁴ On July 20, 2015, Blue Pilot filed its Answer to Joint Complainants' Motion for Entry of Judgment,⁵ wherein the Company claimed that it did not provide discovery responses as directed because the Company believed that no responses were required while the procedural schedule in this matter was suspended pending disposition of the Company's Motion to Dismiss Complaint and Joint Complainants' Motion for Entry of Judgment Against Blue Pilot.

In their Order Granting in Part and Denying in Part Motion for Entry of Judgment (August 4 Order), the ALJs stated that they were "willing to give the Company the benefit of the doubt that it inferred ... that discovery deadlines were also suspended until further notice" and directed Blue Pilot to serve full and complete responses to Joint Complainants' Sets VIII and IX within ten days, or by August 14, 2015. August 4 Order at 9, 12. On August 14, 2015, Blue Pilot served Confidential Supplemental Objections and Responses to Joint Complainants' Set VIII and Objections and Responses to Joint Complainants' Set IX. A copy of Blue Pilot's Confidential Supplemental Objections and Responses⁶ to Joint Complainants' Set VIII is

⁴ To that end, Blue Pilot has objected to every discovery request served by Joint Complainants since the ALJs' disposition of Joint Complainants' Motion for Entry of Judgment Against Blue Pilot.

⁵ The Answer was served on the ALJs and parties by email on July 20, 2015, but the exhibits were served via first class mail only and received by Joint Complainants on or about July 22, 2015.

⁶ It is the Joint Complainants' position that Blue Pilot's Confidential Supplemental Objections and Responses to Set VIII and Confidential Objections and Responses to Set IX are improperly labeled CONFIDENTIAL in their entirety. Blue Pilot has labeled every page of its Objections and Responses as "confidential," including the signature page. As such, it is unclear what specific information is intended to be confidential. The Protective Order entered in this matter limits confidential information to "those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public or which, if disclosed freely, would subject that party or others to risk of competitive disadvantage or other business injury." Blue Pilot's Objections and Responses to Sets VIII and IX do not meet this standard, as they do not wholly contain information that is specific to Blue Pilot or pertains to Blue Pilot's business practices. Furthermore, Blue Pilot has already served some of this same information publicly. Therefore, Joint Complainants submit that Blue Pilot has waived its right to label its Objections and Responses to Sets VIII and IX as confidential in their entirety.

attached hereto as Confidential Exhibit C. A copy of Blue Pilot's Confidential Objections and Responses to Joint Complainants' Set IX is attached hereto as Confidential Exhibit D. For the reasons set forth below, Joint Complainants respectfully request that Your Honors impose sanctions on Blue Pilot for its failure to fully and completely respond to Joint Complainants' Sets VIII and IX. Specifically, Joint Complainants respectfully request that:

- The ALJs direct that it is established in this matter that Blue Pilot's "desired rate of return" utilized in calculating rates for Pennsylvania consumers is high, and that this fact is not disclosed to consumers in Blue Pilot's marketing statements or the Company's Disclosure Statement and that Blue Pilot shall not be permitted to rebut these findings at hearings or in briefs as a sanction for the failure to fully and completely answer Joint Complainants' Set VIII-1;
- The ALJs direct that it is established in this matter that Blue Pilot had a high rate of return during the winter of 2013-2014 and that Blue Pilot shall not be permitted to rebut this finding at hearings or in briefs as a sanction for the failure to fully and completely answer Joint Complainants' Set VIII-1;
- The ALJs direct that it is established in this matter that Blue Pilot had positive income after expenses during the months January, February, March and April 2014 and that Blue Pilot shall not be permitted to rebut this finding at hearings or in briefs as a sanction for the failure to fully and completely answer Joint Complainants' Set VIII-1; and
- The ALJs direct that it is established in this matter that Blue Pilot's prices charged to Pennsylvania consumers do not match the pricing description in the Company's Disclosure Statement and that Blue Pilot shall not be permitted to rebut this finding at

hearings or in briefs as a sanction for the failure to fully and completely answer Joint Complainants' Set VIII-2.

Joint Complainants also request that the ALJs direct Blue Pilot to pay a civil penalty for each discovery request in Joint Complainants' Set IX that is not fully and completely answered by Blue Pilot per the ALJs' August 4 Order from August 14, 2015 until such date as the Company provides full and complete responses without impermissible objections.

II. LEGAL STANDARD

The Commonwealth Court of Pennsylvania has stated that “[d]iscovery itself is designed to promote free sharing of information so as to narrow the issues and limit unfair surprise. It is a tool which serves each litigant and promotes judicial economy.” See Pittsburgh Bd. of Public Educ. v. M.J.N. by N.J., 105 Pa Cmwlth. Ct. 397, 403, 524 A.2d 1385, 1388 (Pa. Commw. Ct. 1987). The failure to comply with the rules of discovery directly affects the due process rights of the party seeking discovery and prevents orderly and fair litigation. August 4 Order at 9, citing Nippes v. PECO Energy Co., Docket No. C-2013-2363324, I.D. at 5 (Aug. 20, 2013), Final Order (Sept. 30, 2013).

In relevant part, Section 5.371 of the Commission's regulations states:

(a) The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occurs:

(1) A party fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests, as required under this subchapter.

52 Pa. Code § 5.371(a)(1).

Section 5.372 of the Commission's regulations states:

(a) The presiding officer, when acting under § 5.371 (relating to sanctions—general) may make one of the following:

(1) An order that the matters regarding which the questions were asked, the character or description of the thing or land, the contents of the paper, or other designated fact shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing in evidence designated documents, things or testimony.

(3) An order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, or entering a judgment against the disobedient party or individual advising the disobedience.

(4) An order with regard to the failure to make discovery as is just.

52 Pa. Code § 5.372.

In the August 4 Order, the ALJs held that if Blue Pilot does not provide full and complete answers to Joint Complainants' Set VIII-1 and VIII-2 within ten days,

we will presume that the company had a high rate of return during the polar vortex winter of 2013-2014, and that the Company did make an income during the months of January – April, 2014, in accordance with the Joint Complainants' claim. Further, Blue Pilot will not be permitted to present evidence to rebut these presumptions at hearing.

August 4 Order at 9-10. The ALJs further stated that Blue Pilot is being given ten days to answer outstanding discovery, Sets VIII and IX, or a negative inference will be drawn against the Company. Id. at 11. Also in the August 4 Order, the ALJs noted that “[i]n cases where the Commission finds that one of the parties has litigated in bad faith, the Commission is empowered to impose sanctions in the form of civil penalties against that party.” August 4 Order at 10. Specifically, Section 3301 of the Public Utility Code permits the assessment of a civil penalty in situations where a party “refuse[s] to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the Commission.” See 66 Pa. C.S § 3301.

III. MOTION TO IMPOSE SANCTIONS

A. Blue Pilot's Response to Set VIII-1 Is Not Full and Complete and Contains Impermissible Supplemental Objections.

In Set VIII-1, Joint Complainants requested the following:

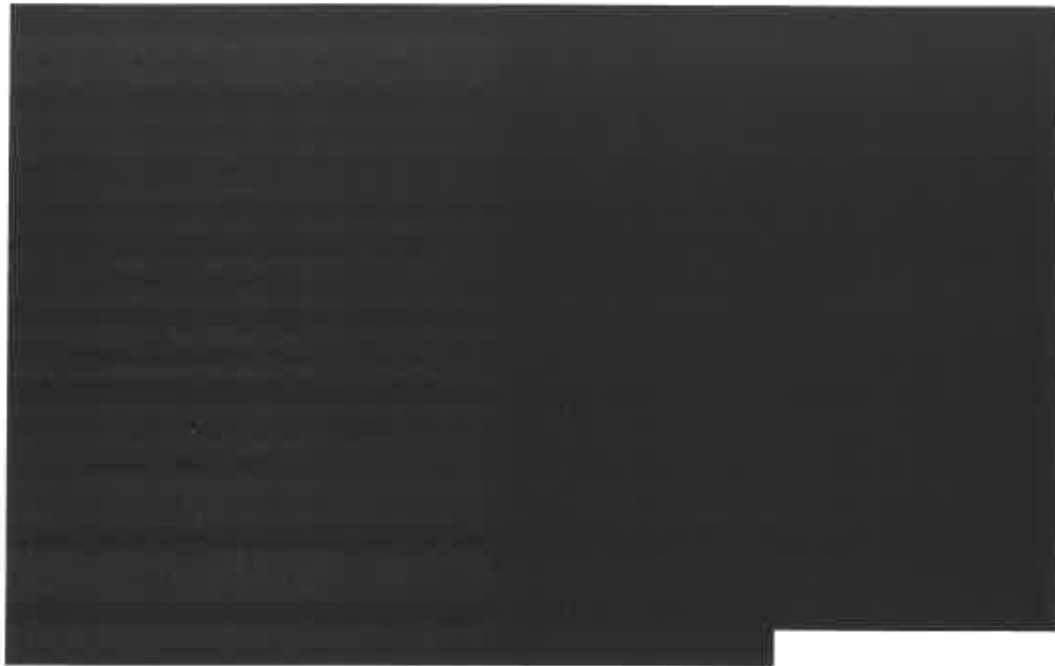
Regarding Blue Pilot's response to Joint Complainants Interrogatories Set I No. 9, describe in detail the "desired rate of return" Blue Pilot used in calculating rates for Pennsylvania customers on variable rate plans from March 31, 2012 until December 31, 2014. Please provide the rate of return obtained by Blue Pilot from its Pennsylvania sales to customers on variable rate plans for March 31, 2012 until December 31, 2014.

Blue Pilot objected to this discovery request in Objections served on April 17, 2015, wherein the Company asserted that the requested information is (1) privileged; (2) not relevant to the subject matter of this proceeding; and (3) would cause unreasonable annoyance and burden to Blue Pilot. These objections were overruled by the ALJs' Order of May 1, 2015, and the ALJs directed Blue Pilot to provide a full and complete response to Joint Complainants' Set VIII-1. In the August 4 Order, the ALJs again directed Blue Pilot to provide full and complete "answers" to Joint Complainants' Set VIII-1 or sanctions would be imposed. This Order plainly contemplates that the Blue Pilot is given a "last minute" chance to answer the outstanding discovery and does not contemplate further objections.

On August 14, 2015, Blue Pilot served Confidential Supplemental Objections and Responses to Joint Complainants' Set VIII-1, as follows:

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Joint Complainants submit that the response is not full and complete as the ALJs directed in the August 4 Order. Specifically, Blue Pilot fails to “describe in detail the ‘desired rate of return’ Blue Pilot used in calculating rates for Pennsylvania customers on variable rate plans from March 31, 2012 until December 31, 2014,” which is requested in Set VIII-1. Instead, Blue Pilot responds that it **BEGIN CONFIDENTIAL** [REDACTED]

[REDACTED] **END CONFIDENTIAL** but that statement/answer relates to profits only, not the desired rate of return that Blue Pilot actually used in calculating rates from March 31, 2012 until December 31, 2014.

Joint Complainants further submit that Blue Pilot’s supplemental objections provided with its response to Set VIII-1 are not permissible. The Commission’s regulations require answers to written interrogatories be provided in a certain form. Section 5.342 outlines the required form of an answer as follows:

- (a)(4) *Form.* Answers to interrogatories must [a]nswer each interrogatory fully and completely unless an objection is made.

52 Pa. Code § 5.342(a)(4). Moreover, the Commission's discovery regulations require specific, well-justified objections. Section 5.342 of the Commission's regulations provide in pertinent part:

- (c) . . . An objection must:
- (1) Restate the interrogatory or part thereof deemed objectionable and the specific ground for the objection.

52 Pa. Code § 5.342(c)(1). Such "specific ground for the objection" must be stated in a document separate from an answer to the discovery request. 52 Pa. Code § 5.342(c).

There is no provision in the Commission's regulations, however, permitting supplemental objections to discovery requests. Joint Complainants submit that Blue Pilot's Supplemental Objections and incomplete response to Set VIII-1 fail to meet the requirements of the Commission's regulations or the ALJs' directives in their May 1, 2015 Order and the August 4 Order. In the August 4 Order, the ALJs stated that should Blue Pilot not provide full and complete responses to outstanding discovery:

we will presume that the company had a high rate of return during the polar vortex winter of 2013-2014, and that the Company did make an income during the months of January – April, 2014, in accordance with the Joint Complainants' claim. Further, Blue Pilot will not be permitted to present evidence to rebut these presumptions at hearing.

August 4 Order at 9-10. As such, Joint Complainants respectfully request that the ALJs impose the following sanctions for Blue Pilot's failure to comply with the ALJs' May 1, 2015 Order and the August 4 Order:

- The ALJs direct that it is established in this matter that Blue Pilot's "desired rate of return" utilized in calculating rates for Pennsylvania consumers is high, and that this fact is not disclosed to consumers in Blue Pilot's marketing statements or the Company's

Disclosure Statement and that Blue Pilot shall not be permitted to rebut these findings at hearings or in briefs;

- The ALJs direct that it is established in this matter that Blue Pilot had a high rate of return during the winter of 2013-2014 and that Blue Pilot shall not be permitted to rebut this finding at hearings or in briefs; and
- The ALJs direct that it is established in this matter that Blue Pilot had positive income after expenses during the months January, February, March and April 2014 and that Blue Pilot shall not be permitted to rebut this finding at hearings or in briefs.

B. Blue Pilot's Response to Set VIII-2 Is Not Full and Complete and Contains Impermissible Supplemental Objections.

In Set VIII-2, Joint Complainants requested the following:

Please provide all documents and/or correspondence that are identified or referred to in Blue Pilot's response to Joint Complainants Discovery Request Set VI No. 7⁷ for January 1, 2013 until December 31, 2014.

⁷ In Set VI-7, Joint Complainants requested that Blue Pilot: "[p]lease describe in detail the records compiled or maintained by Respondent which concern, refer or relate to costs, expenses, profits, losses, revenues, and billing for Respondent's Pennsylvania operations." Blue Pilot's response to Set VI-7, served on March 13, 2015, was as follows:

Response: Pursuant to the Order [granting Joint Complainants' Motion to Compel, *inter alia*, response to Set VI-7], BPE states that the records compiled or maintained by Respondent which concern, refer or relate to costs, expenses and billing for Respondent's Pennsylvania operations are as follows:

Costs

- PJM Regional Transmission Organization invoices

Expenses

- Vendor Invoices
- Professional Services Invoices
- Indirect Overhead Allocation listing

Billing

- EDI Records to and from EDC's from the following categories: 867, 810, 824, and 820.

BPE reserves the right to supplement its response to this Discovery Request.

Blue Pilot's served objections to this discovery request on April 17, 2015, wherein the Company asserted that the requested information is (1) privileged; (2) not relevant to the subject matter of this proceeding; and (3) would cause unreasonable annoyance and burden to Blue Pilot.⁸ Despite the Company's pending objections, Blue Pilot served a partial response to Set VIII-2 on April 27, 2015. The Company's objections were overruled by the ALJs' Order of May 1, 2015, and the ALJs directed Blue Pilot to provide a full and complete response to Joint Complainants' Set VIII-2. Also, in their May 1, 2015 Order, the ALJs identified the information that Joint Complainants noted was missing from the Company's partial response to Set VIII-2. See May 1, Order at 8. In the August 4 Order, the ALJs again directed Blue Pilot to provide a full and complete response to Joint Complainants' Set VIII-2 or sanctions would be imposed.

On August 14, 2015, Blue Pilot served Confidential Supplemental Objections and Responses to Joint Complainants' Set VIII-2, as follows:

Objection: Without waiving BPE's previous objections to Discovery Request No. 2, BPE responded to this request on April 27, 2015.⁹

Joint Complainants submit that Blue Pilot did not fully and completely answer Set VIII-2 in its partial response provided to Joint Complainants on April 27, 2015, as the Company did not provide EDI records to and from EDCs related to the following categories: 867, 810, 824 and 820. No files or documents identified as EDI records to and from EDCs or relating thereto were provided by Blue Pilot. As such, Blue Pilot's response to Joint Complainants' Set VIII-2 is not full and complete as directed by the ALJs in their May 1, 2015 Order and the August 4 Order.

⁸ Blue Pilot served nearly identical objections to, *inter alia*, Joint Complainants VI-7. The ALJs overruled these objections and granted Joint Complainants' Motion to Compel by Order entered March 3, 2015.

⁹ On April 27, 2015, Blue Pilot provided the following partial response to Set VIII-2:

Subject to and without waiving the objections filed on April 17, 2015, *see* BPE-PALIT-002890-3201, which are contained on the enclosed CD.

Additionally, Blue Pilot states that the response was provided “[w]ithout waiving BPE’s previous objections.” These objections were overruled in the ALJs’ May 1, 2015 Order. Further, as already discussed, the Commission’s regulations are clear that discovery responses and objections are to be provided in separate documents and that objections must be specific and are timely only if served within ten days of receiving the discovery request. See 52 Pa. Code §§ 5.342(a)(4), (c) and (c)(1). Joint Complainants note that the verification that accompanied the Company’s response to Set VIII-2 on April 27, 2015, was executed by Raymond Perea, General Counsel to Blue Pilot, and stated that the response was “true and correct to the best of my knowledge, information, and belief” but did not state that the response was full and complete.

Joint Complainants submit that sanctions are appropriate for Blue Pilot’s failure to fully and completely answer Joint Complainants’ Set VIII-2 as directed in the ALJs’ May 1, 2015 Order and the August 4 Order. See 52 Pa. Code § 5.371(a)(1); August 4 Order at 9-10. The ALJs stated that if Blue Pilot does not provide full and complete responses within ten days of the August 4 Order, appropriate presumptions will be imposed upon Blue Pilot without the ability to present evidence to rebut such presumptions. See August 4 Order at 9-10, 12. Further, the ALJs in their May 1, 2015 Order regarding this discovery request stated that they deemed Joint Complainants’ Set VIII-2 as relevant to whether Blue Pilot charged prices that conformed to its Disclosure Statement. See May 1, 2015 Order at 9. As such, Joint Complainants respectfully request that the ALJs direct, as a sanction for Blue Pilot’s failure to comply with the May 1, 2015 and August 4 Order, that it is established in this matter that Blue Pilot’s prices charged to Pennsylvania consumers do not match the pricing description in the Company’s Disclosure Statement and that Blue Pilot shall not be permitted to rebut this finding at hearings or in briefs. Joint Complainants also respectfully request that the ALJs direct Blue Pilot to pay a civil penalty

in the amount of \$100 per day from August 14, 2015 until such date as the Company provides full and complete responses without impermissible objections to Joint Complainants' Set VIII-2.

C. Blue Pilot's Response to Set IX-1 Contains Improper Objections.

In Set IX-1, Joint Complainants requested the following:


a. Identify and describe specific responsibilities and duties of the persons listed below regarding their respective positions held at Blue Pilot from June 10, 2011 to the date of each person's separation from Blue Pilot.

- i. Andrea Zingo
- ii. Sandra Morton
- iii. Darrell Overturf

b. Provide, in corresponding subparts, the date of and reasons for the separations of each of the persons named in 1.a.

On August 14, 2015, Blue Pilot served Confidential Objections and Response to Set IX-1 as follows:

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Under the Commission's regulations, objections to written interrogatories and requests for production of documents must be provided in a certain manner and served at a different time

than answers to written interrogatories. See 52 Pa. Code §§ 5.342 and 5.349(d). Furthermore, to be timely, objections must be served within ten days of receiving the discovery request. 52 Pa. Code §§ 5.342(e) and 5.349(d). It is improper to both object and answer discovery requests. See e.g. Pa PUC v. Pennsylvania American Water Co., Docket No. R-2011-2232243, Order at 12 (July 21, 2011). (PAWC). In PAWC, the company simultaneously objected to and answered in the same document interrogatories propounded on the company by the OCA. The ALJ held that the company's conduct in answering and objecting in the same document "creates a situation that [is] highly confusing to both the Parties and the ALJs in this case . . . [and] such a tactic causes confusion on the parties conducting discovery and is highly improper." Id. In the August 4 Order, the ALJs noted that "[i]n cases where the Commission finds that one of the parties has litigated in bad faith, the Commission is empowered to impose sanctions in the form of civil penalties against that party." August 4 Order at 10. Specifically, Section 3301 of the Public Utility Code permits the assessment of a civil penalty in situations where a party "refuse[s] to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the Commission." See 66 Pa. C.S § 3301. The ALJs further noted in the August 4 Order that if a request for a civil penalty was before them, they "could also direct a civil penalty be paid on a daily basis in the event that the company fails to fully respond to these Interrogatories within ten (10) days." August 4 Order at 10.

Joint Complainants submit that as in PAWC, Blue Pilot improperly responded and objected to Set IX-1 in violation of Commission regulations and is causing confusion for both the parties and the ALJs. Further, Blue Pilot's objections to Set IX-1, which were served on May 13, 2015, are untimely and improperly served in the same document as Blue Pilot's response to Set IX-1. The ALJs directed Blue Pilot to fully and completely answer Joint Complainants' Set

IX, and Blue Pilot has not complied in so far as the response to Set IX-1 contains improper objections, making it unclear whether the response is full and complete. The verification to the response, signed by Ray Perea, General Counsel to Blue Pilot, merely states that the response is true and correct; nothing is stated regarding its completeness. As such, Joint Complainants respectfully request that the ALJs direct Blue Pilot to pay a civil penalty in the amount of \$100 per day from August 14, 2015 until such date as the Company provides full and complete responses without impermissible objections to Joint Complainants' Set IX-1.

D. Blue Pilot's Response to Set IX-2 Contains Improper Objections.

In Set IX-2, Joint Complainants requested the following:

a. Identify and describe specific responsibilities and duties of the persons listed below regarding their respective positions held at Blue Pilot from January 1, 2013 to the date of each person's separation from Blue Pilot.

- i. Samuel Delug
- i. Rosette Delug
- iii. Joseph Koppy
- iv. Raymond Perea
- v. Gregory Rosebeck
- vi. Diane Michelin
- vii. Jessica Renneker
- viii. Nazario Jureidini
- ix. Diane Michelin
- x. Charlene Nawfel
- xi. Tamela Pipes
- xii. Corinne Smith-Plattner

b. Provide, in corresponding subparts, the date of and reasons for the separations of each of the persons named in 2.a, if applicable.

On August 14, 2015, Blue Pilot served Confidential Objections and Responses to Joint Complainants' Set IX-2, as follows:

BEGIN CONFIDENTIAL



[REDACTED]

[REDACTED]

END CONFIDENTIAL

As discussed above in Section III.C., the Commission's regulations require that objections to written interrogatories and requests for production of documents be provided in a certain manner, namely in a separate document from the responses, and served at a different time than answers to written interrogatories. See 52 Pa. Code §§ 5.342 and 5.349(d). Furthermore, to

be timely, objections must be served within ten days of receiving the discovery request. 52 Pa. Code §§ 5.342(e) and 5.349(d). Additionally, it is improper to both object and answer discovery requests in the same document, as it causes confusion to the parties and ALJs. See e.g. PAWC.

Joint Complainants served Set IX-2 on May 13, 2014, and the ALJs directed Blue Pilot to serve full and complete responses within ten days of the August 4 Order. As such, Blue Pilot's objections to Set IX-2 are not timely. Further, the objections are not properly served because they are not in a document separate from the response. Blue Pilot has not complied with the August 4 Order in so far as the response to Set IX-2 contains improper objections making it unclear, whether the response is full and complete. The verification to the response, signed by Ray Perea, General Counsel to Blue Pilot, merely states that the response is true and correct; nothing is stated regarding its completeness. As such, Joint Complainants respectfully request that the ALJs direct Blue Pilot to pay a civil penalty in the amount of \$100 per day from August 14, 2015 until such date as the Company provides full and complete responses without impermissible objections to Joint Complainants' Set IX-2.

E. Blue Pilot's Response to Set IX-3 Contains Improper Objections.

In Set IX-3, Joint Complainants requested the following:

Identify and describe each and every decision, from June 10, 2011 to the date of their separations, in which the persons named in 1.a. participated ("Participant") relating to the following:

- a. Blue Pilot's business model;
- b. The method by which Blue Pilot would offer its products and services to consumers in Pennsylvania, including the telemarketing scripts Blue Pilot representatives were to use when contacting consumers;
- c. The price that Blue Pilot was to charge Pennsylvania consumers;
- d. Design and content of advertisements for Blue Pilot's products and services marketed in Pennsylvania;
- e. Design and content of Blue Pilot's website;

- f. Design of any and all written communications with Pennsylvania consumers;
- g. Selection of managers;
- h. The handling of Pennsylvania consumer complaints or claims of dissatisfactions; and
- i. Any and all Pennsylvania competitive market training materials and operating procedures of Blue Pilot.

For each subpart above, please also identify: (1) the relevant name or names of the Participant(s); (2) a specific description of the topic(s) discussed; and (3) the Participant's specific contribution(s) to the decision ultimately made.

On August 14, 2015, Blue Pilot served Confidential Objections and Responses to Joint Complainants' Set IX-3, as follows:

BEGIN CONFIDENTIAL

[REDACTED]

[REDACTED]

END CONFIDENTIAL

As discussed above in Section III.C., the Commission's regulations require that objections to written interrogatories and requests for production of documents be provided in a certain manner, namely in a separate document from the responses, and served at a different time than answers to written interrogatories. See 52 Pa. Code §§ 5.342 and 5.349(d). Furthermore, to

be timely, objections must be served within ten days of receiving the discovery request. 52 Pa. Code §§ 5.342(e) and 5.349(d). Additionally, it is improper to both object and answer discovery requests in the same document, as it causes confusion to the parties and ALJs. See e.g. PAWC.

Joint Complainants served Set IX-3 on May 13, 2014, and the ALJs directed Blue Pilot to serve full and complete responses within ten days of the August 4 Order. As such, Blue Pilot's objections to Set IX-3 are not timely. Further, the objections are not properly served because they are not in a document separate from the response. Blue Pilot has not complied with the August 4 Order in so far as the response to Set IX-3 contains improper objections making it unclear, whether the response is full and complete. The verification to the response, signed by Ray Perea, General Counsel to Blue Pilot, merely states that the response is true and correct; nothing is stated regarding its completeness. As such, Joint Complainants respectfully request that the ALJs direct Blue Pilot to pay a civil penalty in the amount of \$100 per day from August 14, 2015 until such date as the Company provides full and complete responses without impermissible objections to Joint Complainants' Set IX-3.

F. Blue Pilot's Response to Set IX-4 Contains Improper Objections.

In Set IX-4, Joint Complainants requested the following:

Identify and describe each and every decision, from January 1, 2013 to the date of their separations, in which each of the persons named in 2.a. participated ("Participant") relating to the following:

- a. Blue Pilot's business model;
- b. The method by which Blue Pilot would offer its products and services to consumers in Pennsylvania, including the telemarketing scripts Blue Pilot representatives were to use when contacting consumers;
- c. The price that Blue Pilot was to charge Pennsylvania consumers;
- d. Design and content of advertisements for Blue Pilot's products and services marketed in Pennsylvania;
- e. Design and content of Blue Pilot's website;

- f. Design of any and all written communications with Pennsylvania consumers;
- g. Selection of managers;
- h. The handling of Pennsylvania consumer complaints or claims of dissatisfactions; and
- i. Any and all Pennsylvania competitive market training materials and operating procedures of Blue Pilot.

For each subpart above, please also identify: (1) the relevant name or names of the Participant(s); (2) a specific description of the topic(s) discussed; and (3) the Participant's specific contribution(s) to the decision ultimately made.

On August 14, 2015, Blue Pilot served Confidential Objections to Joint Complainants'

Set IX-4, as follows:

BEGIN CONFIDENTIAL

[REDACTED]

[REDACTED]



END CONFIDENTIAL

As discussed above in Section III.C., the Commission's regulations require that objections to written interrogatories and requests for production of documents be provided in a certain manner, namely in a separate document from the responses, and served at a different time than answers to written interrogatories. See 52 Pa. Code §§ 5.342 and 5.349(d). Furthermore, to be timely, objections must be served within ten days of receiving the discovery request. 52 Pa. Code §§ 5.342(e) and 5.349(d). Additionally, it is improper to both object and answer discovery requests in the same document, as it causes confusion to the parties and ALJs. See also PAWC.

Joint Complainants served Set IX-4 on May 13, 2014, and the ALJs directed Blue Pilot to serve full and complete responses within ten days of the August 4 Order. As such, Blue Pilot's objections to Set IX-4 are not timely. Further, the objections are not properly served because they are not in a document separate from the response. Blue Pilot has not complied with the August 4 Order in so far as the response to Set IX-4 contains improper objections making it unclear, whether the response is full and complete. The verification to the response, signed by Ray Perea, General Counsel to Blue Pilot, merely states that the response is true and correct; nothing is stated regarding its completeness. As such, Joint Complainants respectfully request that the ALJs direct Blue Pilot to pay a civil penalty in the amount of \$100 per day from August 14, 2015 until such date as the Company provides full and complete responses without impermissible objections to Joint Complainants' Set IX-4.

G. Blue Pilot's Response to Set IX-5 Contains Improper Objections.

In Set IX-5, Joint Complainants requested the following:

a. Identify each and every meeting relating in any way to the telemarketing, advertising, sale, and pricing of Blue Pilot's products and services in Pennsylvania, whether in person, teleconference, or video conference, from June 10, 2011 to the date of their separations, attended by any of the persons listed below. In your response, please include the date, time, place, individuals present, a description of what was discussed, and any decisions made.

- i. Andrea Zingo
- ii. Sandra Morton
- iii. Darrell Overturf

b. Attach copies of any and all agendas, notes, documents used during the meeting, or any other documents related to the meeting.

On August 14, 2015, Blue Pilot served Confidential Objections and Responses to Joint Complainants' Set IX-5, as follows:

BEGIN CONFIDENTIAL



END CONFIDENTIAL

As discussed above in Section III.C., the Commission's regulations require that objections to written interrogatories and requests for production of documents be provided in a certain manner, namely in a separate document from the responses, and served at a different time than answers to written interrogatories. See 52 Pa. Code §§ 5.342 and 5.349(d). Furthermore, to be timely, objections must be served within ten days of receiving the discovery request. 52 Pa. Code §§ 5.342(e) and 5.349(d). Additionally, it is improper to both object and answer discovery requests in the same document, as it causes confusion to the parties and ALJs. See also PAWC.

Joint Complainants served Set IX-5 on May 13, 2014, and the ALJs directed Blue Pilot to serve full and complete responses within ten days of the August 4 Order. As such, Blue Pilot's

objections to Set IX-5 are not timely. Further, the objections are not properly served because they are not in a document separate from the response. Blue Pilot has not complied with the August 4 Order in so far as the response to Set IX-5 contains improper objections making it unclear, whether the response is full and complete. The verification to the response, signed by Ray Perea, General Counsel to Blue Pilot, merely states that the response is true and correct; nothing is stated regarding its completeness. As such, Joint Complainants respectfully request that the ALJs direct Blue Pilot to pay a civil penalty in the amount of \$100 per day from August 14, 2015 until such date as the Company provides full and complete responses without impermissible objections to Joint Complainants' Set IX-5.

H. Blue Pilot's Response to Set IX-6 Contains Improper Objections.

In Set IX-6, Joint Complainants requested the following:

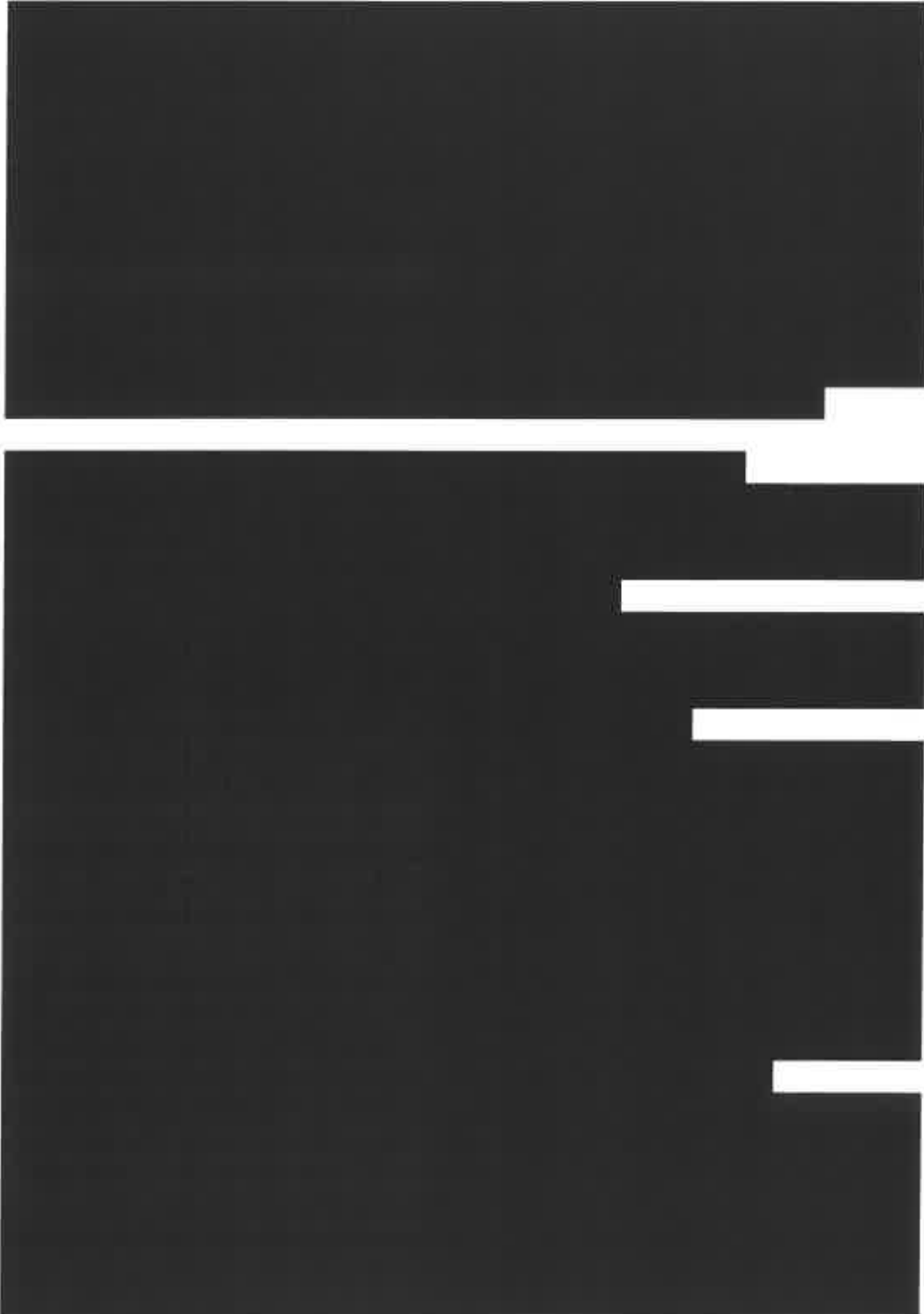
a. Identify each and every meeting relating in any way to the telemarketing, advertising, sale, and pricing of Blue Pilot's products and services in Pennsylvania, whether in person, teleconference, or video conference, from January 1, 2013 to the present, attended by any of the persons listed below. In your response, please include the date, time, place, individuals present, a description of what was discussed, and any decisions made.

- i. Samuel Delug
- ii. Rosette Delug
- iii. Joseph Koppy
- iv. Raymond Perea
- v. Gregory Rosebeck
- vi. Diane Michelin
- vii. Jessica Renneker
- viii. Nazario Jureidini
- ix. Diane Michelin
- x. Charlene Nawfel
- xi. Tamela Pipes
- xii. Corinne Smith-Plattner

b. Attach copies of any and all agendas, notes, documents used during the meeting, or any other documents related to the meeting.

On August 14, 2015, Blue Pilot served Confidential Objections and Responses to Joint Complainants' Set IX-6, as follows:

BEGIN CONFIDENTIAL





END CONFIDENTIAL

As discussed above in Section III.C., the Commission's regulations require that objections to written interrogatories and requests for production of documents be provided in a certain manner, namely in a separate document from the responses, and served at a different time than answers to written interrogatories. See 52 Pa. Code §§ 5.342 and 5.349(d). Furthermore, to be timely, objections must be served within ten days of receiving the discovery request. 52 Pa.

Code §§ 5.342(e) and 5.349(d). Additionally, it is improper to both object and answer discovery requests in the same document, as it causes confusion to the parties and ALJs. See also PAWC.

Joint Complainants served Set IX-6 on May 13, 2014, and the ALJs directed Blue Pilot to serve full and complete responses within ten days of the August 4 Order. As such, Blue Pilot's objections to Set IX-6 are not timely. Further, the objections are not properly served because they are not in a document separate from the response. Blue Pilot has not complied with the August 4 Order in so far as the response to Set IX-6 contains improper objections making it unclear as to whether the response is full and complete. The verification to the response, signed by Ray Perea, General Counsel to Blue Pilot, merely states that the response is true and correct; nothing is stated regarding its completeness. As such, Joint Complainants respectfully request that the ALJs direct Blue Pilot to pay a civil penalty in the amount of \$100 per day from August 14, 2015 until such date as the Company provides full and complete responses without impermissible objections to Joint Complainants' Set IX-6.

I. Blue Pilot's Response to Set IX-7 Contains Improper Objections and Is Not Full and Complete.

In Set IX-7, Joint Complainants requested the following:

Please provide Blue Pilot's employment file for Gregory Rosebeck, including the last known address and phone number of Gregory Rosebeck.

On August 14, 2015, Blue Pilot served Confidential Objections and Responses to Joint Complainants' Set IX-7, as follows:

BEGIN CONFIDENTIAL



[REDACTED]

[REDACTED]

END CONFIDENTIAL

As discussed above in Section III.C., the Commission's regulations require that objections to written interrogatories and requests for production of documents be provided in a certain manner, namely in a separate document from the responses, and served at a different time than answers to written interrogatories. See 52 Pa. Code §§ 5.342 and 5.349(d). Furthermore, to be timely, objections must be served within ten days of receiving the discovery request. 52 Pa. Code §§ 5.342(e) and 5.349(d). Additionally, it is improper to both object and answer discovery requests in the same document, as it causes confusion to the parties and ALJs. See also PAWC.

Joint Complainants served Set IX-7 on May 13, 2014, and the ALJs directed Blue Pilot to serve full and complete responses within ten days of the August 4 Order. As such, Blue Pilot's objections to Set IX-7 are not timely. Further, the objections are not properly served because they are not in a document separate from the response. Blue Pilot has not complied with the August 4 Order in so far as the response to Set IX-7 contains improper objections making it unclear as to whether the response is full and complete. The verification to the response, signed by Ray Perea, General Counsel to Blue Pilot, merely states that the response is true and correct; nothing is stated regarding its completeness.

Additionally, Blue Pilot responds by stating that it will provide the requested file. To date, the requested file has not been provided, and the Company has not indicated in its response

or otherwise when the file will be produced. The ALJs directed Blue Pilot to provide full and complete responses to Joint Complainants' Set IX within ten days of the August 4 Order. Blue Pilot's response is not full and complete because the requested file has not been produced.

As such, Joint Complainants respectfully request that the ALJs direct Blue Pilot to pay a civil penalty in the amount of \$200 per day from August 14, 2015 until such date as the Company provides full and complete responses, including the entire employment file requested, without impermissible objections to Joint Complainants' Set IX-7.

J. Blue Pilot's Response to Set IX-8 Contains Improper Objections.

In Set IX-8, Joint Complainants requested the following:

Please provide the separation agreement between Blue Pilot and Gregory Rosebeck. If none exists, please provide a detailed explanation of any agreement or understanding of separation between Blue Pilot and Mr. Rosebeck and the reason for separation.

On August 14, 2015, Blue Pilot served Confidential Objections and Responses to Joint Complainants' Set IX-8, as follows:

BEGIN CONFIDENTIAL



END CONFIDENTIAL

As discussed above in Section III.C., the Commission's regulations require that objections to written interrogatories and requests for production of documents be provided in a certain manner, namely in a separate document from the responses, and served at a different time than answers to written interrogatories. See 52 Pa. Code §§ 5.342 and 5.349(d). Furthermore, to be timely, objections must be served within ten days of receiving the discovery request. 52 Pa. Code §§ 5.342(e) and 5.349(d). Additionally, it is improper to both object and answer discovery requests in the same document, as it causes confusion to the parties and ALJs. See also PAWC.

Joint Complainants served Set IX-8 on May 13, 2014, and the ALJs directed Blue Pilot to serve full and complete responses within ten days of the August 4 Order. As such, Blue Pilot's objections to Set IX-8 are not timely. Further, the objections are not properly served because they are not in a document separate from the response. Blue Pilot has not complied with the August 4 Order in so far as the response to Set IX-8 contains improper objections making it unclear, whether the response is full and complete. The verification to the response, signed by Ray Perea, General Counsel to Blue Pilot, merely states that the response is true and correct; nothing is stated regarding its completeness. As such, Joint Complainants respectfully request that the ALJs direct Blue Pilot to pay a civil penalty in the amount of \$100 per day from August 14, 2015 until such date as the Company provides full and complete responses without impermissible objections to Joint Complainants' Set IX-8.

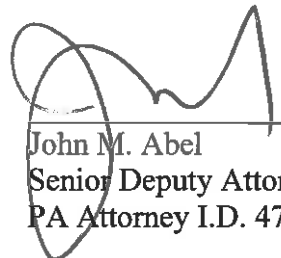
IV. CONCLUSION

For the foregoing reasons, Joint Complainants respectfully request that the Administrative Law Judges impose sanctions against Blue Pilot as follows:

- The ALJs direct that it is established in this matter that Blue Pilot’s “desired rate of return” utilized in calculating rates for Pennsylvania consumers is high, and that this fact is not disclosed to consumers in Blue Pilot’s marketing statements or the Company’s Disclosure Statement and that Blue Pilot shall not be permitted to rebut these findings at hearings or in briefs as a sanction for the failure to fully and completely answer Joint Complainants’ Set VIII-1;
- The ALJs direct that it is established in this matter that Blue Pilot had a high rate of return during the winter of 2013-2014 and that Blue Pilot shall not be permitted to rebut this finding at hearings or in briefs as a sanction for the failure to fully and completely answer Joint Complainants’ Set VIII-1;
- The ALJs direct that it is established in this matter that Blue Pilot had positive income after expenses during the months January, February, March and April 2014 and that Blue Pilot shall not be permitted to rebut this finding at hearings or in briefs as a sanction for the failure to fully and completely answer Joint Complainants’ Set VIII-1; and
- The ALJs direct that it is established in this matter that Blue Pilot’s prices charged to Pennsylvania consumers do not match the pricing description in the Company’s Disclosure Statement and that Blue Pilot shall not be permitted to rebut this finding at hearings or in briefs as a sanction for the failure to fully and completely answer Joint Complainants’ Set VIII-2.

Joint Complainants also respectfully request that the ALJs direct Blue Pilot to pay a civil penalty for each discovery request not fully and completely answered in Joint Complainants' Set IX per the ALJs' Order of August 4, 2015, totaling \$900 per day as detailed in this Motion, from August 14, 2015 until such date as the Company provides full and complete responses without impermissible objections to Joint Complainants' Set IX.

Respectfully submitted,



John M. Abel
Senior Deputy Attorney General
PA Attorney I.D. 47313

Margarita Tulman
Deputy Attorney General
PA Attorney I.D. 313514


Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
T: (717) 787-9707
F: (717) 787-1190
jabel@attorneygeneral.gov
mtulman@attorneygeneral.gov

Counsel for:

Kathleen G. Kane, Attorney General
Bureau of Consumer Protection

Date: September 2, 2015

211850



Candis A. Tunilo
PA Attorney I.D. 89891

Kristine E. Robinson
PA Attorney I.D. 316479
Assistant Consumer Advocates

Office of Consumer Advocate
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ctunilo@paoca.org
krobinson@paoca.org

Counsel for:

Tanya J. McCloskey
Acting Consumer Advocate

EXHIBIT A

Tunilo, Candis

From: Tunilo, Candis
Sent: Tuesday, May 12, 2015 9:02 AM
To: Moury, Karen; Castello, Geoffrey (GCastello@KelleyDrye.com)
Cc: Robinson, Kristine E.; mtulman@attorneygeneral.gov; jabel@attorneygeneral.gov
Subject: Blue Pilot responses to OAG/OCA Set VIII

Karen and Jeff: pursuant to the ALIs' Order granting Joint Complainants' Motion to Compel, full and complete responses to OAG/OCA Set VIII were due yesterday. Can you please let us know when we can expect to receive the responses?

Thanks, Candis

Candis A. Tunilo
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048

Tunilo, Candis

From: Castello, Geoffrey <GCastello@KelleyDrye.com>
Sent: Thursday, May 14, 2015 12:56 PM
To: Tunilo, Candis; Moury, Karen
Cc: Robinson, Kristine E.; Dusman, Dianne E.; jabel@attorneygeneral.gov; mtulman@attorneygeneral.gov
Subject: RE: Commonwealth of Pennsylvania et al v. Blue Pilot Energy LLC (C-2014-2427655): Motion to Dismiss

Candis:

That is correct.

Regards,

Jeff

Geoffrey W. Castello

Kelley Drye & Warren LLP
(973) 503-5922 | gcastello@kelleydrye.com

From: Tunilo, Candis [<mailto:CTunilo@paoca.org>]
Sent: Thursday, May 14, 2015 10:36 AM
To: Moury, Karen; Castello, Geoffrey
Cc: Robinson, Kristine E.; Dusman, Dianne E.; jabel@attorneygeneral.gov; mtulman@attorneygeneral.gov
Subject: FW: Commonwealth of Pennsylvania et al v. Blue Pilot Energy LLC (C-2014-2427655): Motion to Dismiss

Karen and Jeff: does this mean you have no intention of providing full and complete responses to OAG/OCA Set VIII per the ALJs' Order, which were due on Monday, May 11th? Please advise.

Thanks, Candis

From: Baxter, Barbara A. [<mailto:barbara.baxter@bipc.com>]
Sent: Thursday, May 14, 2015 10:25 AM
To: Bames, Elizabeth H (ALJ); Cheskis, Joel (ALJ); John M. Abel; Margarita Tulman ; Webb, Sharon; Estomin, Steve; Tunilo, Candis; Appleby, Christy M.; Robinson, Kristine E.; Swindler, Mike; Scott, Wayne; Wimer, Stephanie M.; Barbara Alexander
Cc: Moury, Karen; Baxter, Barbara A.
Subject: Commonwealth of Pennsylvania et al v. Blue Pilot Energy LLC (C-2014-2427655): Motion to Dismiss

Good morning,

On behalf of Blue Pilot Energy LLC, attached is Blue Pilot Energy, LLC's Motion to Dismiss Joint Complaint, which was electronically filed today.

Hard copies will be provided pursuant to the Certificate of Service.

Thank you,
Barbara Baxter

Assistant to
John F. Povilaitis, Karen O. Moury, and
Eugene E. Dice

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Buchanan Ingersoll & Rooney PC

KNOW GREATER PARTNERSHIP

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EXHIBIT B

Tunilo, Candis

From: Castello, Geoffrey <GCastello@KelleyDrye.com>
Sent: Friday, June 05, 2015 10:54 AM
To: Tunilo, Candis; Moury, Karen
Cc: mtulman@attorneygeneral.gov; jabel@attorneygeneral.gov; Robinson, Kristine E.
Subject: RE: OAG/OCA Set IX directed to Blue Pilot

Candis:

In light of the Motion to Dismiss, Blue Pilot does not intend to serve responses.

Regards,

Jeff

Geoffrey W. Castello

Kelley Drye & Warren LLP
(973) 503-5922 | gcastello@kelleydrye.com

From: Tunilo, Candis [<mailto:CTunilo@paoca.org>]
Sent: Thursday, June 04, 2015 5:01 PM
To: Moury, Karen; Castello, Geoffrey
Cc: mtulman@attorneygeneral.gov; jabel@attorneygeneral.gov; Robinson, Kristine E.
Subject: OAG/OCA Set IX directed to Blue Pilot
Importance: High

Karen and Jeff: On May 13th, Joint Complainants served Set IX on the Company. Blue Pilot did not serve objections to Set IX. Accordingly responses were due on Tuesday, June 2nd. We have not received any responses to date. Please advise whether the Company will serve responses to Set IX.

Thanks, Candis

Candis A. Tunilo
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048

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EXHIBIT C
(CONFIDENTIAL)

EXHIBIT D
(CONFIDENTIAL)

CERTIFICATE OF SERVICE

Commonwealth of Pennsylvania, by
Attorney General KATHLEEN G. KANE,
Through the Bureau of Consumer Protection,

And

TANYA J. McCLOSKEY, Acting Consumer Advocate,

Complainants

V.

BLUE PILOT ENERGY, LLC

Respondent

Docket No. C-2014-2427655

I hereby certify that I have this day served a true copy of the foregoing document, the Motion of Joint Complainants Commonwealth of Pennsylvania and the Office of Consumer Advocate to Impose Sanctions for Blue Pilot's Failure to Serve Full and Complete Responses to Joint Complainants' Interrogatories and Requests for Production of Documents Set VIII and Set IX, in the manner and upon the persons listed below:

Dated this 2nd day of September 2015.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

**Michael Swindler, Esq.
Stephanie M. Wimer, Esq.
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120**

SERVICE BY E-MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

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Candis A. Tunilo

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