

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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June 20, 2014

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.
Energy Services Providers, Inc. d/b/a Pennsylvania Gas &
Electric
Respondent
Docket No. C-2014-_____

Secretary Chiavetta:

Enclosed please find the Joint Complaint of the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer Advocate and the Public Statement of the Office of Consumer Advocate in the above-referenced proceeding.

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

Respectfully Submitted,

Handwritten signature of Candis A. Tunilo in cursive.

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

Enclosures

cc: Office of Administrative Law Judge
Office of Special Assistants
Certificate of Service

*185180

**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-
v.	:	
	:	
ENERGY SERVICES PROVIDERS, INC. d/b/a	:	
PENNSYLVANIA GAS & ELECTRIC	:	
Respondent	:	

JOINT COMPLAINT

AND NOW, comes the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (Attorney General) and the Acting Consumer Advocate Tanya J. McCloskey (OCA) (collectively referred to as Joint Complainants), who bring this action pursuant to the Public Utility Code, 66 Pa. C.S. Ch. 28, the Pennsylvania Public Utility Commission’s regulations, 52 Pa. Code Ch. 54, 56 and 111, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (Consumer Protection Law) and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.*

PRELIMINARY STATEMENT

1. This Joint Complaint is brought in the public's interest to address multiple violations of Pennsylvania law and Pennsylvania Public Utility Commission (Commission) orders and regulations, whereby consumers were misled and deceived as to the price they would pay for their electricity, all to their harm and detriment.

PARTIES

2. Tanya J. McCloskey is the Acting Consumer Advocate. The Office of Consumer Advocate is the agency authorized by law to represent the interests of utility consumers before the Commission, as provided in 71 P.S. § 309-1, *et seq.* The names and address of the OCA's attorneys are as follows:

Candis A. Tunilo
Assistant Consumer Advocate
Brandon J. Pierce
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923

3. The Attorney General is authorized by the Consumer Protection Law to bring an action in the name of the Commonwealth of Pennsylvania to restrain by temporary or permanent injunction unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as provided in 73 P.S. § 201-4.

4. The Consumer Protection Law further authorizes the Attorney General to take such action when she has reason to believe that any person is using or is about to use a method, act, or practice that is unlawful under the Consumer Protection Law and when she determines that proceedings would be in the public interest as provided in 73 P.S. § 201-4.

5. The Attorney General, as the chief law officer of the Commonwealth of Pennsylvania pursuant to Article IV § 4.1 of the Pennsylvania Constitution, is further authorized to initiate and maintain this action, and does so, pursuant to the Commonwealth Attorneys Act, 71 Pa. Stat. § 732-204. The names and address of the Attorney General attorneys are as follows:

John M. Abel, Senior Deputy Attorney General
Nicole R. Beck, Deputy Attorney General
Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

6. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric (Respondent) is a New York corporation and is registered to operate in Pennsylvania as Pennsylvania Gas & Electric. Respondent is licensed to supply electric generation to residential, small commercial (25 kw and under), large commercial (over 25 kw), industrial and governmental consumers in the Allegheny Power, Duquesne Light Company, PECO Energy Company, PPL Electric Utilities, Inc., Pike County Light & Power Company, and UGI Utilities, Inc. service territories in Pennsylvania.

7. The Commission approved the license application of Respondent by Order entered May 9, 2011 at Docket No. A-2010-2212421. See License Application of Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier and Aggregator of Retail Electric Power, Docket No. A-2010-2212421, Order (May 9, 2011) (Licensing Order I).

8. By Order entered August 1, 2011 at Docket No. A-2010-2212421, the license of Respondent was expanded to include the service territories of Citizens' Electric Company of Lewisburg, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and Wellsboro Electric Company. See License Application of Energy Services

Providers, Inc. d/b/a Pennsylvania Gas & Electric for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier and Aggregator of Retail Electric Power, Docket No. A-2010-2212421, Order (Aug. 1, 2011) (Licensing Order II).

9. Respondent submitted financial statements from its parent company MVC Capital, Inc. with its license application, and the Commission relied on this information in determining that Respondent had the technical and financial fitness required for granting the license requested. Licensing Order I at 5-6. MVC Capital, Inc. is a Delaware corporation and trades on the New York Stock Exchange under the symbol “MVC.”

10. The Commission is responsible for regulating the service of electric generation suppliers, as it relates to their activities in the marketing and sale of electricity and electric services. See 66 Pa. C.S. § 2809(e).

11. Respondent provides electric generation supplier (EGS) services to residential consumers, and as such, it must comply with applicable residential service regulations in Chapters 54 and 56 of the Commission’s regulations. See 52 Pa. Code Ch. 54 and 56. See also Licensing Order I at 3-4. Respondent must also comply with Chapter 111 of the Commission’s regulations. See 52 Pa. Code § 111.1.

12. Additionally, Respondent must abide by all applicable federal and state laws and Commission regulations, procedures and orders and ensure that its employees, representatives, agents and independent contractors do so as well. See Licensing Order I at 4-5.

13. Respondent offers variable rate electric generation service to residential consumers in the service territories designated in Licensing Order I and Licensing Order II.

14. Upon information and belief, Respondent uses a variety of marketing and advertising mediums to solicit residential consumers for its variable rate plan including telephonic, internet, mass mail and print solicitations.

15. Respondent, by advertising, marketing, and selling variable rate electric generation service, is engaged in trade or commerce within the Commonwealth.

16. Among the consumers charged high variable prices by Respondent's actions are hundreds of citizens over the age of 60.

17. On or about February 10, 2014, the OCA began receiving a high volume of calls and written correspondence from residential consumers on variable rate plans with EGSs regarding the level of electric generation charges on the consumers' electric bills. The OCA has received approximately 3,000 contacts from consumers regarding variable rates.

18. As of May 5, 2014, the OCA had collected information from approximately 2,434 of its consumer contacts.

19. Of the referenced 2,434 contacts, approximately 826 or 34% were from customers of Respondent. Of the referenced 826 total contacts, written information was collected from approximately 48 consumers.

20. From February 27, 2014 to June 4, 2014, the Attorney General received approximately 39,607 telephone calls and 7,503 consumer complaints related to variable rates charged by EGSs. Of the 7,503 consumer complaints, 1,762 or approximately 23% were against Respondent.

21. Upon information and belief, from January 1, 2014 to April 21, 2014, approximately 500 Formal Complaints were filed at the Commission by consumers regarding variable rates charged by EGSs. Additionally, upon information and belief, approximately 6,500

informal complaints and nearly 10,000 inquiries were made by consumers to the Commission regarding variable rates charged by EGSs. Of the approximately 203 Formal Complaints reviewed by the OCA to date, approximately 23 or 11% were filed against Respondent.

COUNT I – MISLEADING AND DECEPTIVE PROMISES OF SAVINGS

22. The foregoing paragraphs are incorporated herein.

23. Of the referenced 1,762 consumer complaints against Respondent received by the Attorney General, 284 or approximately 16% of the complainants indicated that they understood that their rate would always be lower than or equal to the Price to Compare (PTC) or that their rate would always be lower than the PTC. These complainants then received bills for generation service from Respondent that were at least two or three times more than the PTC.

24. Of the referenced 1,762 consumer complaints against Respondent received by the Attorney General, 62 complainants indicated that they believed that Respondent would provide them a guaranteed rate. These complainants then received bills for generation service from Respondent that were at least two or three times more than the PTC.

25. Of the referenced 48 consumers from whom written information was collected by the OCA, 8 or approximately 16.7%, stated that Respondent's salespeople promised guaranteed savings over the PTC as inducement for the consumers to switch to Respondent. These consumers indicated that they then received bills for generation service from Respondent that were at least two or three times more than the PTC.

26. Of the referenced 23 Formal Complaints filed with the Commission against Respondent reviewed by the OCA to date, at least 4 or 17% of the complainants averred that Respondent's salespeople promised savings over the PTC as inducement for complainants to

switch to Respondent. These complainants then received bills for generation service from Respondent that were at least two or three times more than the PTC.

27. The Commission's regulations state that a licensed EGS is responsible for any fraudulent, deceptive or other unlawful marketing acts by its employees, agents and representatives. See 52 Pa. Code § 54.43(f).

28. The Commission's regulations require compliance with the Consumer Protection Law, 73 P.S. § 201-1, *et seq.* See 52 Pa. Code §§ 54.43(f) and 111.12(d)(1).

29. The Consumer Protection Law defines "unfair or deceptive acts or practices" as, *inter alia*:

- Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he does not have;
- Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; and
- Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

See 73 P.S. § 201-2(4)(v), (xi) and (xxi).

30. It is averred, upon information and belief, that employees, agents and/or representatives of Respondent have engaged in and continue to engage in activities that are fraudulent, deceptive and/or in violation of the Commission's regulations and orders and the Consumer Protection Law by promising savings that may not, and for many consumers did not, materialize.

31. Additionally, upon information and belief, Respondent has failed to adequately train and monitor its agents, as required by the Commission's regulations. See 52 Pa. Code §§ 111.4 and 111.5.

COUNT II – SLAMMING

32. The foregoing paragraphs are incorporated herein.

33. Of the referenced 48 consumers from whom written information was collected by the OCA, 4 or approximately 8.3%, indicated that they did not consent to switch to Respondent.

34. Of the referenced 23 Formal Complaints filed with the Commission against Respondent reviewed by the OCA to date, 3 or 13% of the complainants averred that they did not consent to switch to Respondent.

35. Of the 1,762 consumer complaints received by the Attorney General against Respondent, 88 complainants indicated that they did not consent to switch to Respondent.

36. The Public Utility Code and the Commission's regulations prohibit switching a consumer's generation supplier without the consumer's consent (*i.e.* slamming). See 66 Pa. C.S. § 2807(d)(1); 52 Pa. Code § 54.42(a)(9).

37. The Commission's regulations require compliance with the Consumer Protection Law. See 52 Pa. Code § 54.43(f) and 111.12(d)(1).

38. The Consumer Protection Law prohibits fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding. See 73 P.S. § 201-2(4)(xxi).

39. It is averred, upon information and belief, that Respondent has violated and continues to violate the Commission's regulations and orders and the Consumer Protection Law by switching consumers to Respondent without the consumers' consent.

COUNT III – MISLEADING AND DECEPTIVE WELCOME LETTER

40. The foregoing paragraphs are incorporated herein.

41. The Welcome Letter sent to its new customers by Respondent thanks the customer “for enrolling in our highly competitive electricity supply program” and goes onto state that the Respondent is “committed to helping you lower your total energy costs.” See Welcome Letter attached as Appendix A.

42. The Commission’s regulations require compliance with the Consumer Protection Law. See 52 Pa. Code § 54.43(f) and 111.12(d)(1).

43. The Consumer Protection Law defines “unfair or deceptive acts or practices” as, *inter alia*:

- Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he does not have and
- Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

See 73 P.S. § 201-2(4)(v) and (xxi).

44. The Joint Complainants aver that the Respondent’s claims in its Welcome Letter represent benefits of its services that Respondent did not provide to its customers in violation of the Consumer Protection Law.

45. The Joint Complainants aver that the Respondent’s claims in its Welcome Letter were and are deceptive, which created and continues to create a likelihood of confusion and misunderstanding for the Respondent’s customers.

COUNT IV – LACK OF GOOD FAITH HANDLING OF COMPLAINTS

46. The foregoing paragraphs are incorporated herein.

47. Of the referenced 48 consumers from which written information was collected by the OCA, 29 or approximately 60% stated that when they attempted to contact Respondent about the variable rate charges on their bills, they could not get through to the Respondent on the telephone and/or their messages left for the Respondent went unanswered.

48. Of the referenced 23 Formal Complaints filed with the Commission against Respondent reviewed by the OCA to date, at least 8 or 35% of the complainants averred that when they attempted to contact Respondent about the variable rate charges on their bills, they could not get through to the Respondent on the telephone and/or their messages left for the Respondent went unanswered.

49. The Commission's regulations require EGSs to utilize good faith, honesty and fair dealing with residential consumers. See 52 Pa. Code § 56.1(a). See also Licensing Order at 3.

50. The Commission's regulations set forth the procedure for EGSs to use when they receive notice of a dispute, including a billing dispute, from a residential consumer. Upon notice of such dispute, EGSs are required to investigate the matter, provide the consumer with information necessary to make an informed judgment and issue a report to the consumer within 30 days. See 52 Pa. Code §§ 56.141(a), 56.151 and 56.152.

51. It is averred, upon information and belief, that Respondent has violated and continues to violate the Commission's regulations and orders by failing to adequately staff its call center, failing to provide reasonable access to Respondent representatives for purposes of submitting complaints, failing to properly investigate consumer disputes, failing to properly notify consumers of the results of the Respondent's investigation into a dispute when such

investigation was conducted, and failing to utilize good faith, honesty and fair dealing in its dealings with consumers.

COUNT V – FAILING TO PROVIDE ACCURATE PRICING INFORMATION

52. The foregoing paragraphs are incorporated herein.

53. The Disclosure Statement of Respondent states as follows regarding variable pricing:

Price. Your rate for the Commodity Charges will be a variable rate that changes daily and includes Transmission Charges and estimated total state taxes, including gross receipts tax, but excludes applicable state and local tax. Each month your rate will reflect your cost of electricity, including energy, other wholesale market services, the associated transmission and distribution charges and other market-related factors for your utilities transmission zone within the PJM ISO, plus all applicable taxes, fees, charges, costs, expenses and margins. The price assigned to you may not be the same price assigned to another variable rate account. Each month your bill for energy will be calculated by multiplying the Commodity Charges by the amount of energy used in the billing cycle plus applicable taxes. You may contact PAG&E each month at (866) 706-7361 to obtain your current rate for that day.

The Disclosure Statement is attached hereto as Appendix B.

54. The Commission's regulations require that variable pricing terms include the conditions of variability and the limits on price variability. See 52 Pa. Code § 54.5(c). The variable pricing terms of Respondent fail to adequately state the conditions of variability and the limits on price variability in violation of the Commission's regulation.

55. Of the 1,762 consumer complaints against Respondent received by the Attorney General, 246 or approximately 14% indicated that the Respondent would not provide the rate when they contacted the Respondent for such information.

56. The Commission's regulations require that EGSs "provide accurate information about their electric generation services using plain language and common terms in communications with consumers." See 52 Pa. Code § 54.43(1). Additionally, EGSs must

provide information to consumers “in a format that enables consumers to compare the various electric generation services offered and the prices charged for each type of service.” Id.

57. The Commission’s regulations require compliance with the Consumer Protection Law. See 52 Pa. Code § 54.43(f) and 111.12(d)(1).

58. The Consumer Protection Law prohibits fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding. See 73 P.S. § 201-2(4)(xxi).

59. It is believed and therefore, averred that Respondent has violated and continues to violate the Commission’s regulations and the Consumer Protection Law by failing to provide pricing information requested by its consumers in accordance with the Respondent’s Disclosure Statement.

60. It is believed and therefore, averred that the Respondent has violated and continues to violate the Commission’s regulations by failing to provide pricing information in plain language and using common terms that consumers understand.

61. It is believed and therefore, averred Respondent has failed to disclose all material terms of its services such that consumers could not determine from the Disclosure Statement the price that they would or could be charged by the Respondent or how the price would be calculated by Respondent.

62. It is believed and therefore, averred that Respondent violated and continues to violate the Commission’s regulations by failing to provide information to its consumers in a manner that would allow them to compare offers.

COUNT VI –PRICES NONCONFORMING TO DISCLOSURE STATEMENT

63. The foregoing paragraphs are incorporated herein.

64. Upon information and belief, Respondent charged its variable rate consumers prices at least as high as \$0.41 per kWh for electricity.

65. It is averred, upon information and belief, that Respondent's prices charged to consumers in early 2014 were not reflective of the cost to serve residential consumers.

66. By way of example, the cost to serve the average residential heating consumer in January 2014 should not have exceeded approximately \$0.23 per kWh. See Affidavit of Dr. Steven L. Estomin, attached hereto as Appendix C.

67. It is averred, upon information and belief, that the aforementioned prices do not conform to the variable rate pricing provision of the Respondent's Disclosure Statement.

COUNT VII – FAILURE TO COMPLY WITH THE TELEMARKETER REGISTRATION ACT

68. The foregoing paragraphs are incorporated herein.

69. Of the referenced 1,762 consumer complaints against Respondent received by the Attorney General, at least 394 consumers indicated that their service with Respondent was initiated by a telemarketing call from Respondent.

70. The Commission's regulations require EGSs to comply with the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* See 52 Pa. Code § 111.10(a)(1).

71. When Respondent sells its goods or services through the use of a telemarketing call, the Telemarketer Registration Act requires the Respondent to reduce any sale of goods or services made during such call to a written contract and obtain the consumer's signature on the written contract. See 73 P.S. § 2245(a)(7).

72. Additionally, the Telemarketer Registration Act requires the Respondent to provide consumers with a contract that contains, *inter alia*, the following:

- A detailed description of the consumer goods and services purchased which shall match the oral description given in the telemarketing solicitation;
- Any oral or written representations made during the telemarketing solicitation; and
- A statement that reads: “You are not obligated to pay any money unless you sign this contract and return it to the seller.”

See 73 P.S. § 2245(c).

73. Respondent failed to provide consumers with a contract that contained all of the required information set forth in Sections 2245(a)(7) and 2245(c) of the Telemarketer Registration Act, 73 P.S. § 2245(a)(7) and (c), and has therefore, violated and continues to violate the Commission’s regulations and orders and the Telemarketer Registration Act.

74. Under the Telemarketer Registration Act, any violation of 73 P.S. § 2241, *et seq.* is also a violation of the Consumer Protection Law. See 73 P.S. §2246(a).

75. The Commission’s regulations require that EGSs comply with the Telemarketer Registration Act and the Consumer Protection Law. See 52 Pa. Code § 54.43(f) and 111.10(a).

76. The Consumer Protection Law prohibits fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding. See 73 P.S. § 201-2(4)(xxi).

77. By failing to provide a contract that complies with the Telemarketer Registration Act, Respondent has also violated and continues to violate the Consumer Protection Law.

RELIEF

78. The foregoing paragraphs are incorporated herein.

79. Pursuant to Section 54.42 of the Commission's regulations, 52 Pa. Code § 54.42, the Commission may suspend or revoke an EGS's license and impose civil penalties for the following EGS conduct:

- Failure to follow the principles in 52 Pa. Code § 54.43;
- Violation of applicable provisions of the Public Utility Code, Commission regulations and Commission orders;
- Violation of the consumer protection law; and
- The transfer of a consumer without the consumer's consent.

80. Under the Consumer Protection Law, it is appropriate to impose a permanent injunction to restrain and prevent violations of the Consumer Protection Law and restore to any person in interest any moneys or property that may have been acquired by means of any violation of the Consumer Protection Law. See 73 P.S. § 201-4.1.

81. As outlined above, Respondent violated and continues to violate the Public Utility Code, the Commission regulations and orders, the Consumer Protection Law, the Telemarketer Registration Act, Licensing Order I and Licensing Order II.

WHEREFORE, Joint Complainants Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer Advocate, respectfully request that the Commission take the following actions:

A. Consolidate all similar pending formal complaints against Respondent with this Joint Complaint;

B. Find that Respondent violated the Telemarketer Registration Act, the Consumer Protection Law, the Public Utility Code, and the Commission's regulations and orders, as specified in the foregoing Joint Complaint, and revoke or suspend the Respondent's EGS license;

C. Find that Respondent violated the Telemarketer Registration Act, the Consumer Protection Law, the Public Utility Code, and the Commission's regulations and orders, as specified in the foregoing Joint Complaint, and impose a civil penalty;

D. Order Respondent to provide appropriate restitution, including without limitation to, refunding all charges to its customers that were over and above the Price To Compare in the customers' respective service territories from January 1, 2014 through the date of resolution of this matter, as well as any late, cancellation and/or termination fees and/or other such penalties charged to customers as a result of the Respondent's charges and customers leaving Respondent to obtain generation service elsewhere;

E. Order Respondent to prohibit its salespeople from making pricing promises to consumers that are deceptive and inaccurate;

F. Order Respondent to cease and desist switching consumers to its generation service without their explicit consent;

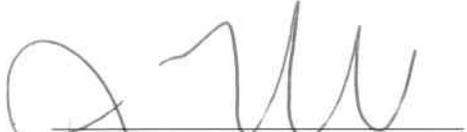
G. Order Respondent to implement proper consumer dispute procedures and adequately staff, train and monitor all employees and agents in such procedures;

H. Order Respondent to discontinue all other practices that violate the Consumer Protection Law, the Telemarketer Registration Act, the Public Utility Code, and the Commission's regulations or orders;

I. Order that the Respondent, its agents and employees, be permanently enjoined from engaging in any practice that violates the Consumer Protection Law and the Telemarketer Registration Act; and

J. Impose any other such relief that the Commission deems appropriate in this matter.

Respectfully submitted,



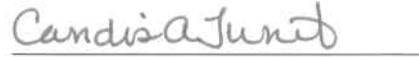
John M. Abel
Senior Deputy Attorney General
PA Attorney I.D. 47313

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PA Attorney I.D. 307665
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bpierce@paoca.org

Counsel for:

Tanya J. McCloskey
Acting Consumer Advocate

DATE: 6-20-14

APPENDIX A



[REDACTED]

April 3, 2013

RE: Account number [REDACTED]

Dear [REDACTED]

Welcome to Pennsylvania Gas & Electric¹ ("PAG&E"). On behalf of everyone at PAG&E, we would like to thank you for enrolling in our highly competitive electricity supply program. We are committed to helping you lower your total energy costs. There are no fees for choosing PAG&E as your supplier, and there are no fees if you ever choose to go back to the utility. Plus, after 12 months of service with PAG&E, you will be eligible to receive a 12% rebate on your single highest month's electricity supply charge by completing and returning to us the enclosed rebate certificate.

You will soon receive a letter from your utility confirming your enrollment with us. Your utility will continue to read your meter and deliver your electricity, just as they do now, and your utility's monthly bills will include the electricity provided by PAG&E.

We have summarized the terms of your enrollment in our program below, but you should read the full enclosed Terms and Conditions.

- ❖ Utility: PPL Electric Utilities
- ❖ Account number: [REDACTED]
- ❖ Product: Variable, 12% after 12
- ❖ Term: Month-to-Month
- ❖ Price: Starting Price \$0.06513 per kWh for May 2013
- ❖ Tax: Price includes gross receipts tax
- ❖ Cancellation fee: \$0
- ❖ In order to continue to receive our competitively priced variable rate and to be eligible to receive any applicable rebates, your account with the utility must remain current and not delinquent.

If your account is exempt from sales tax, please fax a copy of your applicable tax exemption certificate to (888) 829-5797. Be sure to reference your utility account number.

If you have any questions regarding your energy supply charges, please do not hesitate to call us toll-free at (866) 706-7361, Monday through Friday, 8:00 a.m. – 5:30 p.m. EST, and a Customer Service Representative will assist you. Be sure to visit us online at, www.PAGandE.com.

Sincerely,

PAG&E's Customer Service Team
Enclosures: Terms and Conditions
Rebate Certificate

¹ Pennsylvania Gas & Electric is not a utility or affiliated with a utility. PAG&E currently offers service to most customers falling within residential and small business rate classes. PAG&E will not accept enrollments for net metered accounts.

APPENDIX B

Pennsylvania Residential Customers
TERMS AND CONDITIONS – ELECTRICITY - PURCHASE AND SALE AGREEMENT

1. **Background.** I ("Customer") (as defined in the Customer Enrollment Form, website enrollment, and/or transcript of the enrollment telephone call between PAG&E and Customer – collectively referred to as the "Enrollment Confirmation") want Pennsylvania Gas & Electric ("PAG&E")¹, to supply my home with all the energy I need subject to the eligibility requirements of my electric distribution company ("EDC"), and acceptance by PAG&E ("Agreement"). The Public Utility Commission of Pennsylvania ("PUC") has authorized PAG&E to act as an Energy Service Company and has entered into a service agreement with the EDC. PAG&E is a retail energy marketer and not my EDC. The PUC does not regulate the price of energy or other charges found in this Agreement. I am at least 18 years old and fully authorized to enter into this Agreement. PAG&E sets the generation prices and charges that you pay. The PUC regulates distribution prices and services. The Federal Regulatory Commission regulates transmission prices and services. You will receive a single bill from your EDC for both its charges and PAG&E's charges. I understand it will take time for PAG&E to cancel my account. I may rescind this Agreement without fees or penalties within three (3) business days of receipt of the Customer Enrollment Form, by contacting PAG&E in writing, at 4075 Linglestown Rd #113, Harrisburg, PA 17112, or by telephone at (866) 706-7361.
2. **Term.** PAG&E will begin supplying my energy when the EDC switches my account to PAG&E. My Agreement with PAG&E will continue on a month-to-month basis until either party notifies the other party in writing of its desire to cancel this Agreement at least thirty (30) days before the intended month of cancellation. The EDC will send a confirmation notice of the transfer of service to PAG&E. If we propose to change our terms of service in any type of agreement, we will send you advance written notices at about 90 days and 60 days before the effective date of the change. If the EDC is billing our charges for us, then we will provide the notices in separate corresponding mailings. We will explain your options to you in these two advance notifications.
3. **Definitions.**
 - Generation Charges. Charge for production of electricity.
 - Transmission Charges. Charge for moving high voltage electricity from a generation facility to the distribution lines of an electric distribution company.
4. **Price.** Your rate for the Commodity Charges will be a variable rate that changes daily and includes Transmission Charges and estimated total state taxes, including gross receipts tax, but excludes applicable state and local tax. Each month your rate will reflect your cost of electricity, including energy, other wholesale market services, the associated transmission and distribution charges and other market-related factors for your utilities transmission zone within the PJM ISO; plus all applicable taxes, fees, charges, costs, expenses and margins. The price assigned to you may not be the same price assigned to another variable rate account. Each month your bill for energy will be calculated by multiplying the Commodity Charges by the amount of energy used in the billing cycle plus applicable taxes. You may contact PAG&E each month at (866) 706-7361 to obtain your current rate for that day.
5. **Information.** For inquiries and information regarding energy suppliers and the competitive retail energy market, I can contact the PUC at (888) 782-3228.
6. **Emergency Service.** In the event of an energy emergency or service interruption, you should immediately call your local utility's 24-hour electric emergency hotline (Duquesne Light – (888) 393-7000, PECO Energy Company – (800) 841-4141, Pike County Light & Power Company – (877) 434-4100, PPL Electric Utilities – (800) 342-5775, West Penn Power – (800) 255-3443, Mel-Ed, Penn Power, Penelec (888) 544-4877) and local emergency personnel. If I experience service related problems, I should contact my utility.
7. **Dispute Resolution.** If I have a question or concern about my bill, I may contact PAG&E by contacting PAG&E in writing at 4075 Linglestown Rd #113, Harrisburg, PA 17112, or by telephone at (866) 706-7361. PAG&E will refer all complaints to a staff member who, in good faith, will use reasonable efforts to reach a mutually satisfactory solution. If I am still not satisfied, I may call the PUC toll free at (800) 782-1110, or write the PUC, Bureau of Consumer Services, P.O. Box 3265, Harrisburg, PA 17105-3265.
8. **Cancellation Procedures.** Either party may cancel this Agreement (for reasons other than non-payment) at any time by providing written notice to PAG&E, at 4075 Linglestown Rd #113, Harrisburg, PA 17112, or to the other party at least thirty (30) days prior to the end of the intended month of cancellation. If I fail to notify PAG&E as set forth above, I shall remain liable to pay PAG&E for any energy acquisitions made by PAG&E to serve me under this Agreement at the price set forth above. It may take up to sixty (60) days after cancellation before I can receive supply from the EDC, or other energy supplier, depending upon the EDC, or other supplier procedures. During this time, I agree to pay for all energy I consume that PAG&E supplies to me. I will be issued a final bill within twenty (20) days after the final scheduled meter reading, or if meter access is restricted, an estimate of consumption will be used to calculate such bill, which will be reconciled after the final meter reading. Customer may cancel this Agreement without penalty in the event Customer relocates from one location to another, even if the move is within an EDC's service territory. If your electric service is terminated by your EDC, then this Agreement is cancelled on the date that your electric service is terminated.
9. **Energy Supply Quantity.** The EDC will determine all energy quantities supplied under this Agreement, including storage energy, and all such amounts will be accepted as accurate and conclusive by both parties and shall constitute the amount of the sale.
10. **Agency & Power of Attorney.** I appoint PAG&E as my agent and grant PAG&E a power of attorney to act on my behalf in acquiring the supplies necessary to meet my energy needs, contracting for and administering transportation, transmission and related services over interstate facilities and any EDC services necessary to deliver energy to my premises. PAG&E provides these services to me at no additional charge, as they are already included in the price noted above.
11. **Invoicing and Payment.** Unless otherwise agreed to in writing, the EDC will invoice me monthly for energy supplied to me under this Agreement.
12. **Title.** All energy sold under this Agreement shall be delivered to a location considered the "Point of Delivery," which shall be a location determined by PAG&E, and shall constitute the point at which, upon delivery thereto, the sale occurs and title passes from PAG&E to me.
13. **Liability.** In no event shall either party be liable for any punitive, incidental, consequential, exemplary, indirect, third-party claims or other damages whether based on contract, warranty, tort, negligence, strict liability or otherwise, or for lost profits arising from a breach of this Agreement.

¹Pennsylvania Gas & Electric is not a utility or affiliated with a utility.

14. **Choice of Laws.** Venue for any lawsuit brought to enforce any term or condition of this Agreement, or to construe the terms hereof shall be exclusively in the Commonwealth of Pennsylvania. This Agreement shall be construed under and shall be governed by the laws of the Commonwealth of Pennsylvania.
15. **Assignment.** I may not assign my interest in any obligations under this Agreement without the express advance written consent of PAG&E. PAG&E may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof, in connection with any financial agreement and may assign this Agreement to another energy supplier, energy services company, or other entity in accordance with the PUC rules and procedures, if any, governing such transactions.
16. **Severance.** If a court or regulatory agency of competent jurisdiction deems any provision of this Agreement to be invalid, or unenforceable, the remaining provisions shall continue in full force without being invalidated in any way.
17. **No Warranties.** Unless otherwise expressly set forth in this Agreement, PAG&E provides and I shall receive no warranties, express, or implied, statutory, or otherwise and PAG&E specifically disclaims any warranty of merchantability or fitness for a particular purpose.
18. **Delay or Failure to Exercise Rights.** No partial performance, delay or failure on the part of PAG&E in exercising any rights under this Agreement and no partial or single exercise thereof shall constitute a waiver of such rights or of any other rights hereunder.
19. **Force Majeure and Other Circumstances.** PAG&E will not be responsible for supplying energy to me in the event of circumstances beyond its control such as events of Force Majeure, as defined by the EDC, or any transmitting or transportation entity, acts of terrorism, sabotage, or acts of God. If there is a change of any law, rule, regulation or pricing structure whereby PAG&E is prevented, prohibited or frustrated from carrying out its terms of this Agreement, PAG&E may cancel this Agreement.
20. **Taxes and Laws.** Except as provided in this Agreement or by law, all taxes, levies, assessments and fees of whatsoever kind, nature and description, due and payable with respect to the delivery of energy under this Agreement, shall be paid or reimbursed by me except for federal, state or local taxes imposed on the net taxable income of PAG&E. The parties' obligations under this Agreement are subject to present and future legislation, orders, rules, or regulations of a duly constituted governmental authority having competent jurisdiction.
21. **Entire Agreement.** This Agreement and the Enrollment Confirmation set forth the entire agreement between the parties with respect to the terms and conditions of this transaction; any and all other agreements, understandings and representations by and between the parties with respect to the matters addressed herein and therein are superseded by this Agreement and the Enrollment Confirmation.
22. **Acceptance and Amendments.** This Agreement shall not become effective until accepted by PAG&E. PAG&E reserves the right to reject or cancel this Agreement upon my failure to maintain satisfactory credit standing as determined by PAG&E in PAG&E's sole discretion, or to meet minimum or maximum threshold consumption levels as determined by PAG&E in PAG&E's sole discretion. If we propose to change our terms of service in any type of agreement, we will send you advance written notices at about 90 days and 60 days before the effective date of the change. If I do not agree to such amendment, I may cancel this Agreement by providing written notice to PAG&E within thirty (30) days of the date of PAG&E's notice of amendment.

Supplier name: Pennsylvania Gas & Electric Phone number: 1-866-706-7351 Business hours: 8:00 a.m. to 5:30 p.m. URL: www.PAGandE.com	EDC name: Duquesne Light Provider of last resort: Duquesne Light Address: 411 Seventh Avenue (6-1) Pittsburgh, PA 15219 Phone number: (888) 393-7000 Universal Service Program Information: (888) 393-7000
PUC Electric Competition Hotline number: 1-800-692-7380	EDC name: PECO Energy Company Provider of last resort: PECO Energy Company Address: 2301 Market Street P.O. Box 8699 Philadelphia, PA 19101 Phone number: (800) 494-4000 Universal Service Program Information: (800) 494-4000
Public Utility Commission (PUC): P. O. Box 3265 Harrisburg, PA 17105-3265	EDC name: Pike County Light and Power Company Provider of last resort: Pike County Light and Power Company Address: 390 W. Route 59 Spring Valley, NY 10977 Phone number: (877) 434-4100 Universal Service Program Information: (877) 434-4100
EDC name: Met-Ed Provider of last resort: Met-Ed Address: 76 South Main Street Akron, OH 44308 Phone number: (888) 478-2300 Universal Service Program Information: (888) 478-2300	EDC name: PPL Electric Utilities Provider of last resort: PPL Electric Utilities Address: 827 Hausman Road Allentown, PA 18104 Phone number: (800) 342-5775 Universal Service Program Information: (800) 342-5775
EDC name: Penelec Provider of last resort: Penelec Address: 76 South Main Street Akron, OH 44308 Phone number: (888) 478-2300 Universal Service Program Information: (888) 478-2300	EDC name: West Penn Power Provider of last resort: West Penn Power Address: 800 Cabin Hill Drive Greensburg, PA 15601 Phone number: (800) 255-3443 Universal Service Program Information: (800) 255-3443
EDC name: Penn Power Provider of last resort: Penn Power Address: 76 South Main Street Akron, OH 44308 Phone number: (888) 478-2300 Universal Service Program Information: (888) 478-2300	

APPENDIX C

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AFFIDAVIT
OF
STEVEN L. ESTOMIN, Ph.D.

JUNE 19, 2014

EXETER

ASSOCIATES, INC.
10480 Little Patuxent Parkway
Suite 300
Columbia, Maryland 21044

AFFIDAVIT

1. My name is Steven L. Estomin. I am a Senior Economist and Principal with Exeter Associates, Inc., an economics consulting firm. My business address is 10480 Little Patuxent Parkway, Suite 300, Columbia, Maryland 21044.

2. At the request of the Pennsylvania Office of Consumer Advocate (OCA), I performed an analysis addressing residential variable rate pricing in Pennsylvania during the winter of 2014. Specifically, I conducted an analysis regarding day-ahead and real-time market prices for electric energy during the winter of 2014.

3. Separate analyses were conducted for electric space heating and non-electric space heating residential customers.

4. Separate analyses were conducted for the residential customers in the following Electric Distribution Company (EDC) service territories:
 - Allegheny Power System (APS)
 - Duquesne Light Company (DLC)
 - Metropolitan Edison Company (Met-Ed)
 - PECO
 - Penelec
 - PPL Utilities (PPL)

5. The categories of generation costs included in the analyses are:
 - Energy cost (the cost of energy delivered to the relevant EDC zone) – both day-ahead and real-time prices were relied upon
 - Cost of Alternative Energy Portfolio Standard compliance

- Capacity cost
 - Cost of ancillary services, margin (i.e., profit) and risk.
6. Prices were calculated for four separate 4-week billing cycles:
 - January 1 through January 30
 - January 8 through February 6
 - January 15 through February 13
 - January 22 through February 20
 7. The APS and Duquesne zones exhibit the lowest total all-in, per-MWh generation costs, varying from approximately \$70 per MWh (based on real-time energy prices for the Duquesne zone over the January 8 through February 6 billing cycle) to approximately \$135 per MWh (based on day-ahead energy prices for the APS zone over the January 15 through February 13 billing cycle).
 8. Costs for the remaining four zones are similar to each other and range from a total cost of approximately \$129 per MWh (based on real-time energy prices for the Penelec zone for non-space heat customers over the January 8 through February 6 billing cycle) to approximately \$228 per MWh (based on day-ahead energy prices for the PECO zone for space heating customers over the January 1 through February 30 billing cycle).
 9. The results obtained from this analysis suggest that the cost to serve residential consumers covering any of the four billing cycles examined would be not more than \$0.23 per kWh in any of the six EDC zones examined, even under the assumption that all supply were procured on the PJM spot markets.

AFFIDAVIT

Steven L. Estomin, being first duly sworn, deposes and says that this affidavit was prepared by him; that he is familiar with the contents thereof; and that the facts set forth therein are true and correct to the best of his knowledge, information and belief.

Steven Estomin
Steven L. Estomin

Subscribed and sworn to before me on this 19 day of June 2014

Robert M Adams
Notary Public

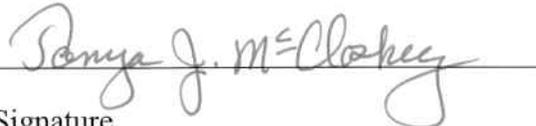
My Commission Expires: 2/2015

**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-
v.	:	
	:	
ENERGY SERVICES PROVIDERS, INC. d/b/a	:	
PENNSYLVANIA GAS & ELECTRIC	:	
Respondent	:	

VERIFICATION

I, Tanya J. McCloskey, Acting Consumer Advocate, hereby state that the facts set forth above in this Joint Complaint are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).


Signature


Date

VERIFICATION

I, Gregory Strupp, Consumer Protection Agent for the Office of Attorney General, Bureau of Consumer Protection, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that the Pennsylvania Office of Attorney General's Bureau of Consumer Protection expects to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 6/20/14

A handwritten signature in black ink, appearing to read 'Gregory Strupp', written over a horizontal line.

Gregory Strupp
Consumer Protection Agent
Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

**PUBLIC STATEMENT OF THE OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. § 309-4(e)**

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161 and for the following reasons, Acting Consumer Advocate Tanya J. McCloskey has determined to file a Joint Complaint with the Commonwealth of Pennsylvania by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (OAG) and participate in proceedings before the Commission involving Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric (PaG&E). The Joint Complaint alleges violations of the Public Utility Code, Commission regulations and orders, the Unfair Trade Practices and Consumer Protection Law and the Telemarketer Registration Act.

PaG&E is licensed by the Commission to supply electric generation to residential and commercial customers throughout Pennsylvania. Early in 2014, the OAG and the OCA received thousands of consumer complaints and contacts about supplier variable rate charges on their electric bills. The OCA joined in the filing of this Complaint to address multiple identified violations of the Commission's regulations and Pennsylvania law and to seek protections for consumers. The OCA will represent the interests of consumers before the Commission and ensure that PaG&E follows the requirements of the law and Commission regulations and orders when it engages in marketing and sales of its electric supply in Pennsylvania.

184551

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	:	
	:	Docket No. C-2014-
v.	:	
	:	
ENERGY SERVICES PROVIDERS, INC. d/b/a	:	
PENNSYLVANIA GAS & ELECTRIC	:	
Respondent	:	

I hereby certify that I have this day served a true copy of the foregoing Joint Complaint of the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer Advocate and the Public Statement of the Office of Consumer Advocate, in the manner and upon the persons listed below:

Dated this 20th day of June 2014.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Johnnie Simms, Esq.
Michael Swindler, 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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300 North Second Street
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Candis A. Tunilo

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