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September 3, 2015

Via Electronic Filing

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Second Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

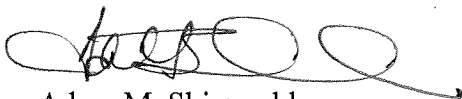
Re: Unified Energy Alliance, LLC v. Rodger K. Walter, et al.  
Docket No.: C-2015-2492473

Dear Ms. Chiavetta:

Enclosed you will find the Reply of Unified Energy Alliance, LLC to the New Matter of Navigate Power, LLC in the above referenced matter. Copies of the Reply will be served in accordance with the Certificate of Service.

Thank you for your courtesy and cooperation. If you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,



Adam M. Shienvold

AMS:kmo

Enclosure

cc: All Counsel and/or Parties of Record  
Per Certificate of Service  
Honorable Elizabeth H. Barnes (w/enc.)  
Ricardo Hernandez, II (w/enc., via email)

**CERTIFICATE OF SERVICE**

I certify that on this 3<sup>rd</sup> day of September, 2015, I served a copy of the REPLY OF UNIFIED ENERGY ALLIANCE, LLC TO THE NEW MATTER OF NAVIGATE POWER, LLC, upon the persons indicated below, via ECF and U.S. First-Class mail, which service satisfies the requirements of the Commissions formal rules at 52 Pa. Code Section 1.1:

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Counsel for Plaintiff

**BEFORE THE  
PENNSYLVANIA UTILITY COMMISSION**

UNIFIED ENERGY ALLIANCE, LLC,	:	
	:	
Complainant	:	
	:	DOCKET NO.: C-2015-2492473
v.	:	
	:	
RODGER K. WALTER, ERNIE	:	
HORNING, J. NICK STORCH, DUANE	:	
ALBRIGHT, ANDY YOUNDT, DON	:	
SHIPP, FUTURE ENERGY	:	
SOLUTIONS, LLC and NAVIGATE	:	
POWER, LLC,	:	
	:	
Respondents	:	

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**REPLY OF UNIFIED ENERGY ALLIANCE, LLC TO THE NEW  
MATTER OF NAVIGATE POWER, LLC**

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Unified Energy Alliance, LLC (“UEA”) submits its Reply to the New Matter of Navigate Power, LLC (“Navigate Power”), pursuant to Section 5.63 of the Rules of Practice of the Pennsylvania Public Utility Commission (“Commission”), as follows:

79. Paragraph 79 of Navigate Power’s New Matter incorporates by reference a four-page “Introduction” containing 30 sentences, many of which include factual allegations that require a response. To respond appropriately, UEA treats each sentence in the “Introduction” as a separately paragraphed pleading, and will restate the pleading in italics in each of the below subparagraphs, followed by UEA’s answer to each allegation:

- a. *Navigate Power and UEA are competing energy generation marketer/brokers.*

Admitted that Navigate Power and UEA are competing electric energy marketer/brokers in the Commonwealth of Pennsylvania.

- b. *The Individual Respondents are independent contractors who market energy on behalf of licensed marketer/brokers.*

Admitted in part, denied in part. UEA admits, upon information and belief, that the Individual Respondents currently are independent contractors who market energy on behalf of Navigate Power, and that Navigate Power is licensed to broker electric energy in the Commonwealth of Pennsylvania. UEA is without knowledge or information sufficient to form a belief as to whether the Individual Respondents market energy on behalf of any other marketer/broker, or whether any such marketer/broker is licensed. Denied that Navigate Power is licensed to market/broker natural gas in the Commonwealth of Pennsylvania. Upon information and belief, the Individual Respondents are marketing natural gas in the Commonwealth of Pennsylvania.

- c. *Over the years, the Individual Respondents have developed ongoing relationships with energy customers.*

This averment is vague, ambiguous, and impossible to accurately answer and, therefore, is denied, and strict proof thereof is demanded at trial.

- d. *In 2014, the Individual Respondents were affiliated with UEA (although not exclusively) and therefore marketed UEA-brokered products and services to their customers.*

Admitted that, during 2014, the Individual Respondents were independent contractors for UEA and, in that capacity, referred customers to UEA for electric supply contracts brokered by UEA. Upon information and belief

it is further admitted that, during 2014, the Individual Respondents were not exclusively marketing electric energy products brokered by UEA. The remaining averments of this paragraph are denied, including any implication that the Individual Respondents had any right to claim customers as “theirs.”

- e. *Upon information and belief, in or about December 2014, UEA began to withhold compensation from the Individual Respondents and/or take other actions in breach of its contractual obligations to the Individual Respondents.*

Denied. UEA has paid all compensation due to each of the Individual Respondents, and complied with all contractual obligations to the Individual Respondents. To the contrary, the Individual Respondents each acted in violation of their contractual obligations to UEA.

- f. *Thereafter, in or about January 2015, the Individual Respondents became affiliated with Navigate Power and commenced marketing Navigate Power-brokered products and services to their customers, including customers whose electric generation service contracts with UEA-affiliated suppliers were about to expire.*

Admitted that the Individual Respondents became affiliated with Navigate Power while still under contract with UEA. UEA is without knowledge or information sufficient to form a belief as to when the Individual Respondents became affiliated with Navigate Power or began marketing Navigate Power-brokered products and services. The remaining

averments of this paragraph are denied. UEA incorporates by reference the averments of its Complaint.

- g. *They did so, not to cause those customers to terminate their UEA contracts, as UEA claims, but rather to invite the customers to consider Navigate Power-brokered contracts.*

Denied. As more fully set forth in UEA's Complaint, the Individual Respondents and Navigate specifically targeted UEA's customers and utilized confusing, deceptive, and misleading marketing tactics that violate the Public Utility Code and the Commission's regulations.

- h. *Unwilling to pay its consultants and unable to compete with Navigate Power in the marketplace, UEA sued Navigate Power and the Individual Respondents in the Cumberland County Court of Common Pleas and moved for an emergency injunction prohibiting Navigate Power and the Individual Respondents from contacting or soliciting "UEA's" customers.*

Admitted only that UEA sued Navigate Power and the Individual Respondents in the Cumberland County Court of Common Pleas, and sought a preliminary injunction. The Complaint and Petition for Preliminary Injunction in that matter are public record and speak for themselves. The remaining averments of this paragraph are denied.

- i. *UEA's motion for emergency injunctive relief was denied by the Court on June 16, 2015, the presiding Judge having agreed that UEA had fallen "woefully short" of establishing the elements required to obtain such relief.*

Admitted only that UEA's Petition for Preliminary Injunction was denied "without prejudice." The remaining averments of this paragraph are denied.

- j. A hearing on Navigate Power's preliminary objections to UEA's civil complaint is scheduled to be held on Friday, August 14, 2015.*

Admitted that the Court heard argument on Navigate Power's preliminary objections to UEA's civil complaint on August 14, 2015. By way of further answer, the Court overruled Navigate Power's preliminary objections in their entirety on August 17, 2015.

- k. While the summary denial of UEA's motion did not dispose of the civil complaint, it did not auger well for its ultimate success.*

This averment does not state any facts and no responsive pleading is required. By way of further answer, the Court in rejecting Navigate Power's preliminary objections affirmed that UEA had stated legally sufficient claims against Navigate Power.

- l. Apparently hoping for better luck before the Commission, UEA filed the instant Complaint approximately two weeks after its motion was denied by the Court of Common Pleas.*

Admitted only that UEA filed its Formal Complaint with the Commission on July 2, 2015, approximately 16 days after the hearing on UEA's Petition for Preliminary Injunction. The remaining averments of this paragraph are denied. By way of further answer, the presiding judge at the Court of Common Pleas stated, among other things, that he believed the

“public interest” would best be protected by the Public Utility Commission in a case such as this one.

- m. *Although the Complaint is artfully drafted in terms of alleged violations of the Public Utility Code and the Commission’s regulations, it is based on essentially the same factual allegations and claims that are the subject of UEA’s civil complaint against Navigate Power and the Individual Respondents in the Cumberland County Court of Common Pleas.*

Admitted that the Complaint properly alleges violations of the Public Utility Code and the Commission’s regulations by Navigate Power and the Individual Respondents. Further admitted that many of the factual allegations that establish violations of the Code and the regulations also form the basis for civil liability against Navigate Power and the Individual Respondents. By way of further answer, the Formal Complaint in this proceeding and the Civil Complaint filed in the Court of Common Pleas are written documents that speak for themselves, and any characterization thereof by Navigate Power is denied.

- n. *Having been denied a quick victory in the Court of Common Pleas, and apparently doubting its ultimate chances of success in that forum, UEA has recast its claims for breach of contract, misappropriation of trade secrets, tortious interference, and the like as allegations of violations of the Public Utility Code and the Commission’s regulations governing electric generation suppliers.*

Denied. Although the Court denied the request for preliminary injunctive relief, UEA is proceeding with its claims for civil damages and equitable relief against Navigate Power and the Individual Respondents for their misappropriation of trade secrets, unfair competition, and tortious interference with contractual relations. That Navigate Power's conduct also is in violation of the Commission's regulations does not in any way diminish the significance of its misconduct.

- o. It is clear, however, that the competitive interests UEA seeks advance in both actions are substantively identical. (See Complaint ¶¶ 18-24 ("Interests of UEA").)*

Denied as stated. In the Cumberland County lawsuit, UEA seeks civil remedies for various tortious acts by Respondents, and for breaches of contract by the Individual Respondents. In the instant Formal Proceeding, UEA proceeds on behalf of itself and its customers who have been impacted directly by the Respondents' unfair, misleading, and deceptive practices in violation of the Public Utility Code and the Commission's regulations. By way of further answer, the Cumberland County Civil Complaint and the Formal Complaint before the Commission are written documents that speak for themselves, and any characterization thereof by Navigate Power is denied.

- p. Navigate Power submits that the Complaint represents an attempt by UEA to have the Commission adjudicate the factual allegations that form the basis of its civil complaint, and thus preempt or contravene the anticipated*

*unfavorable adjudication of those same allegations by the Court of Common Pleas.*

Denied. Although there are many facts in common to both proceedings, the interests to be protected are distinct. In the Cumberland County proceeding, UEA is seeking civil remedies for Navigate Power's and the Individual Respondents' tortious conduct and breaches of contract. No such relief is available to UEA in this proceeding. To the contrary, in this proceeding, UEA seeks relief in the form of equal enforcement of the Commission's regulations governing marketing/brokering of energy in the Commonwealth, and protection of both market participants (including UEA and other marketers/brokers) and consumers. By way of further answer, the Cumberland County Civil Complaint and the Formal Complaint before the Commission are written documents that speak for themselves, and any characterization thereof by Navigate Power is denied.

*q. UEA's interest in this proceeding, therefore, is to secure a tactical advantage over a competitor in ongoing civil business litigation.*

Denied. UEA's interest in this proceeding is to require Navigate Power and the Individual Respondents to adhere to the Commission's regulations for marketing and brokering electric energy and natural gas in the Commonwealth.

*r. Such an interest is not the kind of "direct, immediate and substantial interest" required to invoke the Commission's complaint jurisdiction.*

Denied. The averments of this paragraph are conclusions of law to which no responsive pleading is required and are deemed denied.

- s. *Jurisdictional and standing issues aside, the Complaint is long on rhetoric and short on facts.*

Denied. The Complaint states detailed facts supporting each allegation of a violation of the Commission's regulations. By way of further answer, the Complaint, being in writing, speaks for itself and any characterization thereof by Navigate Power is denied.

- t. *The vast majority of Complaint's allegations relate to the conduct of Individual Respondents.*

The Complaint, being in writing, speaks for itself and any characterization thereof by Navigate Power is denied.

- u. *Most of this alleged conduct – leaving UEA, affiliating with Navigate Power, contacting former customers and competing for and winning their business – constitutes normal business practices in a competitive industry, the result of which is the provision of service to customers on the best terms and at the best prices.*

Denied. The conduct about which UEA complains is unfair, deceptive, and misleading, and not "normal business practice" in any industry. By way of further answer, the Complaint, being in writing, speaks for itself and any characterization thereof by Navigate Power is denied.

- v. *The only clearly objectionable conduct attributed to the Individual Respondents is the alleged “slamming” - the unauthorized switching of customers’ energy suppliers.*

Admitted that “slamming” UEA’s customers is “clearly objectionable conduct.” The remaining averments of this paragraph are denied. By way of further answer, the Complaint, being in writing, speaks for itself and any characterization thereof by Navigate Power is denied.

- w. *Prior to receipt of the Complaint, Navigate Power was unaware of any of the claims of “slamming” alleged by UEA.*

UEA is without knowledge or information sufficient to form a belief as to whether Navigate Power was aware of any slamming by the Individual Respondents.

- x. *Moreover, upon information and belief, none of the allegedly “slammed” customers identified in the Complaint has contacted Navigate Power or the Commission to complain of the alleged “slamming.”*

UEA is without knowledge or information sufficient to form a belief as to whether any of the “slammed” customers contacted Navigate Power. By way of further answer, UEA has included those individuals in the Formal Complaint to assist them with their complaint to the Commission.

- y. *Upon information and belief, the alleged “slamming” did not in fact occur, and the alleged calls to UEA claiming “slamming” were prompted and/or scripted by UEA and its salesmen.*

Denied. Each of the customers identified in the Formal Complaint were slammed by the Individual Respondents acting on behalf of Navigate Power, as set forth in the Complaint and Exhibits.

- z. The allegations of improper conduct on the part of Navigate Power itself are minimal.*

Denied. The Complaint, being in writing, speaks for itself, and any characterization thereof by Navigate Power is denied.

- aa. Navigate Power acknowledges that in two letters it mistakenly stated that it was licensed to provide natural gas service in Pennsylvania, when in fact its natural gas license application remained pending before the Commission.*

This statement is an admission by Navigate Power that it misrepresented its licensure status in at least two letters sent to Pennsylvania consumers.

- bb. Navigate Power takes its obligation to provide accurate information to customers at all times quite seriously, and it does not seek to downplay these misstatements.*

Denied. The conduct of Navigate Power and its independent contractors (the Individual Respondents) demonstrates that Navigate Power does not “take seriously” its obligation to be fair and non-misleading in its communications with consumers.

- cc. However, Navigate Power submits that such isolated occurrences do not support the draconian relief - revocation or suspension of license, civil fines, etc. - demanded by UEA.*

Denied. The averments of this paragraph are conclusions of law to which no responsive pleading is required and are deemed denied. By way of further answer, the relief requested in the Complaint is plainly authorized by the Commission's regulations and is far from "draconian."

*dd. Stripped of its unsupported, irrelevant, and possibly manufactured allegations, the Complaint is nothing more than the attempt of a failed marketer to use the regulatory process to hobble its competitor.*

Denied. The allegations of the Complaint are well-pleaded, and state clear violations of the Commission's regulations. By way of further answer the Complaint, being in writing, speaks for itself and any characterization thereof is denied.

*ee. It should be dismissed as such.*

Denied.

80. UEA incorporates by reference the allegations of its Complaint and its answer to paragraph 79 as though more fully set forth herein.

#### **Answer to First Affirmative Defense**

81. UEA incorporates by reference the allegations of its Complaint and its answer to paragraph 79 as though more fully set forth herein.

82. The averments of paragraph 82 are conclusions of law to which no responsive pleading is required and are deemed denied.

#### **Answer to Second Affirmative Defense**

83. UEA incorporates by reference the allegations of its Complaint and its answer to paragraph 79 as though more fully set forth herein.

84. The averments of paragraph 84 are conclusions of law to which no responsive pleading is required and are deemed denied.

**Answer to Third Affirmative Defense**

85. UEA incorporates by reference the allegations of its Complaint and its answer to paragraph 79 as though more fully set forth herein.

86. The averments of paragraph 86 are conclusions of law to which no responsive pleading is required and are deemed denied.

**Answer to Fourth Affirmative Defense**

87. UEA incorporates by reference the allegations of its Complaint and its answer to paragraph 79 as though more fully set forth herein.

88. The averments of paragraph 88 are conclusions of law to which no responsive pleading is required and are deemed denied.

**Answer to Fifth Affirmative Defense**

89. UEA incorporates by reference the allegations of its Complaint and its answer to paragraph 79 as though more fully set forth herein.

90. The averments of paragraph 90 are conclusions of law to which no responsive pleading is required and are deemed denied.

**Answer to Sixth Affirmative Defense**

91. UEA incorporates by reference the allegations of its Complaint and its answer to paragraph 79 as though more fully set forth herein.

92. The averments of paragraph 92 are conclusions of law to which no responsive pleading is required and are deemed denied.

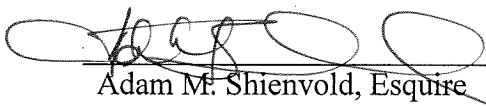
**Answer to Seventh Affirmative Defense**

93. UEA incorporates by reference the allegations of its Complaint and its answer to paragraph 79 as though more fully set forth herein.

94. The averments of paragraph 94 are conclusions of law to which no responsive pleading is required and are deemed denied.

WHEREFORE, Unified Energy Alliance, LLC, respectfully requests that Navigate Power's affirmative defenses be dismissed, with prejudice, and that the Commission grant relief as set forth in its Complaint.

Respectfully submitted,



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Telephone: 717-237-6000

Date: September 3, 2015

Attorneys for  
Unified Energy Alliance, LLC

**VERIFICATION**

I, Ricardo Hernandez, II, hereby verify that I am President of Unified Energy Alliance, LLC and that I am authorized to make this Verification on its behalf. No one person has knowledge of all of the facts set forth in the foregoing PLAINTIFF'S REPLY TO DEFENDANTS' NEW MATTER, but I am informed that the facts stated herein are true and correct to the best of my knowledge, information, and belief.

I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities..

Date:

9-2-2015

*Ricardo Hernandez II*

Ricardo Hernandez, II  
President  
Unified Energy Alliance, LLC