

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
800-684-6560

FAX (717) 783-7152  
consumer@paoca.org

October 2, 2015

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

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

Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

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

Respectfully Submitted,

*Candis A Tunilo*

Candis A. Tunilo  
Assistant Consumer Advocate  
PA Attorney I.D. #89891  
E-Mail: [CTunilo@paoca.org](mailto:CTunilo@paoca.org)

Enclosures

cc: Honorable Elizabeth H. Barnes, ALJ  
Certificate of Service

\*210665

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Unified Energy Alliance, LLC,	:	
	:	
v.	:	Docket No. C-2015-2492473
	:	
Rodger K. Walter,	:	
Ernie Horning,	:	
J. Nick Storch,	:	
Duane Albright,	:	
Andy Youndt,	:	
Don Shipp,	:	
Future Energy Solutions, LLC, and	:	
Navigate Power, LLC	:	

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PREHEARING MEMORANDUM  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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Pursuant to Section 333(a) of the Public Utility Code, 66 Pa. C.S. § 333(a), and in response to the Prehearing Conference Order issued on August 11, 2015, the Office of Consumer Advocate (OCA) provides the following information:

**I. INTRODUCTION**

On July 2, 2015, Unified Energy Alliance, LLC (UEA) filed a Formal Complaint with the Pennsylvania Public Commission (Commission) against Rodger K. Walter, Ernie Horning, J. Nick Storch, Duane Albright, Andy Youndt, Don Shipp (collectively Individual Agents), Future Energy Solutions, LLC (FES) and Navigate Power, LLC (NP). UEA's Formal Complaint contains the following counts: (1) inaccurate and misleading information to customers by the Individual Agents; (2) false, misleading and defamatory correspondence by NP to UEA's customers; (3) false and misleading correspondence to UEA customers by FES and Defendant

Storch; (4) slamming by Individual Agents; (5) lack of agent identification and misrepresentations by Individual Agents; (6) inaccurate information by Individual Agents, NP and FES; (7) failure to obtain Electric Generation Supplier (EGS) licenses by Individual Agents and NP; and (8) fraudulent, deceptive or other unlawful marketing or billing acts by Individual Agents and NP. By way of relief, UEA seeks that the Commission (1) determine that defendants violated the Public Utility Code and the Commission's regulations; (2) enjoin defendants from further violations of the Public Utility Code or the Commission's regulations; (3) reject, condition, suspend or revoke NP's EGC license and prohibit FES and the Individual Agents from obtaining EGS or Natural Gas Supplier licenses in the Commonwealth; and (4) impose a civil penalty.

On July 29, 2015, the Office of Consumer Advocate (OCA) filed a Notice of Intervention and Public Statement. On August 14, 2015, NP filed an Answer with New Matter to UEA's Formal Complaint denying wrongdoing and raising various affirmative defenses. On August 24, 2015, FES and the Individual Agents filed an Answer with New Matter denying wrongdoing and raising various affirmative defenses and a Counterclaim against UEA alleging slamming; fraudulent, deceptive or other unlawful marketing; and hiring a convicted felon to engage in door-to-door marketing. By way of relief in their Counterclaim, FES and the Individual Agents seek an order enjoining UEA from violating the Public Utility Code or the Commission's regulations; revocation or suspension of UEA's EGS license; and imposition of a civil penalty on UEA.

On September 3, 2015, UEA filed a Reply to New Matter of NP. On September 14, 2015, UEA filed its Reply with New Matter to the New Matter and Counterclaim of FES and the Individual Agents, wherein UEA generally denied wrongdoing or violating the Public Utility

Code or the Commission's regulations and raised various affirmative defenses to the Counterclaim.

These matters were referred to the Office of Administrative Law Judge and assigned to Administrative Law Judge Elizabeth H. Barnes (ALJ). ALJ Barnes issued the Prehearing Conference Order on August 11, 2015, directing that a prehearing conference is scheduled for October 7, 2015. The OCA submits this Prehearing Conference Memorandum pursuant to the Prehearing Conference Order.

## **II. ISSUES AND SUB-ISSUES**

The issues and sub-issues identified by the OCA in these matters are:

1. Whether the parties engaged in fraudulent, deceptive or other unlawful marketing or billing practices in violation of the Public Utility Code and Commission regulations;
2. Whether NP and the Individual Agents are properly licensed suppliers in the Commonwealth; and
3. Whether the parties engaged in slamming in violation of the Public Utility Code and Commission regulations.

The OCA reserves the right to include additional issues as more information becomes available through the discovery process or otherwise.

## **III. WITNESSES**

At this time, the OCA does not intend to call any witnesses in this proceeding. However, the OCA reserves the right to call witnesses in this proceeding and cross-examine other parties' witnesses. If OCA determines that it will call a witness or witnesses, the OCA will notify the ALJ and all parties of record.

**IV. SERVICE ON THE OCA**

The OCA will be represented in this case by Assistant Consumer Advocate Candis A. Tunilo. Two copies of all documents should be served on the OCA as follows:

Candis A. Tunilo  
Assistant Consumer Advocate  
Office of Consumer Advocate  
5<sup>th</sup> Floor, Forum Place  
555 Walnut Street  
Harrisburg, PA 17101-1923

Telephone: (717) 783-5048  
Facsimile: (717) 783-7152  
E-mail: [CTunilo@paoca.org](mailto:CTunilo@paoca.org)

**V. DISCOVERY MODIFICATIONS**

The OCA does not propose any discovery modifications at this time.

**VI. PUBLIC INPUT HEARINGS**

The OCA is unaware of any specific consumer requests for public input hearings in this matter to date. If the OCA becomes aware of substantial consumer interest, however, the OCA will promptly notify the ALJ and parties.

**VII. PROPOSED SCHEDULE**

The OCA will work with the parties and ALJ to reach achieve a litigation schedule in these matters.

## VIII. SETTLEMENT DISCUSSIONS

The OCA is willing to participate in settlement discussions in this matter.

Respectfully Submitted,

*Candis A Tunilo*

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Candis A. Tunilo  
Assistant Consumer Advocate  
PA Attorney I.D. # 89891  
E-Mail: [CTunilo@paoca.org](mailto:CTunilo@paoca.org)

Counsel for:  
Tanya J. McCloskey  
Acting Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Telephone: (717) 783-5048  
Facsimile: (717) 783-7152

Dated: October 2, 2015  
212691

CERTIFICATE OF SERVICE

Unified Energy Alliance, LLC,	:	
	:	
v.	:	Docket No. C-2015-2492473
	:	
Rodger K. Walter,	:	
Ernie Horning,	:	
J. Nick Storch,	:	
Duane Albright,	:	
Andy Youndt,	:	
Don Shipp,	:	
Future Energy Solutions, LLC, and	:	
Navigate Power, LLC	:	

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate’s Prehearing Memorandum, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:


Dated this 2nd day of October 2015.

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

Carl R. Shultz, Esq.  
Adam M. Shienvold, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
[cshultz@eckertseamans.com](mailto:cshultz@eckertseamans.com)  
[ashienvold@eckertseamans.com](mailto:ashienvold@eckertseamans.com)  
*Counsel for:* Unified Energy Alliance, LLC

Kathryn L. Simpson, Esq.  
Charles B. Zwally, Esq.  
Mette, Evans & Woodside  
3401 North Front Street  
P.O. Box 5950  
Harrisburg, PA 17110-0950  
[klsimpson@mette.com](mailto:klsimpson@mette.com)  
*Counsel for:* Individual Agents

Thomas J. Sniscak, Esq.  
Christopher M. Arfaa, Esq.  
Hawke McKeon & Sniscak LLP  
100 North 10<sup>th</sup> Street  
Harrisburg, PA 17105  
*Counsel for:* Navigate Power, LLC

  
Candis A. Tunilo  
Assistant Consumer Advocate  
PA Attorney I.D.# 89891  
E-Mail: [CTunilo@paoca.org](mailto:CTunilo@paoca.org)

Counsel for  
Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152  
\*210666