

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

UNIFIED ENERGY ALLIANCE, LLC,	:	
Complainant	:	
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,	:	
Respondents	:	

**PREHEARING CONFERENCE MEMORANDUM OF RODGER K. WALTER, ERNIE  
HORNING, J. NICK STORCH, DUANE ALBRIGHT, ANDY YOUNDT, DON SHIPP,  
and FUTURE ENERGY SOLUTIONS, LLC.**

Respondents RODGER K. WALTER, ERNIE HORNING, J. NICK STORCH, DUANE ALBRIGHT, ANDY YOUNDT, DON SHIPP, and FUTURE ENERGY SOLUTIONS, LLC, by their counsel, Mette, Evans & Woodside, file the following Prehearing Conference Memo pursuant to 52 Pa. Code § 5.222(d)(1):

a.) Service list entry:

Kathryn L. Simpson, Esquire  
Mette, Evans & Woodside  
3401 North Front Street, PO Box 5950  
Harrisburg, PA 17110-0950  
(717) 232-5000 – Telephone  
(717) 236-1816 – Facsimile  
*klsimpson@mette.com*

b.) Statement of possible settlement:

The controversy raised in this matter is currently being litigated in the Court of Common Pleas of Cumberland County. A possible settlement of the current

matter could be the voluntary dismissal of the pending matter and the continued prosecution of the matters pending in Cumberland County.

c.) Proposed plan and schedule of discovery:

1. Discovery requests, responses, objections, and motions to dismiss objections and compel responses are to be served by electronic mail as well as by first class mail. The date of service shall be the day the document is transmitted by electronic mail prior to 4:30 p.m. local prevailing time in Harrisburg, Pennsylvania; provided, however, that for purposes determining subsequent due dates under these modified procedures, all discovery requests, answers, objections, and discovery-related motions served on a Friday or on the day before a holiday recognized by the Commission will be deemed to have been served on the following business day.
2. Responses to written interrogatories, requests for production and requests for admissions shall be served within ten (10) calendar days after electronic service. Responses may be served electronically but hard copies must follow by first-class mail.
3. Objections to written interrogatories, requests for production and requests for admissions shall be served within five (5) calendar days of electronic service.
4. Depositions approved by the ALJ shall not exceed 3 hours in duration and shall be scheduled at the convenience of the parties and the witness(es).
5. Motions to dismiss objections and compel responses shall be filed and served on the ALJ and other parties within five (5) calendar days of electronic service of the objections. Answers to such motions shall be filed and served within three (3) calendar days after service of the motion.
6. The parties shall confer and attempt to resolve motions to dismiss objections and compel responses. If the objections that are the subject of the motion are not resolved, counsel will alert the ALJ by email of the need for a ruling, and a telephonic hearing on the motion may be scheduled.
7. Interrogatories, requests for production and requests for admissions which are objected to but which are not made the subject of a motion to compel will be deemed withdrawn.
8. Pursuant to 52 Pa.Code § 5.341(b), neither interrogatories nor responses are to be served on the Commission or the ALJ, although a certificate of service may be filed with the Commission's Secretary.

- d.) Other proposed orders with respect to discovery:

The parties are negotiating a protective order with regard to confidential information that is obtained in discovery.

- e.) Proposed schedule for the submission of written testimony, an in-person hearing, and submission of briefs:

Complainant's written testimony served	11/4/2015
Respondents' written testimony served	12/16/2015
Close of discovery	1/13/2016
Complainants' oral rejoinder outline served	1/27/2016
Written testimony file	
Evidentiary hearings	2/8/2016
Evidentiary hearings (if necessary)	2/9/2016
Main briefs filed	3/8/2016 (21 days after 2d day of hearing)
Reply briefs filed	3/22/2016 (14 days after Main briefs filed)

- f.) Names, business addresses, and telephone numbers of witnesses expected to be called and subject matter of testimony:

These Respondents will determine the relevant witnesses depending on the evidence proffered by the Complainant. In addition to the potential testimony of each of the Respondents whose addresses are all listed in the Formal Complaint, the Respondents may call the following witnesses all of whom have filed complaints with the Attorney General's Bureau of Consumer Protection regarding the conduct of Complainant and/or its agents and who are expected to testify in accord with their complaints:

Daryl G. Reiff  
300 Killinger Road  
Annville, PA 17003  
717-926-3645

Clifford Z. Zimmerman  
2993 Mill Road  
Elizabethtown, PA 17022  
717-367-5873

Harold R. Sensenig  
4301 Harvest Road  
Manheim, PA 17545  
717-664-2085

The Respondents respectfully request the right to amend this list as the Complainant's evidence is developed.

- g.) List of the issues and sub-issues of this proceeding which the party intends to address and statement of position:

Contingent upon the evidence submitted by Complainant, and respectfully reserving the right to amend this list, with regard to the Formal Complaint:

1. Whether any of these Respondents engaged in activities that would constitute slamming?  
Position: No Respondent engaged in any such conduct.
2. Whether any of these Respondents engaged in providing inaccurate and/or misleading information to consumers?  
Position: No Respondent provided any inaccurate or misleading information.
3. Whether any of these Respondents failed to provide proper agent identification and/or misrepresented their agency to a consumer?  
Position: At all times, Respondents were properly identified.
4. Whether any of the Respondents engaged in activities that would require a license?  
Position: No license was required to act as Respondents did.
5. Whether Unified Energy is entitled to relief from the PUC on its claims?  
Position: Unified Energy is not entitled to relief.

With regard to the Counterclaim:

1. Whether Unified Energy engaged in activities that would constitute slamming?  
Position: Unified Energy engaged in slamming.
2. Whether Unified Energy violated 52 Pa.Code § 111.4 where it had an agent for door-to-door marketing or sales who was convicted of a felony where the conviction (including burglary, theft and conspiracy to commit perjury) reflects adversely on the person's suitability for this type of employment?  
Position: Unified Energy violated the cited Code section.

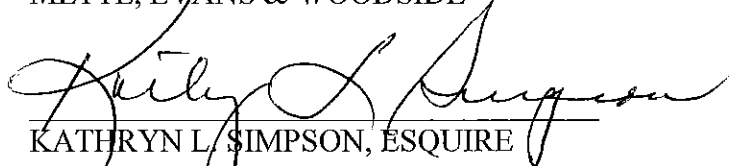
- h.) Statement describing the evidence the party proposes to present at the hearing, relating the evidence to each of the issues and sub-issues:

Depending upon the evidence submitted by the Complainant, these Respondents respectfully reserve their right to amend this list:

1. Testimony of the Respondents.
2. Testimony of customers.
3. Testimony of representatives of Unified Energy.
4. State Police records of Brian Mazer.
5. Business records of Complainant
6. Responses to discovery requests and requests for admissions
7. Any relevant public records

Respectfully submitted,

METTE, EVANS & WOODSIDE



KATHRYN L. SIMPSON, ESQUIRE

Sup. Ct. I.D. No. 28960

CHARLES B. ZWALLY, Esquire

Sup. Ct. I.D. No. 07137

3401 North Front Street, PO Box 5950

Harrisburg, PA 17110-0950

(717) 232-5000 – Telephone

(717) 236-1816 – Facsimile

Date: October 2, 2015

**CERTIFICATE OF SERVICE**

I certify that I am this day serving a copy of the foregoing document upon the person(s) by U.S. First Class mail addressed as follows, which service satisfies the requirements of the Commissions formal rules at 52 Pa. Code Section 1.1:

Adam M. Shienvold, Esquire  
Carl R. Shultz, Esquire  
ECKERT SEAMANS CHERIN & MELLOTT, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101

Thomas J. Sniscak, Esquire  
HAWKE McKEON & SNISCAK  
100 North 10<sup>th</sup> Street  
PO Box 1778  
Harrisburg, PA 17105

Candis A. Tunilo, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Fifth Floor, Forum Place  
Harrisburg, PA 17101-1923

METTE, EVANS & WOODSIDE

By:



KATHRYN L. SIMPSON, ESQUIRE

Sup. Ct. I.D. No. 28960

3401 North Front Street

P. O. Box 5950

Harrisburg, PA 17110-0950

(717) 232-5000 - Phone

(717) 236-1816 - Fax

*Counsel for Rodger K. Walter, Ernie Horning, J. Nick Storch, Duane Albright, Andy Youndt, Don Shipp, and Future Energy Solutions, LLC,*

Date: October 2, 2015