

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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Charles F. Delehanty v. MXEnergy : Docket No.
Inc., Billing dispute. : C-20077773
: :
Initial telephonic hearing : :
: :
----- X

Pages 1 through 54 Hearing Room No. 1
300 Liberty Avenue
Pittsburgh, Pennsylvania
Thursday, August 9, 2007

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

FRED R. NENE, Administrative Law Judge

APPEARANCES:

CHARLES F. DELEHANTY
350 North Balph Avenue
Apartment 1-F
Pittsburgh, Pennsylvania 15202
(Pro se)

EDMUND J. BERGER, Esquire
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P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE FRED R. NENE: This is the
3 time scheduled for a hearing on the complaint filed by
4 Charles F. Delehanty against MXEnergy, Inc. The complainant
5 is present telephonically.

6 MR. DELEHANTY: Yes, Your Honor.

7 JUDGE NENE: The respondent is present telephonically
8 represented by Attorney Edmund Berger.

9 MR. BERGER: Correct, Your Honor.

10 JUDGE NENE: My name is Fred Nene. I'm the
11 administrative law judge assigned by the Commission to
12 develop a record and issue an initial decision in this
13 matter. This appears to be a case where the complainant
14 believes he's not being charged according to the contract
15 that he made with the respondent.

16 Mr. Delehanty, are you still a customer of MXEnergy?

17 MR. DELEHANTY: I am not, Your Honor.

18 JUDGE NENE: Before we begin to take the testimony I
19 would like to ask the parties -- this apparently was
20 referred to mediation -- did mediation take place in this
21 matter, Mr. Berger?

22 MR. BERGER: Not that I'm aware of, Your Honor.

23 JUDGE NENE: Wasn't there something in the file that
24 this was referred to mediation review?

25 MR. DELEHANTY: I thought there was an informal

1 complaint filed with the consumer division of the PUC.

2 JUDGE NENE: Well, I don't know what the bottom line
3 in this case is. But the mediation opportunity gives you a
4 chance to try to settle this amicably. Is there any
5 possibility of that happening in this case, Mr. Delehanty?

6 MR. DELEHANTY: At this point I don't see it, and I
7 would like to present a case then, Your Honor, if I might.
8 I am prepared to present a case here today.
9 Whereupon,

10 CHARLES F. DELEHANTY,
11 having been duly sworn, testified as follows:

12 EXAMINATION

13 BY JUDGE NENE:

14 Q. Present your case then in the most succinct
15 manner you can and give me specific times and dates. Begin
16 by identifying yourself and stating your address, please.

17 A. My name is Charles F. Delehanty. My address is
18 350 North Balph Avenue, Pittsburgh, Pennsylvania, 15202.
19 I'm in Apartment 1-F.

20 This case, Your Honor, is over the law as found
21 in Chapter 52, 62 rather of Title 52 concerning the Natural
22 Gas Supply Customer Choice Program which is outlined in
23 Chapter 62. There is several citations of the law here,
24 sir, contained in that Chapter 62. There's one citation
25 from Chapter 59 concerning gas service.

1 But before I can cite, I cite your authority to
2 rule on this matter in, quote, Chapter 52, Subchapter C, per
3 customer information disclosure, unquote.

4 In particular, Section 62.71(a), quote, the
5 purpose of this subchapter is to require that all natural
6 gas providers enable customers to make informed choices
7 regarding the purchase of all natural gas services offered
8 by providing adequate customer information. Information
9 shall be provided to customers in an understandable format
10 that enables customers to compare prices and services on a
11 uniform basis.

12 Q. Mr. Delehanty, let me stop you right here. These
13 are legal arguments. First of all, we're going to get the
14 facts of the case. Okay? You can make a legal argument at
15 the conclusion of the factual information that we gather.
16 Okay? Let's do this in an orderly fashion. Tell me what it
17 is that's wrong first.

18 A. On October-- Let me try it this way then because
19 the law supports my position. On October 13th, per
20 chapter--

21 Q. What year, October 13th what year?

22 A. Of 2006. I contacted MXEnergy, and in compliance
23 with Section 59.93, customer contact with NGSs, I requested
24 a change of the NGS to be MXEnergy.

25 Q. NGS, would you tell us what that is for the

record, please?

2 A. For the record, that's defined in chapter-- This
3 is in Section 62.72, definitions in Chapter 62. An NGS,
4 quote, natural gas supplier--

5 Q. That's enough. That's all I need to know.

6 A. Okay. I make the distinction, sir, between a
7 natural gas distribution company, which is also defined, and
8 an NGS because an NGS is required to send a disclosure
9 statement to the customer. A natural gas distribution
10 company, such as Columbia Gas of Pennsylvania, is not
11 required to send such a contract to a customer.

12 Anyway, on the 13th I contacted them to request a
13 change of the NGS and gave authorization to Ms. Rawls.

14 Q. To whom?

15 A. Ms. Rawls I believe is her name. She's listed as
16 a witness. Is that Andrea Rawls?

17 MR. BERGER: Yes, it's Andrea Rawls. She's one of my
18 witnesses, and she's the person who did take your call on
19 October 13th.

20 THE WITNESS: Right.

21 A. She obtained the information from me, my account
22 number, current gas account number, name, and address.
23 According to 59.93, Section 59.93, then MXEnergy is then to
24 notify the NGSC of the customer's selection, you know, and
25 proceed with processing the application. That's what they

1 referred to it as an application for their service.

2 Then shortly after I received a document, from MXEnergy
3 dated October 25th of 2006, and I would like that document
4 to be put into evidence. That's Attachment 1 to my original
5 complaint.

6 JUDGE NENE: Wait a minute. Let's find it and see if
7 it's marked.

8 MR. BERGER: Your Honor, Mr. Delehanty's requested
9 exhibit is also MXEnergy's Exhibit 2.

10 JUDGE NENE: Then it's marked in that fashion?
11 Because the one attached to his exhibit is, I don't have
12 sufficient copies I don't believe.

13 MR. DELEHANTY: Then it's also my Exhibit C and D.
14 It's two pages. It's a front and back side. My exhibit is
15 different than theirs. They're not identical.

16 JUDGE NENE: Where is your exhibit?

17 MR. DELEHANTY: Exhibit C and D on my second filing
18 there. I didn't realize it was submitted twice.

19 JUDGE NENE: Wait until I find it. You've got
20 everything stapled together in not a very convenient
21 fashion.

22 MR. DELEHANTY: I don't know. I thought that that's
23 what the requirements were, that it be stapled.

24 JUDGE NENE: I'm going to leave them stapled. I'm
25 referring to your Exhibit C.

1 (Whereupon, the document was marked as Complainant
2 Exhibit No. C for identification.)

3 JUDGE NENE: Would you identify it, please.

4 THE WITNESS: That's the first page of the--

5 JUDGE NENE: It's a one-page document.

6 THE WITNESS: Well, it's the first page of a document
7 that is double-sided.

8 JUDGE NENE: I have a one-page document marked Exhibit
9 C. The following page is marked Exhibit D.

10 (Whereupon, the document was marked as Complainant's
11 Exhibit No. D for identification.)

12 MR. BERGER: This is Mr. Berger. I have the same
13 Exhibit C and D that you are talking about, Your Honor.

14 JUDGE NENE: Do you still wish to identify Exhibit C?

15 MR. DELEHANTY: Exhibit C is the first page.

16 JUDGE NENE: Exhibit C is the only page.

17 MR. BERGER: Unless he's referring to the cover page,
18 Your Honor.

19 MR. DELEHANTY: It's a double-sided document, Your
20 Honor. This was a front and back side. D is the back side,
21 and C is the front side.

22 JUDGE NENE: Well, you didn't say that. I have
23 Exhibit C and D. Is that what you want to refer to?

24 MR. DELEHANTY: Yes, sir.

25 BY JUDGE NENE:

1 Q. Go ahead.

2 A. We're talking front and back sides of a document
3 that was received by me. It's dated October 25, 2007(sic). It
4 was received from MXEnergy. It's my contention that that
5 document represents what I will define as a disclosure
6 statement.

7 Q. Let's go, Mr. Delehanty.

8 A. Okay. Under the Section 6272, definitions, the
9 disclosure statement is defined as, quote, the written
10 disclosure of the terms of service between an NGS and a
11 customer which satisfies the definition of, quote, consumer
12 contract, unquote, in Section 3 of the Plain Language
13 Consumer--

14 Q. Slow down a little bit.

15 A. I'm sorry. Which, okay, I don't know whether--
16 It's the written disclosure of the terms of service between
17 an NGS and a customer which satisfies the definition of,
18 quote, consumer contract, unquote, in Section 3 of the Plain
19 Language Consumer Contract Act.

20 Now, this statement is required to be sent by
21 MXEnergy to a residential customer. NDGCs, like Columbia
22 Gas of Pennsylvania, are not required to send such a
23 statement to customers. This statement, which contains all
24 the terms of the contract, is the only basis of an agreement
25 between a customer and MXEnergy, not any oral statements of

1 any kind. There's no language, no--

2 MR. BERGER: Your Honor

3 JUDGE NENE: Just a minute, Mr. Delehanty. Yes, Mr.
4 Berger?

5 MR. BERGER: I object to his statements in this
6 respect because he's making a conclusion of law. He can
7 make that in his closing argument.

8 JUDGE NENE: I sustain that.

9 BY JUDGE NENE:

10 Q. Mr. Delehanty, what we're getting right now is
11 the facts. You can make your legal arguments at the
12 conclusion.

13 A. Well, I received that document and I agreed to it
14 by not receiving it. Okay? The law says that that's how I
15 agreed to it.

16 Q. Well, let's not get into the law right now.
17 Let's just hear the facts.

18 A. That's it. I mean, then it turns out that
19 MXEnergy was charging me a variable rate instead of fixed
20 rate as specified in the document. The document was for a
21 fixed rate agreement.

22 Q. Okay.

23 A. At 79 cents per ccf. The reality was MXEnergy
24 charged me a variable rate.

25 Q. Do you want to tell us about that?

1 A. I mean, what else is there to say? I don't know
2 what you want.

3 MR. BERGER: I do have some cross-examination, Your
4 Honor.

5 JUDGE NENE: Yes, you may cross.

6 CROSS-EXAMINATION

7 BY MR. BERGER:

8 Q. Mr. Delehanty, are you done with your testimony?
9 You will have an opportunity to make--

10 A. Yes. I'm confused right now a little bit about
11 this presentation. But go ahead.

12 Q. Yes. Well, as His Honor has stated, you will
13 have an opportunity to make a concluding argument. But if
14 you have anything factual, other factual statements to
15 make--

16 A. Well, to me the only thing factual is that
17 MXEnergy did charge me a variable rate which I initially had
18 applied for when I spoke with Ms. Rawls in the October 13th
19 conversation, October 13th, 2006, conversation. I did do
20 what's called sign up for the variable rate program. But
21 the document that was sent to me we put into evidence was
22 for a fixed rate.

23 Q. Now, Mr. Delehanty, you agree that in your
24 October 13th conversation you said to Ms. Rawls that you
25 wanted the variable rate?

1 A. That's correct.

2 Q. And you agree that on October 14th they sent you
3 a letter--

4 MR. BERGER: Which, Your Honor, I premarked as
5 MXEnergy Exhibit 1.

6 JUDGE NENE: Let me find that, please. All right.

7 (Whereupon, the document was marked as MXEnergy
8 Exhibit No. 1 for identification.)

9 BY MR. BERGER:

10 Q. That letter indicates that you were to receive a
11 variable rate. Would you agree with that?

12 A. Never received that letter, sir.

13 Q. You didn't receive that letter?

14 A. Never received it.

15 Q. Okay. Now, you, in fact, were very interested in
16 a variable rate. Am I correct?

17 A. That's correct.

18 Q. You were concerned and you thought that rates
19 were going to drop--

20 A. Drop, that's correct.

21 Q. --and you signed up by a variable rate. Is that
22 correct?

23 A. That's correct.

24 Q. So you never had an intent to receive a fixed
25 rate. Is that correct?

1 A. That's correct. In fact, when I received the
2 document with the fixed rate in this I thought, gee, I asked
3 for a variable rate. But then I looked at it and I said,
4 gee whiz, this isn't a bad deal, 79 cents per ccf, that's
5 okay.

6 Q. Okay. Now, when you started getting billed by
7 MXEnergy when was that, do you know?

8 A. February, that first bill, I've got it here.
9 That was the first bill with MXEnergy was for, that was on
10 2/19/2007.

11 Q. That was for what period of time?

12 A. That was for the period of 2/19 to, oh, I'm
13 sorry, 1/19 to 2/18.

14 Q. So that was the first month for which you were
15 billed by MXEnergy; correct?

16 A. That's correct.

17 Q. Did you know that it was going to take some
18 period of time before you could be changed to their service?

19 A. Yes. Well, I knew that the contract with my
20 previous NGS didn't expire until the end of December or
21 something like that. In fact, there was a period where
22 Columbia Gas was my gas supplier there. There was a one
23 month, some weeks or something, in there where Columbia Gas
24 was my NGS, the contract with the previous NGS had expired,
25 and the one with MXEnergy whenever it began.

1 Q. Now, in the billing you received in February--

2 A. I never looked at it in detail.

3 Q. You never looked at it in detail--

4 A. No, because the bill wasn't unusually high,
5 particularly, so I didn't-- I said, oh, that's the gas
6 charges.

7 JUDGE NENE: Mr. Delehanty, let me ask you to please
8 wait until Mr. Berger finishes his sentence and then you
9 begin. We can't take down two people at one time.

10 THE WITNESS: I'm sorry.

11 BY MR. BERGER:

12 Q. Mr. Delehanty, you never looked at your February
13 19th bill until sometime later?

14 A. The next month.

15 Q. Can you tell me what the rate indicated on that
16 bill was?

17 A. .99 per ccf.

18 Q. Now, what was it that prompted you to contact
19 MXEnergy regarding your service and the fact that you
20 weren't receiving the 79 cent per ccf rate?

21 A. I had complained to a friend of mine. I said, "I
22 set my thermostat at 60, and it got a little bit cold." And
23 a friend of mine says, "Oh, move it on up." So I moved it
24 up to 65, and, boy, did I pay a price. My usage really
25 jumped. It jumped from 41 ccf on that February bill to 133

1 ccf on the next bill, on the March 20th bill.

2 That's when I looked at the bill. I looked at
3 the details. I looked it over and saw that MXEnergy was
4 charging on that bill -- this is the 3/20 bill right here;
5 here it is -- 1.089 per ccf. That's when I thought, wait a
6 minute, what's going on here.

7 Q. What did you do at that point in time?

8 A. I called-- Well, I think I-- Oh, I know I
9 called MXEnergy twice and I spoke with, one time I spoke
10 with a gentleman named Zachary and another time I spoke with
11 a gentleman named Pedro and his identification number is
12 5136. Both of those gentlemen said that they had no record
13 of my account.

14 Q. But, anyhow, shortly after this happened you
15 contacted MXEnergy and made a complaint and then would you
16 agree with me you contacted the PUC and made a complaint?

17 A. That's correct. That's because I had not
18 received any response from MXEnergy.

19 Q. Okay. But did--

20 A. Including I sent them on the 29th an 11-page
21 document which is supported by a telephone record of mine, a
22 seven-minute telephone call. I sent that to the fax number
23 on the front part of the document that I received.

24 Q. Okay.

25 A. I got no response.

1 Q. Okay. Would you agree with me that you did
2 subsequently speak to people at MXEnergy and, in fact, on
3 May 3rd you had an extensive conversation with a number of
4 people, including Mr. Hartmann, MXEnergy's general counsel,
5 regarding the situation? Is that right?

6 A. The only person I conversed with in the phone
7 conversation was Mr. Hartmann. The other two people were
8 witnesses that they were brought in. I think maybe there
9 was acknowledgment of that kind of thing. They were just
10 witnesses as far as I recall. My only conversation, I
11 believe, was only with Mr. Hartmann.

12 Q. Did you have any conversations subsequent to the
13 filing of your informal complaint with MXEnergy other than
14 the May 3rd conversation?

15 A. Well, the informal complaint was filed before May
16 3rd. It was filed back on May 26th I filed my first fax to
17 the FUC because of the telephone calls to MXEnergy where
18 they said they didn't know who I was.

19 Q. You did speak to MXEnergy. Am I correct?

20 A. On May 3rd, yes.

21 Q. Did you speak to them at any other time after the
22 filing of the informal complaint?

23 A. I called Mr. Hartmann, I think, on two occasions.
24 One was to get his fax number, and the other was to confirm
25 that they were, indeed, terminating my service with them.

1 Q. Okay. When did they terminate your service, sir?

2 A. That was just finally terminated there as of my
3 July bill. Okay. It was terminated at -- this was the last
4 one -- 5/19, 6/19. I'm sorry. 6/19 or 6/18 was the last
5 date of their service.

6 Q. Okay. So they served you from January 19th to
7 June 18th of this year. Is that correct?

8 A. That's correct.

9 Q. And they served you at a variable rate. Is that
10 correct?

11 A. That's correct.

12 Q. And you had initially indicated to Ms. Rawls that
13 you wanted the variable rate. Is that correct?

14 A. That's correct.

15 Q. Now, when you got the letter of October 25th,
16 2006, that said it was a fixed rate for 999 months, did it
17 occur to you that that was a mistake given the fact that you
18 had asked for a variable rate?

19 A. The thought that came to me was -- I don't know
20 much about contract law -- but, if I recall correctly, one
21 time somebody in my family had a contract and it didn't have
22 a term limit on it. That was in another state. And I
23 recall at that time -- and this thought came to me when I
24 saw the 999 -- that in order for a contract to be valid
25 there has to be a specific term, it can't be just

1 indefinite.

2 So that's when I thought, oh, well, the 999 is
3 specific. And I thought, oh, they probably meant 12 months,
4 and I didn't think it was important. So at least it was
5 999, it was specific.

6 Q. Okay. Did you do anything following the receipt
7 of the October 25th letter to correct the misunderstanding
8 or the--

9 A. To me there was no misunderstanding. No, I
10 didn't do anything. I thought, hey, it's a good deal.

11 Q. When you asked for a variable rate and they had a
12 fixed rate on there?

13 A. I understand. But I thought in looking at 79
14 cent fixed rate I thought, hey, that's a good deal.

15 Q. So even though you had discussed a variable rate
16 with Ms. Rawls, when it said fixed rate and when it had 999
17 months it didn't occur to you that they might have made a
18 mistake?

19 A. No.

20 Q. Now, in your May 3rd conversation with Mr.
21 Hartmann, MXEnergy's general counsel, you replayed the tape
22 at that time and you agreed, as you've agreed here, that the
23 October 13th conversation had a variable rate. Is that
24 right?

25 A. That question is repetitive. I've already

1 answered it, haven't I, sir?

2 Q. No. I'm asking you about the conversation on May
3 3rd. I haven't asked you about that before.

4 A. I thought you were asking me about what I said on
5 the 13th.

6 JUDGE NENE: Just answer the question, Mr. Delehanty.

7 A. I'm sorry. I misunderstood the question then.

8 BY MR. BERGER:

9 Q. In your May 3rd conversation you replayed the
10 tape. Is that right?

11 A. That's correct, sir.

12 Q. And you stated to Mr. Hartmann that you had
13 agreed to a variable rate on October 13th, is that right,
14 based on that tape?

15 A. I'm not sure. I've already answered the question
16 on that.

17 JUDGE NENE: Would you answer it again then, please,
18 for the record.

19 THE WITNESS: I've already answered the question, sir.

20 BY MR. BERGER:

21 Q. I'm just asking whether you told Mr. Hartmann
22 that.

23 A. It doesn't matter because I've told you that I
24 asked for a variable rate on the 13th and it's in the
25 record. So your question is repetitive, somewhat

1 repetitive.

2 JUDGE NENE: Mr. Delehanty, I'm running this
3 proceeding, and I'm directing you to answer the question
4 whether or not you answered it before.

5 A. I may have said that to Mr. Hartmann.

6 BY MR. BERGER:

7 Q. And did you say that you hadn't recalled that you
8 had agreed to the variable rate? Did you say that to him?

9 A. That's correct. I do recall that. I had
10 forgotten about that telephone conversation. That is
11 correct. I just remembered that I did say that.

12 Q. Okay. And did you say that now that you heard
13 that conversation that that resolved your complaint?

14 A. Yes, only-- But I must qualify. I immediately
15 asked him about this document that I received dated October
16 25th that had the fixed rate. Then he proceeded to tell me
17 that that was an error and it was a mistake and it didn't
18 apply.

19 Under that situation, okay, I then, okay,
20 thought, well, you know, that letter, you know, it's
21 meaningless. I didn't know the law at the time. So I went
22 along and said, hey, okay, all right, and it looked like,
23 yeah, everything is resolved.

24 Q. Subsequently would you agree with me that you
25 requested that MXEnergy terminate your service? I think you

1 requested that of Mr. Hartmann; right?

2 A. Not only that, I requested it on 3/29.

3 Q. Okay. But when you spoke to Mr. Hartmann on May
4 3rd -- I realize it's a little bit more than a month later
5 -- you told him that you wanted your service terminated. Is
6 that correct?

7 A. That's correct.

8 Q. Would you agree with me that at that point they
9 terminated your service as quickly as they could?

10 A. I would agree with that.

11 Q. And Mr. Hartmann did tell you that he believed
12 that his interpretation of the law was that this was a
13 mistake and, therefore, they were not bound to adhere to the
14 fixed price contract. Is that right?

15 A. That's correct. And I believed him at the time.

16 Q. You did some legal research and that's why you
17 decided that, in fact, your complaint wasn't resolved, in
18 your opinion, and that's why we're here today. Is that
19 right?

20 A. That's correct. I looked into the law, and I
21 felt that I was misled by Mr. Hartmann. I'm not saying it
22 was done intentionally. I'm not making any comment. But I
23 thought it misled me. The law doesn't justify any oral or
24 verbal agreements.

25 MR. BERGER: Your Honor, that's all I have for Mr.

1 Delehanty. Thank you for answering my questions, sir.

2 REEXAMINATION

3 BY JUDGE NENE:

4 Q. Mr. Delehanty, let me ask you another question
5 before we listen to what MXEnergy has to say. You believe
6 that you were overcharged between the time of October 13th
7 when you requested the service and March the 29th when you
8 requested termination. When did your service 'actually stop?

9 MR. BERGER: Your Honor, maybe I can answer that. I
10 think he stated that the service was started from MXEnergy
11 on January 19th and that it ended on June 18th of this year,
12 2007.

13 A. I can further assert, Your Honor, that it is my
14 belief that if you would rule that I have paid a variable
15 rate to MXEnergy that I would owe \$68.18. That's the amount
16 of money we're talking about.

17 BY JUDGE NENE:

18 Q. Sixty-eight dollars and how much?

19 A. Eighteen cents.

20 Q. And that's why we're here?

21 A. That's why we're here.

22 JUDGE NENE: Mr. Berger, is that correct, in your
23 calculations? Do you stipulate to that?

24 MR. BERGER: It's close. I think our number is around
25 \$70. Ms. Presley will address that number.

1 JUDGE NENE: Very well. Let's listen to what MXEnergy
2 has to say. You've identified Exhibit C and D, Mr.
3 Delehanty. Those exhibits will be made part of the record.

4 MR. DELEHANTY: Thank you very much, Your Honor.

5 JUDGE NENE: You're welcome.

6 (Whereupon, the documents marked as Complainant
7 Exhibit Nos. C and D were received in evidence.)

8 JUDGE NENE: Mr. Berger?

9 MR. BERGER: Your Honor, we would call Andrea Rawls.
10 Whereupon,

11 ANDREA RAWLS,

12 having been duly sworn, testified as follows:

13 JUDGE NENE: Thank you.

14 DIRECT EXAMINATION

15 BY MR. BERGER:

16 Q. Ms. Rawls, you took the call from Mr. Delehanty
17 on October--

18 MR. DELEHANTY: May I raise a question about this
19 witness, Your Honor?

20 JUDGE NENE: Go ahead. Yes.

21 MR. DELEHANTY: I don't know what the witness exactly
22 is going to testify to.

23 JUDGE NENE: Neither do I.

24 MR. DELEHANTY: I don't know if it's new information
25 other than what's already been determined by myself and Mr.

1 Berger. I don't see where anything she can add, if there's
2 anything she can add to what's already been established
3 factually.

4 JUDGE NENE: Well, let's just see what she has to say.
5 Mr. Berger?

6 MR. BERGER: Thank you, Your Honor.

7 BY MR. BERGER:

8 Q. Ms. Rawls, you took the call from Mr. Delehanty.
9 Is that correct?

10 A. Yes, I did.

11 Q. And in that conversation he requested a variable
12 rate plan. Is that correct?

13 A. Yes.

14 Q. And have you listened to the recording of that
15 conversation since that time to refresh your recollection
16 regarding that conversation?

17 A. Yes, I have.

18 Q. Was there any point in that conversation where he
19 requested a fixed rate plan?

20 A. No.

21 Q. Was there any point in that conversation where
22 you discussed a term of the plan for 999 months?

23 A. No.

24 Q. Did you discuss with him the length of the
25 variable rate plan?

1 A. No.

2 Q. And do you recall how the variable rate plan was
3 designed to, how it changed from month to month?

4 A. I'm sorry. I didn't hear your question.

5 Q. Do you recall how the variable rate plan changes
6 from month to month?

7 A. Yes.

8 Q. Can you explain that?

9 A. Yes. The variable rate that we have changes
10 every month with the market. It can go up and it can go
11 down, but it is not a fixed rate. It's a variable rate that
12 does change with the market.

13 Q. Was there any question in your mind that what Mr.
14 Delehanty requested was a variable rate plan?

15 A. No, not at all. When we started off the
16 conversation he indicated that I want to sign up for a
17 variable rate.

18 MR. BERGER: That's all I have for this witness, Your
19 Honor.

20 JUDGE NENE: Mr. Delehanty, do you have any questions
21 of Ms. Rawls?

22 MR. DELEHANTY: My only issue here is a lot of this
23 was repetitive and already established.

24 JUDGE NENE: Right. Do you have any questions of the
25 witness?

1 MR. DELEHANTY: No.

2 JUDGE NENE: Thank you, Ms. Rawls.

3 MR. BERGER: Your Honor, at this time I would just ask
4 that the compact disk, which is the conversation that Ms.
5 Rawls was referencing, be admitted into the record.

6 JUDGE NENE: Well, can you identify that?

7 MR. BERGER: That's MXEnergy Exhibit 6 that has the
8 conversation. I don't know if you want to play the
9 conversation, have that recorded on the transcript. I don't
10 see a need to.

11 JUDGE NENE: Very good. I have two disks. One that I
12 received is clearly from you, and it is identified as you
13 just described. It says Delehanty versus MXEnergy and it
14 has this case number and it says MXEnergy Exhibit 6.

15 MR. BERGER: That would be the one.

16 (Whereupon, the document was marked as MXEnergy
17 Exhibit No. 6 for identification.)

18 JUDGE NENE: Then I received another disk. I think
19 that this was filed with your answer.

20 MR. BERGER: That would be the same recording.

21 JUDGE NENE: It says Exhibits A and B.

22 MR. BERGER: That would have been, yes, what we filed
23 with our answer.

24 JUDGE NENE: Yes. That's the same?

25 MR. BERGER: That's the same, yes. But we would just

1 offer it here as Exhibit 6.

2 JUDGE NENE: Very good. I'm going to admit that into
3 the record.

4 (Whereupon, the document marked as MXEnergy Exhibit
5 No. 6 was received in evidence.)

6 MR. DELEHANTY: So you don't give any credence to my
7 objections?

8 JUDGE NENE: I didn't hear your objection.

9 MR. DELEHANTY: Well, I'd like to object, sir. One is
10 that this is really two exhibits, Exhibit A and B, which
11 were originally submitted, as Mr. Berger said. Exhibit A
12 appears to be the first part of the conversation. More
13 importantly, there's no agreement of any kind in Exhibit A
14 that that conversation be recorded. Thus it can't be used.

15 As to Exhibit B, there is no notification of any form
16 of recording of that exhibit until the 1 minute and 42/43
17 seconds into that conversation Ms. Rawls does say that the
18 call will be recorded for quality assurance purposes. I
19 said okay, that's fine.

20 I don't believe any part of that conversation prior to
21 the notification can be admitted into this case. And,
22 secondly, it is not a quality assurance issue. This is not
23 a quality assurance hearing. Quality assurance has to do
24 with how well your product is being produced or your service
25 is being produced or your employees are performing. It's an

1 internal function of a corporational business to determine
2 how well you're doing.

3 I just don't see any way that this conversation
4 legally can come into being admitted here.

5 JUDGE NENE: You don't deny that this conversation
6 occurred, do you?

7 MR. DELEHANTY: No, sir, I'm not denying that at all.
8 I don't think it's even needed. I think that, (a), my
9 assertions as to satisfied, you know, what happened, I'm not
10 lying. I have no reason to lie here. It's been
11 established.

12 And that's another thing, that this recording adds no
13 new information to the case. I think everything has been
14 established. I asked for a variable rate plan. They keep
15 wanting to beat a dead horse here.

16 JUDGE NENE: Yes. Well, let me say I'm going to
17 overrule your objection. I have not listened to this
18 recording, and I'm sure that unless the Commission needs to
19 listen to it it won't be listened to.

20 I have heard the testimony of Ms. Rawls concerning the
21 content of the conversation that's contained in this
22 document, and that's sufficient for me. But I will make
23 MXEnergy Exhibit 1 part of the record.

24 MR. BERGER: Exhibit 6, Your Honor.

25 JUDGE NENE: I'm sorry. It's a funny kind of type

1 here. Exhibit 6 will be made part of the record. Mr.
2 Berger, anything else?

3 MR. BERGER: Yes, Your Honor. We would call Greta
4 Presley.

5 Whereupon,

6 GRETA PRESLEY,

7 having been duly sworn, testified as follows:

8 MR. DELEHANTY: Again, Your Honor, I will object to
9 her testimony as being just repetitive and doesn't add to
10 the case.

11 JUDGE NENE: We haven't heard it yet. I don't know
12 how you can say that.

13 MR. DELEHANTY: Because I've read the exhibits that
14 were presented by Mr. Berger.

15 JUDGE NENE: Well, your objection is overruled. Mr.
16 Berger, you may ask questions of your witness.

17 DIRECT EXAMINATION

18 BY MR. BERGER:

19 Q. Good morning, Ms. Presley.

20 A. Good morning.

21 Q. Let's just go over a couple of things that Mr.
22 Delehanty testified. Would you agree that the dates of his
23 service were from January 19th, 2007, to June 18th, 2007?

24 A. Yes.

25 Q. What is your position with the company?

1 A. I am the compliance manager for MXEnergy.

2 Q. What exactly does that entail?

3 A. I am responsible for all customer complaints,
4 insuring that each complaint is addressed and a response is
5 provided to the customer as well as to the PUC.

6 Q. So once Mr. Delehanty filed his complaint you
7 became involved in this matter. Is that right?

8 A. When my employee brought it to my attention I
9 became involved.

10 Q. Now, are you familiar with the contract selection
11 process and how the contract that Mr. Delehanty was sent
12 came into existence following his contact with Ms. Rawls?

13 A. Yes, I am.

14 Q. Can you explain what MXEnergy did after that
15 conversation with Ms. Rawls?

16 A. What occurred in Mr. Delehanty's disclosure
17 statement is that the customer selected a variable rate and
18 the CSR selected that rate for the customer. The system
19 actually mapped the variable rate twice to a fixed rate
20 letter. Since there are not any terms associated with a
21 variable rate, the system defaulted the term to a 999
22 agreement.

23 Q. So was this a system error that occurred?

24 A. This was a system error.

25 Q. Did MXEnergy send out a letter on October 14th,

1 2006, saying that Mr. Delchanty was signed up for a
2 month-to-month market based variable pricing program?

3 A. Yes.

4 Q. Is that MXEnergy Exhibit 1?

5 A. Yes.

6 Q. That's the October 14th, 2006, letter and the
7 language that accompanied it which says our agreement. Is
8 that right?

9 A. Yes, it is.

10 MR. BERGER: Your Honor, I'd ask that MXEnergy Exhibit
11 1, the October 14th letter, be admitted into evidence.

12 MR. DELEHANTY: Your Honor, I will object to that
13 admittance as to there's no proof as to where that letter
14 emanated from or was created. There's no proof to it. It
15 could have been created two weeks ago or last week. I never
16 received the letter. It has no bearing on this case since I
17 never received it.

18 JUDGE NENE: We have testimony that you never received
19 it. But we have an exhibit that's identified as a letter
20 dated October 14th.

21 MR. DELEHANTY: But there's no proof that that letter
22 was ever sent at that time.

23 JUDGE NENE: No. I don't think that there's very
24 seldom proof that a letter was sent other than to have a
25 date on it and it's been testified to and it will be made

1 part of the record.

2 (Whereupon, the document marked as MXEnergy Exhibit
3 No. 1 was received in evidence.)

4 BY MR. BERGER:

5 Q. Ms. Presley, does MXEnergy have any proof that
6 the letter was sent?

7 A. The letter was sent as a welcome letter. The
8 clarification that I can give is that the address is the
9 same on the letter that was dated October the 25th.

10 Q. Does the company always send two letters, a
11 welcome letter and disclosure statement letter?

12 A. Yes, we do.

13 Q. So in the welcome letter it was indicated that
14 the rate was variable?

15 A. Yes.

16 Q. And I think you explained that there was a system
17 error when the disclosure statement letter was sent. Is
18 that correct?

19 A. That is correct.

20 Q. Had you seen this system error occur on frequent
21 occasions before?

22 A. I've seen it occur on one other occasion.

23 Q. So this was an unusual circumstance. Would you
24 agree with me?

25 A. I would agree.

1 Q. Tell me, when was the error recognized by
2 MXEnergy that Mr. Delehanty had received the wrong letter?

3 A. When Mr. Delehanty filed his complaint.

4 JUDGE NENE: Is that the complaint with the Public
5 Utility Commission you're referring to?

6 THE WITNESS: Yes, it is.

7 BY MR. BERGER:

8 Q. And that would have been in March or early April
9 of 2007?

10 A. Yes, it was.

11 Q. And do you know what steps were made at that
12 point in time to resolve that complaint?

13 A. At the point that we received the complaint, we
14 did contact the customer, advising that he enrolled in a
15 variable rate plan which at the time was 79 cents per term.
16 We advised the customer that we had a third-party
17 verification, which is the recording on the customer's
18 account. We attempted to discuss the issue with Mr.
19 Delehanty, and the account notes state that the customer
20 said that we were lying, that he didn't want to speak with
21 us.

22 Q. Is that conversation and those notes, is that
23 reflected in MXEnergy Exhibit 3, the fax from Madelyn Green
24 to Dennis Scatton at the PUC?

25 A. That is correct.

1 MR. BERGER: Your Honor, I'd ask that MXEnergy Exhibit
2 3-- Well, let me ask that MXEnergy Exhibit 2 and 3 be
3 admitted into evidence. MXEnergy Exhibit 2, Your Honor, was
4 the October 25th letter we previously discussed. MXEnergy
5 Exhibit 3 is a business record regarding the contact that
6 was made or the notes that were made regarding the issue
7 that Mr. Delehanty had presented and how it had occurred,
8 and that fax was sent on April 12th, 2007.

9 JUDGE NENE: Mr. Delehanty, do you have any--

10 MR. DELEHANTY: I have an objection, sir.

11 JUDGE NENE: To which exhibit? Do you object to
12 Exhibit 2?

13 MR. DELEHANTY: Exhibit 2 is hearsay.

14 JUDGE NENE: I believe you referred to this exhibit in
15 your own testimony. I believe you're defending your whole
16 case on Exhibit Number 2.

17 MR. DELEHANTY: Well, now, this exhibit doesn't match.
18 This exhibit is not the same as my exhibit. And it lacks,
19 up in the upper right-hand corner -- and this is important
20 -- it doesn't have the MXEnergy logo and address that was on
21 mine.

22 Mine was sent from Annapolis Junction or at least the
23 address up on the upper right-hand corner is Annapolis
24 Junction. There were two telephone numbers, a voice and a
25 fax number. I believe -- I have to look at it real fast --

1 there was an e-mail address. But this doesn't really quite
2 match mine. I would object to it. It's not the one that
3 was sent to me. It's not the one that I received.

4 JUDGE NENE: Mr. Berger, do you want to address that,
5 have your witness address that?

6 MR. BERGER: Yes.

7 BY MR. BERGER:

8 Q. Ms. Presley, is this an electronic copy of the
9 letter that was sent, perhaps missing the logo, but
10 otherwise in every material respect it's the same as the
11 letter that was sent to Mr. Delehanty on October 25th?

12 A. Yes, it is.

13 MR. DELEHANTY: Then I would object because it's
14 repetitive. If it is a duplicate, then all the wording in
15 this document is identical to the document that I have
16 already presented.

17 JUDGE NENE: So what's the difference that we have two
18 copies in the record?

19 MR. DELEHANTY: Well, why should we?

20 JUDGE NENE: Well, we're going to. I'm admitting--

21 MR. BERGER: It's not a big deal, Your Honor. We can
22 rely on Exhibit C and D, too. It's not--

23 JUDGE NENE: Exhibit 2 from MXEnergy will be made part
24 of the record.

25 (Whereupon, the document was marked as MXEnergy

1 Exhibit No. 2 for identification and was received in
2 evidence.)

3 MR. BERGER: What about Exhibit 3?

4 JUDGE NENE: Do you have any objection to Exhibit 3,
5 Mr. Delehanty?

6 MR. DELEHANTY: Yes, because I cannot examine Ms.
7 Kann, I'm sorry, Ms. Green on this statement in this letter
8 and I disagree she did not speak with me in the respect that
9 she has indicated here. She called me and she asked me how
10 to spell my name. She identified herself and asked me how
11 to spell my name.

12 I said, "Why are you calling me?" She would not tell
13 me why she was calling me. Because of that I said, "I'm
14 going to hang up on you because I want to know why you're
15 calling me." And that was the end of that conversation.

16 JUDGE NENE: Mr. Berger?

17 MR. BERGER: Your Honor, this is a business record
18 from MXEnergy. It's a normal exception to the hearsay rule.
19 All it does is indicate how the error occurred. Ms. Presley
20 has already testified to that. But I would submit that it's
21 a permissible--

22 JUDGE NENE: It's a permissible business record.

23 MR. BERGER: --a permissible business record and an
24 exception to the hearsay rule. The Commission's rules
25 aren't very tight about hearsay.

1 JUDGE NENE: No, it's true. Did Ms. Presley say this
2 was a business record kept in the ordinary course of
3 business?

4 MR. BERGER: Yeah, I think she did, Your Honor.

5 THE WITNESS: Yes, I did.

6 JUDGE NENE: Very well. Then it's an exception to the
7 hearsay rule. Exhibit No. 3 MXEnergy will be made part of
8 the record also.

9 (Whereupon, the document was marked as MXEnergy
10 Exhibit No. 3 for identification and was received in
11 evidence.)

12 BY MR. BERGER:

13 Q. Now, Ms. Presley, did you have a conversation
14 with Mr. Delehanty?

15 A. I was on the conversation with Mr. Delehanty with
16 Tom Hartmann and Katheryn Tozzini that occurred on May the
17 3rd.

18 JUDGE NENE: Could you spell that, please, for the
19 record, those names.

20 THE WITNESS: Tom Hartmann, T-o-m H-a-r-t-m-a-n-n, and
21 Kathryn Tozzini, K-a-t-h-r-y-n T-o-z-z-i-n-o.

22 JUDGE NENE: Thank you, Ms. Presley.

23 BY MR. BERGER:

24 Q. Ms. Presley, did Mr. Delehanty, during that
25 conversation which you listened in on and participated in a

1 minor fashion, as I understand it, did he admit that he
2 agreed to a variable rate and that he was going to drop his
3 complaint?

4 A. Yes, he did.

5 Q. Does quality assurance, Ms. Presley, include
6 reviewing conversations to determine whether the plan that
7 was offered was consistent with what was explained to the
8 customer?

9 A. Yes, that does occur.

10 Q. And would you agree with me that MxEnergy does
11 everything it can to prevent errors like this from happening
12 but that periodically mistakes such as this do occur?

13 A. Yes.

14 Q. And can you tell me what the financial impact on
15 Mr. Delehanty's bills was during this period of time from
16 having a variable rate versus having the fixed rate that he
17 had thought that he was entitled to?

18 A. Yes.

19 Q. What was that amount?

20 A. I'm sorry. You started to break up. I didn't
21 hear your last--

22 Q. Yes. What was the amount that you calculated
23 that is the difference between the variable rate that he was
24 actually charged and the amount that he thought he was
25 entitled to?

1 A. It came to \$70.02.

2 Q. That would have been for the period that we
3 discussed as the service period beginning January 19th and
4 ending on June 18th of this year. Is that right?

5 A. That is correct.

6 MR. BERGER: Your Honor, at this point in time I'd
7 like to have MXEnergy Exhibit 4 and MXEnergy Exhibit 5
8 identified for the record.

9 (Whereupon, the documents were marked as MXEnergy
10 Exhibit Nos. 4 and 5 for identification.)

11 BY MR. BERGER:

12 Q. Ms. Presley, is MXEnergy Exhibit 4 a letter you
13 prepared to Mr. Delehanty?

14 A. Yes.

15 Q. And that explained the outcome of your
16 conversation and the conversation Mr. Hartmann had on May
17 3rd. Is that right?

18 A. Yes, it does.

19 Q. MXEnergy Exhibit 5 was a letter that was prepared
20 -- hold on one second, please -- to the Pennsylvania Public
21 Utility Commission on June 14th, 2007. In that was it
22 explained how the problem-- You prepared this letter. Is
23 that correct?

24 A. That is correct.

25 Q. And it was explained in that letter how the

1 problem had occurred and what MXEnergy believed was the
2 appropriate outcome of this issue?

3 A. That is true.

4 JUDGE NENE: I'm a little confused. You're referring
5 to Exhibit Number 4 and then--

6 MR. BERGER: Then Exhibit Number 5, which is a June
7 14th letter to the PUC, both of which were prepared by Ms.
8 Presley.

9 JUDGE NENE: Wait a second.

10 MR. BERGER: Do you have those?

11 JUDGE NENE: I do. I have them. I'm sorry. I
12 understand.

13 BY MR. BERGER:

14 Q. As we discussed before, are these electronic
15 copies of the actual letters that went out from here, Ms.
16 Presley?

17 A. Yes.

18 Q. Is there any difference between the letters other
19 than the lack of the signature and the absence of a
20 letterhead on them?

21 A. There's no other difference.

22 MR. BERGER: Your Honor, we'd ask that these two
23 letters be admitted into evidence.

24 JUDGE NENE: Mr. Delehanty, do you object to four or
25 five?

1 MR. DELEHANTY: Yes, sir. I don't see what is on
2 five. It seems like everything that is in four is included
3 in five and it's a duplication. I don't know that, you
4 know, that five includes everything I believe that's in
5 four. So I don't see the necessity of four. But five I
6 have no objection to.

7 MR. BERGER: Your Honor, the two letters are directed
8 to different folks. They do have some different information
9 in them.

10 JUDGE NENE: Yes, I see that. Mr. Delehanty, did you
11 receive this letter that's referred to as Exhibit 4?

12 MR. DELEHANTY: Yes, I did.

13 JUDGE NENE: You notice the address is the same except
14 it doesn't even have the apartment number but it got to you,
15 didn't it?

16 MR. DELEHANTY: Got to me, yes, sir.

17 JUDGE NENE: Well, it's going to be made part of the
18 record. MXEnergy Exhibits 4 and 5 will be made part of the
19 record.

20 (Whereupon, the documents marked as MXEnergy Exhibit
21 Nos. 4 and 5 were received in evidence.)

22 JUDGE NENE: Mr. Berger?

23 MR. BERGER: Thank you, Your Honor. At this point in
24 time MXEnergy has nothing further to offer.

25 JUDGE NENE: Before you cross-examine Ms. Presley, Mr.

Delehanty, I want to ask her a few questions.

EXAMINATION

BY JUDGE NENE:

Q. Ms. Presley, you testified that there was a system error once before in something like this. Is that correct?

A. Yes, sir.

Q. The letter that came out that you're referring to as an error provided for a 999-month fixed term, fixed rate term. Is that correct?

A. Yes, sir.

Q. Has MXEnergy ever entered into a contract with anybody for a term that long?

A. No, sir.

Q. But you did offer at one time or at the time that this contract was entered into, there was a fixed term, a fixed rate term available?

A. Yes, sir, there was fixed rate terms available.

Q. But do you have any comments about why that letter would say 999?

A. At the point that this letter was generated there was an error from the pricing point that should have been selected, which was a variable rate, which in the letter it is a 79 cent variable rate, but there was no 79 cent fixed rate. So it defaulted to the 999.

1 Q. Do you have a calculator there?

2 A. Yes, I do.

3 Q. I just wondered how long that would be.

4 A. It's actually about 84 years.

5 MR. BERGER: Can I just ask her one question, Your
6 Honor?

7 JUDGE NENE: Yes.

8 REDIRECT EXAMINATION

9 BY MR. BERGER:

10 Q. During that period of time what was the length of
11 the fixed rate offers that were being made?

12 A. The fixed rate offers are 6, 12, 18, 24, and 36
13 months. We do have one five year term in the British
14 Columbia market only.

15 JUDGE NENE: Just for the record, I'm not sure I
16 understood where that was limited to.

17 THE WITNESS: The five-year is in British Columbia.

18 JUDGE NENE: It's kind of factiously absurd to imagine
19 that somebody would enter into an 84-year contract, in my
20 opinion anyway. Thank you. Mr. Delehanty, you can
21 cross-examine Ms. Presley on what she testified to.

22 MR. DELEHANTY: Thank you very much, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. DELEHANTY:

25 Q. Ms. Presley, just as clarification, to what

1 extent in the phone conversation that I had with Mr.
2 Hartmann on May 3rd, to what extent did you participate in
3 that conversation?

4 A. To the extent that I was identified at the
5 beginning of the conversation and Mr. Hartmann did state
6 that myself and Ms. Tozzini were on the line as witnesses.

7 Q. So did you say anything?

8 A. No, sir.

9 Q. Okay. As to this October 14th letter, do you
10 have any explanation as to why I'm saying that, you know, I
11 never received it?

12 A. No, sir, I can't explain.

13 Q. Other than you're saying the address was the
14 same, you know, as on the disclosure letter, you know, you
15 don't have any explanation as to, you know, why I never
16 received it? Okay. All right.

17 Would there be any reason that MXEnergy might
18 want to try to play both ends against the middle by when a
19 person first asks for a variable rate on the telephone and
20 then they send them a fixed rate disclosure statement so
21 that they might have themselves covered; as rates go down
22 they would charge a fixed rate and as gas rates go up they
23 could charge the variable rate? Is that something that
24 MXEnergy participates in?

25 A. No, sir, we do not. We set our pricing based on

1 what the customer requests.

2 Q. These fixed terms that you just alluded to to the
3 judge's questions -- 6, 12, 18, 24, 36, and five years--

4 JUDGE NENE: Mr. Delehanty, slow down, please. We're
5 trying to make a transcript.

6 BY MR. DELEHANTY:

7 Q. The fixed rates that you referred to in response
8 to Judge Nene's question of 6, 12, 18, 24, 36, and five
9 years, when were they first offered in Pennsylvania?

10 A. I'm sorry. The five-year rate is not offered in
11 Pennsylvania.

12 Q. Oh, okay. I'm sorry. Well, when were any of
13 those rates offered in Pennsylvania? Let me pose the
14 question that way.

15 A. I don't have that information right at hand.

16 Q. But it was my understanding in previous claims
17 that no fixed rate program was being offered in Pennsylvania
18 at the time that I signed up.

19 A. Is that a question to me, Mr. Delehanty?

20 Q. Yes, I'm sorry. Is that true?

21 A. Please restate your question.

22 Q. Okay. At the time that I signed up, what fixed
23 rate programs were being offered by MXEnergy in
24 Pennsylvania?

25 A. I don't have that information at hand. I would

1 have to find out when they were being offered and what fixed
2 rates were being offered. But I did research if there was a
3 79 cent fixed rate, and there was not a 79 cent fixed rate.

4 Q. Right. I believe -- and I'm looking for it now
5 in one of these two letters -- you make a claim that I have
6 difficulty with. Exhibits 4 and 5 I agree with their
7 accuracy. I can't find it now, and it's not that important.

8 This \$70.02, would you argue that if I have a
9 document that shows the month-by-month figures and total it
10 comes up to \$68.18, would this help resolve any issues
11 concerning that if I sent you that copy or we made it a part
12 of the record?

13 MR. BERGER: Your Honor, without seeing it, it's
14 impossible for us to agree to it. We would, however, agree
15 that a dollar and 84 cents is negligible.

16 JUDGE NENE: It's didynamous, and we're not going to
17 pursue that issue any further.

18 MR. DELEHANTY: Thank you very much, Ms. Presley.

19 THE WITNESS: Yes, sir.

20 JUDGE NENE: Anything further on redirect, Mr. Berger?

21 MR. BERGER: No, Your Honor.

22 JUDGE NENE: Thank you, Ms. Presley.

23 THE WITNESS: Yes, sir.

24 JUDGE NENE: Well, the burden of proof in this case is
25 on you, Mr. Delehanty. So if you want to make a legal

1 argument I'm going to let you go last. Mr. Berger, do you
2 want to make a statement about the facts and how the law
3 might support your position?

4 MR. BERGER: Yes, Your Honor. Pennsylvania law
5 recognizes that mistakes in written contracts occur and that
6 a meeting of the minds is a very important factor in
7 determining whether a written contract actually reflects the
8 understanding of the parties.

9 When it does not reflect the understanding of the
10 parties, as it does not here, as everybody has testified it
11 does not, the contract is voidable by the party who made the
12 error. That's supported by many, many cases in Pennsylvania
13 law, and I'll just cite a couple of them.

14 One is Kerns versus Minnesota Mutual Life Insurance
15 Company, 75S, South, 2d 413, Eastern District of PA, 1999.
16 Another is Lapio versus Robins, 729 A.2d 1229 Pa. Super.
17 1999. Review of the Pennsylvania Law Encyclopedia 1 PLE
18 Contract Section 82 makes it very clear that when the party
19 who is asserting that there was a mistake and the party who
20 says that--

21 Well, you know, the problem here is that Mr. Delehanty
22 recognizes that there was a mistake, and it's hard to get
23 beyond that. When the party who's trying to assert that the
24 mistake is meaningless recognizes that there was a mistake,
25 the contract is voidable by the party that made the mistake.

1 That's what happened here. I don't think there's
2 really any question that a mistake was made. It's
3 unfortunate. We're, of course, sorry that the mistake was
4 made and we hope that it hadn't been made and we continue to
5 review our procedures and how the system made this error to
6 try and prevent such things from occurring again. But
7 mistakes do get made, and we'll do everything we can to
8 prevent it.

9 I don't think that it's necessary in this case over
10 such an issue for there to be an avoidance of what
11 Pennsylvania law provides in terms of being a mistake and we
12 think the law should be followed and that mistakes should be
13 recognized and when the party is trying to assert that the
14 mistake should be ignored, even though he knows that it was
15 a mistake, he should not be able to enforce that contract.

16 Finally, PUC's regulations don't change Pennsylvania
17 contract law on the mistakes. There can still be a mistake
18 in the disclosure statement and if the written document is a
19 mistake we always default back to the oral understanding.

20 Now, once Mr. Delehanty brought the issue to the
21 attention of MXEnergy, certainly there could have been a new
22 disclosure statement sent out. However, he indicated that
23 he wanted to terminate the agreement at that point in time,
24 and that's what MXEnergy did rather than sending out a
25 replacement disclosure statement so that there wouldn't be

1 an issue. But certainly this has the effect of rescinding
2 the agreement.

3 We think that the time period from January 19th to
4 June 18th of 2007 during which this mistake was discovered
5 and ultimately his service was terminated because he did not
6 want to be in this contract that MXEnergy didn't do anything
7 in error in dealing with the issue once it was discovered.

8 JUDGE NENE: Thank you, Mr. Berger. Mr. Delehanty,
9 convince me that you think you were entitled to 79 cents for
10 34 years.

11 MR. DELEHANTY: Thank you very much, Your Honor. My
12 argument is simply that Chapter 62 of Title 52 trumps Mr.
13 Berger's claim. While I have no problem if Your Honor finds
14 that the disclosure statement is invalid or voided, that's
15 no problem.

16 But I take issue with the claim that there's a default
17 to an oral understanding. That's because of Chapter 62
18 which applies to natural gas suppliers of which MXEnergy
19 admits that in Item 3 of their answer to the complaint where
20 they say MXEnergy only provides natural gas supply service
21 in Pennsylvania.

22 Now, under Chapter 62 there's a disclosure statement
23 required, and I think I purposely defined disclosure
24 statement, if that was allowed, earlier when I first began.

25 JUDGE NENE: Just refer to it again by citation. That

1 will be enough.

2 MR. DELEHANTY: I'm out of order here. Under Section
3 62.72, definitions, disclosure statement is defined there as
4 a written disclosure statement. Then in Section 62.75,
5 disclosure statement for residential and small business
6 customers, (b), says that the NGS shall provide a customer a
7 written disclosure statement containing the terms of service
8 at no charge whatever when the customer requests and NGS
9 initiates service and, (c), the disclosure statement's terms
10 of service shall be disclosed, including the following terms
11 in addition as applicable, end quote.

12 They shall provide that. In that disclosure statement
13 I did receive a quote for the fixed rate term, as C and D
14 show. The thing is that that disclosure statement is the
15 only basis of an agreement with an NGS, and Section 62.75(d)
16 says a customer shall be provided a three-day right of
17 rescission period following receipt of disclosure statement
18 from the NGS. Basically I had three days in order to
19 rescind it, which I did not and I didn't.

20 Now, this is the issue. The only basis of the
21 agreement with an NGS is through the written disclosure
22 statement. There's no default to oral understanding under
23 Chapter 62. There's no reference there that you can default
24 to any understanding. That's the essence of my case, Your
25 Honor, that Chapter 62 trumps the claim of Mr. Berger.

1 Thank you.

2 JUDGE NENE: So you're telling the Commission that you
3 believe that you're entitled to this price for the next 84
4 years?

5 MR. DELEHANTY: No, sir. I'm sorry, sir. Oh, boy.
6 I'm so nervous. I'm sorry. No. No, sir. I'm sorry. You
7 can void that contract. It doesn't matter.

8 If you do, which I suspect you will, then there was no
9 NGS selected because only if there is a written, a
10 disclosure statement agreed to by the customer can an NGS be
11 selected. No oral or verbal understandings can be relied
12 upon is my argument. The code does not support that.
13 Chapter 62 does not support that.

14 Therefore, if you void it, then I'm saying that I
15 would be assigned to Columbia Gas of Pennsylvania. Then I
16 ask that their rate, which is my Exhibit H-1, 2, 3, gas
17 rates for the same time period of January through July 31st,
18 be admitted into evidence. I forgot to do that.

19 JUDGE NENE: Well, we're not going to do that because
20 your testimony was closed. This is closing argument. We're
21 not going back to the facts.

22 MR. DELEHANTY: What I'm asking is that I be assigned
23 to those rates, okay, be assigned as Columbia Gas of
24 Pennsylvania was my supplier of last resort as applied in
25 the disclosure statement and is my supplier of last resort.

1 Therefore, I would be liable for those rates that are
2 charged by Columbia Gas of Pennsylvania for the same period
3 instead of those of MXEnergy.

4 My argument is that simply without a written
5 disclosure statement agreed to, okay, that MXEnergy was not
6 my gas supplier.

7 JUDGE NENE: Thank you very much. Thank you everybody
8 and goodbye. I'll issue an initial decision at a time when
9 I get a copy of this transcript. It will be a while. I'll
10 send out an order when I get the copy of the transcript, and
11 then you'll get the decision in due course after that.

12 I think you can anticipate, you probably understand
13 where I'm going to go with this.

14 MR. BERGER: Thank you, Your Honor.

15 JUDGE NENE: You're welcome. Goodbye.

16 (Whereupon, at 11:14 a.m., the hearing adjourned.)
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* * *

C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Karen L. Cross, Notary Public
Economy Boro, Beaver County
My Commission Expires July 26, 2010
Member, Pennsylvania Association of Notaries

COMMONWEALTH REPORTING CO., INC.

BY: Karen L. Cross
Karen L. Cross

10/21/09 10:51 AM

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PUC Docket C-20077773

Complainant's
Exhibit "C"

mxenergy

P.O. Box 177
Annapolis Junction, MD 20701-0177
Tel: 800 785 4373
Fax: 240 458 0510
www.mxenergy.com

October 25, 2008

Charles Delehanty
350 N. Balph Avenue Apartment 1f
Pittsburgh, PA 15202-1162

Account: 153815410012

DOCKETED
OCT 04 2007

Dear Charles:

Welcome to MXenergy, and congratulations for making a decision to do something about all the uncertainties surrounding natural gas prices.

We want to remind you of the key features of the plan you have chosen and make sure you know what will happen next.

The Fixed Price program you selected guarantees you a fixed rate of \$0.79 per Ccf for the entire life of your 999-month agreement. That means no matter what kind of volatility occurs in the open market for natural gas, your rate will stay the same, just like a fixed rate mortgage. For your records, the terms and conditions of your contract are on the back of this letter.

Here's what happens next:

- There are some steps involved with setting up your account with Columbia Gas of Pennsylvania that usually take a few weeks. After that, *you will see MXenergy listed on your utility bill* along with the charges from Columbia Gas of Pennsylvania to service your home, read your meter and process your bill.
- *You pay your bill directly to Columbia Gas of Pennsylvania.* It's that simple. One bill. One payment.
- If you have any questions about your gas supply lines, appliances, meters, or need to report an emergency, you continue to contact Columbia Gas of Pennsylvania, just like you always have.
- If you have any questions about the MXenergy portion of your bill, call us directly at 1-800-785-4373, Monday through Friday 8:00 AM to 6:00 PM EST.

We look forward to having you as a customer!

MXenergy Customer Care Team

**DOCUMENT
FOLDER**

CPAR80.DOC

EXHIBIT
C-C
PUGH/C-20077773
8-9-07 RLC

EXHIBIT
C-C
PUGH/C-20077773
8-9-07 RLC

OUR AGREEMENT CPA_FVG_CAP_1206

1. I want MXenergy Inc. to supply all the natural gas I need to heat my home or business and for other related uses. I am 18 years of age or older, and I am fully authorized to enter into this agreement.
2. I understand that:
 - I can continue to have natural gas supplied by my current utility, Columbia Gas of Pennsylvania ("Columbia").
 - Columbia will continue to deliver gas to me, read my meter, and also provide emergency and other services they have provided in the past.
 - The natural gas I buy from MXenergy may be included in my Columbia monthly bill.
3. Length of Agreement: My supply for the street address designated on the front of this form will begin on the day that Columbia switches my account to MXenergy and will continue for the full length of the term indicated in my Enrollment Form or Welcome Letter ("Fixed Term").
4. Fixed Price: The price for all the natural gas I buy will be the fixed price noted on my Enrollment Form or Welcome Letter. This price includes estimated total state taxes. This price excludes sales tax, if applicable. This price excludes local taxes if applicable. This price may be higher or lower than Columbia's price.
5. Variable Price with "You Choose When" Conversion: If I have chosen a variable price, my price will be established each month, based upon such factors as natural gas market pricing, transportation or transmission costs, utility charges and other market price related factors, plus all applicable state, local, and use taxes. At anytime, I may ask MXenergy to convert my pricing plan from Variable to Fixed at MXenergy's then current Fixed Price, if available.
6. Seasonal Rate or Variable Capped Price: If I have chosen a seasonal rate or variable capped price plan, my natural gas price will be established each month, based upon such factors as natural gas market pricing, transportation or transmission costs, utility charges and other market price related factors, plus all applicable state, local, and use taxes. However, for my natural gas usage during the cap period months identified on my Enrollment Form or Welcome Letter (the "Cap Period"), my price shall be capped at the cap rate also set forth on my Enrollment Form or Welcome Letter (the "Cap Rate"). My natural gas rate will not exceed the Cap Rate plus all applicable state, local, and use taxes during the Cap Period. There is no cap on my natural gas price before or after the Cap Period. This price may be higher or lower than the local utility's price in any particular month.
7. Expiration/Change of Terms: If I have a fixed term agreement with MXenergy that is longer than 3 months and it is approaching the expiration date or if MXenergy proposes to change the terms of service, MXenergy will send me written notices at about 90 days and 60 days before the expiration date.
 - If MXenergy proposes to change the terms of service in any type of agreement, MXenergy will send me advance written notices at about 90 days and 60 days before the effective date of the change.
 - If MXenergy is billing me directly for our services, then MXenergy will provide the notices as a bill message, a bill insert, or in a separate corresponding mailing.
 - If Columbia is billing for MXenergy, then MXenergy will provide the notices in separate corresponding mailings. MXenergy will explain my options to me in these two advance notifications.
 - If I do not respond, my contract will be renewed at the revised price, terms and conditions on a month to month basis.
 - I may cancel the new agreement at any time without a Cost Recovery Fee.
8. Penalties Fees and Exceptions:
 - If I do not pay my bills on time, MXenergy will charge me a late payment fee of 1.5% per month on all outstanding balances.
 - If I am either a residential customer or a small business customer (consuming less than 3,000 Ccf per year) and I cancel this agreement before the end of my Fixed Term, or if MXenergy cancels my agreement for nonpayment of my bills, MXenergy may charge me a Cost Recovery Fee of no more than \$50.00.
 - If I am a non-residential customer that consumes more than 3,000 Ccf per year and I cancel this agreement before the end of my Fixed Term, or if MXenergy cancels my agreement for nonpayment of my bills, MXenergy may charge me a Cost Recovery Fee of the greater of \$50 or an amount calculated as the product of the volume of unconsumed gas for the balance of my Fixed Term, calculated in the basis of my previous consumption, times the excess, if any, between my price and the price at which MXenergy can sell such gas at the time of the cancellation of this agreement.
9. Cancellation:
 - Right of Rescission - I may cancel this contract for any reason without penalty within 10 days after Columbia sends me notification to verify my switch to MXenergy. I may cancel in writing or verbally by calling Columbia.
 - If I do not pay my bills in full and on time, MXenergy may cancel our agreement by providing me with 10 days written notice. MXenergy may charge me the appropriate Cost Recovery Fee as a result of an early termination.
 - If I move I may cancel our agreement without paying a Cost Recovery Fee if I provide 30 days written notice to MXenergy at the address below.
10. Dispute Procedures:
 - If I have any questions concerning my service, I may contact MXenergy's Customer Service Department by phone, mail, or email, using the information listed below. MXenergy will make every effort to resolve all customer complaints within five business days of receipt. I may contact the PAPUC if I am not satisfied after contacting MXenergy.
11. IF I SMELL GAS I SHOULD IMMEDIATELY CALL COLUMBIA AND LOCAL EMERGENCY PERSONNEL. THE NATURAL GAS DELIVERED UNDER THIS AGREEMENT WILL MEET APPLICABLE QUALITY STANDARDS BUT MXENERGY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING UNDER CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL THEORY or from the failure of Columbia to perform its duties, including operation and maintenance of the system or interruption, or from termination or deterioration of service or from damages arising from any structural damage or as a result of a force majeure event as defined in Columbia's rules tariff.
12. Efficiency Information/Billing Data: I will notify MXenergy promptly of any material changes in my gas consumption (e.g., as a result of building an extension on my home or business). I also understand that MXenergy may choose not to accept or keep me as a customer if my gas consumption does not reflect home or business heating usage. I may at any time request without charge, up to twenty-four months of my payment history for services rendered by MXenergy.
13. Credit Check/Privacy Policy: This contract reflects our entire agreement and supersedes any oral or written statements made in connection with my gas supply from MXenergy. MXenergy may request credit information about me during this agreement and the continuation of this agreement or the offer of future agreements may be dependent upon this credit information. I understand that there may be delays in commencing gas service under this agreement, and I will not hold MXenergy responsible for any such delays. MXenergy shall have the exclusive right to select the points at which title to gas sold hereunder shall pass to me, which points shall be outside the state in which I consume the gas. MXenergy may assign this contract to another supplier authorized by Columbia Gas, provided that MXenergy gives me no less than 30 days written notice and the assignee assumes all of MXenergy responsibilities and duties under this agreement. Any notice required shall be deemed to have been made if delivered by mail to the appropriate party. Neither my social security number, customer account number(s) nor any other confidential information will be released by MXenergy without my affirmative written consent. Commodity prices under this agreement are set by MXenergy. The Pennsylvania Public Utility Commission regulates distribution prices and services.

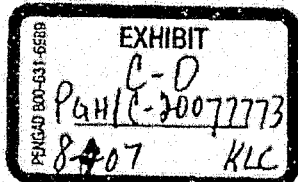
Supplier Name: MXenergy Inc.
 Address: 10010 Junction Drive, Suite 104-S
 Annapolis Junction, MD 20771
 1-800-785-4373

Phone Number: 1-800-785-4373
 Internet Address: www.mxenergy.com
 Business Hours: M-F 8 a.m. to 8 p.m. EST
 NGDG Name: Columbia Gas of Pennsylvania
 Provider of Last Resort: Columbia Gas of Pennsylvania
 Address: 650 Washington Street
 Pittsburgh, PA 15228-2703
 1-800-460-4332

Phone Number: 1-800-460-4332
 Public Utility Commission (PAPUC)
 Address: P.O. Box 3265
 Harrisburg, PA 17105-3265

PAPUC Natural Gas Competition Hotline Number: 1-866-762-3228
 Universal Service Program Information:
 Phone Number: 1-866-460-4332

PUC Docket C-20077773
 Complainant's
 Exhibit "D"



Charles Delahanty v. MXenergy Inc.
Docket No. R-20077773

MXenergy Exh. 1

DOCUMENT
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EXHIBIT
MXENERGY-1
PH/C-20077773
8-9-07 KLL
PENAD 000-031-6989

October 14, 2006

Charles Delehanty
350 N Balph Avenue
Apartment 1F
Pittsburgh, PA 15202-1162

Account: 153815410012

Dear Charles:

Welcome to MXenergy. You have chosen MXenergy's month-to-month market-based variable pricing program. MXenergy offers a variety of price programs including Fixed Rate programs. If you would like to switch to a Fixed Rate program, please call our toll-free number and a representative will assist you with our current programs.

We want to remind you of the key features of the plan you have chosen and make sure you know what will happen next. For your records, the terms and conditions of your contract are on the back of this letter.

Here's what happens next:

- There are some steps involved with setting up your account with Columbia Gas of Pennsylvania that usually take a few weeks. After that, you will see MXenergy listed on your utility bill along with the charges from Columbia Gas of Pennsylvania to service your home, read your meter and process your bill.
- You pay your bill directly to Columbia Gas of Pennsylvania. It's that simple. One bill. One payment.
- If you have any questions about your gas supply lines, appliances, meters, or need to report an emergency, you continue to contact Columbia Gas of Pennsylvania, just like you always have.
- If you have any questions about the MXenergy portion of your bill, call us directly at 1-800-785-4373, Monday through Friday 8:00 AM to 6:00 PM EST.

We look forward to having you as a customer!

MXenergy Customer Care Team

OUR AGREEMENT CPA_FVG_CAP_1205

1. I want MxEnergy Inc. to supply all the natural gas I need to heat my home or business and for other related uses. I am 18 years of age or older, and I am fully authorized to enter into this agreement.
2. I understand that:
 - I can continue to have natural gas supplied by my current utility, Columbia Gas of Pennsylvania ("Columbia").
 - Columbia will continue to deliver gas to me, read my meter, and also provide emergency and other services they have provided in the past.
 - The natural gas I buy from MxEnergy may be included in my Columbia monthly bill.
3. Length of Agreement: My supply for the street address designated on the front of this form will begin on the day that Columbia switches my account to MxEnergy and will continue for the full length of the term indicated in my Enrollment Form or Welcome Letter ("Fixed Term").
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6. Seasonal Rate or Variable Capped Price: If I have chosen a seasonal rate or variable capped price plan, my natural gas price will be established each month, based upon such factors as natural gas market pricing, transportation or transmission costs, utility charges and other market price related factors, plus all applicable state, local, and use taxes. However, for my natural gas usage during the cap period months identified on my Enrollment Form or Welcome Letter (the "Cap Period"), my price shall be capped at the cap rate also set forth on my Enrollment Form or Welcome Letter (the "Cap Rate"). My natural gas rate will not exceed the Cap Rate plus all applicable state, local, and use taxes during the Cap Period. There is no cap on my natural gas price before or after the Cap Period. This price may be higher or lower than the local utility's price in any particular month.
7. Expiration/Change of Terms: If I have a fixed term agreement with MxEnergy that is longer than 3 months and it is approaching the expiration date or if MxEnergy proposes to change the terms of service, MxEnergy will send me written notices at about 90 days and 60 days before the expiration date.
 - If MxEnergy proposes to change the terms of service in any type of agreement, MxEnergy will send me advance written notices at about 90 days and 60 days before the effective date of the change.
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 - If Columbia is billing for MxEnergy, then MxEnergy will provide the notices in separate corresponding mailings. MxEnergy will explain my options to me in these two advance notifications.
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 - I may cancel the new agreement at any time without a Cost Recovery Fee.
8. Penalties Fees and Exceptions:
 - If I do not pay my bills on time, MxEnergy will charge me a late payment fee of 1.5% per month on all outstanding balances.
 - If I am either a residential customer or a small business customer (consuming less than 3,000 Ccf per year) and I cancel this agreement before the end of my Fixed Term, or if MxEnergy cancels my agreement for nonpayment of my bills, MxEnergy may charge me a Cost Recovery Fee of no more than \$50.00.
 - If I am a non-residential customer that consumes more than 3,000 Ccf per year and I cancel this agreement before the end of my Fixed Term, or if MxEnergy cancels my agreement for nonpayment of my bills, MxEnergy may charge me a Cost Recovery Fee of the greater of \$50 or an amount calculated as the product of the volume of unconsumed gas for the balance of my Fixed Term, calculated in the base of my previous consumption, times the excess, if any, between my price and the price at which MxEnergy can sell such gas at the time of the cancellation of this agreement.
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 - If I have any questions concerning my service, I may contact MxEnergy's Customer Service Department by phone, mail, or email, using the information listed below. MxEnergy will make every effort to resolve all customer complaints within five business days of receipt. I may contact the PAPUC if I am not satisfied after contacting MxEnergy.
11. IF I SMELL GAS I SHOULD IMMEDIATELY CALL COLUMBIA AND LOCAL EMERGENCY PERSONNEL. THE NATURAL GAS DELIVERED UNDER THIS AGREEMENT WILL MEET APPLICABLE QUALITY STANDARDS BUT MxENERGY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING UNDER CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL THEORY or from the failure of Columbia to perform its duties, including operation and maintenance of the system or interruption, or from termination or deterioration of service or from damages arising from any structural damage or as a result of a force majeure event as defined in Columbia's sales tariff.
12. Efficiency Information/Billing Data: I will notify MxEnergy promptly of any material changes in my gas consumption (e.g., as a result of building an extension on my home or business). I also understand that MxEnergy may choose not to accept or keep me as a customer if my gas consumption does not reflect home or business heating usage. I may at any time request without charge, up to twenty-four months of my payment history for services rendered by MxEnergy.
13. Credit Check/Privacy Notice: This contract reflects our entire agreement and supersedes any oral or written statements made in connection with my gas supply from MxEnergy. MxEnergy may request credit information about me during this agreement and the continuation of this agreement or the offer of future agreements may be dependent upon this credit information. I understand that there may be delays in commencing gas service under this agreement, and I will not hold MxEnergy responsible for any such delays. MxEnergy shall have the exclusive right to select the points at which title to gas sold hereunder shall pass to me, which points shall be outside the state in which I consume the gas. MxEnergy may assign this contract to another supplier authorized by Columbia Gas, provided that MxEnergy gives me no less than 30 days written notice and the assignee assumes all of MxEnergy responsibilities and duties under this agreement. Any notice required shall be deemed to have been made if delivered by mail to the appropriate party. Neither my social security number, customer account number(s) nor any other confidential information will be released by MxEnergy without my affirmative written consent. Commodity prices under this agreement are set by MxEnergy. The Pennsylvania Public Utility Commission regulates distribution prices and services.

Supplier Name: MxEnergy Inc.
 Address: 10010 Junction Drive, Suite 104-S
 Annapolis Junction, MD 20701
 Phone Number: 1-800-785-4373
 Internet Address: www.mxenergy.com
 Business Hours: M-F 8 a.m. to 6 p.m. EST
 NGDC Name: Columbia Gas of Pennsylvania
 Provider of Last Resort: Columbia Gas of Pennsylvania
 Address: 650 Washington Street
 Pittsburgh, PA 15228-2703
 Phone Number: 1-888-460-4332
 Public Utility Commission (PAPUC)
 Address: P.O. Box 3265
 Harrisburg, PA 17105-3265
 PAPUC Natural Gas Competition Hotline Number:
 1-888-782-3228
 Universal Service Program Information:
 Phone Number: 1-888-460-4332

Charles Delahanty v. MXenergy Inc.
Docket No. R-20077773

MXenergy Exh. 2

DOCUMENT
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SEP 04 2007

SEP 04 2007

SEP 04 2007

EXHIBIT
MXenergy 2
PH/C-20077773
8-9-07 KLC

October 25, 2006

Charles Delehanty
350 N Balph Avenue
Apartment 1F
Pittsburgh, PA 15202-1162

Account: 153815410012

Dear Charles:

Welcome to MXenergy, and congratulations for making a decision to do something about all the uncertainties surrounding natural gas prices.

We want to remind you of the key features of the plan you have chosen and make sure you know what will happen next.

The Fixed Price program you selected guarantees you a fixed rate of \$0.79 per Ccf for the entire life of your 999-month agreement. That means no matter what kind of volatility occurs in the open market for natural gas, your rate will stay the same, just like a fixed rate mortgage. For your records, the terms and conditions of your contract are on the back of this letter.

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- If you have any questions about the MXenergy portion of your bill, call us directly at 1-800-785-4373, Monday through Friday 8:00 AM to 6:00 PM EST.

We look forward to having you as a customer!

MXenergy Customer Care Team

OUR AGREEMENT CPA_FVG_CAP_1205

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2. I understand that:
 - I can continue to have natural gas supplied by my current utility, Columbia Gas of Pennsylvania ("Columbia").
 - Columbia will continue to deliver gas to me, read my meter, and also provide emergency and other services they have provided in the past.
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6. Seasonal Rate or Variable Capped Price: If I have chosen a seasonal rate or variable capped price plan, my natural gas price will be established each month, based upon such factors as natural gas market pricing, transportation or transmission costs, utility charges and other market price related factors, plus all applicable state, local, and use taxes. However, for my natural gas usage during the cap period months identified on my Enrollment Form or Welcome Letter (the "Cap Period"), my price shall be capped at the cap rate also set forth on my Enrollment Form or Welcome Letter (the "Cap Rate"). My natural gas rate will not exceed the Cap Rate plus all applicable state, local, and use taxes during the Cap Period. There is no cap on my natural gas price before or after the Cap Period. This price may be higher or lower than the local utility's price in any particular month.
7. Expiration/Change of Terms: If I have a fixed term agreement with MxEnergy that is longer than 3 months and it is approaching the expiration date or if MxEnergy proposes to change the terms of service, MxEnergy will send me written notices at about 90 days and 60 days before the expiration date.
 - If MxEnergy proposes to change the terms of service in any type of agreement, MxEnergy will send me advance written notices at about 90 days and 60 days before the effective date of the change.
 - If MxEnergy is billing me directly for our services, then MxEnergy will provide the notices as a bill message, a bill insert, or in a separate corresponding mailing.
 - If Columbia is billing for MxEnergy, then MxEnergy will provide the notices in separate corresponding mailings. MxEnergy will explain my options to me in these two advance notices/emails.
 - If I do not respond, my contract will be renewed at the revised price, terms and conditions on a month to month basis.
 - I may cancel the new agreement at any time without a Cost Recovery Fee.
8. Penalties Fees and Exceptions:
 - If I do not pay my bills on time, MxEnergy will charge me a late payment fee of 1.5% per month on all outstanding balances.
 - If I am either a residential customer or a small business customer (consuming less than 3,000 Ccf per year) and I cancel this agreement before the end of my Fixed Term, or if MxEnergy cancels my agreement for nonpayment of my bills, MxEnergy may charge me a Cost Recovery Fee of no more than \$50.00.
 - If I am a non-residential customer that consumes more than 3,000 Ccf per year and I cancel this agreement before the end of my Fixed Term, or if MxEnergy cancels my agreement for nonpayment of my bills, MxEnergy may charge me a Cost Recovery Fee of the greater of \$50 or an amount calculated as the product of the volume of unconsumed gas for the balance of my Fixed Term, calculated in the basis of my previous consumption, times the excess, if any, between my price and the price at which MxEnergy can sell such gas at the time of the cancellation of this agreement.
9. Cancellation:
 - Right of Rescission - I may cancel this contract for any reason without penalty within 10 days after Columbia sends me notification to verify my switch to MxEnergy. I may cancel in writing or verbally by calling Columbia.
 - If I do not pay my bills in full and on time, MxEnergy may cancel our agreement by providing me with 10 days written notice. MxEnergy may charge me the appropriate Cost Recovery Fee as a result of an early termination.
 - If I move I may cancel our agreement without paying a Cost Recovery Fee if I provide 30 days written notice to MxEnergy at the address below.
10. Dispute Procedures:
 - If I have any questions concerning my service, I may contact MxEnergy's Customer Service Department by phone, mail, or email, using the information listed below. MxEnergy will make every effort to resolve all customer complaints within five business days of receipt. I may contact the PAPUC if I am not satisfied after contacting MxEnergy.
11. IF I SMELL GAS I SHOULD IMMEDIATELY CALL COLUMBIA AND LOCAL EMERGENCY PERSONNEL. THE NATURAL GAS DELIVERED UNDER THIS AGREEMENT WILL MEET APPLICABLE QUALITY STANDARDS BUT MxENERGY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING UNDER CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL THEORY or from the failure of Columbia to perform its duties, including operation and maintenance of the system or interruption, or from termination or deterioration of service or from damages arising from any structural damage or as a result of a force majeure event as defined in Columbia's sales tariff.
12. Efficiency Information/Billing Data: I will notify MxEnergy promptly of any material changes in my gas consumption (e.g., as a result of building an extension on my home or business). I also understand that MxEnergy may choose not to accept or keep me as a customer if my gas consumption does not reflect home or business heating usage. I may at any time request without charge, up to twenty-four months of my payment history for services rendered by MxEnergy.
13. Credit Check/Privacy/Notice: This contract reflects our entire agreement and supercedes any oral or written statements made in connection with my gas supply from MxEnergy. MxEnergy may request credit information about me during this agreement and the continuation of this agreement or the offer of future agreements may be dependent upon this credit information. I understand that there may be delays in commencing gas service under this agreement, and I will not hold MxEnergy responsible for any such delays. MxEnergy shall have the exclusive right to select the points at which title to gas sold hereunder shall pass to me, which points shall be outside the state in which I consume the gas. MxEnergy may assign this contract to another supplier authorized by Columbia Gas, provided that MxEnergy gives me no less than 30 days written notice and the assignee assumes all of MxEnergy responsibilities and duties under this agreement. Any notice required shall be deemed to have been made if delivered by mail to the appropriate party. Neither my social security number, customer account number(s) nor any other confidential information will be released by MxEnergy without my affirmative written consent. Commodity prices under this agreement are set by MxEnergy. The Pennsylvania Public Utility Commission regulates distribution prices and services.

Supplier Name: MxEnergy Inc.
 Address: 10010 Junction Drive, Suite 104-B
 Annapolis Junction, MD 20701
 Phone Number: 1-800-785-4373
 Internet Address: www.mxenergy.com
 Business Hours: M-F 8 a.m. to 6 p.m. EST
 NGDC Name: Columbia Gas of Pennsylvania
 Provider of Last Resort: Columbia Gas of Pennsylvania
 Address: 650 Washington Street
 Pittsburgh, PA 15228-2703
 Phone Number: 1-888-460-4332
 Public Utility Commission (PAPUC)
 Address: P.O. Box 3265
 Harrisburg, PA 17105-3265
 PAPUC Natural Gas Competition Hotline Number:
 1-888-782-3228
 Universal Service Program Information:
 Phone Number: 1-888-460-4332
 CPAR90 Delahanty Welcome Ltr.doc

MXenergy Exh. 3

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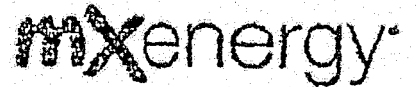
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EXHIBIT
MX Energy-3
PGH/C-20077773
8-9-07 KLC
PENSACOLA 800-631-5985

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	4224	
CONNECTION TEL		917177878641
CONNECTION ID		
ST. TIME	04/12 12:15	
USAGE T	01'27	
PGS. SENT	3	
RESULT	OK	



711 Louisiana St Ste 1000
Houston, TX 77210
www.mxenergy.com

FAX

TO: <u>Blennis Scatton</u>	FROM: <u>Madeline Freese</u>
FAX: <u>717-787-6641</u>	FAX: <u>713-357-2993</u>
PHONE: <u>717-705-4228</u>	PHONE: <u>713-357-2621</u>
	PAGES: <u>3</u>
SUBJECT: <u>Case # 2214663</u>	DATE: <u>4-12-07</u>
COMMENTS: <u>Charles Alekhanov</u>	

Charles Delehanty
Case#2214663
LDC# 153815410012

Marketer Response:

After review of the account, our records indicate that the customer enrolled on a variable rate plan which at the time was \$0.79. I do have a copy of the TPV where the customer is requesting and enrolling in the variable rate plan.

The customer was mailed fulfillment for a fixed rate plan in error. I have attempted to contact Mr. Delehanty to discuss the issue but the customer states that we are liars and he does not want to speak with me.

If there are additional questions or concerns, please feel free to contact us.

Thanks.

Madelyn Greene
Office: 713-357-2621
Fax: 713-357-2993
E-mail: mgreene@mxenergy.com

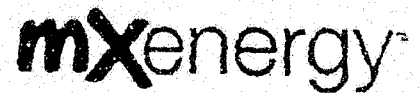
MXenergy Exh. 4

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2007.09.03 11:12:06
SECTION 17.12.06

EXHIBIT
mxEnergy-4
PG 4/C-20077773
8-9-07 KLC



P.O. Box 4911

Houston, TX 77210-4911

www.mxenergy.com

Charles F. Delehanty
350 N. Balph Avenue
Pittsburgh PA 15202

May 7, 2007

Re: Account with MXenergy

Dear Mr. Delehanty:

This confirms your conversations of May 3, 2007 with various MxEnergy Inc. representatives. During the first of those conversations, which included Ms. Kathy Tozzini, Mr. Tom Hartmann, our General Counsel, and me, we played a tape recording of your October 13, 2006 conversation with an MXenergy sales representative. In that taped call, you repeatedly agreed that you were signing up for a variable rate offer with MXenergy. In fact, you were adamant that you wanted the variable rate offering because you believed that natural gas prices would drop over the coming winter.

You acknowledged during the May 3rd conversation that you had completely forgotten about the taped call as well as agreed that based on the recorded conversation, you had entered into and accepted the variable rate offer. You added that now that you remembered the earlier call, you were bound by the variable rate offering.

You and Mr. Hartmann also discussed a letter dated October 25, 2006 letter from MXenergy which erroneously referred to a fixed rate offer of \$0.79/ccf for 999 months. Mr. Hartmann explained to you that the October 25, 2006 letter was an error. He further explained that the agreed transaction was that which was entered into the phone on October 13, 2006. The October 25, 2006 letter did not create a new agreement because there was no mutual agreement to its terms – unlike the phone call on October 13, 2006. In fact, MXenergy did not have a fixed rate for \$0.79 in the Columbia Gas of Pennsylvania (“CPA”) territory. Moreover, it has never had a fixed rate offering for 999 months, as this is over 84 years, it is clear that this was not an intended offer. You laughed when Mr. Hartmann noted this administrative error. In short, there was no meeting of minds on the points raised in the October 25, 2006 letter. You agreed with this and confirmed that once you had heard the tape, you remembered that you had entered into the variable rate arrangement.

Mr. Hartmann explained that because of the nature of the situation, you could either continue with MXenergy at the variable rate offering or cancel. You informed us that you had already started the cancellation process. Mr. Hartmann stated that we would be

glad to retain you as a customer of which your response was that our current rates were too high, but that you would continue to watch them.

Based on our conversation, you agreed to notify the Pennsylvania Public Utility Commission ("PAPUC") and CPA that you no longer had a complaint and that the matter had been resolved. MXenergy agreed to confirm this with the PAPUC and CPA.

It is my understanding that you and Mr. Hartmann had two subsequent calls on May 3, 2007. Mr. Hartmann summarized those conversations to me informing that you called the PAPUC and CPA to tell them that your complaints had been resolved. In the second, call you told Mr. Hartmann that CPA informed you that MXenergy would have to initiate the termination. Mr. Hartmann advised you that this process had already been undertaken in accordance with your directions. You thanked Mr. Hartmann and ended the call.

Our position has not changed, despite your letter of May 4, 2007. Based on your desire to cancel your agreement with MXenergy, I immediately contacted the PUC to inform of our agreement as well as your desire to cancel. We have processed your cancellation in accordance with your direction on May 3, 2007.

We appreciate you as a customer and thank you for allowing MXenergy an opportunity to provide energy services to your home.

Thank you,

Greta Presley
Compliance Manager

MXenergy Exh. 5

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SECRETARY

2007.09.03 11:12:04

EXHIBIT
MXEnergy-5
PGH/C-20077773
8-9-07 KLC
PENGAD 800-631-6369

June 14, 2007

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Charles F. Delehanty
350 N Balph Avenue
Apartment 1F
Pittsburgh, PA 15202
(412)734-4448
LDC account number: 153815410010002

MXenergy records indicate that Mr. Delehanty contacted MXenergy on 10/13/06 to enroll for natural gas service at the service location at 350 N Balph Avenue, Apartment 1F, Pittsburgh, PA 15202. Mr. Delehanty requested a variable rate price plan and provided his Columbia Gas of Pennsylvania account number as 153815410010002.

As a matter of record, the Customer Service Representative (CSR) completed a verification of the call and advised the customer that the telephone call was recorded. As part of the verification process, we requested that Mr. Delehanty repeat the information provided as to verify that that we recorded the information accurately in our system. As part of the verification process we asked Mr. Delehanty his name, the name on the Columbia Gas bill, LDC account number, address, and if he was the person authorized to enroll his account in the choice program in order to complete the new low variable price of .79 (current price at the point of enrollment). Mr. Delehanty verified all information.

We mailed a confirmation letter to the customer on 10/14/06 at 350 N Balph Avenue, Apartment 1F, Pittsburg, PA 15202-1162. We mailed a letter to the customer on 10/25/06 outlining the agreement for \$0.79 cents per therm on a variable rate contract. Due to the CSR's selection of a residential fixed letter for the customer instead of the variable letter caused the generation of a variable rate contract in a fixed contract agreement. Therefore, the incorrect fulfillment was mailed to the customer. The fulfillment states that the customer will receive the \$0.79 rate per CCF for the entire life of your 999-month agreement. This was an administrative error on MXenergy's behalf.

An MXenergy compliance analyst talked with Mr. Delehanty regarding his complaint, informing the customer that the fulfillment received was an administrative error and did not properly represent the variable rate plan that Mr. Delehanty agreed. Further explaining that a variable rate plan changes monthly and would not be a consistent rate of \$0.79 each month. Delehanty stated that he did not agree with the response provided and would escalate the matter.

On May 3, 2007, various MXenergy Inc. representatives initiated a call to Mr. Delehanty, Ms. Kathy Tozzini, Mr. Tom Hartmann, and Ms. Greta Presley. The recorded conversation, which occurred on October 13, 2006 with an MXenergy sales representative, was played to Mr. Delehanty. In that taped call, the customer repeatedly agreed that he was signing up for a variable rate offer with MXenergy.

The customer acknowledged during the May 3, 2007 conversation that he completely forgot about the taped call as well as agreed that based on the recorded conversation, he entered into and accepted the variable rate offer.

Mr. Delehanty and Mr. Hartmann discussed a letter dated October 25, 2006 from MXenergy, which erroneously referred to a fixed rate offer of \$0.79/ccf for 999 months. Mr. Hartmann explained that the October 25, 2006 letter was an administrative error.

The October 25, 2006 letter did not create a new agreement because there was not a mutual agreement to its terms -- unlike the phone call on October 13, 2006. MXenergy has never had a fixed rate offering for 999 months, as the error represents 84 years at a \$0.79 rate, it is clear that this was not an intended variable rate offer. In short, there was no meeting of minds on the points raised in the October 25, 2006 letter.

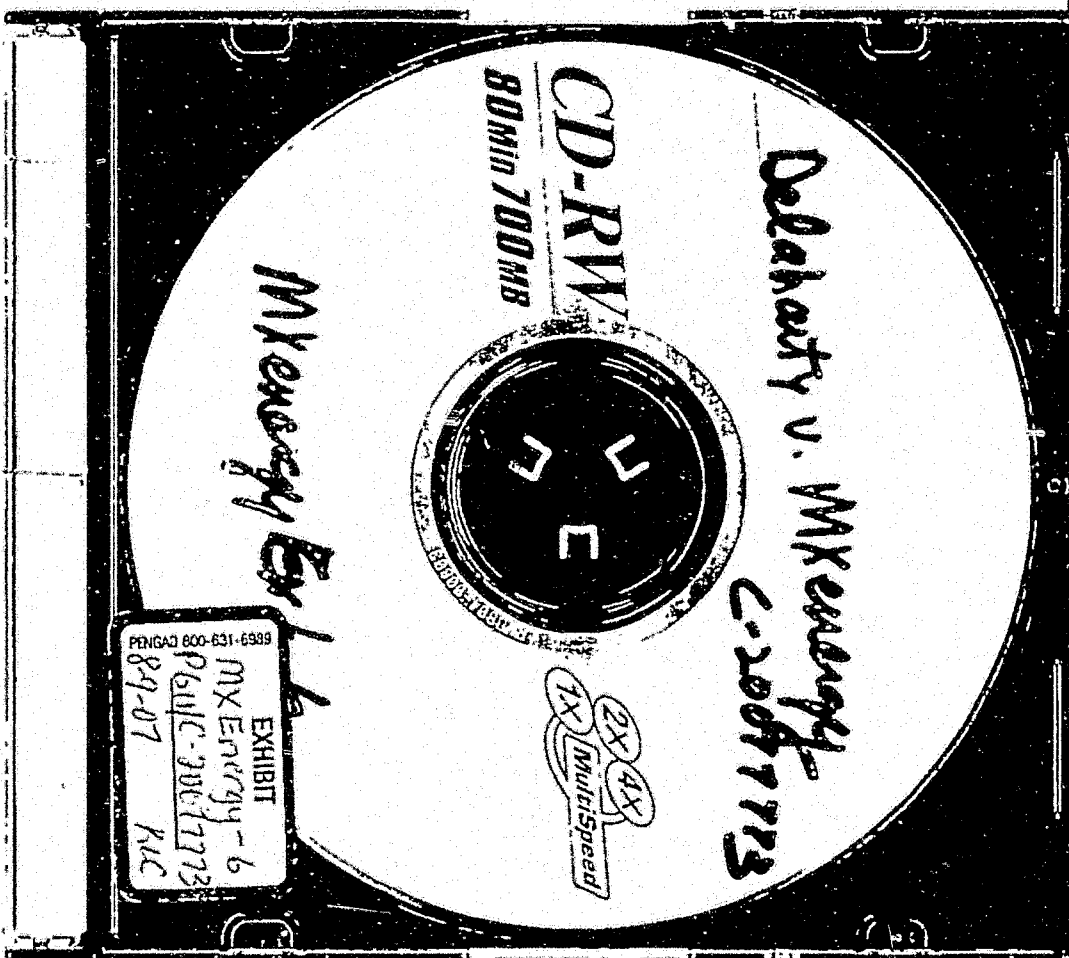
Mr. Delehanty informed us that he had started the cancellation process and would no longer be an MXenergy customer.

Regards,

Greta Presley
Compliance Manager

mxenergy

711 Louisiana Street, Suite 1000
Houston, TX 77002
Phone: (888-420-2922 extension 32)
Telephone: (713) 357-2648
GPresley@mxenergy.com



OVERSIZED
DOCUMENT(S)

Charles Delahanty v. MXenergy Inc.
Docket No. R-20077773

MXenergy Exh. 6

ENCLOSED COMPACT DISC

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