



Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL: 717 237 6000
FAX: 717 237 6019

Karen O. Moury
717.237.6036
kmoury@eckertseamans.com

September 3, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Michael B. Furman v. Energy Plus Holdings, LLC
Docket No. C-2020-3021334

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Energy Plus Holdings, LLC's ("Energy Plus") Preliminary Objections with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Karen O. Moury
Karen O. Moury

KOM/lww

Enclsoure

cc: Hon. Charles E. Rainey, Jr.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this date I served a copy of Energy Plus Holdings LLC's Preliminary Objections upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and First Class Mail

Michael B. Furman
327 Imperial Drive
York, PA 17403
mbfurman@gmail.com

Hon. Charles E. Rainey, Jr.
Chief Administrative Law Judge
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
bobbwillia@pa.gov

Date: September 3, 2020

Karen O. Moury

Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael B. Furman,	:	
	Complainant :	Docket No. C-2020-3021334
v.	:	
	:	
Energy Plus Holdings LLC,	:	
	Respondent :	

NOTICE TO PLEAD

To: Michael B. Furman
327 Imperial Drive
York, PA 17403
mbfurman@gmail.com

You are hereby notified that an Answer to the enclosed **Preliminary Objections** of Energy Plus Holdings LLC must be filed within 10 days of the date of service.

All pleadings, such as an Answer to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Energy Plus Holdings LLC.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Karen O. Moury, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101

/s/ Karen O. Moury

Karen O. Moury, Esquire

Date: September 3, 2020

Attorneys for
Energy Plus Holdings LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael B. Furman,	:	
	Complainant	: Docket No. C-2020-3021334
v.	:	
	:	
Energy Plus Holdings, LLC,	:	
	Respondent	:

**PRELIMINARY OBJECTIONS OF
ENERGY PLUS HOLDINGS LLC**

Pursuant to 52 Pa. Code § 5.101(a)(3) of the regulations of the Pennsylvania Public Utility Commission (“Commission”), Energy Plus Holdings LLC (“Energy Plus”) submits the following Preliminary Objections to the Complaint of Michael B. Furman (“Complainant”), requesting dismissal of the Complaint. In support hereof, Energy Plus avers as follows.

I. INTRODUCTION

1. Energy Plus is an electric generation supplier (“EGS”) licensed by the Commission to supply electricity to retail customers throughout Pennsylvania.¹
2. The Complaint was served on Energy Plus by the Commission on August 14, 2020. Energy Plus simultaneously filed an Answer to the Complaint on today’s date.
3. The relief sought by the Complaint is a refund to reflect the difference between the initial variable price and subsequent variable prices charged by Energy Plus. The variable prices

¹ *License Application of Energy Plus Holdings LLC*, Docket No. A-2009-2139745 (Order entered January 15, 2010). By letter dated October 17, 2011, Energy Plus notified the Commission that it had been acquired by NRG, Energy Inc. (“NRG”). Energy Plus is a wholly owned subsidiary of NRG.

charged by Energy Plus were consistent with the terms and conditions of the contract with Complainant. Complainant knew he enrolled with in a variable-priced contract and simply does not like the prices that he was charged over a 6-year period of being served by Energy Plus.

4. The Commission does not regulate EGS prices and does not have authority under the Public Utility Code to require Energy Plus to issue a refund to Complainant. Further, Complainant is a member of a class which discharged the very claim he is raising here in a federal court class action settled in October 2012. *Wise v. Energy Plus Holdings*, No. 11-cv-7345 (S.D.N.Y.).²

5. As Complainant has no alleged no grounds upon which the requested relief may be granted, the Complaint should be dismissed in its entirety.

6. In the alternative, the Commission should find that all disputes or claims related to matters that occurred prior to August 14, 2017 are barred by the statute of limitations in the Public Utility Code.

II. ARGUMENT

A. Applicable Legal Standards

7. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections.³ The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Id.*

8. Under Section 5.101(a) of the Commission's regulations, preliminary objections must specifically state the legal and factual grounds relied upon and should be limited to the following:

² See Para. 26 of these Preliminary Objections and Appendix A attached hereto.

³ 52 Pa. Code §5.101(a)(1)-(7). *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding;
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter;
- (3) Insufficient specificity of a pleading;
- (4) Legal insufficiency of a pleading;
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action;
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution; and
- (7) Standing of a party to participate in the proceeding.

9. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts.⁴ However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.⁵

10. In deciding the preliminary objections, the Commission must determine whether, based on the well-pleaded factual averments of the party, recovery or relief is possible.⁶

11. The filing of preliminary objections serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary.⁷

⁴ *County of Allegheny v. Cmwlth. of Pa.*, 490 A.2d 402 (Pa. 1985).

⁵ *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007).

⁶ *Department of Auditor General, et al. v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwlth. 1996).

⁷ 66 Pa.C.S. §703(a); *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 557 (Pa. Cmwlth. 1989).

B. Lack of Commission Jurisdiction, 52 Pa. Code §5.101(a)(1).

12. Under Section 5.101(a)(1) of the Commission’s regulations, preliminary objections may be filed against a complaint alleging lack of Commission jurisdiction.

13. The Commission is a creation of the General Assembly and only has the powers and authority granted to it by the General Assembly that are contained in the Public Utility Code.⁸ The Commission must act within and cannot exceed its jurisdiction.⁹ Jurisdiction cannot be conferred by the parties where none exists.¹⁰ Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.¹¹

(i) No Statutory Authority to Determine Prices or Interpret Contracts

14. The Complaint alleges that Energy Plus “overcharged” Complainant and that Energy Plus did not change the variable price frequently enough. In support of this allegation, Complainant refers to an irrelevant definition of “variable” from Investopedia to suggest that a variable rate would increase or decrease depending on a company’s production volume. Complainant overlooks the many other factors listed in the terms and conditions of the contract that Energy Plus considers in establishing variable prices.

15. Since the Commission does not regulate EGS prices,¹² it has no jurisdiction to determine whether Energy Plus “overcharged” Complainant. Moreover, the Commission has no statutory authority to interpret the terms and conditions of a private contract between an EGS and

⁸ *Shedlosky v. Pa. Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

⁹ *City of Pittsburgh v. Pa. Pub. Util. Comm’n*, 43 A.2d 348 (Pa.Super. 1945).

¹⁰ *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

¹¹ *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa.Cmwlth. 1992), alloc. denied, 637 A.2d 293 (Pa. 1993).

¹² 66 Pa.C.S. §2802(5) (“[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity”); *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania v. PUC*, 120 A.3d 1087, 1094 (Pa. Cmwlth. 2015); *HIKO Energy, LLC v. PUC*, 163 A.3d 1079, 1100 (Pa. Cmwlth. 2017), *aff’d on appeal*, 2019 Pa. LEXIS 3139.

its customers. The Commission itself has acknowledged that its jurisdiction over EGSs “does not extend to interpreting the terms and conditions of a contract between an EGS and a customer to determine whether a breach has occurred or setting the rates an EGS can charge.”¹³ Rather, these are matters for civil courts of competent jurisdiction.¹⁴ Therefore, the Commission has no statutory authority to examine each of the factors listed in the contract to determine whether the variable prices charged by Energy Plus reflected them.

16. Complainant knew he was enrolling in a variable rate plan and was aware that it could change on a monthly basis. After staying with Energy Plus for over six years, Complainant decided that he did not like the variable price that was being charged. He should not be heard to complain now that the price did vary but not as frequently as he thinks it should have.

17. As the Commission has no jurisdiction to determine that Energy Plus overcharged Complainant or did not change price often enough, the Complaint should be dismissed.

(ii) No Refund Authority Under Statute

18. The only relief requested by the Complaint is a refund for the difference between the initial variable price and subsequent variable prices charged by Energy Plus.

19. The Commission lacks statutory authority to direct Energy Plus to issue a refund to Complainant. The only provision in the Public Utility Code that authorizes the Commission to direct the issuance of refunds is Section 1312, which is limited to public utilities.¹⁵ EGSs are not public utilities except for limited purposes, which are not applicable here.¹⁶ Indeed, the

¹³ *Office of Small Business Advocate v. FirstEnergy Solutions Corp.*, Docket No. P-2014-2421556 (Order entered January 26, 2015) at 18.

¹⁴ *See Allport Water Auth. v. Winburne Water Co.*, 258 Pa. Super. 555, 393 A.2d 673 (Pa. Super. 1978) (Commission lacks jurisdiction to address disputes involving private contracts); *Adams et al. v. PUC*, 819 A.2d 631 (Pa. Cmwlth. 2003).

¹⁵ 66 Pa. C.S. §1312.

¹⁶ *See Delmarva Power & Light Co. v. PUC*, 582 Pa. 338, 870 A.2d 901 (Pa. 2005).

Commission has acknowledged that Section 1312 does not authorize it to require EGSs to issue refunds to customers.¹⁷

20. Notwithstanding the limited applicability of Section 1312, the Commission has found that in some instances it may rely on its plenary authority under Section 501 of the Public Utility Code¹⁸ to order the issuance of refunds by EGS.¹⁹ However, the circumstances under which the Commission has relied on its Section 501 authority are not present here. The Commission's rationale for finding that it may on some occasions direct EGSs to issue refunds is linked its oversight of the competitive market and ensuring that consumers are adequately protected when an EGS violates its regulations.²⁰

21. Here, Complainant makes no factual averments about the marketing practices of Energy Plus and does not allege that any promises of savings were made during the sales transaction. In fact, he enrolled online and did not interact with a sales agent. He also makes no claims that he was charged a higher price than permitted by the disclosure statement. Although Complainant alleges that he was "overcharged" by Energy Plus, he offers no basis for that claim other than that his variable price increased over the life of the account, which was consistent with the terms and conditions of his contract. In short, he has made no allegations that could lead to a finding that Energy Plus violated the Public Utility Code, Commission regulations or a Commission order.

¹⁷ See *Commonwealth v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Order entered December 18, 2014), at 16-17 ("*IDT Order*")

¹⁸ 66 Pa.C.S §501.

¹⁹ See *Commonwealth v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655 (Order entered July 19, 2018), at 95-96. This issue is currently on appeal in *Blue Pilot Energy, LLC v. Pa. PUC*, Case No. 1054 CD 2019.

²⁰ *IDT Order* at 17-18. See *Kiback v. IDT Energy, Inc.*, Docket No. C-2014-2409676 (Order entered August 20, 2015), at 25-27 (Commission ordered refund by supplier based on finding that the supplier's agent had promised savings compared to the utility rate for default service).

22. Thus, even if the Commission’s statutory authority includes the ability, under some circumstances, to require EGSs to issue refunds, the Complaint contains no factual averments to support the Commission’s use of Section 501 in this proceeding.²¹

23. Granting preliminary objections when there is no reason for going to hearing conserves valuable administrative resources and promotes judicial economy. No reason exists for going to hearing when the Commission lacks statutory authority to grant the requested relief. Therefore, the Complaint should be dismissed.

(ii) Statute of Limitations Bars Claims From Prior to August 14, 2017

24. Under Section 3314 of the Public Utility Code, no action may be brought more than three years after the date at which liability arose.²² As explained by the administrative law judge (“ALJ”) in *Perry v. Public Power, LLC*,²³ the statute of limitations in Section 3314 divests the Commission of jurisdiction to hear a dispute over matters that occurred more than three years ago.

25. Although the complaint in *Perry* was filed more three years after the customer had been served by the EGS and was dismissed in its entirety, it is also appropriate to dismiss portions of a complaint. In *Ackie, et al. v. Philadelphia Gas Works*,²⁴ the ALJ found that two of the alleged events did not occur within the three-year statute of limitations. Citing *Margaret Collins v Pennsylvania-American Water Company*,²⁵ the ALJ in *Ackie* concluded that allegations that fall outside the statute of limitations period are outside of the jurisdiction of the Commission. On that

²¹ This preliminary objection could also be based on the lack of legal insufficiency, pursuant to 52 Pa. Code § 5.101(4). The Complaint fails to state a claim upon which relief can be granted.

²² 66 Pa. C.S. §3314.

²³ *Perry v. Public Power, LLC*, Docket No. 2018-3003086 (Initial Decision served February 15, 2019, adopted by Final Order entered March 29, 2019), at 10-11.

²⁴ *Ackie et al. v. Philadelphia Gas Works*, Docket No. C-2019-3013933 (Order dated January 3, 2020), at 6-7.

²⁵ *Margaret Collins v Pennsylvania-American Water Company*, Docket No. F-2017-2628770 at 17-18 (Order entered August 29, 2019).

basis, she dismissed the paragraphs in the complaint that addressed matters which occurred more than three years earlier.

26. Here, Complainant is seeking refunds from Energy Plus back to May 2012. Yet, the Complaint was not filed until August 14, 2020. Claims for relief for the period of time from April 2012 through August 14, 2017 are barred by the statute of limitations. As the Commission has no jurisdiction to entertain those requests for relief, that portion of the Complaint should be dismissed.

27. Finally, any authority the Commission may have had to consider Complainant's request for a refund was relinquished by Complainant himself. Since Complainant was a customer of Energy Plus prior to October 15, 2012, he was and is a member of the settlement class in a federal class action. *Wise v. Energy Plus Holdings*, No. 11-cv-7345 (S.D.N.Y.). See Class Action Settlement Agreement ("Settlement"), which is attached as Appendix A (requiring claimants who wished to maintain claims against Energy Plus to opt out). As Complainant did not opt out of the class settlement, he released Energy Plus from liability for any claims that were asserted or could have been asserted in that action. Since the variable nature of the Energy Plus rate was an issue in that lawsuit, Complainant has forfeited any right he had to pursue the pending Complaint.²⁶ Therefore, the Complaint should be dismissed.

WHEREFORE, Energy Plus Holdings LLC respectfully requests that the Commission (a) grant these Preliminary Objections; (b) dismiss the Complaint, or in the alternative, bar claims regarding disputes about matters that occurred more than three years before the Complaint was filed; and (c) grant any other relief deemed appropriate.

²⁶ See *Equitable Gas Co. v. Wade*, 812 A.2d 715 (2002), 2002 Pa. Super. LEXIS 3213 (a final judgment precludes a party from further pursuing a claim).

Respectfully submitted,

/s/ Karen O. Moury

Karen O. Moury, Esq. (PA ID #36879)
Carl R. Shultz, Esq. (PA ID #70328)
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
Email: kmoury@eckertseamans.com
cshultz@eckertseamans.com

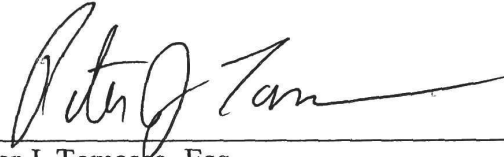
Date: September 3, 2020

Attorneys for Energy Plus Holdings, LLC

Verification

I, Peter J. Tomasco, state that I am Managing Senior Counsel for NRG Energy, Inc., and I state that the facts set forth in the foregoing Preliminary Objections are true and correct to the best of my knowledge, information and belief. Energy Plus Holdings, LLC (“Energy Plus”) is a wholly owned subsidiary of NRG. I expect that Energy Plus will be able to prove the facts set forth in the Answer at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

September 2, 2020

A handwritten signature in cursive script, appearing to read "Peter J. Tomasco", written over a horizontal line.

Peter J. Tomasco, Esq.
Managing Senior Counsel, NRG Energy, Inc.

APPENDIX A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ANGELA WISE and GIDEON ROMM, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

ENERGY PLUS HOLDINGS LLC,

Defendant.

No. 11-CV-07345 (WHP)

JIM FORTNEY, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

ENERGY PLUS HOLDINGS LLC,

Defendant.

No. 12-CV-08119 (WHP)

SETTLEMENT AGREEMENT

Subject to the approval of the Court, Plaintiffs Angela Wise, Gideon Romm, and Jim Fortney ("Plaintiffs" or "Named Plaintiffs"), acting individually and on behalf of the Settlement Class as defined herein, and Defendant Energy Plus Holdings LLC, together with Energy Plus Natural Gas LLC, f/k/a Energy Plus Natural Gas L.P. (collectively "Energy Plus"), enter into this Settlement Agreement ("Agreement") as of this 28th day of February 2013. Plaintiffs and Energy Plus are referred to herein as the "Parties" and each as a "Party."

I. RECITALS

1. Plaintiff Angela Wise filed a class action complaint against Energy Plus on October 18, 2011, styled *Wise v. Energy Plus Holdings LLC*, Civil Action No. 11-7345-WHP, in the United States District Court for the Southern District of New York (the “Wise Action”).

Plaintiff Wise, along with Gideon Romm, filed an Amended Class Action Complaint on January 11, 2012.

2. On March 23, 2012, a hearing was held on Energy Plus’s motion to dismiss, after which, on April 19, 2012, plaintiffs filed their Second Amended Class Action Complaint in the Wise Action. Plaintiffs Wise and Romm allege that Energy Plus violated state consumer protection laws entitling them and the putative class to actual and/or statutory damages and injunctive relief.

3. On August 8, 2012, plaintiff Jim Fortney filed a class action complaint styled *Fortney v. Energy Plus Holdings LLC*, Civil Action No. 12-cv-02355, in the United States District Court for the District of Maryland, Greenbelt Division. Plaintiff Fortney filed an Amended Complaint on or about October 25, 2012, in which he alleges that Energy Plus violated state consumer protection laws entitling him and the class to damages and injunctive relief. The Fortney Action was transferred to this Court and accepted as a related case to the Wise Action, where it bears the docket number 12-CV-08119 (WHP) (the “Fortney Action”).

4. Defendant Energy Plus Holdings LLC answered the operative complaints in the Wise Action and the Fortney Action, denying any wrongdoing or liability and asserting a number of defenses.

5. The Wise Action has proceeded through discovery, with class-related deposition testimony taken and more than 829,000 files produced by Energy Plus.

6. In addition to formal discovery, the Parties also conducted informal discovery and extensive research into the applicable law with respect to the claims and defenses and with respect to class certification issues. Counsel for Plaintiffs reviewed files produced by Energy Plus both as part of formal discovery and in preparation for settlement negotiations.

7. The Parties met telephonically and in person on numerous occasions to discuss a comprehensive settlement of the claims of the Named Plaintiffs and the putative class.

8. On December 4, 2012, the Parties participated in day-long settlement negotiations and reached an understanding.

9. The Parties recognize and acknowledge the benefits of settling these cases. Plaintiffs believe that the claims asserted in this case have merit and that the evidence developed to date supports their claims. Despite the strengths of their case, Plaintiffs are mindful of the problems of proof under, and possible defenses to, the claims in this matter. Plaintiffs further recognize and acknowledge the expense and length of time that proceedings necessary to prosecute this matter against Energy Plus through trial, post-trial proceedings, and appeals would take. Counsel for Plaintiffs have taken into account the uncertain outcome and risks of the litigation, as well as the difficulties and delays inherent in such litigation and the likelihood of protracted appeals. Counsel for Plaintiffs have, therefore, determined that the Settlement set forth in this Agreement is fair, reasonable and adequate. The Settlement confers substantial benefits upon, and is in the best interests of, the Plaintiffs and the Settlement Class (hereafter defined).

10. Energy Plus maintains that it has a number of meritorious defenses to the claims asserted in these actions. Nevertheless, Energy Plus recognizes the risks and uncertainties inherent in litigation, the significant expense associated with defending class actions, the costs of

any appeals, and the disruption to its business operations arising out of class action litigation.

Energy Plus also recognizes the risk that a trial on class-wide claims might present.

Accordingly, Energy Plus believes that the Settlement set forth in the Agreement is likewise in its best interests.

II. SETTLEMENT TERMS

A. Definitions

1. “Claim Deadline” means the last date on which a Claim Form may be submitted. The Claim Deadline will be one hundred and twenty (120) days from the entry of the Preliminary Approval Order and not less than sixty (60) days after the first date on which claims may be filed electronically with the claims administrator; however, if the 120th day after the entry of the Preliminary Approval Order falls on a weekend or federal holiday, then the Claim Deadline shall be the next day that is not a weekend or federal holiday.
2. “Claim Form” means the form, substantially in the form attached hereto as Exhibit A, whether in electronic or “hard copy,” that will be completed by Class Members and submitted to the Settlement Administrator in order to receive settlement benefits.
3. “Class Counsel” means D. Greg Blankinship and Meiselman, Packman, Nealon, Scialabba & Baker P.C.
4. “Class Members” means those consumers who fall within the definition of the Settlement Class and do not timely opt out as provided herein.
5. “Class Period” means any time up to and including October 15, 2012.

6. “Complaints” means, collectively: (i) the Second Amended Class Action Complaint filed in the Wise Action; and, (ii) the Amended Class Action Complaint filed in the Fortney Action.
7. “Court” means the United States District Court for the Southern District of New York.
8. “Effective Date” means the tenth (10th) day after the date on which all of the following conditions are satisfied:
 - a. Execution of this Agreement by the Named Plaintiffs and Energy Plus;
 - b. Entry of the Final Approval Order by the Court approving the Settlement embodied in this Agreement;
 - c. The passage of the earliest date on which: (i) the time for taking an appeal from the Final Approval Order and judgment has expired, without any appeal having been taken; or (ii) if an appeal is taken, the highest court to which such appeal may be taken affirms the Final Approval Order or dismisses the appeal without, in either case, any modification of the Final Approval Order that is in any respect unsatisfactory to the Parties.
9. “Fairness Hearing” or “Final Approval Hearing” means a hearing to be held by the Court, on notice to the Settlement Class, to consider approval of the Settlement and Class Counsel’s motion for approval of attorneys’ fees and reimbursement of costs and expenses. The Parties will ask the

Court to schedule a Fairness Hearing approximately ninety (90) days from the entry of the Preliminary Approval Order.

10. "Final Approval Order" means the Order granting final approval to the Settlement, which should not be entered sooner than ninety (90) days after the appropriate state and federal officials have been served with notice of the Settlement in accordance with the Class Action Fairness Act of 2005, as codified at 28 U.S.C. § 1715(b). Energy Plus agrees to provide the Court and Class Counsel promptly with the date(s) of service of said notices.
11. "Individual Settlement Amount" means the monetary amount calculated as of the end date of the Class Period that is allocated to each Class Member. The Settlement Administrator will be charged with (a) determining the applicable Individual Settlement Amount for each Class Member in accordance with data provided by Energy Plus after review and approval by Class Counsel; and (b) making available for viewing on the website by each Class Member his or her respective Individual Settlement Amount, as well as all other required information. The Individual Settlement Amounts, which apply to class members who have received at least two invoices for electric supply, range between a low of \$6.00 and a high of \$101.00, based upon the state in which the class member resides, the value of rewards, and the length of time a class member was a customer of Energy Plus. The estimated average Individual Settlement Amount per class member is \$23. The aggregate value of all Individual Settlement

Amounts available under the Settlement Agreement is estimated to be between \$9,178,451.00 and \$11,014,142.00, depending on the different options available to Class Members.

12. "Named Plaintiff Enhancement Awards" means the monetary amount awarded by the District Court in recognition of the assistance provided by the Named Plaintiffs in the prosecution of this action, for which Class Counsel shall ask for an amount not to exceed \$4,000.00 for each of Plaintiffs Wise and Romm, and \$2,000.00 for Plaintiff Fortney.
13. "Preliminary Approval Date" means the date on which the Court enters the Preliminary Approval Order.
14. "Preliminary Approval Order" means the Order preliminarily approving the Settlement, conditionally certifying the Settlement Class for the purposes set forth in this Agreement, and approving the form of notice to potential Class Members.
15. "Released Claims" means and includes any and all manner of actions, causes of action, suits, accounts, claims, demands, controversies, judgments, obligations, damages and liabilities of any nature whatsoever, whether or not now known, suspected or claimed, that were asserted, or could have been asserted by Plaintiffs in this action, or that could have been asserted by any Class Member against Energy Plus, that relate to or arise out of the conduct alleged in the Complaints or similar conduct, wherever it may have occurred.

16. "Released Persons" means Energy Plus and their parents, subsidiaries, affiliates, predecessors, successors and assigns, as well as all of their respective, current and former officers, directors, owners, employees, agents, attorneys and insurers.
17. The "Settlement" shall mean the settlement embodied in this Agreement.
18. "Settlement Administrator" means the person or entity selected by Class Counsel with the agreement of Energy Plus and appointed by the Court to perform the role of settlement administrator and all related tasks including those set forth in Section II.D. below.
19. "Settlement Class" is defined as:

All persons who were customers of Energy Plus Holdings LLC or Energy Plus Natural Gas LLC in New York, Maryland, Connecticut, New Jersey, Pennsylvania, Texas, Illinois, Ohio, or Massachusetts, at any time up to and including October 15, 2012.

Excluded from the Settlement Class are Energy Plus Holdings LLC and Energy Plus Natural Gas LLC; any of their respective parents, subsidiaries, or affiliates; any entity controlled by either of them; any officer, director, employee, legal representative, predecessor, successor, or assignee of either Energy Plus Holdings LLC or Energy Plus Natural Gas LLC; and any present or former customer who previously received from Energy Plus any payment resolving a claim similar to those asserted in the Wise Action.

B. Class Certification

The Parties agree that the Wise Action may be conditionally certified as a class action under Fed. R. Civ. P. 23(a) and (b)(3) in accordance with the terms of this Agreement and without prejudice to Energy Plus's right to contest class certification in the event that this Agreement fails to become effective or is not fully implemented in accordance with its terms. If the Settlement is not approved or this Agreement fails to be fully implemented, Energy Plus reserves all rights to object to any subsequent motion to certify a class in this or any other

lawsuit, and no representation or concession made in connection with the Settlement or this Agreement shall be considered law of the case or an admission by Energy Plus or to have any kind of preclusive effect against Energy Plus or to give rise to any form of estoppel or waiver by Energy Plus in these actions or any other proceeding.

Energy Plus expressly denies any and all liability and/or wrongdoing with respect to any and all of the claims alleged in these lawsuits and any similar lawsuits and enters into this Settlement solely to compromise a disputed claim. Accordingly, any references to the alleged business practices of Energy Plus in this Settlement, this Agreement or the related Court hearings and processes shall raise no inference respecting the propriety of those business practices or any other business practices of Energy Plus.

C. Class Counsel

The Parties agree, subject to Court approval, that D. Greg Blankinship and the firm of Meiselman, Packman, Nealon, Scialabba & Baker P.C. shall be appointed Class Counsel, without prejudice to Energy Plus's right to contest the appointment in the event that this Agreement is not fully implemented in accordance with its terms. If the Settlement is not approved or this Agreement fails to be implemented fully, Energy Plus reserves all rights to object to any subsequent motion to appoint class counsel in these or any other actions.

D. Settlement Administrator

The Settlement Administrator will be responsible for all aspects of claims administration in accordance with the terms of its engagement, including without limitation: (a) creating and maintaining a database of names and addresses of class members in accordance with information provided by Energy Plus; (b) comparing that database with a national change of address database; (c) printing and mailing notices, each with an assigned unique claim number; (d) compiling address information for and re-sending any notices returned as undeliverable;

(e) maintaining and staffing a call center that enables class members to hear automated responses to frequently asked questions and to obtain a live operator to field other questions; (f) developing and maintaining a website for the purposes of notice and Claim Form administration;

(g) calculating the proper Individual Settlement Amount for each Class Member and making available for viewing on the website by each Class Member who inquires, his or her respective Individual Settlement Amount; (h) providing a blank Claim Form by mail to any Class Members who request one; (i) compiling a list of Class Members who submit properly completed Claim Forms, either by mail or via the website, and verifying the accuracy and completeness of the Claim Forms; (j) distributing appropriate Individual Settlement Amounts by check to those Class Members who, on or before the Claim Deadline, request the Cash Option described in Section II.H(1) below; (k) distributing gift certificates provided by Energy Plus to Class Members who choose the gift certificate option described in Section II.H(2) below; (m) providing to Energy Plus a list of Class Members who choose either the “cash back” or “green” options described in Sections II.H(3) and H(4) below. Energy Plus will pay all costs relating to the Settlement Administrator, so long as those costs do not exceed \$300,000.00.

E. Notice

The Parties will be jointly responsible for agreeing upon the form and language of the notice to the Settlement Class, and they agree to cooperate in drafting that notice and ensuring that notice complies with the requirements of Federal Rule of Civil Procedure 23 and due process, subject to Court approval. Copies of the proposed notice to the class shall be served and filed with the motion for Preliminary Approval.

A short-form notice to the Settlement Class will be provided by United States Mail, postage prepaid, in a preprinted postcard format. Notice to former customers of Energy Plus will be provided in the same manner, mailed to their last known addresses as reflected in records

reasonably available to Energy Plus. The long-form notice will be available on the website to all Settlement Class members.

No later than twenty (20) days prior to the Final Approval Hearing, the Settlement Administrator shall certify to the Court compliance with the notice provisions of this Section II.E.

F. Website

The Settlement Administrator will create and maintain a website to provide, among other things, (1) copies of the long-form notice discussed in the preceding section hereof, this Agreement, and certain selected pleadings and Court Orders from the Wise Action; (2) the claims administrator's and Class Counsel's contact information; (3) each Class Member's respective Individual Settlement Amount; (4) a method for the electronic submission of Claim Forms at the appropriate time; and (5) a method for requesting the Claim Form(s) by mail.

G. Class-Wide Equitable Relief

As part of the consideration for the Settlement and Releases given herein, Energy Plus agrees, as follows:

Beginning on August 1, 2012, and for twenty-four consecutive months thereafter, Energy Plus shall make or have made the following alterations to its retail consumer marketing materials used in connection with its variable price products sold during the Class Period:

1. In advertisements substantially similar to the advertisement contained in Exhibit B (attached hereto and incorporated herein), Energy Plus shall delete the Frequently Asked Question ("FAQ") entitled "Will I save money with Energy Plus?"
2. In advertisements substantially similar to the advertisement contained in Exhibit B, Energy Plus shall either (i) delete the FAQ entitled "What will

my rate be with Energy Plus?” or (ii) cease to answer such question with any statements related to buying electricity every day at the best possible price, but will instead describe the variable nature of the rate and shall include the following phrase or language substantially similar thereto: “The price may be higher than your local utility.”

3. In advertisements substantially similar to the advertisement contained in Exhibit B, Energy Plus shall either (i) delete the FAQ entitled “What will my rate be with Energy Plus?” or (ii) cease to answer such question with the statement that customers are “getting the best possible price,” but will instead describe the variable nature of the rate and shall include the following phrase or language substantially similar thereto: “The price may be higher than your local utility.”
4. In advertisements substantially similar to the advertisement contained in Exhibit B, Energy Plus shall cease use of the phrase “no risk,” unless it is clear that the statement relates only to the process of switching from the utility to Energy Plus.

During the same 24-month period, Energy Plus further agrees to conduct annual compulsory training for marketing staff, to be conducted by outside counsel. Energy Plus will annually notify Class Counsel of the date(s) on which said training was conducted.

H. Settlement Amounts

In consideration of the Releases set forth in Section II.L below, each Class Member, upon verification by the Settlement Administrator of a timely submitted, properly completed Claim Form, shall be entitled to one of the following options:

1. The Class Member may choose to receive his or her Individual Settlement Amount in the form of a check payable to the Class Member (the “Cash Option”);
2. In lieu of and not in addition to the Cash Option, a Class Member may choose a gift certificate redeemable for merchant gift card(s) in an amount equal to the Individual Settlement Amount, rounded up to the nearest \$5.00 increment;
3. In lieu of and not in addition to the Cash Option or the gift certificate described immediately above, a Class Member who is a current customer receiving electricity or natural gas supply from Energy Plus may choose to participate in a “cash back” program through which such class member will receive, at the end of 12 consecutive continued months of future energy supply service from Energy Plus, a 15% (in the case of electric supply) or 20% (in the case of gas supply) premium over the Cash Option;
or
4. In lieu of the choices set forth in sub-paragraphs II.H(1), H(2), and H(3) above, a Class Member who is a current customer receiving electricity supply from Energy Plus may select a “green” option that will give such Class Member a 20% premium over the Cash Option, valued at Energy Plus’s retail rate for its “green” product add-on, to be fulfilled through renewable energy credit purchases used to offset actual customer usage.

Former Energy Plus customers who choose to reenroll with Energy Plus in the then-prevailing fixed-rate energy supply program (to the extent available in that Class Member’s

service area) can choose either the “cash back” program (for electricity supply service, if available) described in sub-paragraph II.H(3) above, or the “green” option (for electricity supply service) described in sub-paragraph II.H(4) above.

It is understood that a given Class Member may receive or have received electric or natural gas supply service at more than one location and, therefore, may have had more than one account with Energy Plus, which may or may not correspond to more than one Individual Settlement Amount. Each such account shall be treated as a Class Member for the purposes of this Section II.H.

The Individual Settlement Amounts described in this Section II.H will be available on a “claims made” basis and Energy Plus will fund valid claims as determined by the Settlement Administrator only insofar as actually claimed on or before the Claim Deadline.

All Class Members who submit a Claim Form must sign (or, in the case of claims made on-line on the Settlement Administrator’s website, electronically sign), as part of the Claim Form, an attestation under penalty of perjury that: (i) they (or their business) are/were a named account holder with Energy Plus Holdings LLC and/or Energy Plus Natural Gas LLC during the Class Period; (ii) they did not already receive a payment resolving a claim similar to those asserted in the Wise Action; (iii) they did not have and are not now seeking to have their account balance discharged due to bankruptcy or receivership; and (iv) they acknowledge that submission of the Claim Form waives any opt-out rights that they may otherwise have.

Class Members who are paid by check shall have 60 days within which to cash those checks. Upon the expiration of that time period, any check not cashed within the time period allotted will become void. The voiding of any such check by the passage of time as described in

this paragraph shall not serve to invalidate the release given in Section II.L hereof by any Class Member who failed timely to negotiate his or her check.

I. Other Payments by Energy Plus

1. Energy Plus will not oppose or object to a request for, and agrees to pay to Class Counsel, upon Court approval, attorneys' fees, costs, and expenses of litigation, in such amount as may be approved by the Court, not to exceed in the aggregate \$3,300,000 (Three Million, Three Hundred Thousand Dollars). Energy Plus agrees to pay the Court-approved amount to Class Counsel within seven (7) business days of the Effective Date. Notwithstanding anything contained in this Agreement that might be construed to the contrary, it is understood by the Parties and Class Counsel that attorneys' fees, costs and expenses, in the amount awarded by the Court, are the only such fees, costs and expenses that Energy Plus will pay in connection with this Settlement. With the exception of its own costs, expenses or attorneys' fees, Energy Plus shall not be liable for any other litigation costs, expenses or attorneys' fees except as expressly provided in this Agreement.
2. Energy Plus agrees to pay, upon Court approval, Named Plaintiff Enhancement Awards to each Named Plaintiff in the amount awarded by the District Court, not to exceed the amounts set forth in the Definitions above and to so many of the named plaintiffs in the actions set forth in Section K below as support the Settlement, according to its terms; and
3. After the Court has granted preliminary approval to the Settlement Agreement and approved the form of notices, Energy Plus agrees to pay

costs of notice and administration, including all costs relating to the Settlement Administrator up to a maximum of \$300,000 (Three Hundred Thousand Dollars), it being understood that the Settlement Administrator is to be chosen by Class Counsel, with the consent of Energy Plus and that Class Counsel will use best efforts to minimize costs of administration, including using comparison estimates made available by claims administration services contacted by Energy Plus.

J. Full and Final Settlement

The Parties agree that this action is being voluntarily settled after consultation with experienced legal counsel and that the terms of the Settlement were negotiated at arm's length and in good faith. The Parties intend the Settlement to be a final and complete resolution of the Released Claims. In order to effectuate that purpose, the Parties agree to cooperate with one another and use their best efforts to obtain Court approval of the Settlement and this Agreement.

K. Good Faith Effort to Resolve Other Pending Litigation

Class Counsel agrees to make good faith efforts to obtain the agreement of plaintiffs in the actions denominated *Yu v. Energy Plus Holdings LLC and Energy Plus Natural Gas LP*, Civil Action No. 2:12-cv-2627-JLL-MAH (consolidated with *Faistl v. Energy Plus Holdings LLC and Energy Plus Natural Gas LP*, Civil Action No. 2:12-cv-2879-JLL-MAH) (D.N.J.); *Harley v. Energy Plus Holdings LLC*, Court of Common Pleas of Philadelphia County, Pennsylvania, October Term 2012, No. 77; and *Taylor v. Energy Plus Holdings LLC*, Court of Common Pleas of Philadelphia County, Pennsylvania, October Term 2012, No. 704, to agree neither to opt out nor object to this Settlement and to agree to the dismissal of each of those actions with prejudice in light of this Agreement without the necessity of Energy Plus pleading the Settlement and Release as a bar to the claims made in those actions.

Class Counsel acknowledges and agrees that Energy Plus will not pay any additional amount as attorneys' fees, expenses, disbursements or costs to plaintiffs in the above-referenced pending New Jersey and Pennsylvania lawsuits or their respective counsel, except that Energy Plus agrees to pay \$2,000 to each representative plaintiff in the above-referenced pending New Jersey and Pennsylvania lawsuits, on the same terms applicable to Plaintiffs receiving Named Plaintiff Enhancement Awards hereunder, provided that said representative plaintiff agrees not to opt out or object to this Settlement and to support the motion for Final Approval.

In the event that Class Counsel cannot reach agreement with respect to the dismissal of any one or more of the above-referenced pending New Jersey and Pennsylvania lawsuits or counsel in any of those lawsuits does not agree upon an apportionment of the attorneys' fees, costs and disbursements, the Parties will renegotiate the terms of this Agreement in good faith, with a view to ensuring that Energy Plus will not pay more than the amounts it has agreed to in this Agreement in order to settle all outstanding class action litigation against Energy Plus.

L. Release

Upon the Effective Date and without any further action by the Court or by any Party to this Agreement, Plaintiffs and the Class Members and all of their administrators, executors, personal representatives, heirs, agents, attorneys, assigns, predecessors and successors, for good and sufficient consideration, the receipt and adequacy of which is acknowledged, shall be deemed to, and shall, in fact, have remised, released and forever discharged any and all Released Claims, which they, or any of them, had or has or may in the future have or claim to have against the Released Persons.

III. PROCEDURES FOR EFFECTUATING SETTLEMENT

A. Preliminary Approval

Promptly after the execution of this Agreement, Plaintiffs will move the Court for an order preliminarily approving this Agreement and requesting that the Court approve the form and content of the short-form and long-form Notices to the Class, substantially in the forms of Exhibits C and D to this Agreement, as described in Section II.E above, and:

1. conditionally certifying the Settlement Class, for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(a)(1)-(4) and (b)(3), with Plaintiffs Wise and Romm as the named Class representatives and Class Counsel as counsel for Plaintiffs and the Settlement Class;
2. setting the date of the Fairness Hearing, upon notice to the Settlement Class, to consider:
 - a. whether the Settlement should be approved as fair, reasonable and adequate and whether the Released Claims of the Settlement Class against the Released Persons should be dismissed with prejudice;
 - b. Class Counsel's Motion for an award of attorneys' fees, costs and expenses; and
 - c. the Named Plaintiff Enhancement Awards.

Class Counsel will file motions on topics III.A.2.a, b, and c at least ten (10) days prior to the date of the Fairness Hearing.

Upon the filing of Plaintiff's Motion for Preliminary Approval, counsel for Energy Plus will provide notice of the Settlement to the appropriate officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, the costs of such notice to be paid by Energy Plus.

B. Treatment of Potential Opt Outs and Objectors

Subject to an Order of the Court so providing, the Parties agree that:

1. Opt Outs

Any potential Class Member, other than any Named Plaintiff, may elect to be excluded from this Settlement and from the Class by opting out of the Class. Any potential Class Member who desires to be excluded from the Class must give written notice of the election to be excluded on or before the date specified in the Notices described in Section II.E, to the Settlement Administrator, Class Counsel and counsel for Energy Plus. The last date for Class Members to opt out of the Settlement will, subject to Court approval, be 60 days after the entry of the Preliminary Approval Order. Class Members who timely opt out of the Settlement will not be bound by the terms of this Agreement, including any releases contained herein.

In the event that ten percent or more of the Settlement Class opts out, Energy Plus shall have the option to elect to terminate this Agreement, in which circumstance the Settlement will become null and void and the parties will return to the *status quo ante* as described in Section III.E below.

Named Plaintiffs agree not to opt out of this Settlement, but rather affirmatively to support Final Approval. None of the Named Plaintiffs, Class Counsel, Energy Plus, or its counsel shall in any way encourage any Class Member to opt out or discourage any Class Member from participating in this Settlement.

2. Objections

Any Class Member who wishes to object to the Settlement must file a written objection and/or a notice of intention to appear before the Court at the Fairness Hearing, and serve copies on Class Counsel and counsel for Energy Plus. Any objection must set forth in writing a brief, informal statement of the nature of the objection, the reasons for the objection, and copies of any

papers that the objector intends to present to the Court in support of the objection at the Fairness Hearing. The last day for Class Members to object to the Settlement will be 60 days after the entry of the Preliminary Approval Order.

Named Plaintiffs agree not to object to Final Approval of this Settlement, but rather affirmatively to support Final Approval. None of the Named Plaintiffs, Class Counsel, Energy Plus, or its counsel shall in any way encourage any Class Member to object to this Settlement.

C. Approval of the Court

This Agreement and the Settlement embodied herein are subject to Final Approval by the Court. If the Settlement is approved, the Court will enter a judgment dismissing the claims against Energy Plus with prejudice.¹ The Named Plaintiffs waive any right to appeal or collaterally attack a Final Approval Order entered by the Court.

If this Agreement or any part of it is materially modified by the Court or is materially modified upon appeal or remand, either Party may terminate this Agreement pursuant to Section III.D. If no Party timely elects to terminate, then the Parties shall remain bound to the Settlement as so modified. For purposes of this paragraph, a “material modification” is one that significantly affects the rights or obligations of one or more of the Parties. Without limiting the foregoing and by way of illustration only, (a) any change to the scope of the Release set forth in this Agreement; (b) any change to the Final Approval Order, or (c) any increase in the cost of the Settlement to be borne by Energy Plus shall be deemed to be a material modification. No order or action of the Court pertaining to attorneys’ fees or expenses shall be considered to constitute a material modification so long as such order, action or modification does not increase the cost of

¹ To the extent that the Court does not order dismissal with prejudice of the *Fortney* action, Fortney agrees to dismiss his claims voluntarily and with prejudice at the same time as the Wise Action is dismissed.

Settlement to be borne by Energy Plus and does not require that Energy Plus do anything not specifically set forth herein. Similarly, no order or action of the Court pertaining to the Named Plaintiff Enhancement Awards shall be considered to constitute a material modification so long as such order, action or modification does not increase the cost of Settlement to be borne by Energy Plus and does not require that Energy Plus do anything not specifically set forth herein. Any dispute as to the materiality of any modification or proposed modification of this Agreement shall be resolved by the Court.

D. Termination of Agreement

This Agreement shall terminate: (a) automatically if the Court fails to approve the Agreement; (b) at the election of either Party, in the event of any proposed material modification of this Agreement as a condition to approval of the Settlement; (c) prior to approval of this Agreement by the Court, upon the mutual agreement of the Parties by and through their respective counsel; or (d) at the election of Energy Plus, in the event that ten percent or more of the Settlement Class opts out.

E. Effect of Termination of Agreement

If this Agreement is terminated, each Party shall return to his, her, or its respective status as of December 4, 2012, and they shall proceed in all respects as if this Agreement had not been executed and any related orders had not been entered, preserving all of their respective claims and defenses.

IV. MISCELLANEOUS PROVISIONS

A. Costs

Except as otherwise provided in this Agreement, each Party shall bear its own costs and expenses.

B. Entire Agreement

This Agreement, together with the Exhibits hereto, constitutes the entire agreement between the Parties with respect to the subject matter of the Settlement and supersedes all prior negotiations, communications, memoranda and agreements between the Parties. Neither Named Plaintiffs nor Energy Plus are entering into this Agreement in reliance upon any representations, warranties or inducements other than those contained in this Agreement.

C. Amendments

This Agreement may be modified or amended only by (a) an order of the Court, or (b) a writing signed by (i) Class Counsel, and (ii) counsel for Energy Plus.

D. Extensions of Time

The Parties may jointly request that the Court allow reasonable extensions of time to carry out any of the provisions of the Agreement without formally amending this Agreement.

E. Plaintiffs' Authority

Class Counsel represent and warrant that they are authorized to take all appropriate actions required or permitted to be taken by or on behalf of the Named Plaintiffs and, subsequent to an appropriate Court Order, the Class in order to effectuate the terms of this Agreement and are also authorized to enter into appropriate modifications or amendments to this Agreement on behalf of the Named Plaintiffs and, subsequent to an appropriate Court Order, Class Members.

F. Counterparts

This Agreement may be executed in one or more counterparts, all of which together shall be deemed to be one and the same instrument. The Parties agree that a copy of the executed counterparts may be filed with the Court in connection with the motion to approve the Settlement, either in portable document format or some other suitable electronic form, as an

exhibit to Plaintiffs' Motion for Preliminary Approval without the need to collate and file a copy with original signatures.

G. Cooperation

The Parties shall cooperate with the Settlement Administrator to the extent reasonably necessary to assist and facilitate the Settlement Administrator in carrying out its duties and responsibilities. The Parties will also cooperate so that Class Counsel may have such confirmatory discovery as is reasonably necessary in connection with this Agreement.

H. Binding Nature

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Plaintiffs, Class Members and Energy Plus.

I. Construing the Agreement

This Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been initially drafted by counsel for only one of the Parties. It is recognized that this Agreement is the result of arm's-length negotiations between the Parties and it is acknowledged that all Parties have contributed substantially to the preparation of this Agreement, accordingly, the doctrine of *contra proferentum* shall not apply in construing this Agreement, nor shall any other such similar doctrine apply.

J. Choice of Law

This Agreement shall be governed by and interpreted in accordance with the substantive common law of the State of New York, exclusive of choice of law principles.

K. Jurisdiction

The Parties submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York for the purpose of enforcing this Agreement or implementing any part of the Settlement embodied in this Agreement.

L. Headings

The captions and headings employed in this Agreement are for convenience only, are not a part of the Agreement, and shall not be used in construing or interpreting the Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, as of the
date and year first above written.

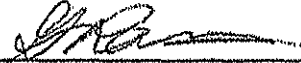
By: Angela D. Wise
Angela Wise, individually
and for the proposed class

By: _____
Gideon Romm, individually
and for the proposed class

By: _____
Jim Fortney, individually
and for the proposed class

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, as of the date and year first above written.

By: _____
Angela Wise, individually
and for the proposed class

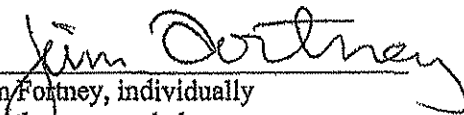
By:  _____
Gideon Romm, individually
and for the proposed class

By: _____
Jim Fortney, individually
and for the proposed class

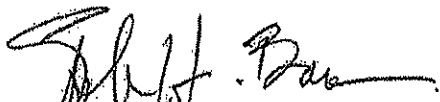
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, as of the date and year first above written.

By: _____
Angela Wise, individually
and for the proposed class

By: _____
Gideon Romm, individually
and for the proposed class

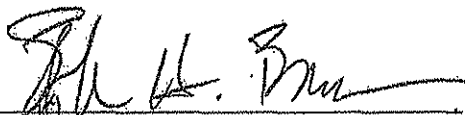
By: 
Jim Fortney, individually
and for the proposed class

For Energy Plus Holdings LLC,



Stephen H. Barnes
President

For Energy Plus Natural Gas LLC, f/k/a Energy Plus Natural Gas LP:
By: Energy Plus Holdings LLC, its sole member,



Stephen H. Barnes
President

Exhibit A

Exhibit A

CLAIM FORM

Name: _____
(First) (Middle Initial) (Last)

Date of Birth: _____
mm/dd/yyyy

Claim Number (printed on the Notice you received by mail): _____

Account Number (if unavailable, leave blank): _____

Address: _____
(Street) (Apt./Unit#)

(City) (State) (Zip)

I wish to participate in the class action settlement in *Wise, et al. v. Energy Plus Holding LLC*, Case No. 11-CV-07345 (WHP) (S.D.N.Y.) (the "Action").

I declare under penalty of perjury that:

(i) On or before October 15, 2012, I enrolled in my name (or that of my business) with Energy Plus Holdings LLC and/or Energy Plus Natural Gas LLC, f/k/a Energy Plus Natural Gas L.P. ("Energy Plus");

(ii) I have not previously received from Energy Plus any payment relating to a complaint that I made with respect to amounts invoiced to me for electric or gas service up to and including October 15, 2012;

(iii) I did not have any account balance with Energy Plus discharged due to bankruptcy or receivership on or before October 15, 2012 and I am not now the subject of any bankruptcy or receivership action.

I further acknowledge that submission of this claim form waives any and all rights I might otherwise have to opt out of the settlement of the Action and bring a lawsuit individually.

I am a current Energy Plus customer and I elect:

- a check for the settlement amount applicable to me
- a gift certificate
- to participate in the cash-back program
- the "green" option (electric customers ONLY)

I am a former Energy Plus customer and I elect:

- a check for the settlement amount applicable to me
- a gift certificate
- to reenroll with Energy Plus in the prevailing fixed-rate electric supply program with a "cash back" option (if available in my service area and, if not, I understand that I will receive the "cash option")
- to reenroll with Energy Plus for electricity service with the "green" option

If not submitted electronically, this form must be mailed to:

The Energy Plus Class Action Settlement
P.O. Box 43152
Providence, RI
02940-3152

(Signature) (if filed electronically, type your full name here)

(Date)

**DO NOT SEND THIS CLAIM FORM
WITH YOUR REGULAR MONTHLY ENERGY SERVICES PAYMENT**

Exhibit B

ENERGY PLUS




November Mailing
Sample A. Sample
100 Main Street
Anywhere, NY 10001



7,500 Bonus Miles

Try Energy Plus risk-free and earn miles

Dear Sample:

As you may know, New Yorkers now have a choice when it comes to their electricity supplier. Energy Plus™ is one of the fastest growing Energy Service Companies (ESCOs) in New York and has created a special offer for  members. Exclusively through Energy Plus, New Yorkers can earn the following rewards:

- ✦ 7,500 bonus miles after your 2nd month as an Energy Plus customer¹
- ✦ Year-round unlimited miles on the supply portion of your electricity bill – 2 miles for every \$1 you spend¹

Also, by selecting Energy Plus you'll be eligible for a monthly **sales tax savings** of up to 9.75% on the delivery portion of your electricity bill.²

Perhaps the best part about this offer is that there is **no risk** to you. Simply provide your current utility account number to Energy Plus and we'll handle enrollment automatically with no impact to your service. Your current utility provider will continue to handle all transmission services – from delivering your electricity to reading your meter, addressing any service emergencies and sending you one consolidated bill.



With Energy Plus there are NO set-up or cancellation fees nor are there any long-term contracts to sign so if you're not completely satisfied, you can go back to your existing provider.

To learn more and sign up, please visit www.EnergyPlusRewards.com  244.

Sincerely,

Paul Frantz
Chief Marketing Officer
Energy Plus™



Questions? Please email us at Service@EnergyPlusCompany.com or call 866-964-5672. Your offer code is -0244-016. Please note that if you choose to have one of our representatives process your application, you will earn 5,000 bonus miles. In order to earn 7,500 bonus miles, please apply online at www.EnergyPlusRewards.com  244. Offer valid for New York residents, excluding areas serviced by the Long Island Power Authority (LIPA). See additional disclosures on reverse side.

 12

Frequently Asked Questions

Who is Energy Plus™?

Energy Plus is one of the fastest growing energy service companies in New York and supplies millions of kilowatt hours of electricity to customers across the state.

Why did I receive this mailing?

You received this mailing because you are an [REDACTED] member and we are proud to introduce this new way you can earn more miles.

Will I save money with Energy Plus?

By choosing Energy Plus, you will no longer have to pay sales tax on the delivery portion of your bill, so the savings will add up over the course of a year.²

What will my rate be with Energy Plus?

Energy Plus offers a market-rate product which means we buy electricity every day at the best possible price and use that price to set our rate. Similar to your local utility company, your rate may change each month. However, we find that over the long-run this is the best way to ensure you're getting the best price possible.

Is Energy Plus licensed and certified?

Yes, Energy Plus is an independent energy company that has been approved by the New York Public Service Commission (PSC) and your local utility company.

Will I have to pay 2 separate bills?

No. When you select Energy Plus as your electricity supplier, you will receive one consolidated bill from your utility company. Energy Plus will simply appear as the supplier under the supply section of your electricity bill.

Is there any cost to enroll?

With Energy Plus, there is no cost to enroll and no monthly fees associated with your account.

Do I need to pay with my credit card in order to earn miles?

No, you do not have to pay with your credit card in order to earn [REDACTED] miles. You can continue paying your utility company in the same way you do today. Energy Plus is not affiliated with a credit card program. The miles you earn with Energy Plus will be deposited into your account based on the membership number you provide during enrollment.

Who do I call if there is a problem with my service?

Your electricity will continue to be delivered safely and reliably by your local utility company. If you experience any type of outage or emergency, please contact your utility company.

¹Bonus miles will be awarded after the close of your second billing cycle with Energy Plus. Please allow 8-12 weeks for bonus miles to appear in your account. Enrollment bonus miles are available only to new Energy Plus customers. You will earn 2 miles for every \$1 spent on the supply portion of your electricity bill, which is approximately half of the total bill.

²After signing up with Energy Plus, you will qualify for a sales tax waiver on the delivery portion of your electricity bill. Your actual tax rate depends on your service location. For New York City customers, the city portion of your sales tax will not be waived due to recent changes in the New York City tax code. Exceptions according to your specific tax laws in your area may apply. Please refer to your bill for your actual tax rate.

Energy Plus reserves the right to modify or discontinue the program. This offer cannot be combined with other offers.

[REDACTED] reserves the right to change the [REDACTED] program and its terms and conditions at any time without notice, and to end the [REDACTED] program with six months notice. Any such changes may affect your ability to use the awards or mileage credits that you have accumulated. [REDACTED] is not responsible for products or services offered by other participating companies. For complete details about the [REDACTED] program, visit [REDACTED].

[REDACTED] are registered trademarks of [REDACTED].

Exhibit C

Legal Notice

**You may be eligible to file a claim
for cash or other valuable options as
part of a class action settlement
because Energy Plus supplied your
electricity or natural gas.**

1-888-344-6711
www.EnergySettlement.com

Energy Plus Settlement
Administrator
c/o Kurtzman Carson
Consultants LLC
PO Box 43152
Providence, RI
02940-3152

BAR CODE

Postal Service: Please do not mark barcode

Class member address here

Claim ID#: _____

(use ID to file your claim on line)

A settlement has been reached with Energy Plus in a class action lawsuit claiming that advertising about its electricity and natural gas rates was misleading. Energy Plus denies all of the allegations, but has agreed to a settlement to avoid the cost and risk of a trial. The Class (which includes you) is comprised of electricity and natural gas customers of Energy Plus at any time through October 15, 2012.

What are the terms of the settlement? Every Class member who received more than one bill from Energy Plus and who makes a claim is entitled to receive a cash award of up to \$101, the amount of which will depend on where they live and how many bills they received. As an alternative, Class members can: 1) choose to receive a gift certificate in the amount of the cash award rounded up to the nearest \$5.00; 2) choose to receive "cash back" at a 15% premium (if they remain enrolled (or re-enroll) with Energy Plus for one continuous year); or 3) choose a "green" electricity option at a 20% premium over the cash award value.

How to Get Benefits? Use the code on the front of this postcard to determine the amount of the award to which you are entitled and to submit your Claim Form online by ____, 2013. Forms for submission by mail are available for downloading at www.EnergySettlement.com or by calling 1-888-344-6711.

Your Other Options. If you don't wish to be bound by the settlement, you must exclude yourself by sending a letter to the return address on the other side of this card by ____, 2013, with a copy to counsel for Defendant and the Class (whose addresses are on www.EnergySettlement.com). Unless you exclude yourself you won't be able to sue Energy Plus for any claim asserted in this lawsuit or released by the Settlement Agreement. If you stay in the settlement, you may object or ask for permission for you or your own lawyer to appear and speak at the hearing—at your own cost—but you don't have to do either. Written objections and requests to appear must be postmarked by ____, 2013 (with a copy to counsel for Defendant and the Class). Details on how to opt-out or object are in the notice and materials on the website. The Court will hold a hearing on ____, 2013 to consider whether to approve the settlement and attorneys' fees and awards for the Class Representatives.

Exhibit D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANGELA WISE and GIDEON ROMM, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

ENERGY PLUS HOLDINGS LLC,

Defendant.

Civil Action No. 11-7345

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

This Notice is to inform you of a proposed settlement of a class action lawsuit that will resolve claims against Energy Plus Holdings LLC and Energy Plus Natural Gas LLC (“Energy Plus” or “Defendant”). If you were a customer of Energy Plus Holdings LLC or Energy Plus Natural Gas LLC at any time up to and including October 15, 2012, **your legal rights may be affected by the settlement**

This Notice is given to you pursuant to Rule 23 of the Federal Rules of Civil Procedure. Please read this document carefully.

YOU ARE NOT BEING SUED. THIS NOTICE IS TO ADVISE YOU OF YOUR LEGAL RIGHTS IN CONNECTION WITH THE PROPOSED SETTLEMENT OF A CLASS ACTION LAWSUIT.

SUMMARY OF THIS LAWSUIT

This lawsuit is pending in the United States District Court for the Southern District of New York (the “Court”). It was brought by Plaintiffs Angela Wise and Gideon Romm, on behalf of themselves and a class of persons with similar claims.

This Notice is not an expression of any opinion by the Court as to the merits of any of the claims or defenses asserted by either side in this lawsuit. The sole purpose of this Notice is to inform you of the proposed settlement and your rights.

Plaintiffs alleged that Energy Plus, an independent energy supplier, made misleading representations to consumers, contrary to its obligations under applicable laws. Plaintiffs also alleged that Energy Plus’s rates were not as advertised because they were higher than prevailing market rates.

Energy Plus denied these allegations and contended that its rates were adequately disclosed and reasonably related to the relevant markets for electric and gas service. At the website set forth below, you can access the relevant complaint and answer for greater detail on the claims and defenses.

The Court has not ruled on the merits of the claims asserted on behalf of Plaintiffs and the Class, nor has it ruled on the merits of Energy Plus's defenses.

DEFINITION OF THE CLASS

On _____, 2013, the Court certified this lawsuit to proceed as a class action for purposes of the proposed settlement.

The Class is defined as:

All persons who were customers of Energy Plus Holdings LLC or Energy Plus Natural Gas LLC in New York, Maryland, Connecticut, New Jersey, Pennsylvania, Texas, Illinois, Ohio, or Massachusetts, at any time up to and including October 15, 2012.

Excluded from the Settlement Class are Energy Plus Holdings LLC and Energy Plus Natural Gas LLC; any of their respective parents, subsidiaries, or affiliates; any entity controlled by either of them; any officer, director, employee, legal representative, predecessor, successor, or assignee of either Energy Plus Holdings LLC or Energy Plus Natural Gas LLC; and any present or former customer who already made a similar claim and whose claim was resolved by a payment from Energy Plus.

In a class action, one or more persons are appointed to represent the interests of all persons with similar claims or defenses. In this case, the Court appointed Ms. Wise and Mr. Romm to serve as the Class Representatives. The Court also approved Ms. Wise and Mr. Romm's attorneys, the law firm of Meiselman, Packman, Nealon, Scialabba & Baker P.C., to serve as attorneys for the Class.

This Notice is being sent solely for the purposes of: (i) informing you that this lawsuit is pending; (ii) informing you that the Court has certified the lawsuit to proceed as a class action for purposes of settlement; (iii) advising you that the parties have reached agreement on a proposed settlement, and explaining the terms of the proposed settlement and how you can make a claim; and (iv) advising you of your rights with respect to the proposed settlement.

SUMMARY OF THE PROPOSED SETTLEMENT

Depending on the choice of payment method that Settlement Class members make, the Settlement Agreement commits Energy Plus to making between \$9,178,451.00 and \$11,014,142.00 available for claims made by class members. Based on the state in which each class member resides and the number of bills he or she received, class members (other than those who received fewer than two invoices from Energy Plus within the relevant time period) are eligible to receive a check for between \$6 and \$101 dollars (the "Cash Option") for electricity supply and additional amounts if the same customer also received natural gas supply from

Energy Plus. The average settlement amount under the Cash Option for the entire class of more than 400,000 is approximately \$23.00. Class members, whether they received electric supply only, natural gas supply only, or both, can find the exact Cash Option amount for which they are eligible on the Settlement Administrator's website, www.EnergySettlement.com. Class Members who are paid by check shall have 60 days within which to cash those checks.

While every eligible class member can choose the Cash Option, the Settlement Agreement provides added value by giving class members the option of receiving one of three alternative forms of payment, each of which is offered at a premium over the Cash Option. First, Settlement Class members may choose a gift certificate redeemable for merchant gift cards at a value equal to the Cash Option rounded up to the nearest \$5.00. For example, a class member eligible for a \$16 cash payment could choose a gift certificate in the amount of \$20. The result is an average premium of 8.25% over the Cash Option.

Second, Settlement Class members can choose to participate in a "cash back" program through which they will receive, at the end of 12 consecutive months of future service from Energy Plus, a check or prepaid card in an amount equal to their applicable Cash Option plus a 15% (in the case of electric supply) or 20% (in the case of gas supply) premium over the Cash Option. Class members choosing this option must remain customers of Energy Plus for one year. Former customers may choose this option by re-enrolling with Energy Plus under its prevailing fixed price energy supply program (to the extent available in that Class Member's service area).

Third, for Energy Plus's electricity customers, a "green" option is available at a 20% premium over the Cash Option, valued at Energy Plus's retail rate for its "green" product add-on, to be fulfilled through renewable energy credit purchases used to offset actual customer usage. Should all of Energy Plus's electricity customers choose the green option, the maximum potential value of the Settlement Agreement will be \$ 11,020,598.

Energy Plus has also agreed to be bound for two years to specific agreed changes that it has made to its advertising about the rates it charges; this two-year period began on August 1, 2012, by which time it had made the specified changes. Energy Plus will also engage outside counsel to conduct annual compulsory training for its marketing staff during those two years.

Class members who do not opt out of the settlement (as described below) will relinquish their right to bring claims on their own behalf, including claims for monetary relief, and Class members will not be able to sue Energy Plus on the same or any related claims. The proposed settlement does not mean that any law was violated or that Energy Plus did anything wrong. Plaintiffs and Class Counsel think the proposed settlement is fair and in the best interests of all Class members.

YOUR RIGHTS AS A CLASS MEMBER

1. The Court authorized this Notice because you have a right to know about the proposed settlement of this class action lawsuit and about your options before the Court decides

whether to give final approval to the settlement. This Notice explains the lawsuit, the proposed settlement, and your legal rights.

2. To remain a member of the Class, as described above, you do not have to file any document with the Court or take any other action, although you must file a claim to receive an award. To determine the award to which you are entitled and the procedure for filing a claim, go to the settlement website (www.EnergySettlement.com) and enter the code on the front of the postcard you received. If you do not have access to the Internet, you can call the Settlement Administrator at 1-888-344-6711 and request that a claim form be mailed to you. Claims, whether made on-line or by mail, must be submitted by ____, 2013.

3. If you do not want to participate in this proposed settlement and you want to retain the right to sue Energy Plus about the legal issues in this case, then you must take steps to exclude yourself from the proposed settlement. This is called asking to “opt out” of the Class. If you exclude yourself, or “opt out,” you cannot object to the proposed settlement. If you ask to be excluded, however, you may retain your right to sue Energy Plus. If you exclude yourself, you will not be bound by anything that happens in this lawsuit. Unless you exclude yourself, you give up the right to sue Energy Plus for all of the claims that the proposed settlement resolves.

4. To exclude yourself from the proposed settlement, you must state your intention to do so in writing, submitted by U.S. Mail, First-Class postage prepaid, to the Settlement Administrator, Kurtzman Carson Consultants LLC, at the address below. You must include your full name, address, signature, date, and, to the extent you can identify it, the time period during which you received electricity or natural gas supplied by Energy Plus. To be considered valid, a request for exclusion must set forth all of this information and must be timely received. You must mail copies of your request for exclusion postmarked by ____, 2013 to:

Energy Plus Settlement Administrator
c/o Kurtzman Carson Consultants LLC
PO Box 43152
Providence, RI
02940-3152

You must also send a copy of your request to be excluded to Class Counsel and Energy Plus’ counsel at the addresses listed below. Requests to be excluded made on the phone, by email, or on the Internet cannot be accepted.

5. You or an attorney that you hire may file an appearance in this case with the Clerk. If you hire an attorney to represent you it will be at your own expense and you will not be represented by Class Counsel. Otherwise, unless you decide to exclude yourself from the Class, you will be represented by Class Counsel. You will not personally have to pay Class Counsel any attorneys’ fees, costs or expenses for their professional services, but such fees, costs and expenses to be paid by Defendant may be awarded to them by the Court. Energy Plus has agreed to pay to Class Counsel attorneys’ fees, costs, and expenses in an amount to be approved by the Court, up to \$3,300,000. The Court may award less than that amount.

6. If you disagree with any aspect of the proposed settlement and you do not opt out of the settlement, you may express your views to the Court in writing. The Court will consider your views. In your written objection, be sure to include the following:

- (1) the name and title of the lawsuit, *Wise v. Energy Plus Holdings LLC*, Civil No. 11-7345;
- (2) your full name, address, telephone number, and signature;
- (3) to the extent you can identify it, the time period during which you received electricity or natural gas supplied by Energy Plus.

Your written objection also must include a statement of the reasons why you object to the proposed settlement, and any documentation supporting your objection. If you intend to appear at the Final Approval Hearing to be heard, your written objection must state that you intend to do so (as explained in the section on “The Final Approval Hearing” below). Send copies of any objection to the Court, Class Counsel, and Energy Plus’s Counsel listed below, postmarked no later than _____ 2013.

COURT	CLASS COUNSEL	ENERGY PLUS’S COUNSEL
Clerk of the Court U.S. District Court Southern District of New York 500 Pearl Street New York, New York 10007	D. Greg Blankinship Meiselman, Packman, Nealon, Scialabba & Baker P.C. 1311 Mamaroneck Avenue White Plains, New York 10605	Dana B. Klinges Duane Morris LLP 30 South 17th Street Philadelphia, Pennsylvania 19103-4196

Class members who do not timely make their objections in this manner will be deemed to have waived all objections and will not be entitled to be heard at the Final Approval Hearing.

FINAL APPROVAL HEARING

1. The Court will hold a Final Approval Hearing (also known as a “Fairness Hearing”) at ___ a.m./p.m. on _____, 2013 in Courtroom 20B of the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl St., New York, NY 10007. At the Final Approval Hearing, the Court will consider whether the proposed settlement is fair, reasonable, and adequate. The Court also will consider Class Counsel’s request for attorneys’ fees, costs, and expenses, and a proposed incentive award of \$4,000 each for Ms. Wise and Mr. Romm, and an incentive award of \$2,000 each for five other plaintiffs named in similar lawsuits, in recognition of their time and energy devoted to this case. If there are objections to the settlement, the Court will consider them. After the Final Approval Hearing, the Court will decide whether to approve the proposed settlement. You do not need to attend the Final Approval Hearing. Class Counsel will answer any questions the Court may have concerning the Class’s position regarding the settlement.

However, you are welcome to attend the hearing at your own expense. If you send a written objection to the Court, you do not have to come to the Final Approval Hearing to have that objection considered. As long as you mailed your written objection on time, the Court will consider it. You may have your own lawyer attend the Final Approval Hearing (at your expense), but it is not necessary that you do so in order for the Court to consider your written objection. For you or your personal lawyer to speak at the Final Approval Hearing, you must send a letter or other written document to the Court as specified above. You should clearly mark your letter or document as your "Notice of Intent to Appear" in *Wise v. Energy Plus Holdings LLC*, Civil No. 11-7345. Be sure to include your name, address, telephone number, the time period in which you received electricity or natural gas from Energy Plus (to the extent you can identify it), and your signature. You also must include information about what you intend to say at the hearing. You must also send copies of your written objections to the Court, Class Counsel, and Energy Plus's Counsel at the addresses listed above. Any written objection must be postmarked no later than _____, 2013. The Court will decide if you will be allowed to speak at the Final Approval Hearing.

OTHER MATTERS

1. Please do *not* call the Court or the Clerk of the Court about this case. Also, do not contact your local utility about this case. If you have questions, you should contact your own attorney or direct your inquiries to the attorneys for the Class, D. Greg Blankinship, Esq., Meiselman, Packman, Nealon, Scialabba & Baker P.C., 1311 Mamaroneck Avenue, White Plains, New York 10605, (914) 517-5000.

2. This Notice is only a summary of the proposed settlement of this lawsuit. All pleadings and documents, including the full Settlement Agreement, have been filed with the Clerk of the Court and may be reviewed or copied in the office of the Clerk of the United States District Court for the Southern District of New York. This Notice is sent only to advise you of the proposed settlement of this lawsuit and your rights with respect thereto.

Dated: New York, NY
_____, 2013

By Order of the Court
CLERK OF THE COURT
United States District Court
Southern District of New York

EXHIBIT B

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3/23/12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ANGELA WISE and GIDEON ROMM,
on behalf of themselves and others similarly :
situated,

Plaintiffs,

-against-

ENERGY PLUS HOLDINGS LLC,

Defendant.

-----X

11 Civ. 7345 (WHP)

ORDER

WILLIAM H. PAULEY III, District Judge:

For the reasons stated on the record on March 23, 2012, defendant Energy Plus's motion to dismiss is granted. Plaintiffs' claims under New York General Business Law sections 349 and 349-d(3) are dismissed without prejudice. Plaintiffs are granted leave to amend their complaint to plead that Energy Plus's alleged misstatements caused their injury. See Stutman v. Chemical Bank, 95 N.Y.2d 24, 29-30 (2000). Plaintiffs' claim under New York General Business Law section 349-d(7) and their claim for unjust enrichment are dismissed with prejudice. The Clerk is directed to terminate the motion pending at ECF No. 12. Plaintiffs shall file their second amended complaint by April 6, 2012.

Dated: March 23, 2012
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.

Counsel of Record:

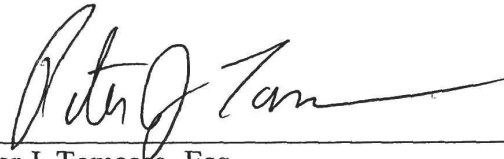
Jeffrey I. Carton, Esq.
Meiselman, Denlea, Packman, Carton & Eberz PC
1311 Mamaroneck Avenue
White Plains, NY 10605
Counsel for Plaintiffs

Jason E. Halper, Esq.
Lowenstein Sandler PC
1251 Avenue of the Americas
New York, NY 11020
Counsel for Defendant

Verification

I, Peter J. Tomasco, state that I am Managing Senior Counsel for NRG Energy, Inc., and I state that the facts set forth in the foregoing Preliminary Objections are true and correct to the best of my knowledge, information and belief. Energy Plus Holdings, LLC (“Energy Plus”) is a wholly owned subsidiary of NRG. I expect that Energy Plus will be able to prove the facts set forth in the Answer at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

September 2, 2020

A handwritten signature in cursive script, appearing to read "Peter J. Tomasco", written over a horizontal line.

Peter J. Tomasco, Esq.
Managing Senior Counsel, NRG Energy, Inc.