

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>ELIZABETH EQUITY PA, LLC</b>	:	
<b>Complainant,</b>	:	
	:	<b>Docket No. C-2023-3042962</b>
v.	:	
	:	
<b>ENGIE RESOURCES, LLC</b>	:	
<b>Respondent</b>	:	

**NOTICE TO PLEAD**

TO: ELIZABETH EQUITY PA,  
LLC – COMPLAINANT

You are hereby notified that ENGIE Resources, LLC (“ENGIE”) has filed the attached Motion For Summary Judgment (“Motion”) with the Pennsylvania Public Utility Commission (“Commission”) in the above-captioned matter. An Answer to the Motion is due in twenty (20) days. If you do not file a timely written answer/response to the attached Motion, the presiding Administrative Law Judge may rule on this Motion without further input.


**File with:**

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

**With a copy to:**

Alan M. Seltzer  
John F. Povilaitis  
Buchanan Ingersoll & Rooney, PC  
409 North Second Street, Suite 500  
Harrisburg, PA 17101

Dated: November 9, 2023

  
Alan M. Seltzer, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>ELIZABETH EQUITY PA, LLC</b>	:	
<b>Complainant,</b>	:	
	:	<b>Docket No. C-2023-3042962</b>
<b>v.</b>	:	
	:	
<b>ENGIE RESOURCES, LLC</b>	:	
<b>Respondent</b>	:	

**MOTION FOR SUMMARY JUDGMENT OF ENGIE RESOURCES, LLC**

TO THE PRESIDING ADMINISTRATIVE LAW JUDGE:

AND NOW, ENGIE Resources, LLC ("ENGIE" or the "Company"), by and through its counsel, Alan M. Seltzer and John F. Povilaitis and Buchanan Ingersoll & Rooney P.C., hereby files this Motion for Summary Judgment ("Motion") in the above-referenced matter pursuant to Section 5.102 of this Commission's regulations, 52 Pa. Code §5.102(b). and states as follows:

**I. Introduction**

1. In this Motion, the Company seeks a determination that there is no legal basis for the Formal Complaint (as defined below) in this matter where the Complainant, Elizabeth Equity PA, LLC (“Complainant”), (i) requests that the Commission resolve a private contractual dispute and award money damages, neither of which the Commission has the legal authority and jurisdiction to do and (ii) is not presently represented by legal counsel in this proceeding before the Pennsylvania Public Utility Commission (“Commission” or “PUC”) despite its status as a corporate entity. Thus, the Formal Complaint, as a matter of law, should be dismissed with prejudice. Attached to this Motion as Exhibit A is the Affidavit of John Thomas, Director of Customer Care at ENGIE Resources LLC.

**II. Procedural Background**

2. On or about September 6, 2023, the Complainant filed a Formal Complaint with

the Commission at the above-referenced docket number ("Formal Complaint") (attached hereto as "Exhibit B") requesting that the Commission direct the Company to pay the Complainant the sum of \$2,157.80, which the Complainant claims is an "overcharge" for electric service. (Formal Complaint, ¶6). This requested relief is based on an alleged available lower price for electricity quoted to the Complainant by a separate electric generation supplier ("EGS") than what the Complainant was legally obligated to purchase from the Company under a previously negotiated and fully effective energy supply agreement.

3. The Formal Complaint was served on the Company on September 13, 2023 and, on September 28, 2023, the Company timely filed its Answer and New Matter to the Formal Complaint (attached hereto as "Exhibit C") asserting that the Complainant's request for money damages was outside the jurisdictional authority of the Commission, which is not empowered to decide private contractual disputes between a citizen and a utility. *Answer and New Matter* ¶¶25-26. The Company further asserted that, to the extent that the Complainant is not an individual, it must be represented by an attorney in an adversarial proceeding such as this one. *See* 52 Pa. Code § 1.21(b). ("Except as provided in subsection (a), persons in adversarial proceedings shall be represented in accordance with § 1.22 (relating to appearance by attorneys and legal intern). The Complainant did not Answer the Company's *New Matter*."

4. On November 1, 2023, the Commission issued a Hearing Notice advising that a telephonic hearing would be held in this proceeding at 10 AM on December 15, 2023. To date, the Complainant has not advised the Company that it is or will be represented by counsel at the evidentiary hearing and no legal counsel has formally entered an appearance on behalf of the Complainant in this proceeding.

### **III. Factual Background**

5. The Company is an approved and operating Electric Generation Supplier (“EGS”) in the Commonwealth of Pennsylvania, among other states, having EGS license No. A-110156 in Pennsylvania. Exhibit A, ¶4.

6. The Company and the Complainant entered into a Master Electric Energy Sales Agreement effective September 29, 2022 (“Master Sales Agreement”). Exhibit A, ¶5. The Master Sales Agreement is attached hereto as "Exhibit D."

7. Either the Company or the Complainant had the right to terminate the Master Sales Agreement upon thirty (30) days prior written notice, subject to the continuation of any then pending sales confirmations executed pursuant to the Master Sales Agreement, which would remain in effect after any termination of the Master Sales Agreement. Exhibit A, ¶6.

8. In accordance with the Master Sales Agreement, ENGIE and the Complainant entered into a sales confirmation on September 29, 2022 for a fixed energy price of \$0.10990 per kilowatt-hour for two separate accounts in the service territory of PPL Electric Utilities (“Sales Confirmation”). Exhibit A, ¶7. The Sales Confirmation is attached hereto as “Exhibit E.”

9. The start date for the provision of electric energy by ENGIE to the Complainant under the Sales Confirmation was October 1, 2022 and the end date was September 30, 2027, i.e., a five-year term. Exhibit A, ¶8.

10. Prior to the end of the five-year term under the Sales Confirmation, the Complainant switched electric generation service from ENGIE to another EGS on June 27, 2023, and is seeking a refund in the Complaint based on its claim that the contractual rate it agreed to pay under the Master Sales Agreement and Sales Confirmation for electricity was higher than a rate quoted by the other EGS when the Complainant was under a legally binding and fully effective energy supply contract with ENGIE. Exhibit A, ¶9.

#### IV. Argument

##### A. Legal Requirements for Motion for Summary Judgment

11. The Commission's regulations provide that "...after the pleadings are closed, but within a time so that the hearing is not delayed, a participant may move for summary judgment based on the pleadings and depositions, answers to interrogatories, admissions and supporting affidavits." 52 Pa. Code § 5.102(b).

12. Furthermore, "[t]he judgment sought will be rendered if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show there is no genuine issue as to a material fact and that the moving participant is entitled to judgment as a matter of law." 52 Pa. Code § 5.102(c).

13. When deciding whether a motion for summary judgment should be granted, the court must examine the record in the light most favorable to the non-moving party and all doubts as to the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. Sanchez v. Philadelphia Housing Authority, 611 A.2d 346 (Pa. Cmwlth. 1992). South River Power Partners, L.P. v. West Penn Power Company, 1996 Pa. PUC LEXIS 175.

14. If no factual dispute exists, a hearing is unnecessary. Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission, 563 A.2d 557 (Pa. Cmwlth. 1989).

15. In this instance and as will be discussed further below, there is no genuine issue of material fact in dispute- indeed there are no facts in question at all in this proceeding - and this Motion should be granted since the Company is entitled to relief as a matter of law.

##### B. **The Commission Lacks Subject Matter Jurisdiction Over Competitive Supply Rates, the Terms and Conditions of Contracts Between an EGS and a Customer and Claims for Damages Arising under a Private Contractual Dispute.**

16. The only relief sought by the Complainant is compensation for the difference

between two competitive supply rates offered by EGSs – characterized as a refund for an overcharge -- (Formal Complaint, ¶6). This requested relief (in the nature of money damages) is based on an alleged lower price for electricity quoted to the Complainant by a separate EGS than what the Complainant was legally obligated to purchase from the Company under a previously negotiated and fully effective energy supply agreement. In essence, the Complainant is asking for a refund of the difference between ENGIE’s contract rate of \$0.10990 per kilowatt-hour under the Master Sales Agreement and Sales Confirmation and the new EGS’ rate for the service period in which ENGIE was the Complainant’s lawful electric generation supplier. Exhibit A, ¶10.

17. It is well settled that the Commission has only the powers, and can only consider such matters, as are expressly, or by necessary implication, given it by the legislature. Behrend v. Bell Telephone Co., 363 A.2d 1152 (Pa. Super 1976); Brockway Glass Company, Inc. v. West Penn Power Co., 54 Pa. P.U.C. 509 (1980). The Public Utility Code, 66 Pa. C.S. §101, et seq. (the "Code"), gives the Commission supervisory and regulatory power over the rates, service and facilities of public utilities. Brockway Glass Company, Inc. at 514.

18. With regard to EGSs, the law is clear that the Commission does not have traditional ratemaking authority over competitive suppliers and does not regulate competitive rates. *See Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655 (Order Entered December 11, 2014)(2014 WL 12684845) (“*Blue Pilot*”). Nor does the Commission have subject matter jurisdiction to interpret the terms and conditions of a contract between an EGS and a customer to determine whether a breach of the contract has occurred. *Blue Pilot* at 11, citing Allport Water Authority v. Winburne Water Co., 393 A.2d 673 (Pa. Super. Ct. 1978). Here, the Company charged the rates reflected in the Master Sales Agreement and Sales Confirmation, which correctly disclosed the rate to be charged to the Complainant. The

Complainant does not dispute this fact. Therefore, the Commission has no rate issue before it that it has subject matter jurisdiction to decide.

19. Moreover, to the extent the Complainant's request for relief is construed as a request for damages to be awarded, the Code does not give the Commission jurisdiction over claims for damages. Behrend v. Bell Telephone Co., 363 A.2d 1152 (Pa. Super 1976); Brockway Glass Company, Inc. v. West Penn Power Co., 54 Pa. P.U.C. 509 (1980); Bones v. Bates Taxi, Inc., 51 Pa. P.U.C. 346 (1977).

20. The Courts of Common Pleas retain original jurisdiction over suits for damages. Behrend v. Bell Telephone Co., 363 A.2d at 1158.

21. The Complainant is seeking compensation in the Formal Complaint in the amount of \$2,157.80, what the Complainant claims is an "overcharge" for electric service, and which is in reality money damages.

22. Importantly, the Commission does not have jurisdiction over the subject matter of this Formal Complaint. The proper forum for the Complainant's recovery of damages is the Courts of Common Pleas. Therefore, the Formal Complaint must be dismissed with prejudice.

23. The resolution of the Formal Complaint essentially involves a dispute over the application of the Master Sales Agreement and Sales Confirmation, both of which are private contracts between the Complainant and the Company.

24. The Commission lacks the jurisdiction and authority to adjudicate any private contractual dispute between the Complainant and ENGIE, regardless of the substantive positions of the parties under the Master Sales Agreement and Sales Confirmation.

25. The Commission is not empowered to decide private contractual disputes between a citizen and a utility. DiSanto v. Dauphin Consol. Water Supply Co., 436 A.2d 197, 199 (Pa.

Super. 1981), 436 A.2d at 199; see also ARIPPA v. Pa. Pub. Util. Comm'n, 966 A.2d 1204, 1208 (Pa. Cmwlth. 2009). This is a further basis to dismiss the Formal Complaint with prejudice.

**C. The Complainant has Failed to Retain Legal Counsel to Represent it in this Proceeding.**

26. The Complainant is a corporate entity and, as such, it must be represented by an attorney in an adversarial proceeding such as this one. *See* 52 Pa. Code § 1.21(b). (“Except as provided in subsection (a), persons in adversarial proceedings shall be represented in accordance with § 1.22 (relating to appearance by attorneys and legal intern).”)

27. It does not appear that the Complainant is presently represented by an attorney, the Complainant has not advised the Company it has retained legal counsel, and no attorney at law has entered an appearance on behalf of the Complainant thus far in this proceeding. The Company recognizes that a corporate complainant must have counsel of record to represent at any evidentiary hearing, not necessarily before that time. However, to protect the Company’s rights, the Company requests that if the Complainant fails to retain counsel that makes an appearance and to file a timely Answer to this Motion consistent with the attached Notice to Plead, the Administrative Law Judge rule that the Complainant’s failure to obtain counsel is another basis on which to dismiss the Complaint with prejudice.

**IV. Conclusion**

28. For the above-cited reasons, there is no genuine issue of material fact on any issues raised in the Formal Complaint and based on the applicable law, this Motion should be granted, and the Formal Complaint dismissed with prejudice.



WHEREFORE, ENGIE Resources LLC respectfully requests that the Commission grant its Motion for Summary Judgment, dismiss the Formal Complaint with prejudice, and grant to the Company such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

Dated: November 9, 2023

  
BUCHANAN INGERSOLL & ROONEY PC  
Alan M. Seltzer (PA ID No. 27890)  
John F. Povilaitis (PA ID No. 28944)  
409 N. Second Street, Suite 500  
Harrisburg, PA 17101  
Phone: (717) 237-4800  
Fax: (717) 233-0852  
[alan.seltzer@bipc.com](mailto:alan.seltzer@bipc.com)  
[john.povilaitis@bipc.com](mailto:john.povilaitis@bipc.com)

*Attorneys for ENGIE Resources, LLC.*

# **Exhibit A**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>ELIZABETH EQUITY PA, LLC</b>	:	
<b>Complainant,</b>	:	
	:	<b>Docket No. C-2023-3042962</b>
v.	:	
	:	
<b>ENGIE RESOURCES, LLC</b>	:	
<b>Respondent</b>	:	

**AFFIDAVIT OF JOHN THOMAS IN SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT OF ENGIE RESOURCES, LLC**

I, John Thomas hereby submit the following Affidavit, under penalty of perjury, in support ENGIE Resources, LLC’s (“ENGIE” or the “Company”) Motion for Summary Judgment (“Motion”) in the above captioned proceeding.

I, John Thomas, declare as follows:

1. My name is John Thomas, and I am employed by ENGIE Resources LLC as the Director of Customer Care.

2. As Director of Customer Care, I am responsible for the customer experience and customer care team. My work responsibilities include customer care, quality assurance, and account services in the operations and business performance group.

3. I am familiar with the Complaint filed by Elizabeth Equity PA, LLC (“Complainant”) before the Pennsylvania Public Utility Commission (“PaPUC”) in the above matter, as well as the terms and conditions under which ENGIE extended commodity electricity service to the Complainant.

4. The Company is an approved and operating Electric Generation Supplier (“EGS”) in the Commonwealth of Pennsylvania, among other states, having EGS license No. A-110156 in

Pennsylvania.

5. The Company and the Complainant entered into a Master Electric Energy Sales Agreement effective September 29, 2022 (“Master Sales Agreement”).

6. Either the Company or the Complainant had the right to terminate the Master Sales Agreement upon thirty (30) days prior written notice, subject to the continuation of any then pending sales confirmations executed pursuant to the Master Sales Agreement, which would remain in effect after any termination of the Master Sales Agreement.

7. In accordance with the Master Sales Agreement, ENGIE and the Complainant entered into a sales confirmation on September 29, 2022 for a fixed energy price of \$0.10990 per kilowatt-hour for two separate accounts in the service territory of PPL Electric Utilities (“Sales Confirmation”).

8. The start date for the provision of electric energy by ENGIE to the Complainant under the Sales Confirmation was October 1, 2022 and the end date was September 30, 2027, i.e., a five-year term.

9. Prior to the end of the five-year term under the Sales Confirmation, the Complainant switched electric generation service from ENGIE to another EGS on June 27, 2023, breaching the terms of the Sales Confirmation.

10. The Complainant is seeking a refund in the Complaint based on its claim that the contractual rate it agreed to pay under the Master Sales Agreement and Sales Confirmation of \$0.10990 per kilowatt-hour for electricity was higher than a rate quoted by the other EGS when the Complainant was under a legally binding and fully effective energy supply contract with ENGIE.

I, John Thomas, Director of Customer Care for ENGIE Resources LLC, hereby verify that the information in the foregoing Affidavit is true and correct to the best of my information, knowledge and belief. I understand that the statements are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to the unsworn falsification to authorities.



John Thomas, Director Customer Care

ENGIE Resources LLC

Dated: November 8, 2023

# **Exhibit B**



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
400 NORTH STREET, KEYSTONE BUILDING SECOND FLOOR  
HARRISBURG, PA 17120

IN REPLY PLEASE  
REFER TO OUR FILE

**DATE SERVED: September 13, 2023**

NAVEEN RABIE  
ENGIE RESOURCES LLC  
1360 POST OAK BLVD, SUITE 400  
HOUSTON, TX 77056  
*naveen.rabie@engie.com*

**C-2023-3042962**

Dear Sir or Madame:

A formal complaint has been filed against you before the Pennsylvania Public Utility Commission by Elizabeth Equity PA LLC. Within twenty (20) days of the date of this letter, you must either: (1) respond by filing with the Commission, in writing, an Answer in accordance with 52 Pa. Code Section 5.61, either personally or through your attorney; or (2) satisfy the complaint by settling the matter with the Complainant and submitting proof of settlement to the Commission.

IF YOU FAIL TO ANSWER THE COMPLAINT WITHIN TWENTY (20) DAYS OF THE ABOVE DATE SERVED, THE CLAIMS AGAINST YOU MAY BE DEEMED ADMITTED, THE CASE MAY GO FORWARD, AND A PENALTY MAY BE ENTERED AGAINST YOU BY THE COMMISSION WITHOUT FURTHER NOTICE.

**CUSTOMER OF A UTILITY**

**A payment schedule may be prescribed or a termination of utility services may be authorized. You may lose money, property or other important rights.**

**COMPANY/UTILITY**

**The Commission may revoke or suspend any certificate or permit held by you or impose a fine or other penalty or remedy authorized by the Public Utility Code. You may lose money, property or other important rights.**

Detailed instructions on how to proceed are contained in the attached pages. Unless you are a corporation or other organization, you may proceed without a lawyer.

Very truly yours,

Rosemary Chiavetta  
Secretary

RC: mm

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**DATE SERVED: September 13, 2023**

**ELIZABETH EQUITY PA LLC**

Complainant

v.

**ENGIE RESOURCES LLC**

Respondent

Complaint Docket

No: **C-2023-3042962**

---

**FORMAL COMPLAINT NOTICE TO RESPONDENT TO ANSWER OR SATISFY**

---

**TO: ENGIE RESOURCES LLC**

**TAKE NOTICE:**

1. You have twenty (20) days from the above date served to either: (a) satisfy this complaint or (b) file with the **Secretary of the Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, PA 17120**, one original written answer, under oath, as required by 52 Pa. Code Section 5.61, which either admits or specifically denies the allegations in the complaint. You must also serve one copy of the answer upon the complainant. In accordance with 52 Pa. Code Section 1.56(a), **the date served is the mailing date appearing at the top of this Notice.**

2. In accordance with 52 Pa. Code Section 5.61, if you fail to either satisfy or settle this complaint, or to file an answer or other responsive pleading within twenty (20) days of the above date served, you will be deemed to have admitted all the allegations in this complaint. In that event, the Commission may, without hearing, enter an order which either revokes or suspends any certificate or permit held by you or may impose a fine or other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. Section 101, et seq. If you are a customer of a utility, the Commission may enter an order setting forth a payment schedule or authorize termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

3. If you elect to satisfy or settle this complaint, you must file with the Commission, within twenty (20) days from the above date served, a certified statement of satisfaction as required by 52 Pa. Code Section 5.24. Such certified statement must describe the basis on which this complaint was satisfied and any settlement agreement between the parties must be made in writing and attached to the certified statement. Such certified statement must be filed with the Secretary of the Commission at the address set forth in paragraph 1 above. Upon the Commission's receipt of a certified statement of satisfaction from all complainants, this complaint may be dismissed in accordance with 66 Pa. C.S. Section 703(a) (unless the Commission determines that a dismissal would be contrary to the public interest, in which event the Commission may direct that hearings be held upon the complaint).



4. If you file an answer which admits the allegations in this complaint, or which fails to specifically deny the allegations in this complaint, the Commission may, without hearing, enter an order which either revokes or suspends any certificate held by you or impose a fine or other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq. If you are a customer of a utility, the Commission may enter an order setting forth a payment schedule or authorize termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

5. If you file a timely answer which specifically denies the allegations in this complaint, or which raises material questions of law or fact, this matter shall be referred to the Office of Administrative Law Judge for hearing and a decision. If, after hearing on the issues, you are found to have committed any of the violations alleged in the complaint, the Administrative Law Judge may render a decision which either revokes or suspends any certificate or permit held by you or imposes a fine or other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq. If you are a customer of a utility, the Commission may enter an order setting forth a payment schedule or authorize termination of utility services. When imposing a penalty, the Administrative Law Judge is not bound by the relief sought by the complainant in paragraph 4 of the attached complaint.

A handwritten signature in black ink, reading "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

# **Exhibit C**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>ELIZABETH EQUITY PA, LLC</b>	:	
<b>Complainant,</b>	:	
	:	<b>Docket No. C-2023-3042962</b>
v.	:	
	:	
<b>ENGIE RESOURCES, LLC</b>	:	
<b>Respondent</b>	:	

**ANSWER AND NEW MATTER OF ENGIE RESOURCES, LLC  
TO THE COMPLAINT OF ELIZABETH EQUITY PA, LLC**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

ENGIE Resources, LLC (“ENGIE” or the “Company”), through its counsel Alan M. Seltzer, John F. Povilaitis, and Buchanan Ingersoll & Rooney PC, pursuant to Section 5.61 of the Pennsylvania Public Utility Commission (“Commission”) regulations, 52 Pa. Code § 5.61, answers the above-captioned Complaint (“Complaint”) filed by Elizabeth Equity PA, LLC (“Complainant”), as follows:

1. Admitted. It is admitted that this paragraph contains, among other things, the Complainant’s name, address, email address and utility account number.
2. Admitted. It is admitted that the Complainant selected email service for communication by the Commission.
3. Admitted. It is admitted that this paragraph contains the name of the entity that is the subject of the Complaint.
4. Admitted. It is admitted that the Complainant has checked the box labelled “Electric” appearing in the complaint form.
5. **Reason for Complaint**

The Complainant has not used this section of the form Complaint to assert any facts

relating to the Complaint.

6. **Requested Relief**

This paragraph contains both allegations of fact and prayers for relief, all of which are set forth below, labelled “a” through “f” and are answered as follows:

(a) **Please see attached bills.**

**Response:** There are no allegations of fact in this sentence requiring a response herein. However, it is noted and acknowledged that attached to the Complaint are electric service bills showing the name PPL Electric Utilities and noting the energy supplier as “Engie Resources, LLC.”

(b) **We were signed up with ENGIE without our authorization.**

**Response:** Denied. It is expressly denied that the Complainant signed up to take electric service from ENGIE without its authorization. On the contrary, it is averred that a duly authorized representative of the Complainant executed all the documents necessary to contract for long-term electric energy supply from ENGIE including, without limitation, a Master Sales Agreement and a Sales Confirmation, both of which are more fully described in the New Matter below.

(c) **We have a contract with SUMMER ENERGY MIDWEST, LLC and the rate is significantly cheaper.**

**Response:** Denied. After reasonable investigation, the Company lacks knowledge or information sufficient to form a belief regarding the truth of this averment and demands proof thereof, if relevant, at hearing.

(d) **Our rate at SUMMER ENERGY is \$0.07698 and the rate that ENGIE gave us is about \$0.11 (varies on the bill).**

**Response:** Admitted in part and denied in part. After reasonable investigation, the Company lacks knowledge or information sufficient to form a belief regarding the truth of the averment regarding the Complainant's rate with SUMMER ENERGY and demands proof thereof, if relevant, at hearing. It is admitted that, while ENGIE's charges to customers can and do vary based on the specific transaction and product purchased, the approximate rate identified in this sentence in connection with the service arrangement with the Complainant is accurate.

(e) **The total overcharge (including taxes) amounts to \$2,157.89.**

**Response:** Admitted in part and denied in part. It is expressly denied that ENGIE has overcharged Complainant for electric service or for any other thing. All charges by ENGIE to the Complainant have been fully consistent with the terms and conditions of the documents signed by the Complainant to purchase long-term energy supply from ENGIE at a fixed price. After reasonable investigation, the Company lacks knowledge or information sufficient to form a belief regarding the truth of the averment regarding the amount alleged by Complainant, its calculation, justification or lawfulness, and demands proof thereof, if relevant, at hearing.

(f) **We would like to be refunded for the overcharge amount.**

**Response:** Denied. The allegations in this sentence constitute prayers for relief that require no response herein. To extent the allegations in this sentence are not considered prayers for relief, they are denied. As noted in the response to sentence (e) above, it is expressly denied that ENGIE has overcharged Complainant for electric service or for any other thing or that the Complainant is entitled to any refund of any amounts from ENGIE.

7. **Protection from Abuse (PFA)/Domestic Violence.**

**Response:** Not applicable.

8. **Prior Utility Contact.**

a. No.

b. **We tried speaking with ENGIE to say that we never authorized this and whoever put on their supply did it without permission.**

**Response:** Denied. After reasonable investigation, the Company lacks knowledge or information sufficient to form a belief regarding the truth of whether the Complainant “tried” to speak with or contact ENGIE regarding this matter and demands proof thereof, if relevant, at hearing.

c. Not completed by Complainant.

9. There are no allegations of fact in this paragraph requiring a response herein. However, it is noted that as a company, the Complainant is required to be represented in this proceeding by an attorney duly admitted to practice law.

10. There are no allegations of fact in this paragraph requiring a response herein.

11. There are no allegations of fact in this paragraph requiring a response herein.

**NEW MATTER**

The averments contained in paragraphs 1-11 of the Answer above are incorporated by reference herein.

12. The Company is an approved and operating Electric Generation Supplier in the Commonwealth of Pennsylvania, among other states.

13. The Company and the Complainant entered into a Master Electric Energy Sales Agreement effective September 29, 2022 (“Master Sales Agreement”).

14. Either the Company or the Complainant had the right to terminate the Master Sales Agreement upon thirty (30) days prior written notice, subject to the continuation of any then pending sales confirmations executed pursuant to the Master Sales Agreement, which would remain in effect after any termination of the Master Sales Agreement.

15. In accordance with the Master Sales Agreement, ENGIE and the Complainant entered into a sales confirmation on September 29, 2022 for a fixed energy price for two separate accounts in the service territory of PPL Electric Utilities (“Sales Confirmation”).

16. The start date for the provision of electric energy by ENGIE to the Complainant under the Sales Confirmation was October 1, 2022 and the end date was September 30, 2027, i.e., a five-year term.

17. Prior to the end of the five-year term under the Sales Confirmation, the Complainant switched electric generation service from ENGIE to another electric generation supplier on June 27, 2023. This action constituted an “early termination” of the Master Sales Agreement.

18. Under Section 2.6 of the Master Sales Agreement executed by the Complainant, switching to an electric generation supplier other than ENGIE before the end of the contracted for 5-year term constituted an “event of default.”

19. Under Section 2.7 of the Master Sales Agreement executed by the Complainant, the Complainant’s event of default and action in switching electric generation suppliers before the end date specified in the Sales Confirmation resulted in the Complainant’s obligation to make a Termination Payment to ENGIE in the amount of \$7,408.00 (“Termination Payment”).

20. While ENGIE is willing to waive and not collect the Termination Payment the Complainant is otherwise obligated to pay under the Master Sales Agreement the Complainant

executed previously, ENGIE denies any responsibility to pay the amount being sought by the Complainant as a refund.

21. The Complainant is asking for a refund of the difference between ENGIE's contract rate and the new electric generation supplier's rate for the service period in which ENGIE was the Complainant's lawful electric generation supplier. The Complainant's price for electric energy at the time it entered into the Master Sales Agreement and Sales Confirmation with ENGIE reflected the current market price for energy and was a fair and competitive rate.

22. Because the Complainant apparently located an electric supplier quoting a lower rate for electric energy several months after executing the Master Sales Agreement and Sales Confirmation with ENGIE, does not later allow the Complainant to breach the terms of the agreements with ENGIE, switch electric generation suppliers without paying a termination fee, *and* get a refund.

23. The Complainant voluntarily entered into a long-term (i.e., 5-year) fixed price energy contract in order to be insulated from the volatility (both up and down) in energy prices over that five-year term. The Complainant knew or should have known that electric energy prices could and would deviate from the fixed price contract with ENGIE, and that it bore the risk if the market price of energy went below the fixed price reflected in the Sales Confirmation.

24. The Complainant's request that the Commission direct ENGIE to pay a refund to the Complainant as a result of the Complainant's breach of the Master Sales Agreement and Sales Confirmation is both inappropriate as both a matter of law and fact and is an unlawful attempt to require the Commission to resolve a private contractual dispute between the parties.



25. The Commission lacks the jurisdiction and authority to adjudicate the private contractual dispute between the Complainant and ENGIE, regardless of the substantive positions of the parties under the Master Sales Agreement and Sales Confirmation.

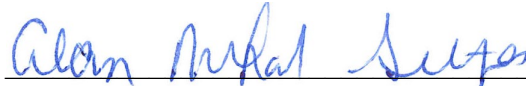
26. The Commission is not empowered to decide private contractual disputes between a citizen and a utility. *DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197, 199 (Pa. Super. 1981), 436 A.2d at 199; see also *ARIPPA v. Pa. Pub. Util. Com'n*, 966 A.2d 1204, 1208 (Pa. Cmwlth. 2009).

27. Further, to the extent that the Complainant is not an individual, it must be represented by an attorney in an adversarial proceeding such as this one. See 52 Pa. Code § 1.21(b). (“Except as provided in subsection (a), persons in adversarial proceedings shall be represented in accordance with § 1.22 (relating to appearance by attorneys and legal intern). It does not appear that the Complainant is presently represented by an attorney and the Company requests that the Complainant be directed to obtain the services of an attorney as this proceeding moves forward to hearings.

WHEREFORE, ENGIE Resources, LLC hereby requests that the Complaint of Elizabeth Equity PA, LLC be dismissed with prejudice, and that the Commission grant the Company such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

Dated: September 28, 2023



BUCHANAN INGERSOLL & ROONEY PC

Alan M. Seltzer (PA ID No. 27890)

John F. Povilaitis (PA ID No. 28944)

409 N. Second Street, Suite 500

Harrisburg, PA 17101

Phone: (717) 237-4800

Fax: (717) 233-0852

[alan.seltzer@bipc.com](mailto:alan.seltzer@bipc.com)


[john.povilaitis@bipc.com](mailto:john.povilaitis@bipc.com)

*Attorneys for ENGIE Resources, LLC.*

## VERIFICATION

I, Naveen Rabie, Senior Counsel of ENGIE Resources, LLC., have read the foregoing document, i.e., Answer and New Matter of ENGIE Resources, LLC, and verify that the facts set forth therein are true and correct to the best of my knowledge, information and belief.

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

By:  \_\_\_\_\_

Name: Naveen Rabie

Date:   e  em  e  \_\_\_\_\_

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>ELIZABETH EQUITY PA, LLC</b>	:	
<b>Complainant,</b>	:	
	:	<b>Docket No. C-2023-3042962</b>
<b>v.</b>	:	
	:	
<b>ENGIE RESOURCES, LLC</b>	:	
<b>Respondent</b>	:	

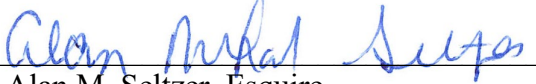
**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of the foregoing document upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

**Via Email:**

Elizabeth Equity PA, LLC  
35 East Elizabeth Avenue  
Bethlehem, PA 18018  
[zkoval@heraldequities.com](mailto:zkoval@heraldequities.com)

Date: September 28, 2023

  
\_\_\_\_\_  
Alan M. Seltzer, Esquire

# **Exhibit D**

## **MASTER ELECTRIC ENERGY SALES AGREEMENT**

This Master Electric Energy Sales Agreement (this "Agreement") is entered into effective as of the 29th day of September 2022 (the "Effective Date") by and between ENGIE Resources LLC ("ENGIE") and **ELIZABETH EQUITY PA LLC** ("Customer"). ENGIE and Customer are also referred to as "Party" and collectively as the "Parties."

### **SECTION 1. TRANSACTION TERMS AND CONDITIONS**

- 1.1 **Purchase and Sale.** ENGIE shall sell and deliver and Customer shall purchase and receive Firm Full Requirements Service pursuant to a Sales Confirmation and the terms and conditions herein. Any conflict between the terms of this Agreement and an applicable Sales Confirmation shall be resolved in favor of the Sales Confirmation. During the term of this Agreement, should ENGIE fail to schedule the delivery of sufficient quantities of electricity to Customer by the local utility distribution company, Customer and ENGIE recognize: (i) the local utility distribution company, per the local utility distribution company's Tariff responsibilities, nevertheless is obligated to deliver sufficient electricity to satisfy Customer's needs and (ii) ENGIE shall settle with the ISO subject to Section 1.4 herein at no additional cost or expense to Customer with respect to the purchase of electricity to cover any such failure.
- 1.2 **Contract Price.** Customer shall pay ENGIE the Contract Price as specified in an applicable Sales Confirmation.
- 1.3 **Term.** This Agreement shall be effective on the Effective Date. Either Party may terminate this Agreement upon thirty (30) days prior written notice. Notwithstanding the foregoing, the termination of this Agreement shall not affect or excuse the performance of either Party pursuant to any provision of this Agreement that by its terms survives any such termination and provided, further, any Sales Confirmations executed pursuant to this Agreement shall remain in effect, and the provisions of this Agreement shall continue to apply until both Parties have fulfilled all obligations with respect to the underlying transactions. The termination of this Agreement does not terminate any Sales Confirmation executed pursuant to this Agreement.
- 1.4 **Billing and Payment.** Following the receipt of Utility Related Charges, ISO fees or charges, and Customer's metered electric energy consumption, ENGIE will deliver to Customer an invoice setting forth the amount due for the preceding billing cycle. The invoice shall include the monthly charges for energy consumption and any other charges or fees imposed pursuant to the terms of this Agreement, and any applicable Taxes and Utility Related Charges. ENGIE may use estimated data for billing subject to future reconciliation upon receipt of actual data for the applicable billing cycle. Payment shall be due to ENGIE by check, electronic transfer or any other mutually agreed upon payment method in accordance with the payment terms of the Sales Confirmation. Overdue payments will accrue interest at the Interest Rate from the due date to the date of payment. If any amount of an invoice is disputed in good faith, the entire amount shall be paid when due. Any disputed amounts that are determined to be owed to Customer shall be re-paid by ENGIE with interest accrued at the Interest Rate from the date payment was due through the date of re-payment to the Customer. If ENGIE elects to utilize the applicable local utility to distribute invoices, Customer shall comply with the billing and payment requirements of the local utility.

### **SECTION 2. GENERAL TERMS AND CONDITIONS**

- 2.1 **Notices.** Notices and correspondence shall be in writing and delivered by regular or electronic mail, or similar means and deemed received on the date transmitted or delivered (after business hours on next Business Day) and notice by overnight mail or courier is deemed received two (2) Business Days after it was sent. All notices shall be provided to the person and addresses specified in Section 4, or to such other person and address as a Party may specify in writing to the other Party.
- 2.2 **Taxes.** Taxes means all fees and taxes (other than income taxes) imposed by a governmental authority on the purchase and sale of electricity, including utility, gross receipts, sales, use, franchise and excise taxes. Customer is responsible for all Taxes and shall reimburse ENGIE for the cost of any such Tax without markup, whether levied directly on Customer or ENGIE. Customer will provide any applicable Tax exemption certificates, and until provided, no exemption will apply. ENGIE will not refund or credit previously paid Taxes but will assign to Customer applicable refund claims.
- 2.3 **Title, Risk of Loss.** Title, liability and risk of loss associated with the electric energy purchased and sold hereunder shall pass from ENGIE to Customer at the delivery point specified in an applicable Sales Confirmation.
- 2.4 **Credit Assurances.** If requested by a Party, the other Party or its Guarantor shall provide copies of all its SEC Form 10-K and/or Form 10-Q reports or, if such reports are unavailable, copies of the Party's most recent audited financial statements. Such reports shall be prepared in accordance with generally accepted accounting principles. If either Party has reasonable grounds to believe the other Party has experienced a Material Adverse Change or the other Party's creditworthiness or performance under this Agreement has become unsatisfactory, then that Party shall provide the other with written notice requesting Performance Assurance in an amount determined in a commercially reasonable manner. Upon receipt of such notice, the receiving Party shall have three (3) Business Days to remedy the situation by providing such Performance Assurance. In the event the receiving Party fails to provide such Performance Assurance within three (3) Business Days of

receipt of such notice, then an Event of Default shall be deemed to have occurred and the requesting Party shall be entitled to any remedies set forth in this Agreement.

- 2.5 Force Majeure. Force Majeure means an event that is beyond the reasonable control of the claiming party that could not have been prevented by the exercise of due diligence, including, but not limited to: acts of God; civil disturbances or disobedience; labor dispute or shortage; sabotage; explosions; accidents affecting machinery or power lines; lightning; earthquakes; fires; storms; tornadoes, floods, failure of transmission or distribution, failure of generation, acts of a public enemy; and the direct or indirect effect of governmental orders, actions or interferences. Nothing contained herein shall be construed to require a claiming party to settle any strike or labor dispute. If either Party is rendered unable by Force Majeure to carry out, in whole or part, its obligations under this Agreement, such Party shall give notice and provide full details of the event to the other Party in writing as soon as practicable after the occurrence of the event. During such Force Majeure period, the obligations of the Parties (other than to make payments due) will be suspended. The Party claiming Force Majeure will make all reasonable attempts to remedy the effects of the Force Majeure and continue performance; provided, however, that no provision of this Agreement shall be interpreted to require ENGIE to deliver, or Customer to receive, electric energy at points other than the delivery point(s). Force Majeure shall not include (a) Customer's decision to shut down, sell or relocate its facilities or (b) economic loss due to Customer's loss of markets or suppliers.
- 2.6 Events of Default. An "Event of Default" means: (a) the failure to make, when due, any payment required under this Agreement if such failure is not remedied within five (5) Business Days after written notice, or (b) Customer cancels, terminates or discontinues service, switches service to another supplier, or transfers service to the default service provider, after the Effective Date of a Sales Confirmation executed pursuant to this Agreement; or (c) any representation or warranty made by a Party in this Agreement proves to have been false or misleading in any material respect when made or ceases to remain true during the Term; or (d) the failure by a Party to perform any covenant set forth in this Agreement and for which a remedy is not provided herein and such failure is not excused by the other Party in writing or by Force Majeure or cured within five (5) Business Days after written notice thereof; or (e) the failure of a Party to provide Performance Assurance in accordance with Section 2.4; or (f) absent agreement to the contrary the failure of Customer to utilize ENGIE as its sole supplier of electric energy for the facilities and accounts specified in an applicable Sales Confirmation (absent a failure to perform by ENGIE); or (g) a Party: (i) makes an assignment or any general arrangement for the benefit of creditors; or (ii) otherwise becomes Bankrupt or insolvent.
- 2.7 Remedies upon Event of Default. If an Event of Default occurs, the non-defaulting Party shall have the right (i) to liquidate and terminate any and all Sales Confirmations hereunder and/or (ii) suspend performance. If non-defaulting Party elects to terminate and liquidate, it shall calculate the aggregate amount of losses or gains it incurs in accordance with the following formula: Termination Payment = (Contract Price – Current Market Price) x (the amount of electricity remaining to be delivered under the terminated Sales Confirmations as shown in the Monthly Anticipated Consumption table attached thereto). The non-defaulting Party shall provide a written explanation of its calculation of the Termination Payment to the defaulting Party, and the Termination Payment shall be due within five (5) Business Days thereafter.
- 2.8 Limitation of Liability. FOR BREACH OF ANY PROVISION FOR WHICH A REMEDY OR MEASURE OF DAMAGES IS PROVIDED, LIABILITY IS LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES IN TORT, CONTRACT UNDER ANY INDEMNITY PROVISION OR OTHERWISE.
- 2.9 Indemnification. Except as limited by Section 2.8, each Party shall indemnify, defend and hold the other Party harmless from claims, demands and causes of action asserted against the indemnitee by any person arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to electric energy is vested in such Party as provided in Section 2.3.
- 2.10 Representations and Warranties. Each Party, with respect to itself, represents and warrants: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and qualified to conduct its business in jurisdictions necessary to perform this Agreement; (b) it has all regulatory authorizations, permits and licenses necessary for it to legally perform its obligations under this Agreement; (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to it; (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitute its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses; (e) it is not Bankrupt or insolvent and there are no reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it; and (f) it has read this Agreement and fully understands its rights and obligations under this Agreement, and has had an opportunity to consult with an attorney of its own choosing to explain the terms of this Agreement and the consequences of signing it. Customer further represents and warrants to ENGIE throughout the term of this Agreement that no facility or

account listed on Attachment A, Exhibit 1 is classified by the applicable utility as a residential account. ENGIE and its successors and assignees make no warranty of any kind, either express or implied, including implied warranty of merchantability and fitness for a particular purpose with regard to the services ENGIE provides or activities Customer undertakes, pursuant to this Agreement. ENGIE has no duty to advise Customer or exercise judgment on Customer's behalf as to the merits or suitability of any transactions that ENGIE proposes to enter into with Customer.

- 2.11 Confidentiality. Neither Party shall disclose, unless authorized in writing by the other Party, the terms of this Agreement to a third party (other than the Party's employees or its lenders, advisors, insurers, counselors or accountants) except in order to comply with any applicable law, order, regulation or exchange rule, to collect debts owed or to obtain transmission, distribution, ancillary or other regulated services; provided, each Party will notify the other Party of any proceeding of which it is aware which may result in non-routine disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation; provided, all monetary damages shall be limited to direct actual damages and a breach of this section shall not give rise to a right to suspend or terminate this Agreement.
- 2.12 Modification. No amendment or modification will be enforceable unless reduced to writing and executed by the Parties.
- 2.13 Assignment and Binding Effect. Neither Party will assign this Agreement or any of its rights without the prior written consent of the other Party which shall not be unreasonably withheld. Any successor or assignee shall be subject to all the provisions of this Agreement to the same extent as though such were the original Party under this Agreement. An assignment shall be effective when the assignee or transferee agrees in writing to assume all of the obligations of the assignor or transferor and to be bound by all of the provisions of this Agreement. This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Any assignment in violation of this Section shall be void.
- 2.14 Billing Dispute Resolution. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement within twenty-four (24) months of the date the invoice or adjustment to an invoice was rendered. In the event of any dispute, each Party will thoroughly investigate the matter and report the results of its investigation to the other Party. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 2.14 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made.
- 2.15 Change in Law. In the event that there is a change in law, administrative regulation, tariff, or any fees or costs imposed by the applicable ISO or by a Governmental Authority, or a change in ISO/RTO Operations, market structure, congestion zone design, or protocols, or a change in application or interpretation thereof, and such change causes ENGIE to incur any capital, operating or other costs relating to the provision of services contemplated herein, in order to maintain the same level and quantity of delivery of electric energy, ENGIE shall have the right to adjust the amounts payable by Customer under this Agreement to reflect, based on the type of change, Customer's pro rata share of ENGIE's incremental costs resulting from such change. If a change in law renders performance under this Agreement illegal, the Parties shall attempt to renegotiate this Agreement to comply with such change, and if unable, the Parties' obligations hereunder shall terminate upon the date the change in law becomes effective.
- 2.16 Governing Law. THIS AGREEMENT AND ALL MATTERS ARISING OUT OF OR RELATING TO IT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ANY CONFLICTS-OF-LAW PRINCIPLE THAT DIRECTS THE APPLICATION OF ANOTHER JURISDICTION'S LAWS. EACH PARTY CONSENTS TO THE PERSONAL JURISDICTION IN ANY FEDERAL OR STATE COURT WITHIN HOUSTON, HARRIS COUNTY, TEXAS IN ANY ACTION OR SUIT COMMENCED IN SUCH COURT, AND EACH PARTY HEREBY WAIVES ANY OBJECTION THAT IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR *FORUM NON CONVENIENS*. EACH PARTY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION RELATING TO THIS AGREEMENT.
- 2.17 Misc. This Agreement and a Sales Confirmation executed in accordance with this Agreement constitute the entire agreement. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those herein expressed. If any provision of this Agreement is found to be illegal or unenforceable, the other provisions shall remain effective and enforceable to the greatest extent permitted by law. All confidentiality and indemnity rights will survive the termination of this Agreement. This Agreement may be executed in several counterparts, each of which will be an original and all of which constitute one and the same instrument. Except as expressly provided otherwise in this Agreement, all remedies in this Agreement, including the right of termination, are cumulative, and use of any remedy shall not preclude any other remedy in this Agreement. In any action or proceeding to collect amounts due under this Agreement, the prevailing Party shall be entitled to recover its collection costs and expenses, including reasonable attorneys' fees, from the other Party.

### **SECTION 3. DEFINITIONS**



Bankrupt means a petition or the commencement of a proceeding or cause of action under a bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) becomes insolvent (however evidenced), or (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets.

Business Day means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day is 8:00 a.m. - 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party to whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

Contract Price means the price in U.S. dollars as specified in an applicable Sales Confirmation.

Current Market Price means the wholesale price of electricity and any applicable related services (e.g. capacity, ancillary services) that are available for sale at the time of a termination and liquidation. Such price may be based on quotes from leading brokers, and other sellers in the wholesale market; and the Non-Defaulting Party shall not be required to enter into any transactions in order to establish the Current Market Price.

Firm Full Requirements Service means that either Party shall only be relieved of its obligations without liability to the extent that, and for the period during which performance is prevented by Force Majeure or any type of curtailment as ordered by the applicable ISO.

Governmental Authority means any federal, state, local, municipal or other government, any governmental, regulatory or administrative agency, commission or other authority.

Guarantor means an entity providing a guaranty of payment in favor of the other Party.

Interest Rate means the lesser of one and 1 ½ % per month or the maximum rate permitted by applicable law.

ISO means an Independent System Operator to be specified on a Sales Confirmation.

Material Adverse Change shall mean Customer's credit rating has dropped below BBB- per Standard & Poors or Baa3 per Moody's Investors Service.

Performance Assurance means collateral in the form of either cash, letter(s) of credit, corporate guarantees, or other security acceptable to the requesting Party.

RTO means the applicable regional transmission organization responsible for moving electricity over large interstate areas.


Utility Related Charges is defined in the applicable Sales Confirmation.

Utility Transfer Date means the date which the utility permits ENGIE to commence or discontinue Customer's service. ENGIE is not responsible or liable for any loss, cost, charge, damage, or fee incurred by or assessed to Customer for a delay in enrollment. Customer understands that third parties are, in part, responsible for enrollment timeliness.

**SECTION 4. NOTICES**

	<b>BUSINESS CONTACT</b>	<b>BILLING CONTACT</b>	<b>ENGIE CONTACT</b>	<b>Mailing Address:</b> Engie Resources LLC PO Box 841680 Dallas, Texas 75284-1680
<b>NAME:</b> <b>ATTN:</b>	Elizabeth Equity PA LLC		<b>ENGIE Resources Inc.</b>	<b>Electronic Payments:</b> Bank of America Merrill Lynch Dallas ABA: 026009593 Account Number: 4451335207
<b>STREET ADDRESS:</b>	134 RT 5, Suite 201		<b>1360 Post Oak Blvd. Suite 400</b>	<b>Overnight Mailing Address:</b> Engie Resources LLC Bank of America Lockbox Services Lockbox 841680 1950 N Stemmons Freeway - Suite 5010 Dallas, Texas 75207
<b>CITY, STATE, ZIP:</b>	Suffin, NY 10901		<b>Houston, TX 77056</b>	
<b>PHONE #:</b>	717-418-8686		<b>1-866-MYENGIE</b>	
<b>FAX #:</b>			<b>(713) 636-0927</b>	
<b>EMAIL:</b>	gitty@empiremanagement.net		<a href="mailto:care@engieresources.com">care@engieresources.com</a>	
	<b>Customer DUNS No.</b>	<b>Customer Federal Tax ID (EIN)</b>	<b>Self-service billing online:</b> MyEngiePortal <a href="https://accounts.engieresources.com">https://accounts.engieresources.com</a>	
		87-4733504		

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement effective as of the Effective Date. This Agreement will not become effective as to either Party unless and until executed by both Parties.

<b>Customer: ELIZABETH EQUITY PA LLC</b>	DocuSigned by: <i>libby gold</i> FAFF49DDA8064D5...	<b>ENGIE Resources LLC</b>
<b>Signature:</b>		<b>Signature:</b> 
<b>Print Name:</b> libby gold		<b>Print Name:</b> Jay Bell
<b>Print Title:</b> accounting dept		<b>Print Title:</b> Vice President of Sales
<b>Date:</b> 9/30/2022		<b>Date:</b> 10/4/2022

# **Exhibit E**

**SALES CONFIRMATION**  
**Pennsylvania**  
**Fixed Price RTC**

This Sales Confirmation is entered on 9/29/2022 (“Confirmation Effective Date”), by and between ENGIE Resources LLC (“ENGIE”) and **ELIZABETH EQUITY PA LLC** (“Customer”) (hereinafter collectively referred to as the “Parties”) regarding the purchase and sale of electric energy and related services pursuant to and subject to the Master Electric Energy Sales Agreement dated 9/29/2022 by and between the Parties (the “Master Agreement”). Terms not defined herein shall have the meaning given in the Master Agreement.

**Transaction Term:** This Sales Confirmation shall be effective on the Confirmation Effective Date and service shall commence at the Contract Price on the Utility Transfer Date immediately on or following the Start Date. Service shall remain in effect at the Contract Price through the Utility Transfer Date immediately on or following the End Date, but in no event later than the end of the Billing Cycle including such date. Customer’s options for service beyond the Utility Transfer Date immediately following the End Date include: i) executing an agreement with ENGIE for new terms and conditions of service, ii) transferring to another competitive supplier or iii) providing a written request to ENGIE to transfer Customer’s accounts to the default service provider. In the event Customer does not exercise an option prior to the End Date, ENGIE may continue providing post-term service on a month-to-month basis. The price for post-term service shall be a monthly variable rate set by ENGIE. Taxes and Utility Related Charges are not included and are separately listed in an invoice.

**Full Swing Transaction:** Customer’s electricity consumption is variable and is not subject to a maximum or minimum usage limit.

**Contract Price:** Customer shall pay ENGIE the applicable Contract Price as specified in Attachment A, Exhibit 1 per kWh of electric energy consumed in a Billing Cycle.

Except to the extent that a charge is separately listed as an obligation in this Sales Confirmation, the Contract Price may include a broker fee and includes non-utility charges including energy, ancillary services, congestion, losses, and current network integrated transmission and transmission enhancement charges (provided that changes to rate effective after contract execution may be passed through to Customer). The Contract Price does not include Taxes, Utility Related Charges, or Reliability Must Run charges. Installed (or unforced) capacity pricing may be adjusted by the final net load clearing price for periods outside the PJM RPM Base Residual Auction rates cleared as of the contract date.

**Regulatory Charges:** The Contract Price does not include Regulatory Charges.

**Taxes and Utility Related Charges:** Taxes and Utility Related Charges are separately listed in the Customer bill and are not included in any other charge identified in this Sales Confirmation.

**Facilities, Accounts and Quantities:** See Attachment A.

**Miscellaneous:**

**INFORMATION FOR SMALL BUSINESS ACCOUNTS** (*accounts that receive service under a small commercial, small industrial or small business rate classification, and whose maximum peak load was less than 25 kW within the last 12 months*)

**Electric Generation Supplier License Number:** ENGIE’s Pennsylvania Public Utility Commission Electric Generation Supplier (EGS) License Number is A-110156.

**Default Service Provider (Your Local Utility Company) Information:**

DEFAULT SERVICE PROVIDER	TELEPHONE NUMBER
Metropolitan Edison Company/ Met-Ed	1-800-545-7741
Pennsylvania Electric Company/ Penelec	1-800-545-7741
Duquesne Light Company	1- 888-393-7100

Philadelphia Electric and Gas Company/ PECO	1-800-841-4141
Allegheny Power/ West Penn Power	1-800-255-3443
PPL Electric Utilities	1-800-342-5775
Pennsylvania Power Company/ Penn Power	1-800-720-3600
UGI Electric / UGI Utilities	1-800-962-1212

**Service Complaints:** If you are unsatisfied with your service, please contact ENGIE to discuss your terms of service. If you are still dissatisfied with your service, you may contact the Pennsylvania Public Utility Commission at 1-800-PUC-1110.

**Pennsylvania Required Statements:** Generation prices and charges are set by the electric generation supplier you have chosen; ENGIE is your generation supplier. The Public Utility Commission regulates distribution prices and services; regulation by the Pennsylvania PUC sets the prices charged to you by your local utility company, and will be reflected on a separate bill you will receive from your local utility. The Federal Energy Regulatory Commission regulates transmission prices and services.

**Customer Notification Statement:** If you have a fixed term agreement with us and it is approaching the expiration date, or whenever we propose to change our terms of service in any type of agreement, you will receive written notification from us in corresponding separate mailings that precede either the expiration date or the effective date of the proposed changes. We will explain your options to you in these three advance notifications.

**Purchase of Receivables Program:** ENGIE retains the right to and may sell its account receivables to the applicable consolidated billing utility under the terms of the applicable Purchase of Receivables Program (POR). Such utility is authorized to disconnect its delivery service and ENGIE's commodity service for non-payment of all amounts due on the consolidated bill, including the amount due ENGIE, in accordance with all applicable provisions set forth in the Purchase of Accounts Receivable program. If the billing utility disconnects its delivery service for Customer's non-payment, this shall be deemed an event of default pursuant to Section 2.6 of the Master Agreement. If Customer is not accepted into the utility consolidated billing purchase of receivable ("POR") program, ENGIE has the option to decline or discontinue service by providing notice to Customer. If ENGIE elects to decline or discontinue service, Customer will be responsible for any payments due prior to the service being discontinued, but otherwise the Sales Confirmation shall have no force or effect.

The City of Philadelphia Business Privilege Tax is not included in the Contract Price and shall be separately listed as a tax in the Customer bill.

**IDR Meter Authorization:** Customer shall, during the term of this Sales Confirmation, promptly provide all necessary authorizations to ENGIE in order to allow ENGIE to receive interval meter data (IDR) from Customer's facility(ies) listed on Attachment A. At its sole cost, ENGIE or its representative shall have the right to access or install telemetry from Customer's facility(ies) listed on Attachment A in order to track and evaluate Customer's usage on a regular basis for the purpose of load forecasting.

**"Rate Ready" Accounts.** For account(s) in which the utility uses a "rate ready" billing system, the Contract Price during the post-term period shall be a monthly variable rate set by ENGIE plus a post-term charge and any applicable non-utility related charges, ISO charges or administrative fees. Taxes and Utility Related Charges are separately listed in an invoice. Customer may terminate post-term service at any time without liability.

**ON-SITE CUSTOMER GENERATION:** The Contract Price is conditioned on Customer's representation that, except for emergency back-up generation used when the local utility is not capable of delivering electricity, Customer does not operate on-site generation or thermal storage facilities. If Customer does operate on-site generation or thermal storage, ENGIE shall calculate in a commercially reasonable manner the present value of any economic loss resulting from the reduced load caused by such operation, and such loss shall be due from the Customer.

**Government/Public Entity Payment Terms and Indemnity Waiver.** This Agreement may be subject to state mandated payment term requirements for government/public entities; Customer shall provide a written verification of the applicability of such provision(s) to ENGIE to receive such extended terms at an

additional cost to be determined by ENGIE. To the extent prohibited by state law or other statute, the Indemnification provision set forth in Section 2.9 of the Master Agreement shall be inapplicable.

**Independent System Operator (ISO)** means the system operator that controls or governs the transmission and distribution system or any successor thereto for the location where the facility(ies) are physically located.

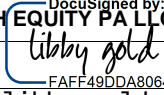
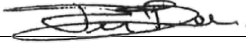
**“Utility Related Charges”** means tariff based charges or surcharges assessed by a local utility arising from or related to, including but not limited to, (i) transmission and distribution of energy (other than network integrated transmission service); (ii) stranded costs or transition costs and any other similar types of charges associated with the opening of the applicable state’s electric market to competition; (iii) system reliability, rate recovery, future payback of under-collections, amortization, of above market purchases or energy load repurchases, public purpose programs and all similar items.

**“Regulatory Charges”** means reliability charges, such as Reliability Must Run and Must Run Alternatives, which may be necessary to provide voltage support, capacity, energy, stability or management of localized transmission constraints. Such charges will be assigned to Customer by ENGIE in its commercially reasonable discretion.

**Facility/Account Deletions Prior to End Date:** The Parties intend that each of the Facilities listed on Attachment A will be continuously served by ENGIE through the End Date shown on Attachment A. However, should Customer close a Facility or otherwise discontinue electric service prior to the End Date, then ENGIE shall calculate in a commercially reasonable manner, the present value of any economic loss it incurred thereby. Any loss that ENGIE reasonably concludes is material shall be due from Customer. Customer shall provide notice of any Facility closure to ENGIE as soon as practicable.

**Billing Contact Information:** All invoices to Customer for service under this Sales Confirmation shall be provided to the person and address specified in the chart following the signature block of this Sales Confirmation.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Sales Confirmation effective as of the Effective Date. This Sales Confirmation will not become effective as to either Party unless and until executed by both Parties.

SIGNATURES	
Customer: <b>ELIZABETH EQUITY PA LLC</b>	<b>ENGIE Resources LLC</b>
Signature: 	Signature: 
Print Name: <b>libby gold</b>	Print Name: <b>Jay Bell</b>
Print Title: <b>accounting dept</b>	Print Title: <b>Vice President of Sales</b>
Date: <b>9/30/2022</b>	Date: <b>10/4/2022</b>
CUSTOMER DUNS NUMBER: _____	
CUSTOMER FEDERAL TAX ID NUMBER (EIN): _____	

	BUSINESS / PRIMARY CONTACT	BILLING CONTACT	ENGIE Resources CONTACT	CUSTOMER PAYMENTS
<b>NAME:</b> <b>ATTN:</b>	Elizabeth Equity PA LLC		ENGIE Resources	<b>Payment Address:</b> ENGIE Resources LLC PO Box 841680 Dallas, TX 75284-1680
<b>STREET ADDRESS:</b>	134 RT 59, Suite 201		Physical Address – 1360 Post Oak Blvd. Suite 400 Houston, Texas 77056	<b>Overnight Address:</b> ENGIE Resources LLC Bank of America Lockbox Services Lockbox 841680 1950 N Stemmons Freeway, Suite 5010 Dallas, TX 75207
<b>CITY, STATE, ZIP:</b>	Suffern, NY 10901		Mailing Address – PO Box 841680 Dallas, Texas 75284-1680	<b>Electronic Payment:</b> Merrill Lynch Dallas ACH Routing: 111000012 Wire ABA: 026009593 Account No.: 4451335207
<b>PHONE #:</b>	717-418-8486		1-866-MYENGIE	
<b>FAX #:</b>			(713) 636-0927	
<b>EMAIL:</b>	<a href="mailto:gitty@empiremanagement.net">gitty@empiremanagement.net</a>		<a href="mailto:care@engieresources.com">care@engieresources.com</a>	<b>Self-service billing online:</b> MyEngiePortal <a href="https://accounts.engieresources.com">https://accounts.engieresources.com</a>

Check here if accounts are tax exempt and send certificates to [care@engieresources.com](mailto:care@engieresources.com). No exemption is applied until receipt of tax certificates.

Customer: ELIZABETH EQUITY PA LLC  
 Effective Date: 09/29/2022  
 Agreement #: 1-1S1R5TI,1  
 PR #: 1-1QXYIWL,1

**ATTACHMENT A: AGREEMENT SUMMARY INFORMATION**

Product Code: FP01-CP02D-CP02F-CA01

Product: Fixed Price RTC

**Exhibit 1: Facilities and Accounts**

#	Facility Name Service Address	City, State, Zip	County	Utility	Delivery Point	Account Number	Rate Schedule	Start Date	End Date
1				PPL	PPL Resid Agg	3193015069	GS-3	10/01/2022	09/30/2027
2				PPL	PPL Resid Agg	3473015087	GS-1	10/01/2022	09/30/2027

Contract Price (\$/KWh):	0.10990
--------------------------	---------



Customer: ELIZABETH EQUITY PA LLC  
 Effective Date: 09/29/2022  
 Agreement #: 1-1S1R5TI,1  
 PR #: 1-1QXYIWL,1

**ATTACHMENT A: AGREEMENT SUMMARY INFORMATION**

**Exhibit 2: Monthly Anticipated Consumption (in MWh)**

**Delivery Point:** PPL Resid Agg

Month	Year	MWh
Oct	2022	33.71
Nov	2022	34.10
Dec	2022	35.38
Jan	2023	37.50
Feb	2023	32.35
Mar	2023	34.82
Apr	2023	33.81
May	2023	38.95
Jun	2023	40.93
Jul	2023	41.11
Aug	2023	39.60
Sep	2023	34.02
Oct	2023	34.08
Nov	2023	34.12
Dec	2023	34.64
Jan	2024	37.48
Feb	2024	33.64
Mar	2024	33.89
Apr	2024	34.83
May	2024	39.21
Jun	2024	40.03
Jul	2024	41.96
Aug	2024	39.13
Sep	2024	33.62
Oct	2024	34.60
Nov	2024	33.72
Dec	2024	35.09
Jan	2025	37.65
Feb	2025	32.49
Mar	2025	34.10
Apr	2025	34.41
May	2025	38.13

Customer: ELIZABETH EQUITY PA LLC  
 Effective Date: 09/29/2022  
 Agreement #: 1-1S1R5TI,1  
 PR #: 1-1QXYIWL,1

**ATTACHMENT A: AGREEMENT SUMMARY INFORMATION**

**Delivery Point:** PPL Resid Agg

Jun	2025	40.32
Jul	2025	42.22
Aug	2025	38.94
Sep	2025	35.04
Oct	2025	34.35
Nov	2025	33.24
Dec	2025	35.17
Jan	2026	37.31
Feb	2026	32.42
Mar	2026	34.45
Apr	2026	34.48
May	2026	37.75
Jun	2026	40.89
Jul	2026	42.16
Aug	2026	38.86
Sep	2026	34.87
Oct	2026	34.06
Nov	2026	33.56
Dec	2026	35.26
Jan	2027	36.90
Feb	2027	32.33
Mar	2027	34.89
Apr	2027	34.51
May	2027	37.90
Jun	2027	40.96
Jul	2027	41.75
Aug	2027	39.15
Sep	2027	34.70

Customer: ELIZABETH EQUITY PA LLC  
Effective Date: 09/29/2022  
Agreement #: 1-1S1R5TI,1  
PR #: 1-1QXYIWL,1

**ATTACHMENT A: AGREEMENT SUMMARY INFORMATION**

**ACKNOWLEDGMENT:**

Customer has reviewed the Account Numbers on this Attachment A for accuracy and completeness and verifies that the facilities and accounts identified on this Attachment A are owned or under its control.

Signature:  \_\_\_\_\_  
FAFF49DDA8064D5...

Print Name: libby gold

Customer, please check this box if your accounts are tax exempt.  
If tax exempt, please send your tax exemption certificates to [custserv@na.engie.com](mailto:custserv@na.engie.com)  
We cannot apply the tax exemption until we receive your certificates.

**VERIFICATION**

I, Naveen Rabie, Counsel for ENGIE Resources LLC, have read the foregoing document and verify that the facts set forth therein are true and correct to the best of my knowledge, information and belief. To the extent that the foregoing document and/or its language is that of counsel, I have relied upon counsel in making this Verification.

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

By: TRB

Name: NAVEEN RABIE

DATE: 11/9/2023

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>ELIZABETH EQUITY PA, LLC</b>	:	
<b>Complainant,</b>	:	
	:	<b>Docket No. C-2023-3042962</b>
<b>v.</b>	:	
	:	
<b>ENGIE RESOURCES, LLC</b>	:	
<b>Respondent</b>	:	

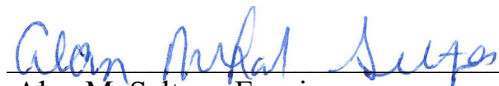
**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of the foregoing document upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

**Via Email:**

Honorable John Coogan  
Administrative law Judge  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor West  
Harrisburg, Pa 17120  
[jcoogan@pa.gov](mailto:jcoogan@pa.gov)

Elizabeth Equity PA, LLC  
Shloma Jacobowitz  
543 Bedford Avenue, APT 229  
Brooklyn, NY 11211  
[zkoval@heraldequities.com](mailto:zkoval@heraldequities.com)

  
\_\_\_\_\_  
Alan M. Seltzer, Esquire

November 9, 2023