

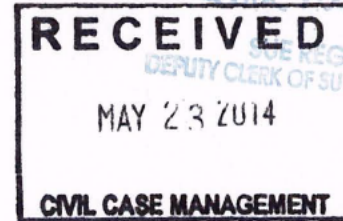
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MAY 23 2014



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MERCER COUNTY
DOCKET NO. MER-C- 33 -14

JOHN J. HOFFMAN, Acting Attorney General of the
State of New Jersey, NEW JERSEY BOARD OF
PUBLIC UTILITIES, and STEVE C. LEE, Acting
Director of the New Jersey Division of Consumer
Affairs,

Plaintiffs,

v.

PALMCO POWER NJ, LLC, PALMCO ENERGY
NJ, LLC, JANE AND JOHN DOES 1-10, individually
and as owners, officers, directors, shareholders,
founders, managers, agents, servants, employees,
representatives and/or independent contractors of
PALMCO POWER NJ, LLC, PALMCO ENERGY
NJ, LLC, and XYZ CORPORATIONS 1-10,

Defendants.

Civil Action

COMPLAINT

Plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey ("Attorney General"), with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, the New Jersey Board of Public Utilities, with offices located at 44 South Clinton Avenue, Trenton, New Jersey 08625 ("BPU" or "Board"), and Steve C. Lee, Acting Director of the New Jersey Division of

Consumer Affairs (“Director”), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of Complaint state:

PRELIMINARY STATEMENT

1. With the enactment of the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. (“EDECA”), the BPU was authorized “to permit competition in the electric generation and gas marketplace . . . and thereby reduce the aggregate energy rates currently paid by all New Jersey consumers.” N.J.S.A. 48:3-50(c)(1). Among the goals of such deregulation was to “lower the high cost of energy, and improve the quality and choices of service” and to “[e]nsure universal access to affordable and reliable electric power and natural gas service.” N.J.S.A. 48:3-50(a)(1), (4). Such deregulation permitted the entry of third party suppliers (“TPSs”) of natural gas and electric power, to compete for customers with local distribution companies (“LDCs”).

2. At all relevant times, Palmco Power NJ LLC (“Palmco Power NJ”) has been licensed by BPU as a TPS of natural gas in the State of New Jersey (“New Jersey” or “State”). At all relevant times, Palmco Energy NJ LLC (“Palmco Energy NJ”) has been licensed by BPU as a TPS of electric power in New Jersey. In their advertisement, marketing and sale of electric generation service and gas supply service, Palmco Power NJ and Palmco Energy NJ (collectively, “Palmco”) have represented that their rates were competitive and less than the LDC.

3. To date, BPU has received complaints from three hundred thirteen (313) consumers, while the New Jersey Division of Consumer Affairs (“Division”) has received complaints from forty-two (42) consumers, as to Palmco. The Division has also received one hundred thirty three (133) consumer complaints from the Better Business Bureau. Among other things, these complaints demonstrate that Palmco: (a) engaged in aggressive and deceptive marketing practices which included leading consumers to believe they were affiliated with an LDC; (b) failed to provide rates

for gas and electric that were competitive, lower than the LDC and/or consistent with the pricing mechanisms set forth in their contracts; (c) charged rates for gas and electric that were exorbitant compared with the consumers' prior supplier; and (d) switched consumers' energy suppliers without their authorization.

4. Defendants' conduct constitutes multiple violations of the EDECA, N.J.S.A. 48:3-49 et seq., the Regulations Governing Energy Licensing and Registration, N.J.A.C. 14:4-5.1 et seq. ("Energy Licensing and Registration Regulations"), Regulations Governing Retail Choice Consumer Protection, N.J.A.C. 14:4-7.1 et seq. ("Retail Choice Consumer Protection Regulations"), the Regulations Governing Energy Anti-Slamming, N.J.A.C. 14:4-2.1 et seq. ("Energy Anti-Slamming Regulations"), the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), and the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq. ("Advertising Regulations"). The Attorney General, Director and BPU submit this Complaint to halt Defendants' deceptive business practices, to seek adherence to the applicable law, and to prevent consumers from suffering further monetary harm.

PARTIES AND JURISDICTION

5. The Attorney General, pursuant to N.J.S.A. 52:17A-4, is charged with the responsibility of enforcing the CFA, N.J.S.A. 56:8-1 et seq., and all regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. ("CFA Regulations"). The Director, pursuant to N.J.S.A. 52:17B-124, is charged with the responsibility of administering the CFA and the CFA Regulations on behalf of the Attorney General.

6. BPU, pursuant to N.J.S.A. 48:2-13, has been granted general supervision and regulation of as well as jurisdiction and control over all public utilities, including electric and gas utilities which operate within the State of New Jersey ("New Jersey" or "State"), as well as their

property, property rights, equipment, facilities and franchises.

7. Pursuant to the EDECA, N.J.S.A. 48:3-56, 48:3-78 and 48:3-79, BPU has authority and jurisdiction to regulate electric power suppliers and gas power suppliers. Among other things, BPU licenses electric power suppliers and gas power suppliers. N.J.S.A. 48:3-78 and N.J.S.A. 48:3-79.

8. The EDECA defines “electric power supplier” as “a person or entity that is duly licensed pursuant to the provisions of [the EDECA] to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers . . .” N.J.S.A. 48:3-51. The EDECA further defines “electric generation service” as “the provision of retail electric energy and capacity which is generated off-site from the location at which the consumption of such electric energy and capacity is metered for retail billing purposes, including agreements and arrangements related thereto.” N.J.S.A. 48:3-51.

9. The EDECA defines “gas supplier” as “a person that is duly licensed pursuant to the provisions of [the EDECA] to offer and assume the contractual and legal obligation to provide gas supply service to retail customers . . .” N.J.S.A. 48:3-51. The EDECA further defines “gas supply service” as “the provision to customers of the retail commodity of gas . . .” N.J.S.A. 48:3-51.

10. By this action, the Attorney General, Director and BPU (collectively, “Plaintiffs”) seek injunctive relief and other relief for violations of the EDECA, the Energy Licensing and Registration Regulations, the Retail Choice Consumer Protection Regulations, the Energy Anti-Slamming Regulations, the CFA and the Advertising Regulations. Plaintiffs bring this action pursuant to their authority under the EDECA, specifically N.J.S.A. 48:3-82, 48:3-83, 48:3-84 and 48:3-86, and the CFA, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and 56:8-19. Venue is proper in Mercer County, pursuant to R. 4:3-2(b), because it is a county in which the Defendants have

conducted business.

11. On January 28, 2009, Palmco Power NJ, was established as a Limited Liability Company in the State. At all relevant times, Palmco Power NJ has maintained a principal business address of 1350 60th Street, Brooklyn, New York 11219 (“1350 60th Street Brooklyn”).

12. The registered agent in the State for Palmco Power NJ is Corporation Service Company, with a mailing address of 830 Bear Tavern Road, West Trenton, New Jersey 08628.

13. On January 28, 2009, Palmco Energy NJ, was established as a Limited Liability Company in the State. At all relevant times, Palmco Energy NJ has maintained a principal business address of 1350 60th Street Brooklyn.

14. The registered agent in the State for Palmco Energy NJ is Corporation Service Company, with a mailing address of 830 Bear Tavern Road, West Trenton, New Jersey 08628.

15. Upon information and belief, John and Jane Does 1 through 10 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, managers, agents, servants, employees, and/or representatives of Palmco Power NJ and/or Palmco Energy NJ who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

16. Upon information and belief, XYZ Corporations 1 through 10 are fictitious corporations meant to represent any additional corporations who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

17. Palmco Power NJ and Palmco Energy NJ are collectively referred to as “Defendants.”

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

18. At all relevant times, Palmco Power NJ has advertised, marketed, offered for sale and sold gas supply service to retail customers in New Jersey.

19. At the time of the last renewal, Palmco Power NJ supplies gas to approximately 27,567 customers in the State.

20. At all relevant times, Palmco Energy NJ has advertised, marketed, offered for sale and sold electric generation service to retail customers in New Jersey.

21. At the time of the last renewal, Palmco Energy NJ supplies electricity to approximately 27,751 customers in the State.

22. At all relevant times, Palmco has maintained a website located at www.palmcoenergy.com ("Palmco Website").

23. At all relevant times, Defendants have offered gas supply service in the territories covered by Elizabethtown Gas, Public Service Electric & Gas ("PSE&G"), New Jersey Natural Gas and South Jersey Gas.

24. At all relevant times, Defendants have offered electric generation service in the territories covered by Atlantic City Electric, Jersey Central Power & Light ("JCP&L")/FirstEnergy, PSE&G and Rockland Electric.

A. Licensing of Defendants with BPU:

25. On or about February 11, 2009, Defendants submitted an initial application to BPU for a New Jersey Gas Supplier license for Palmco Energy NJ and a New Jersey Electric Power license for Palmco Power NJ (collectively, "Initial Applications").

26. On or about June 9, 2009, Defendants provided supplemental information in connection with the Initial Applications, which included the identification of the New Jersey office

address for Palmco Energy NJ and Palmco Power NJ as: One Greentree Centre, 10,000 Lincoln Drive East – Suite 201, Marlton, New Jersey 08053 (“10,000 Lincoln Drive East Suite 201 Marlton”).

27. On July 1, 2009, BPU issued Gas Supplier License No. GSL-0033 to Palmco Energy NJ (“Palmco Energy NJ License”) and Electric Supplier License No. ESL-0049 to Palmco Power NJ (“Palmco Power NJ License”).

28. On or about May 19, 2010, December 21, 2011 and August 9, 2013, Defendants submitted renewal applications for the Palmco Energy NJ License and the Palmco Power NJ License (collectively, “Renewal Applications”).

29. On February 10, 2011, September 13, 2012 and October 16, 2013, BPU renewed the Palmco Energy NJ License and the Palmco Power NJ License. The current licenses are set to expire on October 15, 2014.

30. The Initial Application and Renewal Applications submitted by Defendants identified 10,000 Lincoln Drive East Suite 201 Marlton as the “NJ Principal Business Address” for Palmco Energy NJ and Palmco Power NJ.

31. At all relevant times, 10,000 Lincoln Drive East Suite 201 Marlton has been a virtual office owned and operated by American Executive Centers.

**B. Defendants’ Marketing and Sale of Gas Supply
Service and Electric Generation Service Generally:**

32. Commencing on or about July 1, 2009, Defendants advertised, marketed, offered for sale and/or sold gas supply service and electric generation service to consumers in the State. At varying times, Palmco advertised through the Palmco Website, print advertisements, door-to-door solicitations and telephone solicitations.

Palmco Website:

33. At all relevant times, Defendants have advertised and marketed gas supply service and electric generation service for sale to consumers in the State through the Palmco Website.

34. The homepage of the Palmco Website includes a link to Frequently Asked Questions (“FAQs”) which, if accessed, include the following:

What is PALMco Energy?

PALMco Energy is a family owned and operated energy supply company (ESCO) that supplies electricity, gas and oil in New York. Our family has been in the energy business for over 75 years, and we dedicate ourselves to providing quality service, customer satisfaction, dependable energy, and competitive prices.

* * * * *

What is a deregulated energy market?

In a deregulated energy market, energy supply companies (ESCOs) like PALMco Energy provide customers with more options for their energy needs beyond their utility company. The goal of deregulation is to lower the cost of energy for consumers by increasing the number of companies providing services and creating a more competitive energy supply market.

* * * * *

What sets PALMco Energy apart from other ESCOs?

Unlike other energy supply companies, PALMco Energy is a family owned and operated company. Because our family has been in the energy business for over 75 years, far longer than any other ESCO, we understand the importance of maintaining our relationship with each and every customer. We treat our customers like family, not another number, and provide them with quality, personal service they deserve.

* * * * *

[Emphasis added.]

* * * * *

Why is the pricing for my energy different this month than it was last month?

With a variable price plan, the month-to-month pricing of your energy supply depends on the value of the energy we provide, which fluctuates daily. The average of the daily value of energy is used to determine the monthly rate for your energy supply, which is why there may be variations in the price per Therm or kWh each month.

35. At least up through April 2, 2014, the homepage of the Palmco Website included a link to a "Promotions" page which, if accessed, includes the following:



PALMco Energy would be happy to have you as a customer. To show you our appreciation for your business we'd like to offer you Gift Cards worth up to \$100 towards dinner at one of your favorite restaurants. Your Restaurant.com Gift Card™ will be mailed to you automatically with easy redemption instructions. Everything you need to know will be included with your Gift Card. A Restaurant.com Gift Card™ gives you the choice of thousands of participating restaurants nationwide, as well as premium online partners like Lobster Gram, Mrs. Fields, The Fruit Company and many others.

*Offer valid only on gas accounts with a minimum historical usage of 4500 annual therms and/or electric accounts with a minimum historical usage of 4500 annual kWh. Account must not be in for cancellation at the time the sixth invoice is rendered to receive \$25 per account in Gift Cards and must not be in for cancellation at the time the fourteenth invoice is rendered to receive \$25 per account in Gift Cards. Limited time offer and applies to new customers only. Up to 2 Gift Cards per gas and/or electric account enrolled. PALMco Energy is not affiliated with any local utility company and is an independent energy supply company. If you receive services from PALMco, your bill will reflect a Commodity Service charge from PALMco for the commodity, and a Delivery Service charge from the Distribution Utility, which will remain responsible for repairs if delivery is interrupted.

36. At all relevant times, consumers could not purchase gas supply service and/or electric generation service directly through the Palmco Website.

37. At all relevant times, the Palmco Website included the following:

SALES

Phone: (877) 726-5862

Fax: (718) 851-2427

Email: sales@palmcoenergy.com (mailto: sales@palmcoenergy.com)

CUSTOMER SERVICE

Monday-Friday: 8am-4:45pm (excluding certain Holidays)

Phone: (877) 726-5862

Fax: (718) 851-2427

Email: customerservice@palmcoenergy.com

(mailto: customerservice@palmcoenergy.com)

PLEASE NOTE – Monday is our busiest day with incoming phone calls and wait times will be longer than usual.

MAILING ADDRESS

PALMco Energy

1350 60 Street

Brooklyn, NY 11219

38. At all relevant times, the Palmco Website did not include a reference to the Palmco Energy NJ License or the Palmco Power NJ License.

39. At all relevant times, the Palmco Website did not include a statement as to whether or not Palmco offers budget billing.

40. At all relevant times, the Palmco Website did not include a statement that switching to a competitive TPS is not mandatory and that the customer has the option to remain with the LDC for basic generation service or basic gas supply service.

Palmco Brochure:

41. At all relevant times, Defendants have advertised and marketed gas supply service and electric generation service through print advertisements, specifically a brochure (“Palmco Brochure”).

42. At all relevant times, the Palmco Brochure has consisted of two (2) pages.

43. The first page of the Palmco Brochure includes the following statements:

Dependable Supply
Competitive Prices
Courteous Service

• NO RISKS!
Only Opportunities for Savings*
**Savings are not guaranteed*

44. The first page of the Palmco Brochure also includes the following statements: “Ownership has been in the Energy Business Since 1938,” “Friendly, Knowledgeable Customer Service Representatives” and “Courteous Service.”

45. In addition, the first page of the Palmco Brochure includes the following:

PALMco
One Greentree Centre
10,000 Lincoln Drive East – Suite 201
Marlton, NJ 08053

Toll Free: 877 726-5862

Fax: 718 851-2427

Email: Sales@PalmcoEnergy.com

www.PalmcoEnergy.com

Gas Supplier License: GSL-0033
Electric Supplier License: ESL-0049

46. The second page of the Palmco Brochure includes the heading “**You Now Have a Choice From Whom You Purchase Your Energy!**” and provides, in pertinent part:

Who Are We?

PALMco is an Energy company that is privately owned by a family that has been in the energy business since 1938. . . .

What Do We Do?

Since the Energy industry in New Jersey was deregulated, we strive to save our customers money on their Energy bills. As an independent supplier, we are able to customize our purchases in a more efficient manner to better serve our customers.

We work in conjunction with your local Utility company to allow you to participate in the deregulation of the energy industry. It is not mandatory to choose a Third Party Supplier, but the goal of deregulation is to lower the cost of energy for

consumers through competition.

What Sets Us Apart?

Because the family who owns **PALMco** has been in the energy business for decades, we understand the importance of each and every customer. Our customers are not just a number to us. Every customer will always receive the highest level of service possible. Our commitment to our customers is paramount. A live, friendly and knowledgeable customer service representative will address any questions or concerns you may have. . . .

[Emphasis added.]

47. The Palmco Brochure does not identify the LDCs in whose territories Palmco is offering gas supply service and/or electric generation service.

48. The Palmco Brochure does not include a statement as to whether or not Palmco offers budget billing.

**C. Defendants' Contracts for Gas Supply
Service and Electric Generation Service:**

49. At all relevant times, Defendants required consumers to enter into a two-page Natural Gas & Electricity Supply Agreement for gas supply service and electric generation service ("Palmco Contract").

50. At all relevant times, the Palmco Contract bore a heading that read "Privately Owned; Family in Business Since 1938."

51. At all relevant times, the Palmco Contract referenced an address of 1350 60th Street Brooklyn, a phone number of (877) 726-5862 and/or (718) 851-6655 and a fax number of (718) 851-2427.

52. At all relevant times, the Palmco Contract included a reference to "Palmco Energy License: GSL0033" and "Palmco Power License: ESL0049."

53. At all relevant times, the Palmco Contract included separate sections as to the consumer's gas and electric accounts, including name on account, utility account number, service

address and utility.

54. At least up though 2012, the Palmco Contract including the following statement as to the natural gas price:

Price: You will pay Palmco Energy NJ LLC ("Palmco Energy" or "Palmco") a price for natural gas supply service that varies from month to month based on the applicable monthly NYMEX closing price for natural gas, applicable interstate transportation costs, any supply and agency functions that Palmco performs for you, and other prevailing market conditions. You are responsible for paying and reimbursing Palmco for all applicable taxes, fees, assessments, and other charges, however designated, relating to the service provided under this Agreement. If you are tax exempt, you must furnish Palmco an exemption certificate before your service commences.

55. At least up through 2012, the Palmco Contract including the following statement as to the electric price:

Price: You will pay Palmco Power NJ LLC ("Palmco Power" or "Palmco") a price for electric generation service that will vary from month to month. The price you pay will be based on a monthly zonal locational marginal price ("LMP") determined on a day ahead or real time basis, any supply and agency functions that Palmco performs for you, certain transmission, capacity, ancillary, and administrative costs incurred by Palmco, and other prevailing market conditions. You are responsible for paying and reimbursing Palmco for all applicable taxes, fees, assessments, and other charges, however designated, relating to the service provided under this Agreement. If you are tax exempt, you must furnish Palmco an exemption certificate before your service commences.

56. Commencing in or about January 2013, the Palmco Contract including the following statement as to the natural gas price:

Natural Gas Price: You will pay Palmco Energy NJ LLC ("Palmco Energy" or "Palmco") a price for natural gas supply service that varies from month to month based on the applicable monthly NYMEX closing price for natural gas, applicable interstate transportation costs, any supply and agency functions that Palmco performs for you, and other prevailing market conditions. Your initial price for gas supply service will be _____ per therm.

57. Commencing in or about January 2013, the Palmco Contract including the following statement as to the electric price:

Electric Price: If you receive electric generation service from Palmco Power NJ LLC (“Palmco Power” or “Palmco”), you will pay a price that will vary from month to month based on a monthly zonal locational marginal price (“LMP”) determined on a day ahead or real time basis, any supply and agency functions that Palmco performs for you, line loss, compliance costs, certain transmission, capacity, ancillary, and administrative costs incurred by Palmco, and other prevailing market conditions. Your initial price for electric generation supply service will be _____ per kWh.

58. At all relevant times, the Palmco Contract included the following statement on its first page:

I would like Budget Billing _____ (Please initial if you would like Budget Billing). **Restrictions may apply.*

59. At least as of January 2013, the Palmco Contract included the following provision:

For Door-To-Door Sales Only – You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached Door-to-Door Sales Receipt and Notice of Cancellation form for an explanation of this right. If this is a door-to-door sale, by signing below you acknowledge that you have received two copies of the “Door-to-Door Sales Receipt” that is part of this Agreement.

60. Prior to January 2013, the Palmco Contract included the following provision:

For Door-To-Door Sales Only – see attached copies of your Door-to-Door Sales Receipts for a description of your rights.
If this is a door-to-door sale, by signing below you acknowledge that you have received two copies of the ‘Door-to-Door Sales Receipt’ that is part of this Agreement.

61. At all relevant times, the Palmco Contract did not include a clear and conspicuous statement that the purpose of the document is to authorize a change in the consumer’s supplier of natural gas and/or electric.

62. At all relevant times, the General Terms and Conditions of the Palmco Contract, specifically the subpart titled “Residential Customers Confirmation Notice, Right of Rescission and Right of Cancellation” provided, in pertinent part:

If you are a residential customer: (a) you will receive a confirmation notice of your choice of Palmco Energy as you [sic] natural gas supplier and/or Palmco Power as your electric generation supplier; (b) you will have [seven or 14] calendar days from the date of the confirmation notice to contact your utility and rescind your selection of Palmco; and (c) this agreement for [gas supply and/or electric generation service] will not be legally binding on you until the [seven-day or 14-day] confirmation period has expired and you have not, directly or indirectly, rescinded your selection within such [seven-day or 14-day] period. . . .

63. At all relevant times, the General Terms and Conditions of the Palmco Contract, specifically the subpart titled "Limitation of Liability" provided:

As between Palmco and you, you will be deemed to be in exclusive control of the natural gas and/or electricity and responsible for any damage, injury, charges, transportation fees, costs or losses at and after the Sales Point(s), including, without limitation, any losses that Palmco incurs that result from having to resell, or its inability to resell, to another party natural gas and/or electricity supplies allocated for you. As between Palmco and you, Palmco will be deemed in exclusive control of the natural gas and/or electricity, and responsible for any damage, injury, charges, transportation fees, costs or losses until the natural gas and/or electricity is delivered to the Sales Point(s); provided, however, that in no event shall Palmco's liability under this Agreement exceed the difference between the reasonable price of replacing any undelivered natural gas and/or electricity and the price of natural gas and/or electricity under this Agreement. **NEITHER YOU NOR PALMCO WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR INDIRECT DAMAGES ARISING FROM A BREACH OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST REVENUES.**

64. At all relevant times, the General Terms and Conditions of the Palmco Contract, specifically the subpart titled "Dispute Procedures and Questions Concerning Your Service" provided:

Contact Palmco at 877-726-5862 or by e-mail at CustomerService@PalmcoEnergy.com if you have any questions or complaints about your service under this Agreement. If you are not satisfied with Palmco's response, you may call the New Jersey Board of Public Utilities ("BPU") at 800-624-0241.

65. At all relevant times, the General Terms and Conditions of the Palmco Contract, specifically the subpart titled "Miscellaneous" provided, in pertinent part, that:

Palmco may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof, in connection with any financial agreement and may assign this Agreement to another energy supplier, energy services company or other entity in accordance with the BPU rules and procedures, if any, governing such transactions.

D. Defendants' Aggressive Sales Tactics:

Door-To-Door Solicitations:

66. At all relevant times, Defendants have advertised and otherwise offered gas supply service and electric generation service for sale to consumers in the State through door-to-door solicitations ("Door-to-Door Solicitations").

67. Upon information and belief, Palmco sales representatives who conducted Door-to-Door solicitations told consumers that they were investigating illegal overcharges by their current utility company (i.e. PSE&G) and requested to see the consumers' bills.

68. Upon information and belief, Palmco sales representatives asked to see consumers' most recent utility bills and upon being provided with the bill, recorded their name, account number and/or telephone number.

69. Upon information and belief, Palmco sales representatives told consumers that such account information was necessary for the processing of a complaint against the utility company and/or of a reimbursement or refund for any overcharges.

70. Upon information and belief, Palmco sales representatives required that consumers sign a form in order to acknowledge that they were informed of the overcharges and/or to verify that the Palmco representative had spoken with the consumer.

71. Upon information and belief, consumers later discovered that the form the Palmco representatives required them to sign was the Palmco Contract.

72. Upon information and belief, in at least one (1) instance, a consumer refused to sign the form, but days later received a letter from Palmco indicating that the company was the

consumer's new energy supplier.

73. Upon information and belief, in at least one (1) instance, a consumer asked the Palmco representative if he was soliciting door-to-door to switch her energy supplier and the Palmco representative responded "no," that he was only investigating the utility company overcharges.

74. Upon information and belief, Palmco sales representatives who conducted Door-to-Door solicitations: (a) represented that they were employed by PSE&G; (b) at times, carried a binder with a PSE&G logo and/or PSE&G identification; and/or (c) told consumers that they would receive discounted gas and/or electric rates (e.g. 20%) if they signed an agreement which, in actuality, was the Palmco Contract.

75. Upon information and belief, a Palmco sales representative followed a PSE&G technician into the home of an 87-year-old woman residing with two (2) developmentally disabled relatives, and living in subsidized housing on a fixed income and in a neighborhood where solicitation was prohibited. The Palmco representative told the consumer that he was from PSE&G and convinced her to sign the Palmco Contract.

76. Upon information and belief, a Palmco representative solicited a senior citizen door-to-door, stating that she worked for PSE&G which was looking to freeze rates. After providing the Palmco representative with her recent PSE&G bill, the consumer indicated that she recently switched back to PSE&G from Palmco because the latter's rates were higher. The consumer then noticed that the Palmco representative was wearing a Palmco badge on her pants, and asked if she was from Palmco. When the representative said "yes," the consumer asked her to leave her home.

77. Upon information and belief, a Palmco sales representative told an account holder's friend that he was a representative of PSE&G and stated that if he did not sign the Palmco Contract, power would be shut off.

78. Upon information and belief, Palmco representatives who conducted Door-to-Door Solicitations failed to inform consumers, even when directly questioned, that they worked for Palmco and that they were selling TPS services.

79. Upon information and belief, a resident of Ventnor City, New Jersey had signed a Palmco Contract in June 2012, but cancelled before activation. The consumer was then told that he switched to Palmco as a result of a Door-to-Door Solicitation on November 1, 2012. The consumer challenged Palmco, for as a result of Superstorm Sandy, Ventnor City was not accessible to non-emergency vehicles at that time.

80. Upon information and belief, in at least one (1) instance, a Palmco representative told a consumer that the State of New Jersey mandated that she be assigned a third party supplier of electric and gas.

81. Upon information and belief, Palmco sales representatives who conducted Door-to-Door Solicitations represented that Palmco had competitive rates that would be lower than PSE&G's rates.

82. Upon information and belief, Palmco sales representatives who conducted Door-to-Door Solicitations represented that the electric and gas costs would be drastically reduced, as Palmco would eliminate the "middle man" and would supply energy directly to the consumer.

83. Upon information and belief, Palmco sales representatives who conducted Door-to-Door Solicitations represented that by switching to Palmco consumers would realize savings on their gas and/or electric bills. At varying times, Palmco sales representatives identified such savings as: (a) an average monthly reduction of no less than 5% compared to the current utility bill; (b) an average monthly reduction of 10-15%; (c) an average monthly reduction of 20%; or (d) \$0.12 less per kWh and \$0.03 less per therm than PSE&G's rates.

84. Upon information and belief, Palmco representatives told consumers, during Door-to-Door Solicitations, that Palmco gas and/or electric rates would never be higher than those of their current utility.

85. Upon information and belief, Palmco sales representatives who conducted Door-to-Door solicitations did not inform consumers that the Palmco rates were variable.

86. Upon information and belief, Palmco sales representatives conducting Door-to-Door Solicitations represented that there would be a 10% discount in the Palmco gas and electric rates for consumers age 65 or older.

87. Upon information and belief, Palmco sales representatives conducted overly aggressive solicitation of senior citizens, who included: (a) an 87-year old man who signed a Palmco Contract after being told he could save money switching from PSE&G; (b) an 89-year old woman who suffers from dementia; and (c) a woman who is confined to a wheelchair.

88. Upon information and belief, Palmco sales representatives who solicited consumers door-to-door convinced persons other than the named customer on the account or a person authorized to make decisions on the account to sign the Palmco Contract authorizing the switch.

89. Upon information and belief, Palmco sales representatives who conducted Door-to-Door Solicitations did not ensure that the person they were speaking with or who was asked to sign the Palmco Contract was either the named person on the account or a person authorized to make a decision about the account.

90. Upon information and belief, a Palmco representative returned to a consumer's home twice in one day and when told by the account holder's daughter that they were not interested in switching to Palmco, the representative tried to gain entry to the house, thus requiring the consumer to call the police.

91. Upon information and belief, the Palmco sales representatives who conducted Door-to-Door Solicitations failed to advise consumers that they were signing the Palmco Contract to switch their energy supplier.

92. Upon information and belief, Palmco representatives covered the text of the Palmco Contract except for the signature line, such that the consumers did not see the text of the document until after signature.

93. Upon information and belief, Palmco representatives who conducted Door-to-door Solicitations did not provide consumers with an opportunity to read the Palmco Contract prior to signature.

94. Upon information and belief, consumers asked Palmco representatives conducting Door-to-Door Solicitations to provide business cards, and they failed to do so.

95. Upon information and belief, although a consumer told the Palmco sales representative that she was not interested in switching her energy supplier, she subsequently received a letter from Palmco, indicating that her application was being processed.

96. Upon information and belief, Palmco representatives used consumer billing and account information to switch consumers to Palmco without their consent or authorization.

97. Upon information and belief, in at least one instance, Palmco did not obtain the requisite permit to conduct Door-to-Door Solicitations.

Telephone Solicitations:

98. At all relevant times, Defendants have advertised and otherwise offered gas supply service and electric generation service for sale to consumers in the State through telephone solicitations ("Telephone Solicitations").

99. Upon information and belief, Palmco representatives who conducted Telephone

Solicitations identified themselves as employees of PSE&G.

100. Upon information and belief, during a Telephone Solicitation, a consumer provided his utility account information after the Palmco representative said that he worked for PE&G and was calling because the consumer was selected to have his energy costs reduced.

101. Upon information and belief, during Telephone Solicitations, consumers provided billing and account information to Palmco representatives, thinking that they are affiliated with their utility companies, only to later discover that they have been switched to Palmco.

102. Upon information and belief, during Telephone Solicitations, Palmco representatives created the impression that they represent the consumers' utility companies and did not identify themselves as representatives of Palmco until after a consumer agrees to switch to Palmco.

103. Upon information and belief, during Telephone Solicitations, Palmco sales representatives told consumers that by switching to Palmco, they would realize savings on their gas and/or electric bills. At varying times, Palmco representatives identified such savings as: (a) a reduction of no less than 5% compared to their current utility bill; (b) a reduction of 10%; (c) a reduction of 20%; (d) a "noticeable" decrease from PSE&G rates; or (e) "wholesale" rates compared to the "retail" rates offered by PSE&G.

104. Upon information and belief, Palmco representatives told consumers, during Telephone Solicitations, that although the Palmco gas and/or electric rates are variable, they would never be higher than those of the consumers' current utility bills.

105. Upon information and belief, Palmco sales representatives who conducted Telephone Solicitations did not advise consumers that the Palmco gas and electric rates were variable.

106. Upon information and belief, during a telephone solicitation, a consumer stated that she is a senior citizen and was advised by the Palmco representative that there is a 10% senior citizen

discount.

107. Upon information and belief, in at least one (1) instance, Palmco sales representatives continued to make multiple Telephone Solicitations after the consumer requested to be placed on Palmco's Do Not Call List. During one call, the Palmco sales representative almost convinced the consumer's mother-in-law, a senior citizen, to authorize the switch to Palmco.

108. Upon information and belief, a couple, who were both over 80 years-old, hard of hearing and do not have a command of the English language, were switched to Palmco during a Telephone Solicitation. The couple's daughter attempted, without success, to contact Palmco to obtain a copy of the third party verification recording.

109. Upon information and belief, Palmco sales representatives who conducted Telephone Solicitations did not ensure that the person they were speaking with or who was asked to sign the Palmco Contract was either the named person on the account or a person authorized to make a decision about the account.

110. Upon information and belief, consumers who signed up with Palmco as a result of a Telephone Solicitation were subsequently not provided with a Palmco Contract.

E. Defendants' Exorbitant Pricing:

111. Upon information and belief, certain consumers who switched to Palmco realized a modest savings on their first and/or second utility bill, but afterwards, their gas and electric rates steadily increased.

112. At least from October 2013 through March 2014, Palmco was charging consumers for gas and/or electric at rates that were significantly higher than the rates of consumers' prior utility.

113. At all relevant times, the Palmco Contract provides for "a price for natural gas supply service that varies from month to month based on the applicable monthly NYMEX closing price for

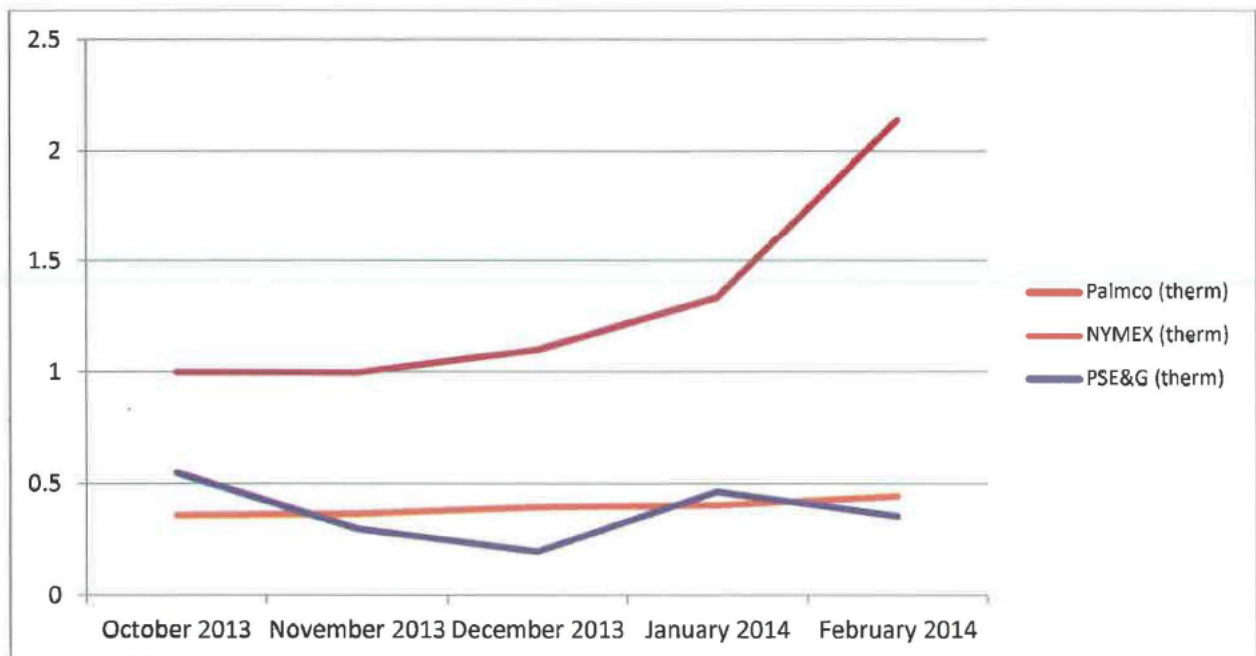
natural gas . . .”

114. The New York Mercantile Exchange (NYMEX) is a commodity futures exchange owned and/or operated by CME Group of Chicago. NYMEX handles billions of dollars’ worth of commodities, including natural gas, being bought and sold on the trading floor and the overnight electronic trading computer systems for future delivery.

115. As referenced below, at least from October 2013 through March 2014, Palmco’s price for natural gas supply service was markedly in excess of the NYMEX closing price.

Palmco Customer # 1

	October 2013	November 2013	December 2013	January 2014	February 2014
PSE&G	0.543956	0.295095	0.193990	0.462885	0.355950
Palmco	0.9949	0.9949	1.09815789	1.3357413	2.14190058
NYMEX	0.353325	0.3613	0.3932	0.402925	0.4445

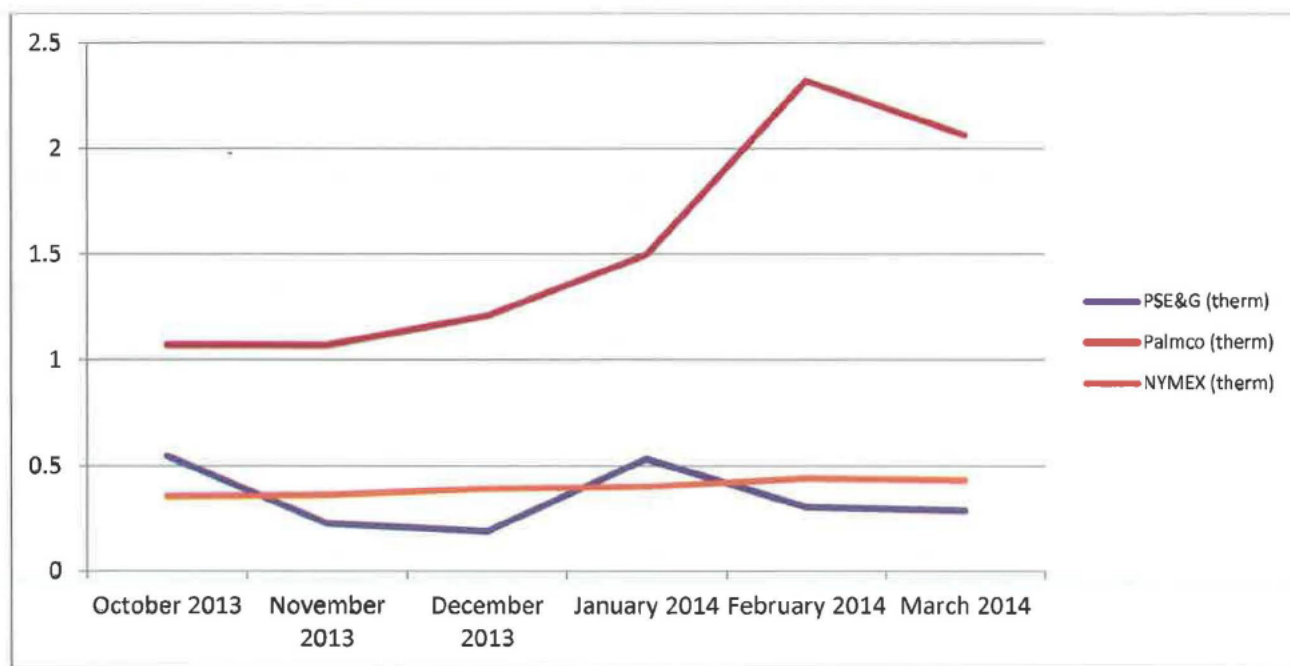


116. Palmco Customer #1 realized the following increases in his gas supply service

after switching from his LDC to Palmco: October 2013 - 82.90% (\$8.12); November 2013 - 237% (\$33.59); December 2013 - 466% (\$206.15); January 2014 - 189% (\$303.75); and February 2014 - 502% (\$610.80).

Palmco Customer #2

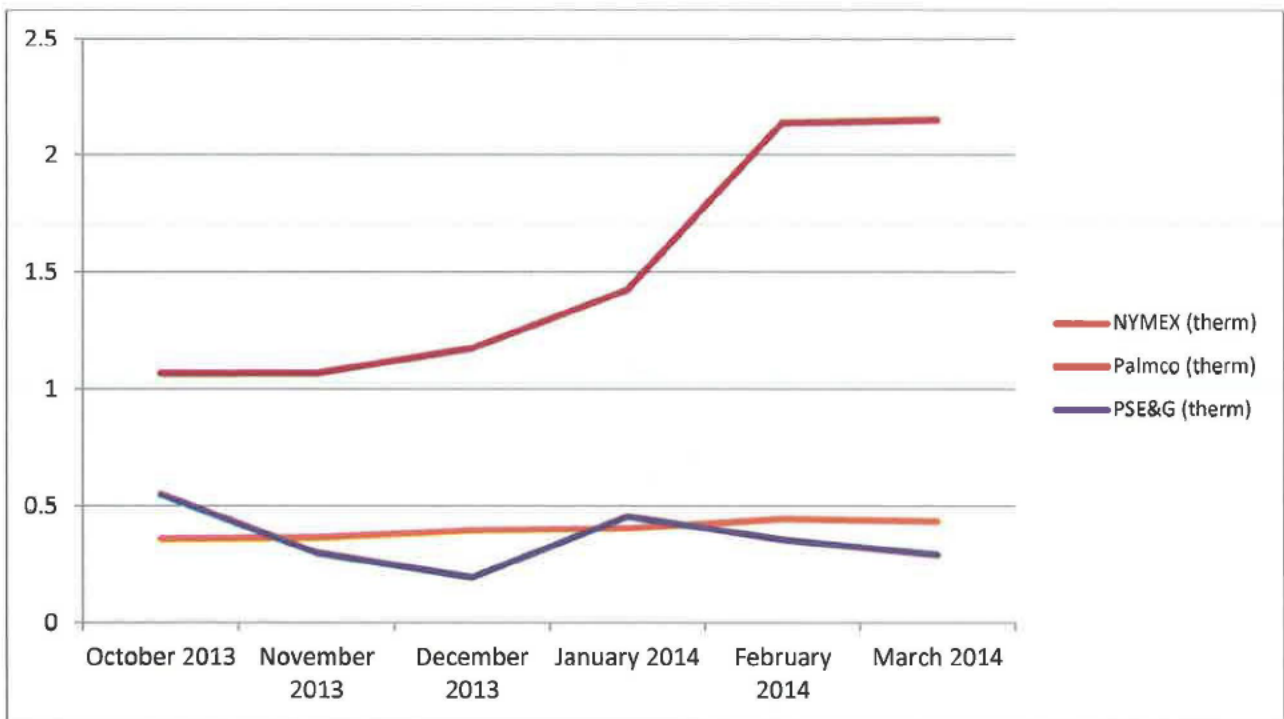
	October 2013	November 2013	December 2013	January 2014	February 2014	March 2014
PSE&G	0.543886	0.227857	0.193977	0.533120	0.310050	0.294071
Palmco	1.06460000	1.0645918	1.20525680	1.49539589	2.3209	2.06543478
NYMEX	0.353325	0.3613	0.3932	0.402925	0.4445	0.43623333



117. Palmco Customer #2 realized the following increases in his gas supply service after switching from his LDC to Palmco: October 2013 - 96% (\$26.04); November 2013 - 367% (\$82.00); December 2013 - 521% (\$334.73); January 2014 - 181% (\$328.14); February 2014 - 649% (\$633.42); and March 2014 - 602% (\$407.41).

Palmco Customer #3

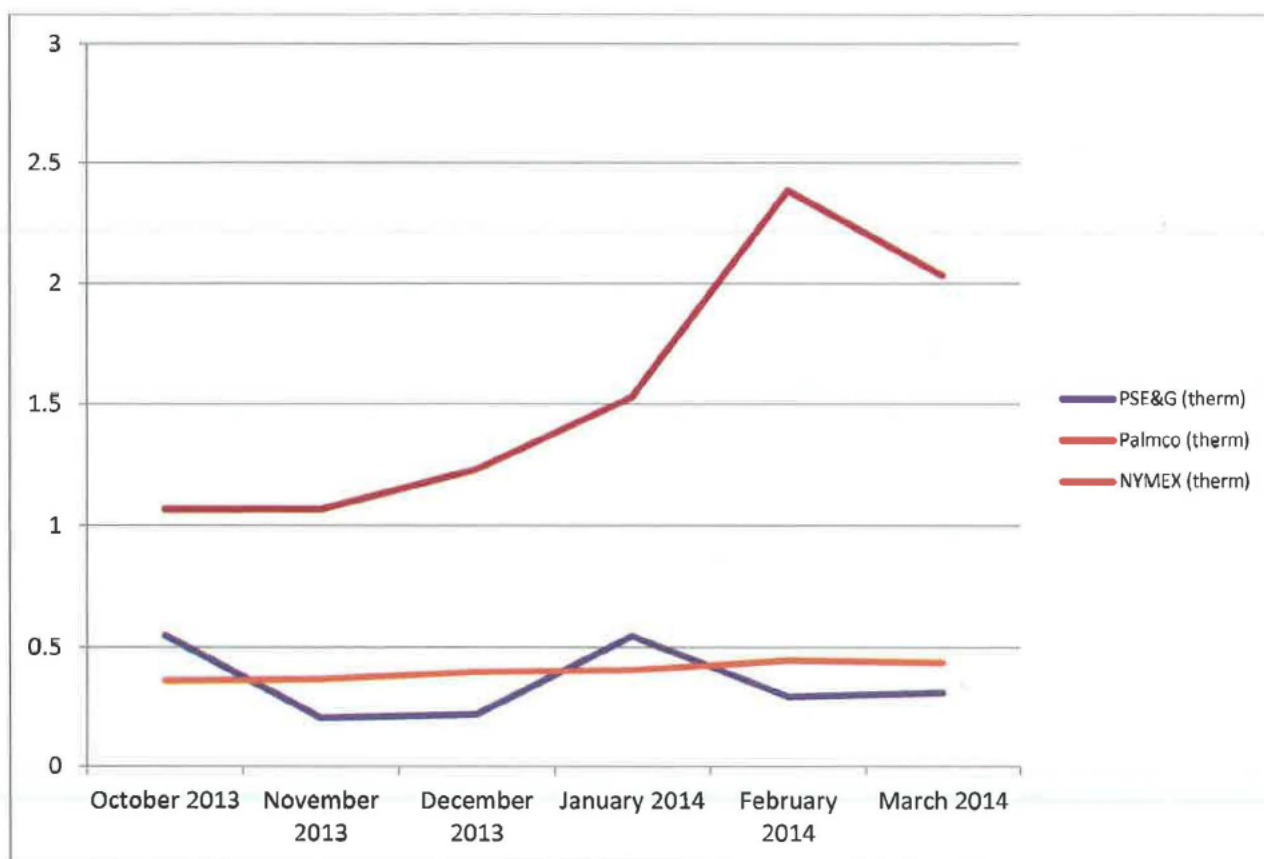
	October 2013	November 2013	December 2013	January 2014	February 2014	March 2014
PSE&G	0.544221	0.297032	0.194024	0.454184	0.356	0.294132
Palmco	1.0642105	1.0647222	1.1733333	1.42266667	2.1374	2.15000000
NYMEX	0.353325	0.3613	0.3932	0.402925	0.4445	0.4362333



118. Palmco Customer #3 realized the following increases in his gas supply service after switching from his LDC to Palmco: October 2013 - 96% (\$9.88); November 2013 - 258% (\$27.62); December 2013 - 505% (\$94.01); January 2014 - 213% (\$116.22); February 2014 - 500% (\$228.02); and March 2014 - 631% (\$189.30).

Palmco Customer #4

	October 2013	November 2013	December 2013	January 2014	February 2014	March 2014
PSE&G	0.543765	0.203362	0.218212	0.543993	0.294035	0.311131
Palmco	1.0640000	1.0644878	1.23028037	1.52861111	2.386934	2.0337
NYMEX	0.353325	0.3613	0.3932	0.402925	0.4445	0.43623



119. Palmco Customer #4 realized the following increases in his gas supply service after switching from his LDC to Palmco: October 2013 - 96% (\$7.80); November 2013 - 423% (\$67.17); December 2013 - 464% (\$108.29); January 2014 - 181% (\$141.79); February 2014 - 712% (\$286.73); and March 2014 - 533% (\$158.46).

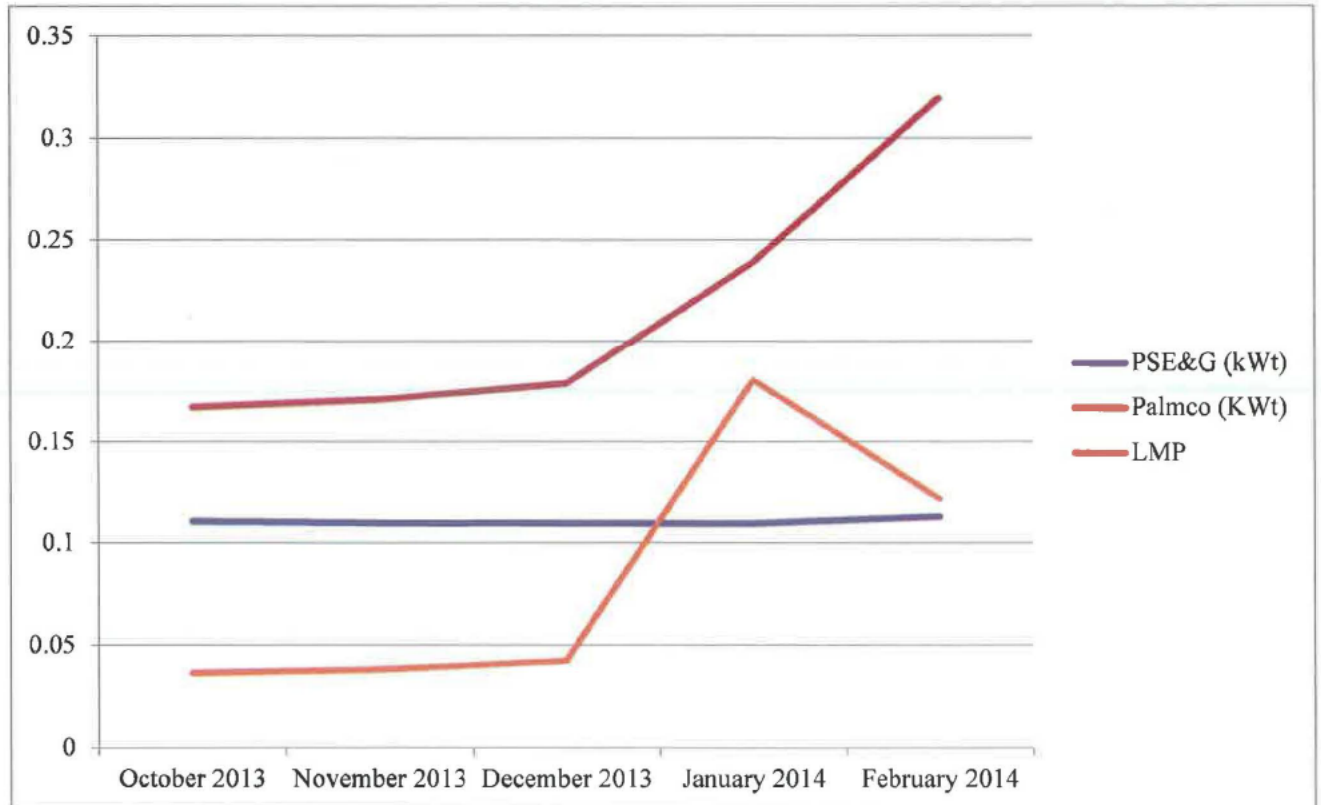
120. At all relevant times, the Palmco Contract provides for “a price for electric generation

service that will vary from month to month based on a monthly zonal locational marginal price ('LMP') determined on a day ahead or real time basis" LMP reflects the value of the energy at the specific location and time it is delivered and takes into account electricity demand, generation costs and the use of and limits on the transmission system.

121. At least from October 2013 through February 2014, Palmco's price for electric generation service was markedly in excess of the LMP closing price.

Palmco Customer #1

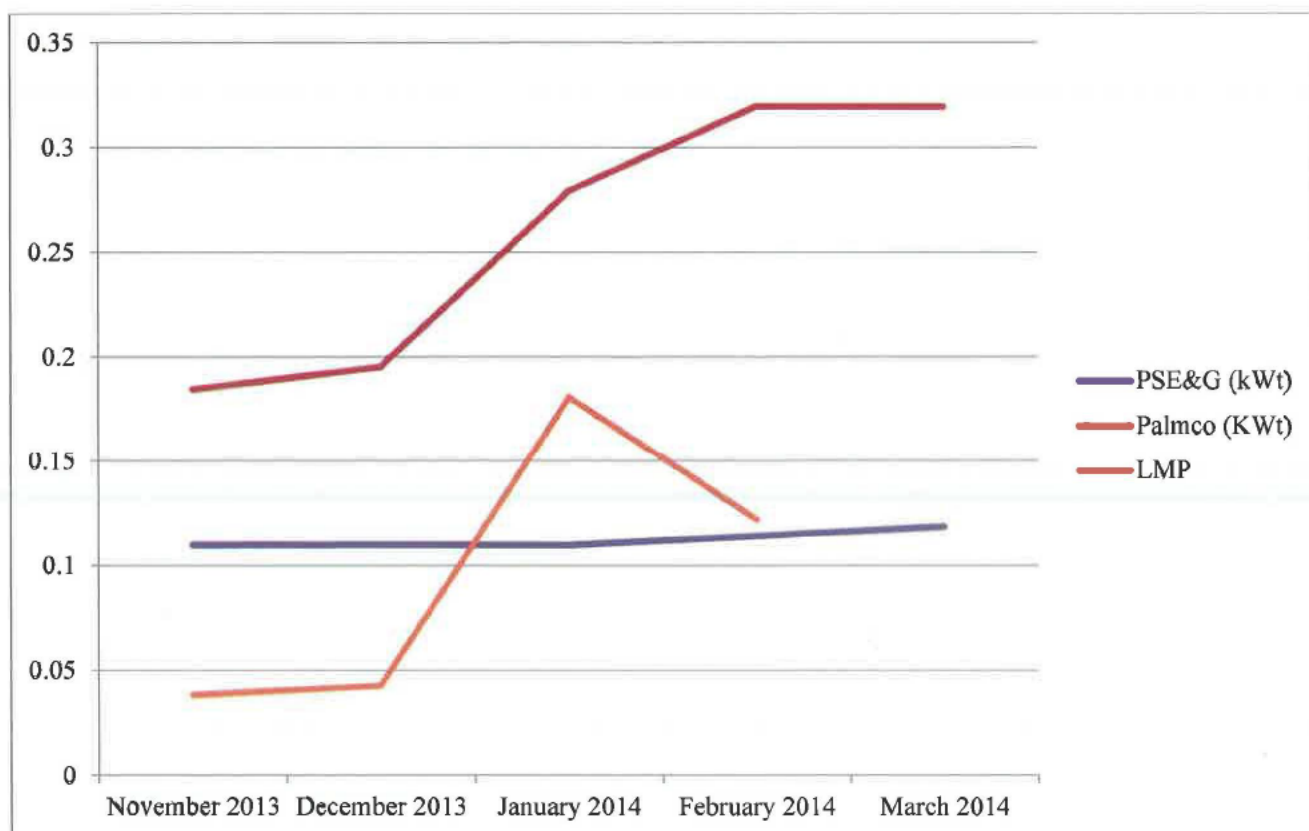
	October 2013	November 2013	December 2013	January 2014	February 2014
PSE&G	0.110227	0.109501	0.109665	0.109699	0.113269
Palmco	0.16637397	0.17028909	0.17854299	0.2391888	0.31954622
LMP	0.03572	0.03761	0.04227	0.18039	0.12197



122. Palmco Customer #1 realized the following increases in his electric generation service after switching from his LDC to Palmco: October 2013 - 51% (\$54.35); November 2013 - 56% (\$46.26); December 2013 - 63% (\$76.11); January 2014 - 118% (\$111.75); and February 2014 - 182% (\$245.47).

Palmco Customer # 2

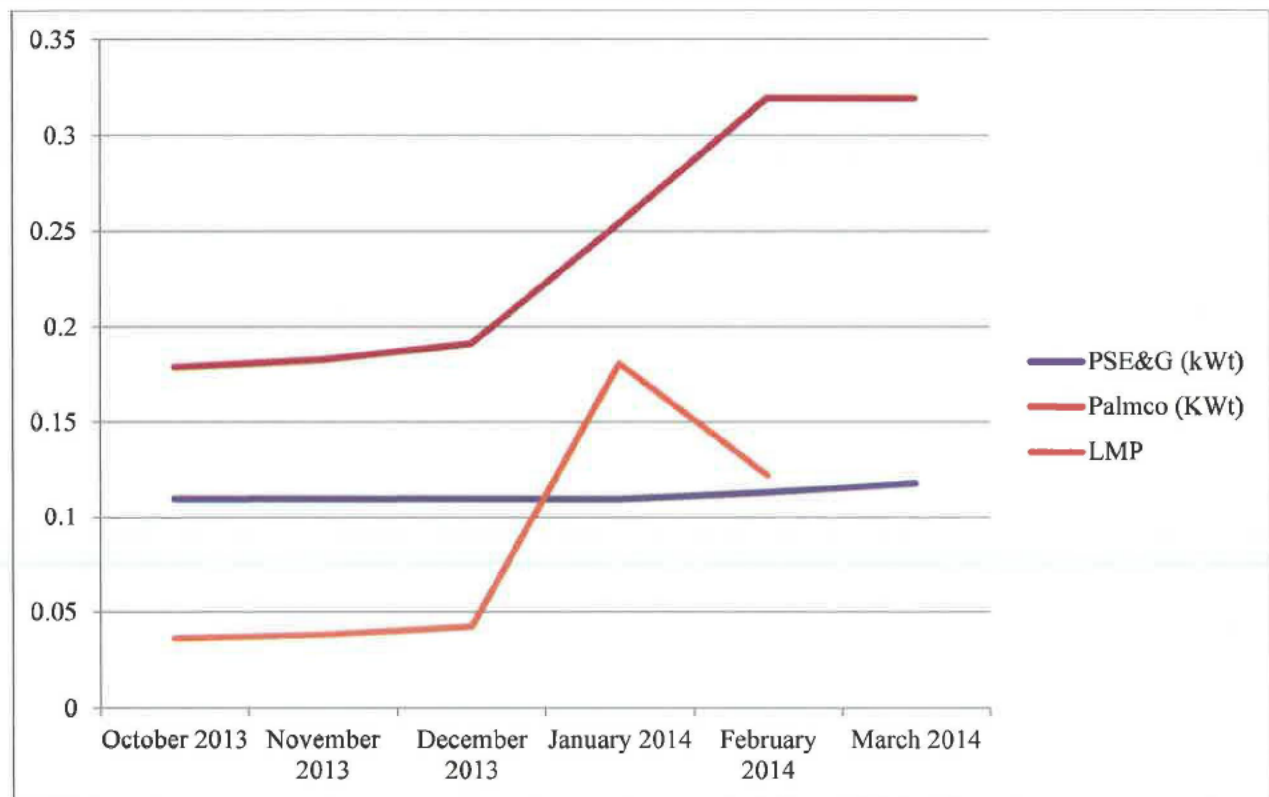
	November 2013	December 2013	January 2014	February 2014
PSE&G	0.10952	0.109702	0.109692	0.114233
Palmco	0.18381295	0.19470199	0.27896272	0.3195333
LMP	0.03761	0.04227	0.18039	0.12197



123. Palmco Customer #2 realized the following increases in his electric generation service after switching from his LDC to Palmco: November 2013 - 68% (\$30.98); December 2013 - 77% (\$51.34); January 2014 - 154% (\$104.44); and February 2014 - 180% (\$123.18).

Palmco Customer #3

	October 2013	November 2013	December 2013	January 2014	February 2014
PSE&G	0.109381	0.109495	0.109647	0.109718	0.113263
Palmco	0.17804124	0.18222222	0.19074205	0.25422535	0.31954386
LMP	0.03572	0.03761	0.04227	0.18039	0.12197

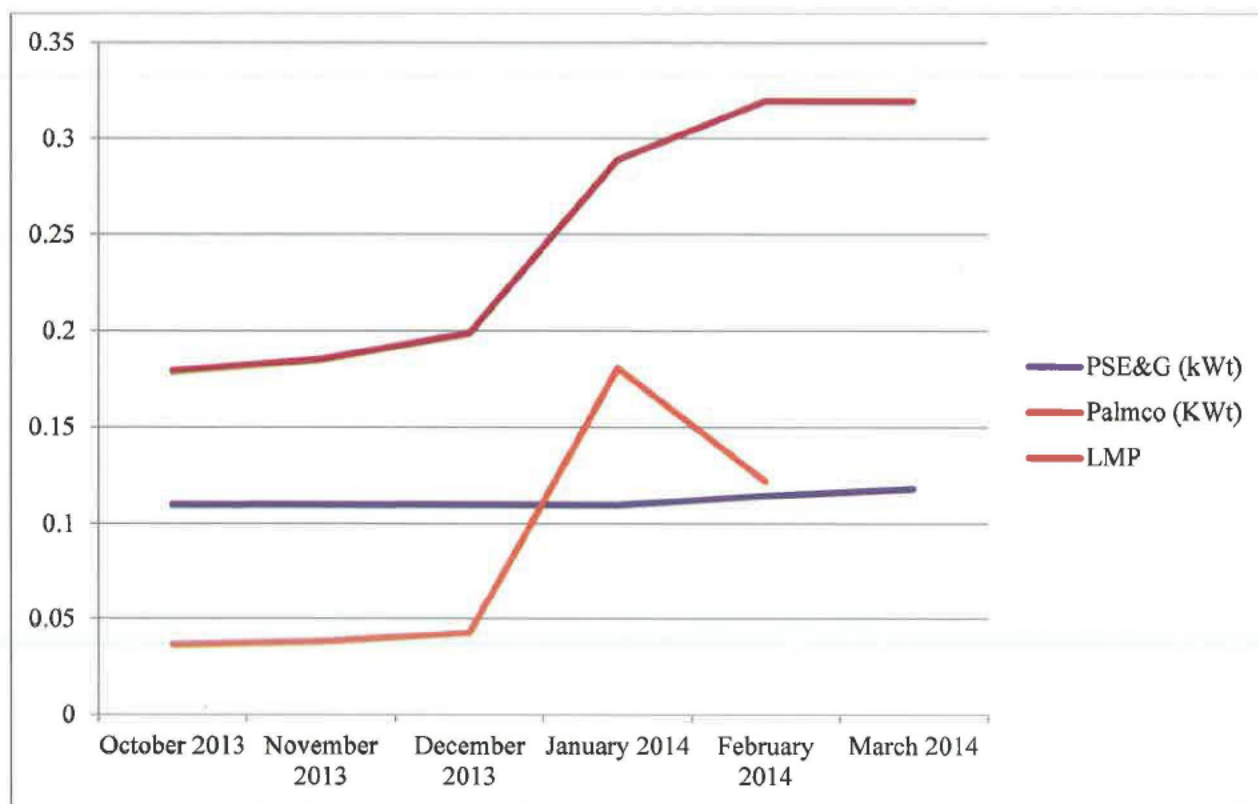


124. Palmco Customer #3 realized the following increases in his electric generation service after switching from his LDC to Palmco: October 2013 - 63% (\$13.32); November 2013 - 66%

(\$14.40); December 2013 - 74% (\$22.95); January 2014 - 132% (\$41.04); and February 2014 - 182% (\$49.13).

Palmco Customer #4

	October 2013	November 2013	December 2013	January 2014	February 2014
PSE&G	0.109451	0.109539	0.109718	0.109699	0.114742
Palmco	0.17846154	0.18457259	0.19826276	0.28895990	0.31954717
LMP	0.03572	0.03761	0.04227	0.18039	0.12197



125. Palmco Customer #4 realized the following increases in his electric generation service after switching from his LDC to Palmco: October 2013 - 63% (\$31.40); November 2013 - 69% (\$55.30); December 2013 - 81% (\$81.55); January 2014 - 163% (\$143.05); and February 2014 - 178% (\$162.82).

126. Upon information and belief, certain consumers who switched to Palmco subsequently received bills from their utility companies that did not specify the amount of kWhs or therms being used or the pricing

127. Consumers who have cancelled their Palmco Contracts have received a letter, under the signature of Robert Palmese, President Electricity and Natural Gas Division, which provides in pertinent part:

\$150 in free **RESTAURANT.COM**® Gift Cards*

Dear Valued Customer,

It's been brought to my attention that you recently cancelled your service with PALMco. Our company is never happy to lose a customer, and we're concerned that we are no longer able to serve you.

PALMco values you as a customer, because we consider you a part of our family. Without you there would be no PALMco, so we want to try our best to win you back. With this in mind, I'd like to extend to you a limited time offer. As a valued customer, I'd like to show my appreciation for your business by offering you **RESTAURANT.COM**® Gift Cards worth up to \$150.

* * * * *

*See the enclosed advertisement for details.

128. Accompanying this letter was a one (1) page advertisement which stated "RE-ENROLL YOUR ELECTRIC AND GAS ACCOUNTS AND GET UP TO \$150 IN FREE **RESTAURANT.COM** GIFT CARDS*. In seven (7) point font at the bottom of the advertisement was the following:

*Offer valid only on gas accounts with a minimum historical usage of 4500 annual therms and/or electric accounts with a minimum historical usage of 4500 annual kWh. Account must not be in for cancellation at the time the sixth invoice is rendered to receive \$50 per account in Gift Cards and must not be in for cancellation at the time the fourteenth invoice is rendered to receive \$25 per account in Gift Cards. Limited time offer and applies to returning customers only. Up to 2 gift Cards per gas and/or electric account re-enrolled.

F. Customer Service Issues:

129. Upon information and belief, consumers who were switched to Palmco without signing a Palmco Contract or otherwise providing authorization attempted, without success, to either contact a Palmco customer service representative or to obtain a copy of the Palmco Contract they purportedly signed.

130. Upon information and belief, a consumer made three (3) requests for the Palmco Contract and even offered to personally pick it up the contract, only to be told that the consumer could not do so as Palmco, in effect “wasn’t open to people.”

131. Upon information and belief, consumers who contacted Palmco in response to Palmco Contracts being signed by another person (i.e. friend, tenant, roommate, visitor) unbeknownst to them, were told that anyone 18 years or older could authorize the switch.

132. Upon information and belief, a consumer who was switched without her authorization contacted Palmco and was told that a man – unknown to the consumer – signed the Palmco Contract as a result of a Door-to-Door Solicitation.

133. Upon information and belief, consumers who attempted to call Palmco had difficulty doing so, in that: (a) a recording indicated that the offices were closed; (b) they were placed on hold for lengthy periods of time (i.e. 35 minutes, 45 minutes, 1 hour).

134. Upon information and belief, at least one (1) consumer called Palmco, spoke briefly with a customer service representative, was placed on hold, and after one (1) hour, was disconnected.

135. Upon information and belief, consumers who called Palmco in response to their bills spoke with customer service representatives who were rude, belligerent, disrespectful and/or failed to provide information or assistance.

136. Upon information and belief, consumers who were able to reach Palmco customer

service representatives requested to speak with a supervisor, which request was refused.

137. Upon information and belief, a consumer called Palmco, only to discover that the telephone lines were crossed, such that he became connected with another disgruntled consumer.

COUNT I

VIOLATION OF THE EDECA AND ENERGY LICENSING AND REGISTRATION REGULATIONS BY DEFENDANTS (FAILING TO COMPLY WITH BASIC REQUIREMENTS)

138. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1 through 137 above as if more fully set forth herein.

139. The EDECA authorized the Board to adopt electric power supplier licensing standards and gas supplier licensing standards, among other things, to require that the TPS: (a) provide the name and address of the in-State customer service agent for the TPS; (b) maintain an office within this State for the purposes of accepting service of process, maintaining such records as the Board requires and ensuring accessibility to the Board, consumers and electric and/or gas public utilities; and (c) comply with such specific standards of conduct for electric power suppliers and gas suppliers as the Board shall adopt. N.J.S.A. 48:3-78(c)(1)(e), (3), (6) and N.J.S.A. 48:3-79(c)(1)(e), (3), (6).

140. The Energy Licensing and Registration Regulations, N.J.A.C. 14:4-5.1 et seq., apply to electric power suppliers and gas suppliers.

141. The Energy Licensing and Registration Regulations, N.J.A.C. 14:4-5.2, set forth basic requirements for an electric power supplier and gas supplier, and provide, in relevant part:

(b) To be eligible for an electric power supplier, gas supplier . . . license, an applicant shall maintain an office in New Jersey for purposes of accepting service of process, maintaining the records required under this subchapter and ensuring the licensee's accessibility to State agencies, consumers and gas and electric public utilities. To satisfy this requirement, an applicant shall:

1. Lease or own space in a building in New Jersey. The space shall be sufficient to house all records required to be kept under this subchapter. The records may be kept in electronic form; and

2. Provide the street address of the New Jersey office. A post office box or rented mail-receiving space at a mall service store shall not constitute a New Jersey office.

(c) The applicant shall document that it will make itself accessible to customers and regulators by maintaining the following:

* * * * *

2. A customer service representative, who is available by toll-free telephone during normal New Jersey business hours to respond to complaints or inquiries from customers; and

3. A regulatory affairs representative, who is available by telephone during normal New Jersey business hours, and who will do the following:

i. Assist Board staff in pursuing investigations on behalf of the Board and/or the Division of Consumer Affairs in the Department of Law and Public Safety; and

ii. Facilitate the resolution of billing complaints and other problems.

(d) An automated telephone service shall not, by itself, satisfy the requirements in (c)2 and 3 above. Rather, the applicant shall make it possible for customers, Board staff and/or Division of Consumer Affairs staff, to speak to an individual. It is not necessary that these representatives be located in New Jersey. However, a representative shall be available to the Board staff and/or customers within 24 hours, if necessary to resolve a problem.

142. In their offering for sale and sale of electric generation service and/or gas supply service, Defendants have violated the Energy Licensing and Registration Regulations, N.J.A.C. 14:4-5.2, by:

a. Failing to maintain office space in New Jersey, as required by N.J.A.C. 14:4-5.2(b);

b. Failing to make itself accessible to customers by maintaining a customer service representative who is available by toll-free telephone during normal New Jersey business hours, as required by N.J.A.C. 14:4-5.2(c)(2);

c. Failing to make itself accessible to customers by maintaining a regulatory affairs representative who is available by toll-free telephone during normal

New Jersey business hours to facilitate the resolution of billing complaints and other problems, as required by N.J.A.C. 14:4-5.2(c)(2); and

- d. Failing to maintain a customer service representative to whom customers can speak within 24 hours of the customer's contact with Palmco in order to resolve a problem, as required by N.J.A.C. 14:4-5.2(d).

143. Each violation by Defendants of the Energy Licensing and Registration Regulations, N.J.A.C. 14:4-5.2, comprises a per se violation of the EDECA, N.J.S.A. 48:3-83, 48:3-78(c)(1)(e), (3), (6) and N.J.S.A. 48:3-79(c)(1)(e), (3), (6).

COUNT II

VIOLATION OF THE EDECA AND RETAIL CHOICE CONSUMER PROTECTION REGULATIONS BY DEFENDANTS (FAILING TO ADHERE TO ADVERTISING AND MARKETING STANDARDS)

144. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1 through 143 above as if more fully set forth herein.

145. The EDECA authorized the Board to adopt consumer protection standards for electric power suppliers and/or gas suppliers including, but not limited to, marketing and advertising. N.J.S.A. 48:3-85(a).

146. The Retail Choice Consumer Protection Regulations, N.J.A.C. 14:4-7.1 et seq., apply to all electric power suppliers and gas suppliers.

147. The Retail Choice Consumer Protection Regulations, specifically N.J.A.C. 14:4-7.3, concern advertising standards and provide, in relevant part:

(c) A TPS shall include in its advertisements of a general nature, via electronic, radio and/or television medium, the following:

.

2. The LDC(s) in whose service territory(ies) the TPS is offering services. If the TPS offers its services throughout New Jersey, the advertisement may state this fact, rather than listing all New Jersey LDCs.

148. The Retail Choice Consumer Protection Regulations, specifically N.J.A.C. 14:4-7.4,

concern marketing standards and provide, in relevant part:

(a) In marketing materials provided by the TPS to residential customers for the purpose of persuading the customer to authorize a switch to the TPS for electric generation service or gas supply service, whether such materials are in hardcopy form, electronically or via internet websites, the following information, and that in either (b)1 or 2 below, shall be provided:

.

5. The TPS's license number;

6. The LDC(s) in whose service territory(ies) the TPS is offering the advertised services. If the TPS offers its services throughout New Jersey, the materials may state this fact, rather than listing all New Jersey LDCs;

.

8. A clear statement indicating whether or not the TPS offers budget billing.

(b)The marketing materials provided by the TPS to residential customers shall also include either of the following:

1. The estimated percentage savings on the total bill which a customer will realize under the advertised price relative to the customer taking basic generation service or basic gas supply service from the LDC; or

2. If a TPS does not offer a fixed price or guaranteed price electric generation service or gas supply service, the TPS shall describe in clear and conspicuous language the mechanism or formula by which the price is determined, and provide detailed customer bill comparison, which demonstrates for a residential customer for 250 kWh, 500 kWh, 1,000 kWh and 2,000 kWh plus any monthly fixed and/or variable charge(s) for each month of the year, the customer's total electric bill under the proposed contract with the customer's total electric bill at the same electricity usage levels for each month of the year if the customer were to remain on basic generation service; and for 50 therms, 100 therms, 150 therms and 200 therms plus any monthly fixed and/or variable charge(s) for each month of the year, the customer's total gas bill under the proposed contract with the customer's total gas bill at the same gas usage levels for each month of the year if the customer were to remain on basic gas supply service, for the term of the contract being offered, such TPS shall also clearly indicate the period of time for which the savings offer is valid, and the term (duration) of the contract being offered.

.

(d) The TPS shall comply with all FTC telemarketing rules, including the restriction on telemarketing between the hours of 9:00 P.M. and 8:00 A.M., Eastern Standard Time.

* * * * *

(f) The TPS shall clearly state in its solicitations to the customer, and in its marketing materials, whether in hardcopy, electronically or via internet website, that switching to a competitive third-party supplier is not mandatory, and the customer has the option of remaining with the LDC for basic generation service or basic gas supply service.

149. In their offering for sale and sale of electric generation service and/or gas supply service, Defendants have violated the Retail Choice Consumer Protection Regulations, N.J.A.C. 14:4-7.4, by:

- a. Failing to include in the Palmco Brochure a statement as to the LDC(s) in whose service territory(ies) Palmco is offering services, as required by N.J.A.C. 14:4-7.3(c)(2);
- b. Failing to include on the Palmco Website a reference to the Palmco Energy NJ License and the Palmco Power NJ License, as required by N.J.A.C. 14:4-7.4(a)(5);
- c. Failing to include in the Palmco Brochure a statement as to the LDC(s) in whose service territory(ies) Palmco is offering services, as required by N.J.A.C. 14:4-7.4(a)(6);
- d. Failing to include on the Palmco Website a statement as to whether or not Palmco offers budget billing, as required by N.J.A.C. 14:4-7.4(a)(8);
- e. Failing to include in the Palmco Brochure a statement as to whether or not Palmco offers budget billing, as required by N.J.A.C. 14:4-7.4(a)(8);
- f. Failing to include on the Palmco Website any pricing information for electric generation service and/or gas supply service, as required by N.J.A.C. 14:4-7.4(b)(1) and (2);
- g. Failing to include in the Palmco Brochure any pricing information for electric generation service and/or gas supply service, as required by N.J.A.C. 14:4-7.4(b)(1) and (2);
- h. Failing to honor a consumer's request to have his telephone number placed on the Palmco Do Not Call list, in violation of N.J.A.C. 14:4-7.4(d); and

- i. Failing to include on the Palmco Website a statement that switching to a competitive TPS is not mandatory and that the customer has the option to remain with the LDC for basic generation service or basic gas supply service, as required by N.J.A.C. 14:4-7.4(f).

150. Each violation by Defendants of the Retail Choice Consumer Protection Regulations, specifically N.J.A.C. 14:4-7.3 and N.J.A.C. 14:4-7.4, comprises a per se violation of the EDECA, N.J.S.A. 48:3-83 and 48:3-85(a).

COUNT III

VIOLATION OF THE EDECA AND RETAIL CHOICE CONSUMER PROTECTION REGULATIONS BY DEFENDANTS (FAILING TO ADHERE TO CONTRACT STANDARDS)

151. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1 through 150 above as if more fully set forth herein.

152. The EDECA, N.J.S.A. 48:3-85(a) authorized the Board to adopt contract standards for electric power suppliers and/or gas suppliers as follows:

(1) Contract standards shall include, but not be limited to, requirements that electric power supply contracts or gas supply contracts must conspicuously disclose the duration of the contract; state the price per kilowatt hour or per therm or other pricing determinant approved by the board; have the customer's written signature; the customer's electronic signature; and audio recording of a telephone call initiated by the customer; independent, third-party verification, in accordance with section 37 of P.L. 1999, c.23 (C. 48:3-86), of a telephone call initiated by an electric power supplier, gas supplier or private aggregator; or such alternative forms of verification as the board, in consultation with the Division of Consumer Affairs, may permit for switching electric power suppliers or gas suppliers and for contract renewal; and include termination procedures, notice of any fees, and toll-free or local telephone numbers for the electric power supplier or gas supplier and for the board.

153. The Retail Choice Consumer Protection Regulations, specifically N.J.A.C. 14:4-7.6, concern contract standards and provide, in relevant part:

(a) A TPS shall not provide electric generation service or gas supply service to a retail customer without the customer's written signature on a contract or such alternative forms of verification identified in N.J.A.C. 14:4-2.3 and as the Board may permit to initiate such service(s), for switching TPSs or for renewal thereof. On or

before the date the TPS submits a change order to an LDC, and within one business day of when a customer authorizes a contract renewal, the TPS shall send a copy of the TPS contract to the customer. The TPS may do this by an electronic method or by regular mail, at the option of the customer, or if the customer signed up in person, the TPS may hand deliver the contract to the customer.

(b) A TPS contract shall clearly and conspicuously state that the purpose of the document is to authorize a change in the customer's TPS, and include explicit terms and conditions, which shall include, at a minimum:

.....

2. The price per kWh or therm or, if a fixed pricing arrangement is not made, a clear and unambiguous statement of the precise mechanism or formula by which the price will be determined; if the contract contains no particular pricing terms, but rather, expresses the charges for service rendered on a percentage savings basis, the contract language shall clearly and conspicuously state that percentage savings being guaranteed, as well as the price or charges to which the percentage savings is being compared;

.....

4. A statement of the residential customer's rights, which shall provide that the customer will receive a confirmation notice of its choice of supplier and that, at a minimum, the customer will have seven calendar days from the date of the confirmation notice to contact its LDC and rescind its selection. Furthermore, that a contract for electric generation or gas supply service shall not be legally binding upon the residential customer until the seven-day confirmation period has expired, and the customer has not, directly or indirectly, rescinded his or her selection;

.....

6. No statement that asks any customers to waive any rights they have under New Jersey or Federal Consumer Protection laws.

.....

(l) The contract may not include provisions (sometimes referred to as 'material change notices') that permit the TPS to change material terms of the contract without the customer's affirmative authorization unless the change is required by operation of law. "Material terms of a contract" include, but are not limited to, terms regarding the price, deliverability, time period of the contract, or ownership of the gas or electricity. "Non-material" terms include those regarding the address where payments should be sent or the phone number to be used for customer inquiries. Changing the price to reflect a change in the Sales and Use Tax or other State-mandated charge would be permitted as a change required by operation of law.

154. In their offering for sale and sale of electric generation service and/or gas supply service, Defendants have violated the Retail Choice Consumer Protection Regulations, N.J.A.C. 14:4-7.6, by:

- a. Providing electric generation service and/or gas supply service to a retail customer without the customer's written signature on the Palmco Contract or other approved form of verification, as required by N.J.A.C. 14:4-7.6(a);
- b. Including on the Palmco Contract the signature of a person who is not the account holder and is not authorized by the account holder to switch from the account holder's LDC to Palmco, in violation of N.J.A.C. 14:4-7.6(a);
- c. Failing to provide the Palmco Contract to consumers who sign up with Palmco through Telephone Solicitations, as required by N.J.A.C. 14:4-7.6(a);
- d. Failing to charge consumers a price for natural gas supply service that was based upon the applicable monthly NYMEX closing price for natural gas referenced in the Palmco Contract, in violation of N.J.A.C. 14:4-7.6(b)(2);
- e. Failing to charge consumers a price for electric generation service that was based upon the monthly zonal locational marginal price ("LMP") determined on a day ahead or real time basis referenced in the Palmco Contract, in violation of N.J.A.C. 14:4-7.6(b)(2);
- f. Including in the Palmco Contract a statement that for Door-to-Door Sales, there is a three (3) business day right of rescission, which is inconsistent with the seven (7) day right of rescission required by N.J.A.C. 14:4-7.6(b)(4);
- g. Including in the Palmco Contract a "Limitation of Liability" section that limits Palmco's liability to "the difference between the reasonable price of replacing any undelivered natural gas and/or electricity and the price of natural gas and/or electricity under the [Palmco Contract]," in violation of N.J.A.C. 14:4-7.6(b)(6); and
- h. Including in the "Miscellaneous" section of the Palmco Contract a provision permitting Palmco's assignment of the Palmco Contract to another energy supplier, without conditioning such assignment upon the customer's affirmative authorization, as required by N.J.A.C. 14:4-7.6(l).

155. Each violation by Defendants of the Retail Choice Consumer Protection Regulations, specifically N.J.A.C. 14:4-7.6, comprises a per se violation of the EDECA, N.J.S.A. 48:3-83 and 48:3-85(a).

COUNT IV

VIOLATION OF THE EDECA AND RETAIL CHOICE CONSUMER PROTECTION REGULATIONS BY DEFENDANTS (FAILING TO ADHERE TO CUSTOMER BILL STANDARDS)

156. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1 through 155 above as if more fully set forth herein.

157. The Retail Choice Consumer Protection Regulations, specifically N.J.A.C. 14:4-7.7, concern customer bill standards and provide, in relevant part:

(a) All TPS bills shall be in clear and conspicuous language and shall contain sufficient information to enable a customer to accurately calculate the correct bill amount.

(b) All TPS bills shall include, at a minimum, all of the following:

1. The billing period and billing date;
2. The number of kWhs or therms used;
3. The unit price for each kWh or therm;
4. If the number of kWhs or therms is based on estimates or averages, or on information from a remote reading device, the bill shall clearly indicate the basis of the number of kWhs or therms;

.....

(c) If a TPS does not issue separate bills for its services, the TPS shall provide to the LDC all of the following information for inclusion in the LDC's consolidated bills:

1. For all customers except for commercial and industrial electricity customers, the information required at (b)(3) above; . . .

158. In their offering for sale and sale of electric generation service and/or gas supply service, Defendants have violated the Retail Choice Consumer Protection Regulations, N.J.A.C. 14:4-7.7 by:

- a. Failing to provide the LDC with the unit price for each therm supplied by Palmco Energy NJ for gas supply service provided to a consumer, in violation of N.J.A.C. 14:4-7.7(c)(1); and

- b. Failing to provide the LDC with the unit price for each kWh supplied by Palmco Power NJ for electric generation service provided to a consumer, in violation of N.J.A.C. 14:4-7.7(c)(1).

159. Each violation by Defendants of the Retail Choice Consumer Protection Regulations, specifically N.J.A.C. 14:4-7.7, comprises a per se violation of the EDECA, N.J.S.A. 48:3-83 and 48:3-85(a).

COUNT V

VIOLATION OF THE RETAIL CHOICE CONSUMER PROTECTION REGULATIONS BY DEFENDANTS (FAILING TO ADHERE TO COMPLAINT STANDARDS)

160. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1 through 159 above as if more fully set forth herein.

161. The Retail Choice Consumer Protection Regulations, specifically N.J.A.C. 14:4-7.9, concern complaint standards and provide, in relevant part:

(a) A TPS shall use good faith efforts to respond to and resolve all complaints promptly.

(b) If a TPS has been advised that the customer is not satisfied with the TPS's response, the TPS shall advise the customer that the customer can contact the Board, at 1-800-624-0241, to request an alternate dispute resolution procedure or to file a formal complaint.

(c) A TPS shall maintain a record of the complaints received, how resolved, and still pending, for review by the Board upon request, within three days notice.

162. In their offering for sale and sale of electric generation service and/or gas supply service, Defendants have violated the Retail Choice Consumer Protection Regulations, N.J.A.C. 14:4-7.9, by:

- a. Failing to use good faith efforts to respond to and resolve all customer complaints promptly, as required by N.J.A.C. 14:4-7.9(a);
- b. Failing to respond to voicemails left by customer complainants, as required by N.J.A.C. 14:4-7.9(a);

- c. Failing to provide adequate customer service staffing, so as to require consumers to remain on the telephone line for protracted periods of time, in violation of N.J.A.C. 14:4-7.9(a);
- d. Failing to make supervisors available to resolve consumer complaints, in violation of N.J.A.C. 14:4-7.9(a);
- e. Failing to appropriately train customer service representatives so as to be able to appropriately respond to customer inquiries as to billing and contracts, in violation of N.J.A.C. 14:4-7.9(a);
- f. Failing to include in the "Dispute Procedures and Questions Concerning Your Service" section of the Palmco Contract a statement advising consumers of their option to request an alternate dispute resolution procedure or to file a formal complaint with the Board; and
- g. During telephone conversations, failing to notify customer complainants that if they are dissatisfied with Palmco's response, they can contact the Board at 1-800-624-0241, to request an alternate dispute resolution procedure or to file a formal complaint.

163. Each violation by Defendants of the Retail Choice Consumer Protection Regulations, specifically N.J.A.C. 14:4-7.9, comprises a per se violation of the EDECA, N.J.S.A. 48:3-83 and 48:3-85(a).

COUNT VI

VIOLATION OF THE EDECA AND ENERGY ANTI-SLAMMING REGULATIONS BY DEFENDANTS (FAILING TO ADHERE TO CHANGE ORDER STANDARDS)

164. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1 through 163 above as if more fully set forth herein.

165. The EDECA, N.J.S.A. 48:3-86(a), authorized the Board to adopt standards "to prevent and establish penalties for unauthorized changes of a consumer's electric power supplier or gas supplier, a practice commonly known as 'slamming.'"

166. The EDECA, N.J.S.A. 48:3-86(b) provides, in pertinent part:

(b) Standards for the prohibition of unauthorized changes in a customer's electric power supplier or gas supplier shall include:

(1) An electric power supplier, an electric public utility, a gas supplier or a gas public utility shall not cause an unauthorized change in a customer's electric power supplier or gas supplier, a practice known as 'slamming.' A change in a customer's electric power supplier or gas supplier shall be deemed to be unauthorized unless the customer has done so affirmatively and voluntarily and the supplier has obtained the customer's approval, which approval shall be evidenced by the customer's written signature; the customer's electronic signature; an audio recording of a telephone call initiated by the customer; independent, third-party verification . . . of a telephone call initiated by an electric power supplier, electric public utility, gas supplier or gas public utility. . . .

167. The Energy Anti-Slamming Regulations, specifically N.J.A.C. 14:4-2.1, provide as follows:

(a) This subchapter is intended to protect against unauthorized changes or 'switches' in a customer's electric power supplier or natural gas supplier, as required by the [EDECA], N.J.S.A. 48:3-86 et seq.

(b) This subchapter applies to local distribution companies (LDCs) and third-party suppliers (TPSs), as these terms are defined in N.J.A.C. 14:4-1.2.

(c) This subchapter applies to the switching of a customer in either of the following situations:

1. A switch from one TPS to another TPS; or
2. A switch from an LDC to a TPS.

(d) In advertising and marketing to customers, and in switching customers from one TPS to another, or from an LDC to a TPS, a TPS shall comply with the Board's consumer protection standards for electric power suppliers and natural gas suppliers at N.J.A.C. 14:4-7.

168. Further, the Energy Anti-Slamming Regulations, specifically N.J.A.C. 14:4-2.2, define "change order" as a "request, submitted by a TPS to an LDC, to switch the customer from one provider of electric generation service or gas supply service to another provider."

169. In addition, the Energy Anti-Slamming Regulations, specifically N.J.A.C. 14:4-2.3, concern the change order required for a switch to a TPS and provide, in relevant part:

(a) No TPS shall submit a change order to an LDC, unless the change order complies with this subchapter.

(b) To comply with this subchapter, a change order shall meet all of the following requirements:

1. The change order shall be transmitted from the TPS to the LDC through an Electronic Data Interchange (EDI) transaction, or through another electronic information exchange system with equivalent speed and security. Information on EDI may be found at the Board's website at <http://www.nj.gov/bpu/about/divisions/energy/edi.html>; and

2. The change order shall demonstrate, through compliance with the verification requirements at (c) below, that the customer has authorized the switch affirmatively and voluntarily.

(c) The change order shall be verified through one of the following:

.....

2. An audio recording made by an independent third party or by a TPS of a customer agreeing to switch verbally on a telephone call. The questions and statements of the independent third party or the TPS may be recorded or electronic. However, all customer responses shall be made verbally in real time. The verification shall:

i. Include a statement by the customer of record, or person authorized to make the switch, of their first name, last name and the account service address;

ii. Verify that the person speaking is the customer of record, or is authorized to make the switch;

iii. Indicated the date of the recording;

iv. Confirm that the person speaking voluntarily wishes to make the switch;

v. Identify the name of the TPS to which the customer is switching;

vi. Indicate the customer's LDC account number and the type of service to be switched;

vii. State the price per kwh or therm, whether the price is fixed for a period of time or variable, and if fixed, for what period of time;

viii. The amount of any cancellation fees and/or any other charges not included in the per unit price under (c)2vii above; and

ix. Include a recording of the entire duration of the call, from the first contact with the customer to the disconnection of the call. This requirement may be waived with the customer's consent.

3. A signature in ink on a paper form, showing that the customer voluntarily authorized the switch. This form shall:

- i. Identify the customer;
- ii. Verify that the signatory is the customer of record or is authorized to make the switch;
- iii. Indicate the date upon which the document was signed;
- iv. Confirm that the signatory voluntarily wishes to make the TPS switch;
- v. Identify the name of the TPS to which the customer is switching;
- vi. Indicate the account number of the LDC and the type of service to be switched; and
- vii. Include a statement that the customer acknowledges receipt of a copy of the terms and conditions of service; or

.....

(e) A TPS that switches a customer without complying with this subchapter shall be subject to enforcement in accordance with N.J.A.C. 14:4-2.8.

170. In their offering for sale and sale of electric generation service and/or gas supply service, Defendants have violated the Energy Anti-Slamming Regulations, specifically N.J.A.C. 14:4-2.3, by:

- a. Through Telephone Solicitations, switching a retail customer's electric generation service and/or gas supply service from an LDC to Palmco without an audio recording made by an independent third party or by a TPS demonstrating the customer's agreement, as required by N.J.A.C. 14:4-2.3(b)(2) and 14:4-2.3(c)(2);
- b. Through Door-to-Door Solicitations, switching a retail customer's electric generation service and/or gas supply service from an LDC to Palmco without the customer's written signature on the Palmco Contract, as required by N.J.A.C. 14:4-2.3(b)(2) and 14:4-2.3(c)(3);

- c. Through Telephone Solicitations, switching a retail customer's electric generation service and/or gas supply service from an LDC to Palmco without confirming that the customer voluntarily wishes to make the TPS switch, in violation of N.J.A.C. 14:4-2.3(b)(2) and N.J.A.C. 14:4-2.3 (c)(2)(iv);
- d. Through Door-to-Door Solicitations, switching a retail customer's electric generation service and/or gas supply service from an LDC to Palmco without confirming that the customer voluntarily wishes to make the TPS switch, in violation of N.J.A.C. 14:4-2.3(b)(2) and N.J.A.C. 14:4-2.3 (c)(3)(iv); and
- e. Including on the Palmco Contract the signature of a person who is not the account holder and is not authorized by the account holder to switch from the account holder's LDC to Palmco, in violation of N.J.A.C. 14:4-2.3(c)(3)(ii).

171. The Energy Anti-Slamming Regulations, specifically N.J.A.C. 14:4-2.8(c), provide that "[i]n considering violations of EDECA or this subchapter, the Board may consider every day of each violation against each customer as a separate offense."

172. Further, each violation by Defendants of the Energy Anti-Slamming Regulations, specifically N.J.A.C. 14:4-2.3, comprises a per se violation of the EDECA, N.J.S.A. 48:3-83 and 48:3-86.

COUNT VII

VIOLATION OF THE CFA BY DEFENDANTS (UNCONSCIONABLE COMMERCIAL PRACTICES, DECEPTION, FALSE PRETENSES AND KNOWING OMISSIONS OF MATERIAL FACT)

173. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1 through 172 above as if more fully set forth herein.

174. The EDECA, specifically N.J.S.A. 48:3-84, provides as follows:

- a. The rights, remedies and prohibitions accorded by the provisions of this act are in addition to and cumulative of any right, remedy or prohibition accorded by the common law or any statute of this State and nothing contained herein shall be construed to deny, abrogate or impair any such common law or statutory right, remedy or prohibition. The Attorney General and the Division of Consumer Affairs in the Department of Law and Public Safety shall continue to have the authority to enforce civil and criminal violations of the consumer fraud act,

P.L.1960, c. 39 (C. 56:8-1 et seq.) of any other applicable law, rule or regulation in connection with the activities of electric power suppliers and gas suppliers.

175. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing [] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise....

176. The CFA defines “merchandise” as including “any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale.” N.J.S.A. 56:8-1(c).

177. The gas supply service and the electric generation service advertised, marketed, offered for sale and sold by Defendants comprise merchandise within the meaning of the CFA.

178. In the operation of Palmco Energy NJ and Palmco Power NJ, Defendants have engaged in the use of unconscionable commercial practices, deception, false pretenses, misrepresentations and/or knowing omissions of material fact.

179. Defendants have engaged in unconscionable commercial practices including, but not limited to, the following:

- a. During Door-to-Door Solicitations, obtaining access to consumers’ bills not for purposes of investigating illegal overcharges by their current utility, but for purposes of switching consumers’ gas supply service and/or electric generation service from their LDC to Palmco;
- b. During Door-to-Door Solicitations, obtaining access to consumers’ bills not for purposes of processing a complaint against their current utility company and/or providing a refund or reimbursement for any overcharges by their current utility, but for purposes of switching consumers’ gas supply service and/or electric generation service from their LDC to Palmco;
- c. During a Door-to-Door Solicitation, responding “no” to the consumer’s question as to whether the Palmco representative was soliciting to switch the consumer’s energy supplier;

- d. During Door-to-Door Solicitations, requesting that consumers sign a form in order to acknowledge that they were informed of the utility overcharges when, in actuality, such form was the Palmco Contract;
- e. Switching a consumer's gas supply and/or electric generation service from the LDC to Palmco even after the consumer refused to sign the Palmco Contract;
- f. Switching a consumer's gas supply and/or electric generation service from the LDC to Palmco without the consumer's authorization and based upon a Door-to-Door Solicitation that purportedly occurred in Ventnor City, New Jersey, in the immediate aftermath of Superstorm Sandy;
- g. Switching consumers' gas supply and/or electric generation service from their LDC to Palmco without the consumers' knowledge or authorization;
- h. Inducing consumers to sign the Palmco Contract based upon representations of competitive gas and electric rates that were lower than PSE&G rates when, in many instances, the Palmco rates were markedly higher;
- i. Inducing senior citizens to sign the Palmco Contract based upon representations of a "10% Senior Citizen Discount" when, in fact, there was no discount;
- j. In Door-to-Door Solicitations, misleading consumers to believe that the Palmco sales representative is a PSE&G employee or is some way affiliated with PSE&G;
- k. In a Door-to-Door Solicitation, indicating that the Palmco representative was a PSE&G employee and coercing an account holder's friend to sign the Palmco Contract under threat of shutting off the power;
- l. In a Door-to-Door Solicitation, following a PSE&G technician into the home of an 87-year old woman residing with two (2) developmentally disabled individuals and proceeding to convince her to sign the Palmco Contract;
- m. Conducting aggressive Door-to-Door Solicitations and Telephone Solicitations of senior citizens;
- n. During Door-to-Door Solicitations, convincing persons who are other than the named customer on the account or a person authorized to make decisions on the account, to sign the Palmco contract;
- o. During Door-to-Door Solicitations, failing to ensure that the Palmco Contract was being signed by the account holder or an authorized person to make decisions as to the account;

- p. Returning to a consumer's home twice in one (1) day and attempting to gain entry to the home even after being told by the consumer's daughter that they were not interest in switching to Palmco, thus requiring the police to be called;
- q. During Door-to-Door Solicitations, failing to provide consumers with adequate opportunity to review the Palmco Contract prior to signature;
- r. During Door-to-Door Solicitations, covering the text of the Palmco Contract but for the signature line, so that the consumers did not see the text until after signature;
- s. During Door-to-Door Solicitations and upon the consumer's request, failing to provide a business card for the Palmco representative;
- t. Conducting Door-to-Door Solicitations in neighborhoods where soliciting is prohibited;
- u. Conducting Door-to-Door Solicitations in municipalities without a solicitation permit;
- v. Failing to offer competitive pricing as represented on the Palmco Website and the Palmco Brochure;
- w. Failing to provide the discounted rates indicated by Palmco sales representatives in Door-to-Door Solicitations and Telephone Solicitations;
- x. Identifying in the Palmco Brochure an address of 10,000 Lincoln Drive East Suite 201 Marlton which is actually a virtual office;
- y. Failing to maintain a New Jersey office where consumers can have access to customer service;
- z. Failing to adequately staff customer service as to provide a "live" representative for consumers to speak with concerning billing questions, cancellation requests and/or complaints; and
- aa. Failing to respond to consumer telephone messages.

180. Defendants' conduct in violation of the CFA includes, but is not limited to, the following knowing omissions, concealment and/or suppression of material facts:

- a. Conducting Door-to-Door Solicitations where the Palmco representatives fail to inform consumers that they are affiliated with Palmco;

- b. During Door-to-Door Solicitations, failing to inform consumers that Palmco is a TPS;
- c. During Door-to-Door Solicitations, failing to inform consumers that the document they are being required to sign is actually the Palmco Contract;
- d. During Door-to-Door Solicitations, having Palmco representatives carry a binder and identification with the PSE&G logo, thus creating the impression that they were employees of PSE&G;
- e. During Door-to-Door Solicitations, failing to inform consumers that the Palmco Contract provided variable rates for gas supply service and electric generation service;
- f. During Door-to-Door Solicitations, failing to inform consumers that by signing the Palmco Contract, they are switching their energy supplier;
- g. During Telephone Solicitations, failing to inform consumers that the Palmco Contract provided variable rates for gas supply service and electric generation service;
- h. Failing to include on the Palmco Website a reference to the Palmco Energy NJ License or the Palmco Power NJ License;
- i. Failing to include on the Palmco Website whether or not Palmco offers budget billing;
- j. Failing to include on the Palmco Website a statement that switching to a competitive TPS is not mandatory and that the customer has the option to remain with the LDC for basic generation service or basic gas supply service;
- k. Failing to include in the Palmco Brochure whether or not Palmco offers budget billing;
- l. Failing to include in the Palmco Brochure a statement that switching to a competitive TPS is not mandatory and that the customer has the option to remain with the LDC for basic generation service or basic gas supply service; and
- m. Failing to identify in the Palmco Brochure the LDCs in whose territories Palmco is offering gas supply service and/or electric generation service.

181. Defendants' conduct in violation of the CFA includes, but is not limited to, the following deceptive practices and/or false pretenses:

- a. Conducting Door-to-Door Solicitations where Palmco sales representatives state that they are investigating illegal overcharges by the consumer's utility

company (i.e. PSE&G) for purposes of obtaining access to the consumer's bills and/or account information;

- b. Conducting Door-to-Door Solicitations where Palmco sales representatives state that they are employees or otherwise affiliated with PSE&G;
- c. Conducting Door-to-Door Solicitations where the Palmco sales representatives are carrying binders or identification badges with the PSE&G logo; and
- d. Obtaining consumer utility billing and account information under the guise of addressing utility overcharges, when the purpose is to switch consumers to Palmco.

182. Each unconscionable commercial practice, act of deception, false pretense and knowing omission, concealment and/or suppression of a material fact by Defendants constitutes a separate violation under CFA, N.J.S.A. 56:8-2.

COUNT VIII

VIOLATION OF THE EDECA, THE RETAIL CHOICE CONSUMER PROTECTION REGULATIONS AND THE CFA BY DEFENDANTS (MISREPRESENTATIONS)

183. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1 through 182 above as if more fully set forth herein.

184. The Retail Choice Consumer Protection Regulations, specifically N.J.A.C. 14:4-7.4, concern marketing standards and provide, in relevant part:

(i) The TPS shall not make misrepresentations, in its solicitations or marketing materials or any way, in violation of any standards implemented by the Board pursuant to the Act, of any other consumer protection laws or rules implemented or enforced by the Division of Consumer Affairs, or of the mechanics of the customer enrollment process adopted by the Board.

185. Defendants' conduct in violation of the CFA and the Retail Choice Consumer Regulations includes, but is not limited to, the following misrepresentations:

- a. Representing to consumers that the purpose of the Door-to-Door Solicitations was the investigation of utility overcharges, when such was not the case;

- b. During Door-to-Door Solicitations, representing to consumers that Palmco required access to their utility account information in order to process a complaint against the utility for overcharges, when such was not the case;
- c. During Door-to-Door Solicitations, representing to consumers that Palmco required access to their utility account information in order to provide a reimbursement or refund for overcharges, when such was not the case;
- d. During Door-to-Door Solicitations, representing to consumers that the Palmco representatives were employees or otherwise affiliated with PSE&G, when such was not the case;
- e. During Door-to-Door Solicitations, representing to a consumer that the State of New Jersey mandated a selection of a TPS, when such is not the case;
- f. During Door-to-Door Solicitations, representing to consumers that if they signed an agreement (i.e. Palmco Contract) they would receive discounted gas and electric rates with PSE&G, when such was not the case;
- g. During Door-to-Door Solicitations, representing to consumers that Palmco had competitive gas and electric rates that were lower than PSE&G rates, when such was not the case;
- h. During Door-to-Door Solicitations, representing that by switching to Palmco, consumers would realize savings on their gas and/or electric bills, when such was not the case;
- i. During Door-to-Door Solicitations, representing that Palmco's electric and/or gas rates would never be higher than those of their current utility, when such was not the case;
- j. Representing in the Palmco Contract that Palmco's price for natural gas supply service is based upon the applicable monthly NYMEX closing price for natural gas, when such was not the case;
- k. Representing in the Palmco Contract that Palmco's price for electric generation service is based upon the LMP determined on a day ahead or real time basis, when such was not the case;
- l. Representing to consumers, in Door-to-Door Solicitations, that by switching to Palmco their rates for gas supply service and/or electric generation service would be less than the LDC, when such was not the case;
- m. Representing to consumers, in Door-to-Door Solicitations, that by switching to Palmco their rates for gas supply service and/or electric generation service would be less than the LDC, when such was not the case;

- n. Representing on the Palmco Website that Palmco provides “competitive prices,” when such is not the case;
- o. Representing on the Palmco Website that Palmco provides “quality service” and “customer satisfaction,” when such is not the case;
- p. Representing in the Palmco Brochure that Palmco offers “Competitive Prices” and “Only Opportunities for Savings,” when such is not the case;
- q. Representing in the Palmco Brochure that there are “Friendly, Knowledgeable Customer Service Representatives” and “Courteous Service,” when such is not the case; and
- r. Representing in the Palmco Brochure that “we strive to save our customers money on their Energy bills,” when such is not the case.

186. Each misrepresentation by Defendants comprises a violation of the The Retail Choice Consumer Protection Regulations, specifically N.J.A.C. 14:4-7.4, which comprises a per se violation of the EDECA, N.J.S.A. 48:3-83 and 48:3-85(a), as well as a violation of the CFA, N.J.S.A. 56:8-2.

COUNT IX

VIOLATION OF THE CFA BY DEFENDANTS (SENIOR CITIZEN)

187. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1 through 186 above as if more fully set forth herein.

188. The CFA provides for additional penalties for pecuniary injury to a senior citizen.

189. In Door-to-Door Solicitations and Telephone Solicitations, Defendants have referenced a 10% senior citizen discount.

190. At all relevant times, Defendants have engaged in aggressive Door-to-Door Solicitations and Telephone Solicitations of senior citizens in an attempt to persuade them to switch to Palmco as their supplier of natural gas and/or electric.

191. At all relevant times, Defendants have entered into Palmco Contracts with “senior citizens” within the definition of the CFA, N.J.S.A. 56:8-14.2.

192. At all relevant times, Defendants have caused pecuniary injury to senior citizens within the definition of the CFA, N.J.S.A. 56:8-14.2.

193. The CFA, N.J.S.A. 56:8-14.3 provides:

- a. In addition to any other penalty authorized by law, a person who violates the provisions of [the CFA] shall be subject to additional penalties as follows:
 - (1) A penalty of not more than \$10,000 if the violation caused the victim of the violation pecuniary injury and the person knew or should have known that the victim is a senior citizen . . . ;
or
 - (2) A penalty of not more than \$30,000 if the violation was part of a scheme, plan, or course of conduct directed at senior citizens . . . in connection with sales or advertisements.

[N.J.S.A. 56:8-14.3(a)(1).]

194. At all relevant times, because of consumers' age and/or appearance, Defendants had actual or constructive knowledge that the consumers were senior citizens. At all relevant times, Defendants solicited directly to senior citizens by offering "Senior Citizen Discounts."

195. Each instance where Defendants engaged in deceptive practices in connection with their sale of Palmco Contracts to senior citizens entitles Plaintiffs to recovery of additional penalties provided by N.J.S.A. 56:8-14.3.

COUNT X

VIOLATION OF THE ADVERTISING REGULATIONS BY DEFENDANTS

196. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 195 above as if more fully set forth herein.

197. The Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., promulgated pursuant to the CFA, among other things, govern general advertising practices.

198. The Advertising Regulations, N.J.A.C. 13:45A-9.1 define “advertisement,” in pertinent part, as:

. . . any attempt by an advertiser . . . to directly or indirectly induce the purchase or rental of merchandise at retail, appearing in any newspaper, magazine, periodical, catalog, circular, in-store or out-of-store sign or other written matter placed before the consuming public, or in any radio broadcast, television broadcast, electronic medium or delivered to or through any computer.

a. Specifically, the Advertising Regulations provide, in pertinent part:

(a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:

4.
The use of any type, size, location, lighting, illustration, graphic depiction or color resulting in the obscuring of any material fact. Disclaimers permitted or required under this section, such as ‘terms and conditions apply’ and ‘quantities limited,’ shall be set forth in at least 10-point font.

9.
The making of false or misleading representations concerning the reasons for, existence or amounts of price reductions, the nature of an offering or the quantity of advertised merchandise available for sale.

[N.J.A.C. 13:45A-9.2(a)(9).]

199. In their advertisement, marketing and offering for sale of contracts, Defendants have violated the Advertising Regulations including, but not limited to, the following:

- a. Representing on the Palmco Website that the Defendants have been in business “since 1938” when Palmco Power NJ and Palmco Energy NJ were established in 2009;
- b. Representing on the Palmco Website that Palmco provides “competitive prices,” when such is not the case;
- c. At least through April 2, 2014, including on the Palmco Website a promotion which reads “Join Columbia Utilities . . . Earn a Restaurant.com Gift Card,” but then setting forth exclusions to such promotion in six (6) point font at the bottom of the page;
- d. In the Palmco Brochure, advertising competitive rates on the price of gas

supply service and/or electric generation service, then failing to provide such competitive rates;

- e. Representing in the Palmco Brochure that the Defendants have been in business “since 1938” when Palmco Power NJ and Palmco Energy NJ were established in 2009;
- f. Representing in the Palmco Brochure that Palmco offers “Competitive Prices” and “Only Opportunities for Savings,” when such is not the case; and
- g. Forwarding to consumers who have cancelled their Palmco service a brochure stating “Re-Enroll Your Electric And Gas Accounts And Get Up To \$150 In Free Restaurant.com Gift Cards,” but then setting forth exclusions to such promotion in seven (7) point font at the bottom of the page.

200. Each violation of the Advertising Regulations by Defendants constitutes a per se violation of the CFA, N.J.S.A. 56:8-2.

PRAYER FOR RELIEF


WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment against Defendants:

- (a) Finding that the acts and omissions of Defendants constitute multiple instances of unlawful practices in violation of the EDECA, N.J.S.A. 48:3-49 et seq., the Energy Licensing and Registration Regulations, N.J.A.C. 14:4-5.1 et seq., the Retail Choice Consumer Protection Regulations, N.J.A.C. 14:4-7.1 et seq., the Energy Anti-Slamming Regulations, N.J.A.C. 14:4-2.1 et seq., the CFA, N.J.S.A. 56:8-1 et seq., as well as the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq.;
- (b) Permanently enjoining Defendants and their owners, officers, directors, shareholders, members, founders, managers, agents, servants, employees, representatives, independent contractors and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the EDECA, N.J.S.A. 48:3-49 et seq., the Energy Licensing and Registration Regulations, N.J.A.C. 14:4-5.1 et seq., the Retail Choice Consumer Protection Regulations, N.J.A.C. 14:4-7.1 et seq., the Energy Anti-Slamming Regulations, N.J.A.C. 14:4-2.1 et seq., the CFA, N.J.S.A. 56:8-1 et seq., as well as the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., including, but not limited to, the acts and practices alleged in this Complaint;

- (c) Directing Defendants, jointly and severally, to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any alleged practice herein to be unlawful and found to be unlawful, as authorized by the EDECA, N.J.S.A. 48:3-82, the Energy Anti-Slamming Regulations, N.J.A.C. 14:4-2.7(e) and 14:4-2.8(d), and the CFA, N.J.S.A. 56:8-8;
- (d) Assessing the maximum civil penalties against Defendants, jointly and severally, for each and every violation of the EDECA, in accordance with N.J.S.A. 48:3-82(a)(2), 48:3-83 and 48:3-86(e), the Energy Anti-Slamming Regulations, N.J.A.C. 14:4-2.8, and the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Assessing the maximum statutory civil penalties against Defendants, jointly and severally, for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-14.3(1);
- (f) Directing the assessment of costs and fees, including attorneys' fees, against Defendants, jointly and severally, for the use of the State of New Jersey, as authorized by the EDECA, N.J.S.A. 48:3-82(c), and the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (g) Granting such other relief as the interests of justice may require.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____


Lorraine K. Rak
Deputy Attorney General
Chief, Consumer Fraud Prosecution Section


Dated: May 23, 2014
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the EDECA, N.J.S.A. 48:3-49 et seq., the Energy Licensing and Registration Regulations, N.J.A.C. 14:4-5.1 et seq., the Retail Choice Consumer Protection Regulations, N.J.A.C. 14:4-7.1 et seq., the Energy Anti-Slamming Regulations, N.J.A.C. 14:4-2.1 et seq., the CFA, N.J.S.A. 56:8-1 et seq., and the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq. is not the subject of any other action pending in any other court of this State. I am aware that other private actions have been brought against the Defendants, but have no direct information that any such actions involve consumer fraud allegations other than the action titled Komoda vs. Palmco Energy NJ LLC, Docket No. ESX-L-003263-14. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By _____


Lorraine K. Rak
Deputy Attorney General
Chief, Consumer Fraud Prosecution Section


Dated: May 23, 2014
Newark, New Jersey

RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____


Lorraine K. Rak
Deputy Attorney General
Chief, Consumer Fraud Prosecution Section

Dated: May 23, 2014
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Deputy Attorney General Lorraine K. Rak is hereby designated as trial counsel on behalf of Plaintiffs in this action.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____


Lorraine K. Rak
Deputy Attorney General
Chief, Consumer Fraud Prosecution Section

Dated: May 23, 2014
Newark, New Jersey