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

**FIRA DONIN and INNA GOLOVAN,**

**on behalf of themselves and all others  
similarly situated,**

**Plaintiffs,**

**v.**

**JUST ENERGY GROUP INC. and JUST  
ENERGY NEW YORK CORP.,**

**Defendants.**

***CLASS ACTION COMPLAINT***

Case No: 17 Civ. 5787

***JURY TRIAL DEMANDED***

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Plaintiffs Fira Donin and Inna Golovan (“Plaintiffs”), by their attorneys Wittels Law, P.C. and Hymowitz Law Group, PLLC., bring this consumer protection action in their individual capacity, and on behalf of a Class of consumers defined below, against Just Energy Group Inc. and Just Energy New York Corp. (hereafter collectively “Just Energy” or “Defendants” unless otherwise specified), and hereby allege the following with knowledge as to their own acts, and upon information and belief as to all other acts:

**OVERVIEW OF DEFENDANTS’ UNLAWFUL PRACTICES**

1. This consumer class action arises from Just Energy’s fraudulent, deceptive, unconscionable, and bad faith conduct in “supplying” residential gas and electricity.
2. Traditionally, residential gas and electricity was supplied by regulated utilities like Con Edison. The rates utilities could charge were strictly controlled. In the 1990s, however, Enron’s unprecedented lobbying campaign resulted in deregulation of state energy markets in New York and elsewhere such that consumers were permitted to choose from a variety of companies selling residential energy. Seizing on deregulation, independent energy service companies (“ESCOs”) like Defendant Just Energy have grown rapidly.
3. Just Energy entices residential customers to sign up for its service by offering its energy at low initial “teaser rates.” Yet Defendants don’t alert their unsuspecting customers that when the teaser rate period expires consumers are charged exorbitant variable energy rates. Just Energy’s customers are given no advance notice of these excessive variable rates. Just Energy also does not disclose to customers that its rates are consistently higher than the rates charged by consumers’ existing utilities, or how variable rate customers can calculate (and avoid) Just Energy’s steep variable gas and electricity charges.

4. Just Energy also defrauds customers through a pricing shell game rigged in Just Energy's favor. When the underlying wholesale market price of gas and/or electricity that Just Energy purchases for re-sale goes *up*, Defendants simply pass on these costs to their customers by raising rates. However, when the market price goes *down*, Just Energy's rate remains at an inflated level higher than the market rate. Through this scheme, Just Energy subjects consumers to consistent and unlawful "heads I win, tails you lose" pricing. Just Energy's practice of charging inflated electric and gas prices is intentionally designed to maximize revenue.

5. Plaintiffs and the Class of Defendants' gas and electric customers have been injured by Defendants' unlawful practices. Accordingly, Plaintiffs and the Class defined below seek damages, restitution, declaratory, and injunctive relief for Just Energy's fraud, violation of state consumer protection statutes, and unjust enrichment.

6. Defendants' deceptive marketing and sales practices are unlawful in multiple ways, including:

- a. Using introductory teaser rates to misrepresent the cost of Defendants' energy;
- b. Failing to adequately disclose that quoted rates are introductory teaser rates;
- c. Failing to adequately disclose when Defendants' introductory teaser rates expire;
- d. Actively misrepresenting the rates Defendants will charge when the teaser rates expire;
- e. Failing to adequately disclose that Defendants' energy rates are consistently higher than the rates a customer's existing incumbent utility charges;
- f. Failing to provide customers advance notice of the variable rate Defendants will charge; and
- g. Failing to clearly and conspicuously identify in its contract and marketing materials the variable charges in Defendants' variable energy plans.

7. Only through a class action can Just Energy's customers remedy Defendants' ongoing wrongdoing. Because the monetary damages suffered by each customer are small compared to the much higher cost a single customer would incur in trying to challenge Just Energy's unlawful practices, it makes no financial sense for an individual customer to bring his or her own lawsuit. Further, many customers don't realize they are victims of Just Energy's deceptive conduct. With this class action, Plaintiffs and the Class seek to level the playing field and make sure that companies like Just Energy engage in fair and upright business practices.

**I. Defendants' Fraudulent, Deceptive, and Unlawful Conduct.**

8. Price is the most important consideration for energy consumers. Given that there is no difference at all in the electricity or natural gas that Just Energy supplies as opposed to the consumer's utility, the only reason a consumer switches to an ESCO like Just Energy is for the potential savings offered in a competitive market as opposed to prices offered by a regulated utility. That is, after all, the entire point of energy deregulation.

9. Understanding this basic fact about residential energy consumers' decision-making, Just Energy uses introductory teaser rates to misrepresent how much its energy costs. For example, Just Energy enticed consumers like Plaintiffs and the Class to switch their gas and electric accounts by showing them low introductory rates. Yet Defendants did not adequately apprise consumers that the sample energy rates were teaser rates. Defendants also did not effectively reveal to consumers that Just Energy's introductory teaser rate would expire or the date on which Just Energy's actual variable rate would kick in.

10. Defendants further defrauded and deceived Plaintiffs and the Class by actively misrepresenting the rates Just Energy charges when its teaser rates expire, and by failing to adequately disclose that Just Energy's gas and electricity rates are consistently higher than the rates

charged by the customers' regulated utility.

11. Defendants are aware of the variable energy rates they intend to charge. Yet to conceal Just Energy's price gouging, Defendants do not provide customers any advance notice.

12. Just Energy's material misrepresentations and omissions concerning its energy rates violate N.Y. GEN. BUS. LAW § 349-d(3), which prohibits deceptive acts and practices in the marketing of residential energy. Section 349-d(3) is part of a new law, called New York's ESCO Consumers Bill of Rights, which was specifically enacted in 2010 to combat widespread consumer fraud in New York's energy markets and to protect New York's energy consumers from underhanded business tactics like those employed by Defendants.

13. Just Energy's material misrepresentations and omissions concerning its energy rates also violate New York's and other states' consumer protection statutes and common laws of fraud and unjust enrichment.

14. Plaintiffs are not the only consumers harmed by Just Energy's conduct. On December 31, 2014, Just Energy agreed to settle strikingly similar claims brought by the Massachusetts Attorney General, making various concessions related to its deceptive residential energy sales and billing practices.<sup>1</sup>

15. The Massachusetts Attorney General alleged that Just Energy made misleading, false, and unlawful representations and omissions concerning its energy, including that:

Just Energy represented to consumers that purchasing residential gas and/or electricity from Just Energy will save customers money;

Just Energy failed to disclose complete and accurate pricing information; and

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<sup>1</sup> Assurance of Discontinuance, *In the Matter of Just Energy Group, Inc., et al.*, Mass. Sup. Ct., Suffolk, (Dec. 31, 2014), attached as Exhibit A.

Just Energy failed to disclose to consumers that its rates following any introductory period may be higher than the rates charged by consumers' traditional utilities.<sup>2</sup>

16. In response to the Massachusetts Attorney General's allegations, Just Energy agreed to refund a total of \$4,000,000 to Massachusetts customers along with implementing several key changes to its marketing and sales practices, as follows:

Just Energy must cease making representations, either directly or by implication, about savings that consumers may realize by switching to Just Energy, unless Just Energy contractually obligates itself to provide such savings to consumers."<sup>3</sup>

Where Just Energy quotes introductory teaser rates in its marketing material or in any verbal representation, the rate quote must be accompanied by a statement informing consumers that the quoted rate is an introductory rate and state when the rate will expire.<sup>4</sup>

Just Energy is banned for three years from enrolling consumers into variable rate energy products unless it complies with the following requirements:

- Within 30 days of a customer enrolling in a variable energy rate product, Just Energy must provide the customer with written notice of the date on which the introductory rate will expire.
- Any new contracts for variable rate products shall either (i) include the calculation that will be used to set monthly rates under the contract such that the customer can calculate the cost of Just Energy's residential energy, or (ii) make the rates available 60 days in advance via phone and the internet.<sup>5</sup>

For three years Just Energy is banned from charging consumers variable electricity rates in excess of 14.25¢ per kWh.<sup>6 7</sup>

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<sup>2</sup> *Id.* ¶¶ 19(a), 20(a)–(b).

<sup>3</sup> *Id.* ¶ 26(a).

<sup>4</sup> *Id.* ¶ 26(c).

<sup>5</sup> *Id.* ¶ 28(a)–(b), (d).

<sup>6</sup> *Id.* ¶ 30(a).

<sup>7</sup> Just Energy charged Plaintiff Donin electricity rates higher than this very high rate for 17 months while she was a Just Energy customer. 14 of those 17 months were consecutive. For the 10 months of billing data Plaintiff Golovan possesses, Defendants charged her more than the 14.25¢ cap *every single month*.

For current Just Energy variable rate customers, the company is required to clearly and conspicuously post its current variable rates and post subsequent variable rates with at least 45 days advance notice.<sup>8</sup> Just Energy is also required to mail notice to all existing Massachusetts variable rate customers alerting them to the fact that advance pricing information is now available via phone and on Just Energy's website, and that these customers can cancel their Just Energy contracts without paying termination fees.<sup>9</sup>

Just Energy must at its own expense hire an independent monitor for three years to audit *inter alia* Just Energy's Massachusetts marketing materials, billing data, consumer communications, and direct marketing efforts.<sup>10</sup>

Just Energy must distribute a copy of the Assurance of Discontinuance to current and future (for three years) principals, officers, directors, and supervisory personnel responsible for the Massachusetts market.<sup>11</sup> Just Energy must also secure and maintain these individuals' signed acknowledgement of receipt of the Assurance of Discontinuance.

17. Notably, while as discussed below Just Energy has been fined by regulators for deceptive marketing at least *six* times, no other actions have to date been brought by New York's or other states' enforcement authorities to recoup the millions Just Energy unlawfully extracted from consumers in New York and elsewhere. That is the purpose of this action.

## **II. Just Energy's Contract and Marketing Materials Also Violate New York's Mandatory ESCO Disclosure Statute.**

18. Under N.Y. GEN. BUS. LAW § 349-d(7), Just Energy is required to clearly and conspicuously identify its variable charges in *all* consumer contracts and in *all* marketing materials. The purpose of this disclosure requirement is to ensure that consumers are adequately apprised of how their rates will be set.

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<sup>8</sup> *Id.* ¶ 30(b).

<sup>9</sup> *Id.* ¶ 30(c).

<sup>10</sup> *Id.* ¶ 44, Attachment 2.

<sup>11</sup> *Id.* ¶ 46.



19. Rather than complying with Section 349-d(7)'s disclosure requirements, Just Energy's marketing either does not mention its variable rates *at all* or fails to make the required disclosures in a clear and conspicuous manner.

20. Just Energy's contracts, which arrive when a customer can still cancel without penalty, likewise fail to meet the New York ESCO Consumers Bill of Rights' variable charge disclosure requirements.

21. Had Just Energy provided Plaintiffs with truthful, adequate, and appropriate disclosures about Just Energy's variable energy rates, they would not have switched to Just Energy.

### **PARTIES**

#### ***Plaintiff Fira Donin***

22. Plaintiff Donin is a citizen of New York residing in Brooklyn, New York.

23. In the Spring of 2012, Ms. Donin was contacted by a Just Energy sales representative. Just Energy's representative used a written, standardized sales script and had been trained by Defendants in a way that emphasized uniformity in sales techniques. Upon information and belief, Just Energy's representatives were only permitted to use sales scripts that had been centrally approved and the content of such scripts did not meaningfully vary over time.

24. The Just Energy representative showed Ms. Donin Just Energy's rates for gas and electricity, which Plaintiff believed were representative of Just Energy's rates. Based on these rates, Ms. Donin agreed to switch both her electric and gas account to Just Energy. As described herein, however, Just Energy's statements about its rates were false, fraudulent, and constitute material misrepresentations. Just Energy's statements both during the initial enrollment and at all relevant times thereafter also included several material omissions about Just Energy's variable

rates, as described herein.

25. Shortly after agreeing to switch her gas and electric accounts to Just Energy, Defendants sent Plaintiff emails which misrepresented the rates Just Energy would charge after the introductory period. The rates in Just Energy's emails were not substantially different from Defendants' teaser rates. Just Energy's deceptive emails repeated and reinforced Defendants' misrepresentations and omissions regarding Just Energy's rates.

26. Once Ms. Donin's gas and electricity accounts were successfully transferred to Just Energy, Defendants began supplying Plaintiff's residential energy in June 2012. After Ms. Donin learned in August 2016 that she had been overcharged by Just Energy by more than \$2,000 compared to what her local utilities would have charged, she notified Just Energy that she wanted to cancel her gas and electricity accounts.

***Plaintiff Inna Golovan***

27. Plaintiff Golovan is a citizen of New York residing in Brooklyn, New York.

28. In or around the Summer of 2012, Ms. Golovan was contacted by a Just Energy sales representative. Just Energy's representative used a written, standardized sales script and had been trained by Defendants in a way that emphasized uniformity in sales techniques. Upon information and belief, Just Energy's representatives were only permitted to use sales scripts that had been centrally approved and the content of such scripts did not meaningfully vary over time.

29. Defendants' representative showed Ms. Golovan Just Energy's electricity rate, which Plaintiff believed was representative of Just Energy's rates. Based on this rate, Plaintiff Ms. Golovan agreed to switch her electric account to Just Energy. As described herein, however, Just Energy's statements about its rate were false, fraudulent, and constitute material misrepresentations. Just Energy's statements both during the initial enrollment and at all

relevant times thereafter also included several material omissions about Just Energy's variable rates, as described herein.

30. Once Ms. Golovan's electricity account was successfully transferred to Just Energy, Defendants began supplying Plaintiff's residential electricity in August 2012. After Ms. Golovan learned in April 2015 that Just Energy's electricity rates had been consistently high, she notified Just Energy that she wanted to cancel her electricity account.

***Defendant Just Energy Group Inc.***

31. Established in 1997, Defendant Just Energy Group Inc. (which refers to itself as "Just Energy"), is a publicly traded Canadian corporation incorporated under the laws of Ontario. In 2004, Just Energy made its initial expansion into the United States. Headed by Enron alums James Lewis and Deborah Merrill, Just Energy is operated out of dual headquarters in Houston, Texas and Toronto, Ontario. Just Energy's operating affiliates include Defendant Just Energy New York Corp., Just Energy Illinois Corp., Just Energy Indiana Corp., Just Energy Texas L.P., Just Energy Massachusetts Corp., Just Energy Michigan Corp., Amigo Energy, Commerce Energy Inc., Green Star Energy, Hudson Energy Services, LLC, Momentis U.S. Corp., National Energy Corp., Tara Energy, Universal Energy Corporation, and Universal Gas and Electric Corporation. Just Energy and its operating affiliates market and sell natural gas and/or electricity in New York, California, Delaware, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, New Jersey, Ohio, Pennsylvania, and Texas.

32. Just Energy's shares are traded on the Toronto Stock Exchange and the New York Stock Exchange bearing the ticker symbol "JE." Just Energy is the 11<sup>th</sup> largest independent energy supplier in the United States, with over 1.8 million customers across North America. Variable rate plans are one of Just Energy's main products.

33. Just Energy has amassed a damning public dossier. The following chronology documents Defendants' deceptive business practices.

34. In June 2003, the Toronto Star reported that Just Energy (then operating under the name Ontario Energy Savings Corp.) was fined for violating the Ontario Energy Board's code of conduct for fraudulently enrolling customers.<sup>12</sup>

35. In 2008, the Illinois Attorney General sued U.S. Energy Savings Corp. (whose name was changed to Just Energy in 2012), alleging violations of Illinois' consumer fraud laws. The May 2009 Press Release announcing a \$1 million settlement noted that the Illinois Attorney General had "received a nearly unprecedented number of calls from consumers who were deceived by false assurances that they would receive significant savings by switching to this alternative gas supplier."<sup>13</sup> According to the Attorney General's complaint, among other deceptive conduct "consumers were led to believe that they would automatically save money by enrolling in the U.S. Energy Savings program."<sup>14</sup>

36. During this same period, the Citizens Utility Board (the "CUB") and AARP filed a formal complaint with the Illinois Commerce Commission (the "ICC") alleging, *inter alia*, that Just Energy told customers they would "save money" by signing up, that consumers would not see any gas price increases if they signed up, and that Just Energy presented false and misleading information about its prices.<sup>15</sup> In April 2010, the ICC found that Just Energy's sales and

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<sup>12</sup> Spears, John, "Energy marketers fined over forgeries," Toronto Star (June 21, 2003).

<sup>13</sup> Press Release, "Madigan Secures \$1 Million in Consumer Restitution from Alternative Gas Supplier for Deceptive claims," May 14, 2009.

<sup>14</sup> *Id.*

<sup>15</sup> Verified Original Complaint ¶19, Illinois Commerce Commission Docket 08-0175 (March 3, 2008).

marketing practices were deceptive, fined the company \$90,000, and ordered an independent audit of its practices.<sup>16</sup>

37. In July 2008, New York's Attorney General announced a \$200,000 settlement with Just Energy (then named U.S. Energy Savings) and noted that the Attorney General's "office received hundreds of consumer complaints that sales contractors promised immediate savings on utility bills, but the price of gas was actually more than the price charged by the local utility because the price was locked in for a multi-year period."<sup>17</sup>

38. As previously noted, in December 2014 Just Energy agreed to settle deceptive marketing claims brought by the Massachusetts Attorney General.

39. In November 2016, Ohio's Public Utilities Commission (the "PUCO") fined Just Energy *for a second time* for misleading marketing practices. An article in the Columbus Dispatch notes that Just Energy is an "energy company with a track record of misleading marketing," that it was fined by the PUCO in 2010 for deceptive marketing, and that it "sells energy contracts that often cost more than customers would pay if they received the standard service price."<sup>18</sup> The article also mentions that some of the complaints that led to the PUCO's action "stemmed from contracts sold on behalf of Just Energy by another company, saveonenergy.com."<sup>19</sup>

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<sup>16</sup> Press Release, "Illinois Commerce Commission Fines Just Energy for Deceptive Sales and Marketing Practices, Orders Audit," April 15, 2010.

<sup>17</sup> Press Release, "Attorney General Cuomo Stops WNY Natural Gas Provider From Deceiving Consumers by Misrepresenting Service Contracts," (July 4, 2008).

<sup>18</sup> Gearino, Dan, "Electricity marketer Just Energy fined over complaints," The Columbus Dispatch, (Nov. 4, 2016).

<sup>19</sup> *Id.*

40. There are also numerous complaints about Just Energy on the internet.

41. Over the last three years alone Just Energy has had at least 284 complaints filed with the Better Business Bureau (the “BBB”). Of the customer reviews posted to the BBB’s website, 93% are categorized by the BBB as “Negative Reviews.”

42. Below are a few examples taken from the consumer complaint website Ripoff Report:<sup>20</sup>

**Just Energy Switched my energy rate to variable with NO NOTICE, doubled fees for six months.**

I have noticed over the past few months that the energy cost was getting higher and I thought it was due to the cold winter and higher energy usage. I called Duquesne Light last month and they said call your energy supplier which is JUST ENERGY. In December they had changed my fixed electrical usage rate to a nearly DOUBLE variable rate with NO NOTICE (total extra fees amounting to about \$1,500.00). I called Just Energy and tried to get reimbursed, they reviewed my account and said they sent me a POST CARD in the mail when the rate change occurred (which I have never received). I have gotten no reimbursement and they offered to send me a \$20.00 visa gift card which I declined. If anyone can offer any information about anything I can do to try and reclaim some money that would be great!!!!

**Just Energy Our bill has doubled since signing up for this, “energy efficient” program. Nipsco checked what we have been paying and what we are now paying and confirmed that. Our thermostat is digitally programmed to have heat set at 65 and our bill is \$354.20**

We signed up for Just Energy because of them of course telling us we can save more money on our gas bill. We just received a bill of \$354.20 and a disconnect notice. We called Nipsco to figure out what is going on and they were able to look at what we have been paying with them which had been .38 cents per therm and now we are being charged double that! I would like to note that our indoor thermostat is electronically programmed to be at 65 degrees when heat is running . . . . I was also told by Nipsco that they cannot check or confirm because Just Energy is a different company, that we are now most likely stuck into a contract with these people and obligated to pay these outrageous bills. Having 4 children having our services disconnected is not an option, it’s just sad . . . that instead of buying my kids Christmas presents I now have to pay this high gas bill or go

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<sup>20</sup> Misspellings corrected.

without heat in the dead of winter.

**Commerce Energy dba Just Energy Just Energy, US Energy Broken Promises**

For the past 7 months, I was understanding that Just Energy was a utility company that was about helping the consumer save money on their electric bills from AEP. Come to find out that they were in fact charging my account more than what I could have been paying if I stayed with AEP. I was also told that when I signed up with them that my rate would be a fixed rate of 6.5 cents but in fact it wasn't. I am completely at a loss of words at how this company has done me wrong.

I am on a very fixed income and every dollar I can save is a blessing, so when they come to my house promising that they can save me money I was all for it. Just recently I was told that I was being charged an additional fee of supplier charges that I wasn't supposed to have on my bill. I am very upset with this and I want some explanation as to why this was happening . . . as well as I want my money back. So to anyone who is thinking about signing up with this company, please do your research and think again.

**Just Energy of Massachusetts Just Energy of Ontario Just energy promised me 6.9 cents, not to ever go above Nstar rates, after a month or two the rate is almost twice Nstar rate, because I use electricity for heating my bill was very high after they doubled their rates that I noticed, most people would not, they ripped me off for \$1,300, only God knows how much the rip off in their final month. Please do not sign with them.**

Just Energy sales representative called me promised 6.9 cents rate, that will never go above Nstar rate, that happened for a month or two, now my rate is almost twice Nstar rate, I only noticed because I use electricity for heat, my utilization is high so is my rip off, so I have to notice most people with low utilization would not, they ripped me off \$1,300 in 2 months and only God knows how much is the rip off this month, the problem is by the time you realize and change they already ripped you off 3 months. Please no matter what you do, do not sign up with Just Energy.

**Just Energy 100% scam. Pushy sales people lie. Company won't cancel service. Rates went way up!!!**

Pushy sales people who lie. Rates went way up, not down as promised. Company not allowing me to cancel service. . . . Upon receiving the first bill after the switch to Just Energy our cost for gas doubled, and electric went up 50%. Calls to cancel service and switch back to our local company do not go though, month after month I continue to get ripped off.

**Just Energy Scummy bunch of scheisters! Avoid them at any cost. I bought their spiel, and I suffered as a result. Prices are not competitive. After I moved, they screwed me cause I wouldn't continue with the Just Energy, Scam, Untrustworthy, Avoid**

AVOID Just Energy. Quick talking salesmen, who will rip you off. Rates are not competitive, and they charged me \$50 when I moved out of my apartment. Never deal with this company if you want a truth in advertising and a good deal.

**USESC, Just Energy Scammed me I'm a 72 year old Hispanic. This man flashed a badge made me get my gas bill and promised I'd save money.**

I am a 72 year old Hispanic lady, on social security and Section 8. A man showed up at my apartment. He flashed a badge and began to explain on what USESC was all about.

He talked about how high the gas rates are going and that by signing with this company I would be locked into a certain rate and that my gas bills would be lower. He made me get my current gas bill and he showed me the rate I was at and compared it to a rate he said I would be locked into.

I was made to believe that I would be saving money. When I began to look at my bills after signing I noticed that instead of saving money I have begun to pay more. On my bills I have seen a 200 dollar increase monthly and have not saved a dime on anything.

I was completely scammed into signing this contract and I believe it's because I'm a senior citizen. I now cannot afford to pay my gas bill and feed my children.

It would be best if no one else got scammed the way I did. I'm raising my grandchildren and we are barely surviving. I'm outraged that a company would purposely scam the weak and helpless

Heaven  
Chicago, Illinois  
U.S.A.

**just energy I sign a contract with just energy and the bill went up instead of down**

I sign a contract with just energy and the bill went up instead of down . . . .

43. Just Energy's twitter feed tells a similar story, as the word "scam" appears more than 40 times in posts from 2009 to the present.



44. Media reports about Just Energy equally condemn Defendants for deceptive conduct. When the confidential results of the audit ordered by the ICC referenced in Paragraph 36 above were made public, Chicago's CBS affiliate reported that between 2010 and 2011 Just Energy received over 29,729 customer complaints.<sup>21</sup> "There were so many complaints over so many years with so little company oversight on how they were handled that the audit said, '[a]n adequate compliance culture at the top levels of the organization is not evident.'"<sup>22</sup>

45. A 2014 exposé by Canada's Global News highlights that the "CUB, the Better Business Bureau (BBB), the Ontario Energy Board, among others, have been inundated with complaints from consumers about the sales methods employed by Just Energy. The most common grievance is Just Energy promises people savings that don't materialize."<sup>23</sup>

46. The exposé further references Just Energy's founder Rebecca MacDonald who has "raked in an estimated \$150 million from the company since she established it in the 1990s" and is facing accusations "over whether she's misled investors in her company."<sup>24</sup> Those accusations include that MacDonald faked her credentials and the conclusions by "two of Canada's top forensic accounting firms" that Defendants used "an unregulated form of accounting to paint a much rosier picture of the company's financial situation," which in turn allowed Just Energy to show an "artificial profit."<sup>25</sup>

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<sup>21</sup> Zekman, Pam, "Alternative Energy Supplier Has Long Record Of Fraud Complaints," *CBS2*, (Jan. 15, 2013).

<sup>22</sup> *Id.*

<sup>23</sup> Livesey, Bruce, "Canadian energy company stalked by controversy over its sales methods," *Global News*, (Nov. 6, 2014).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

47. The Global News exposé also contains a 22-minute video entitled the “Just Energy Hustle.” Below is an excerpt of a Global News Journalist’s videotaped interview with Just Energy’s Co-CEO Deborah Merrill. Despite having joined Just Energy in 2007, in the 2014 interview the Co-CEO denies even knowing about the many criticisms leveled at Just Energy’s marketing and sales practices:

Journalist: “Critics have accused your company of underhanded sales tactics, sleazy tactics to try to get people to sign their name to a contract”

Co-CEO Merrill: “I have not heard those accusations, so, nobody said that to me, no.

Journalist: “Really, this is news to you?”

Co-CEO Merrill: “No, nobody’s said that to me. I think it’s . . . .”

Journalist: “It’s your company. I mean, you know. . . .”

Co-CEO Merrill: “I would disagree with that.”

Journalist: “You would disagree that there’s a view that your company is doing things at the door that it shouldn’t be doing?”

Co-CEO Merrill: “No, I’m saying that mistakes happen and we take ‘em very seriously.”

“The Just Energy Hustle,” Minutes 18:35 to 19:18.<sup>26</sup>

48. More than a year prior to the Global News exposé, on July 31, 2013, New York-based investment management firm Spruce Point Capital Management released an investment analysis that labeled Just Energy as “a company that U.S. consumers and investors are quickly realizing has become toxic to their wallets through deceptive energy marketing practices, and


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<sup>26</sup> Available at: <https://globalnews.ca/news/1656865/canadian-energy-company-stalked-by-controversy-over-its-sales-methods/>

harmful to their brokerage accounts.”<sup>27</sup> The report signaled that Just Energy’s “growth appears to be the result of deceptive sales tactics, now at risk of unravelling” which is “evidenced by a large body of consumer fraud complaints.”<sup>28</sup>

49. The report also highlights how Just Energy (referred to below as “JE”) uses a teaser rate to deceive consumers.<sup>29</sup>

As noted in the table below, JE “appears” to offer the lowest price fixed contract, but as discussed below there’s a ‘catch.’



	ConEd Solutions	Constellation	Spark Energy	Greenlight Energy	US Gas & Electric	Just Energy	Constellation	Spark Energy	Greenlight Energy	Just Energy
Commodity	Electric	Electric	Electric	Electric	Electric	Electric	Gas	Gas	Gas	Gas
Term (months)	12	12	12	None	5	60	12	12	None	60
Initiation Fee	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Cancellation Fee	-	-	-	-	\$50.00	\$50.00	-	-	-	\$50.00
Monthly Fee	-	-	-	-	-	-	-	4.95	-	-
Unit Cost (c/KWh   c/therm)	10.45c	10.99c	10.49c	10.00c	10.50c	7.15c	67.90c	77.50c	66.00c	62.00c

Source: ConEdison website and company websites. End of April 2013

JE’s gas RateFlex prices are fixed *only for three* months – despite the 5-year term – and after three months, the contract reverts to a *fluctuating* price based on “*business and market conditions.*” The Electric RateFlex is fixed for 2 months. JE then gives its customers the option of locking in this new, variable and unknown price. The company tries to reassure consumers that the rate won’t fluctuate that much by guaranteeing that the variable rate won’t increase by more than 35% *per month* (see: [section 7](#)). Just Energy also allows consumers to cancel their contract free within 30 days – before the misleadingly low introductory price expires – but charges a \$50 “Exit Fee” if cancelled thereafter. Of course, most consumers don’t bother to read the fine print, particularly if salesmen are pushing quick cash back incentives with Visa Gift Cards for [registering](#) and [referring friends](#).

<sup>27</sup> Spruce Point Capital Management, “Just Energy: Another Dividend Cut Poses An Above Average Risk to Investors” at 2 (July 31, 2013), available at: <http://www.sprucepointcap.com/just-energy/>.

<sup>28</sup> *Id.* at 3.

<sup>29</sup> *Id.* at 4–5.

*Defendant Just Energy New York Corp.*

50. Defendant Just Energy New York Corp. is a Delaware company with its principle executive office in Toronto, Ontario. Defendant Just Energy Group Inc.'s public financial filings reveal that it completely controls its operating affiliates, including Defendant Just Energy New York Corp. These filings and other public data show that Just Energy Group Inc. and its unified executive team control all operational and financial aspects of its operating affiliates, which are run on a consolidated basis as one company. Just Energy Group Inc. used its operating affiliates to perpetrate the unlawful conduct challenged in this lawsuit. Just Energy Group Inc. reports its operating affiliates' earnings and losses in a consolidated format. Defendant Just Energy New York Corp. is the corporate entity that supplied Plaintiffs' energy.

**JURISDICTION AND VENUE**

*Subject Matter Jurisdiction*

51. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1332 (the "Class Action Fairness Act").

52. This action meets the prerequisites of the Class Action Fairness Act, because the claims of the Class defined below exceed the sum or value of \$5,000,000, the Class has more than 100 members, and diversity of citizenship exists between at least one member of the Class and Defendants.

*Personal Jurisdiction*

53. This Court has general personal jurisdiction over Defendants. Defendants do business in New York through continuous, permanent, and substantial activity in New York.

54. This Court has specific personal jurisdiction over Defendants because they maintain sufficient contacts in this jurisdiction, including the advertising, marketing, distribution

and sale of natural gas and electricity to New York consumers.

*Venue*

55. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2). Substantial acts in furtherance of the alleged improper conduct occurred within this District and Plaintiffs reside within this District.

**FACTUAL ALLEGATIONS**

**I. Energy Deregulation and Resulting Wide-Spread Consumer Fraud.**

56. In 1996, New York deregulated the sale of retail gas and electricity. As a result of deregulation, New York consumers can purchase natural gas and electricity through third-party suppliers while continuing to receive delivery of the energy from their existing public utilities. These third-party energy suppliers are known as energy service companies, or “ESCOs.” Since New York opened its retail gas and electric markets to competition, more than a million New York consumers have switched to an ESCO.

57. ESCOs are subject to minimal regulation by New York’s utility regulator, the New York State Public Service Commission (the “PSC”). ESCOs like Just Energy do not have to file their rates with the PSC, or the method by which those rates are set.

58. ESCOs play a middleman role: they purchase energy directly or indirectly from companies that produce energy and sell that energy to end-user consumers. However, ESCOs do not *deliver* energy to consumers. Rather, the companies that produce energy deliver it to consumers’ utilities, which in turn deliver it to the consumer. ESCOs merely buy gas and electricity at the wholesale rate and then sell that energy to end-users with a mark-up. Thus, ESCOs are essentially brokers and traders: they neither make nor deliver gas or electricity, but merely buy energy from a producer and re-sell it to consumers.

59. If a customer switches to an ESCO, the customer's existing utility continues to bill the customer for both the energy supply and delivery costs. The only difference to the customer is which company sets the price for the customer's energy supply.

60. After a customer switches to an ESCO, the customer's energy supply charge (based either on a customer's kilowatt hour [electricity] or therm [gas] usage) is calculated using the supply rate charged by the ESCO and not the regulated rate charged by the customer's former utility. The supply rate charged is itemized on the customer's bill as the number of kilowatt hours ("kWh") or therms multiplied by the rate. For example, if a customer uses 145 kWh at a rate of 10.0¢ per kWh, the customer will be billed \$14.50 (145 x \$.10) for their energy supply.

61. Almost all states that deregulated their energy markets did so in the mid to late 1990s. This wave of deregulation was frantically pushed by then-corporate superstar Enron. For example, in December 1996 when energy deregulation was being considered in Connecticut, "the most aggressive proponent" of deregulation, Enron CEO Jeffrey Skilling said:

Every day we delay [deregulation], we're costing consumers a lot of money . . . .  
It can be done quickly. The key is to get the legislation done fast.<sup>30</sup>

62. Operating under this sense of urgency, the states that deregulated suffered serious consumer harm. For example, in 2001 forty-two states had started the deregulation process or were considering deregulation. Today, the number of full or partially deregulated states has dwindled to only seventeen and the District of Columbia. Even within those states several have recognized deregulation's potential harm to everyday consumers and thus only allow large-scale consumers to shop for their energy supplier.

63. Responding to shocking energy prices, many key players that supported

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<sup>30</sup> Keating, Christopher, "Eight Years Later . . . 'Deregulation Failed,'" *Hartford Courant*, Jan. 21, 2007.

deregulation now regret the role they played. For example, reflecting on Maryland's failed deregulation experience, a Maryland Senator commented:

Deregulation has failed. We are not going to give up on re-regulation till it is done.<sup>31</sup>

64. A Connecticut leader who participated in that state's foray into energy deregulation was similarly regretful:

Probably six out of the 187 legislators understood it at the time, because it is so incredibly complex. . . . If somebody says, no, we didn't screw up, then I don't know what world we are living in. We did.<sup>32</sup>

65. One of deregulation's main unintended consequences has been the proliferation of ESCOs like Just Energy whose business model is primarily based on deception. As a result of this widespread consumer fraud, states like New York began enacting post-deregulation remedial legislation meant to "establish[] important consumer safeguards in the marketing and offering of contracts for energy services to residential and small business customers."<sup>33</sup> As the sponsoring memorandum notes, the ESCO Consumers Bill of Rights, codified as G.B.L. Section 349-d, in 2010 sought to end the exact type of deceptive conduct Plaintiffs challenge here:

Over the past decade, New York has promoted a competitive retail model for the provision of electricity and natural gas. Consumers have been encouraged to switch service providers from traditional utilities to energy services companies. Unfortunately, consumer protection appears to have taken a back seat in this process.

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High-pressure and *misleading sales tactics*, onerous contracts with unfathomable *fine print*, short-term "teaser" rates followed by *skyrocketing* variable prices—many of the problems recently seen with subprime mortgages are being repeated in energy

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<sup>31</sup> Hill, David, "State Legislators Say Utility Deregulation Has Failed in its Goals," *The Washington Times*, May 4, 2011.

<sup>32</sup> Keating, *supra*.

<sup>33</sup> ESCO Consumers Bill of Rights, New York Sponsors Memorandum, 2009 A.B. 1558, at 1 (2009) attached as Exhibit B.

competition. Although the PSC has recently adopted a set of guidelines, its “Uniform Business Practices” are limited and omit important consumer protections in several areas. The fact is, competition in supplying energy cannot succeed without a meaningful set of standards to weed out companies whose business model is based on taking unfair advantage of consumers.

*Id.* at 3–4 (emphasis added).

66. Regulators have also begun to call out the high levels of fraud that pervade deregulated energy markets. For example, in 2014 New York’s PSC concluded that New York’s residential and small-commercial retail energy markets were plagued with “marketing behavior that creates and too often relies on customer confusion.”<sup>34</sup> The PSC further noted “it is extremely difficult for mass market retail energy customers to access pricing information relevant to their decision to commence, continue or terminate service through an ESCO.”<sup>35</sup>

67. The PSC’s complaint data confirms its conclusions. The PSC’s annual complaint statistics reports indicate that in 2012 the PSC received 1,733 ESCO related complaints of which 322 alleged deceptive marketing. The number of ESCO related complaints increased to 2,384 in 2013 with 2,001 reporting deceptive marketing practices. In 2014 there were 4,640 initial ESCO related complaints, with 2,510 claiming deceptive marketing. In 2015 the data shows there were 5,044 initial ESCO related complaints with 2,348 alleging deceptive marketing practices. In 2016 there were 2,995 initial complaints against ESCOs, with 1,375 alleging deceptive marketing practices.

68. The number of deceptive marketing allegations against ESCOs far exceed the combined number of complaints received by all other regulated utilities in New York, including

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<sup>34</sup> CASE 12-M-0476, Order Taking Actions to Improve the Residential and Small Nonresidential Retail Access Markets, at 4 (Feb. 20, 2014).

<sup>35</sup> *Id.* at 11.



the lightly regulated telecommunications industry. Further, no single ESCO or single region of New York is responsible for most of the complaints. Rather, the complaint data demonstrates that consumer fraud is part of the industry's standard operating procedures.

69. A large percentage consumer complaints to the PSC concern variable rate pricing like Defendants' where consumers' bills are more or less as advertised during the teaser or fixed rate period, but after this initial period expires, instead of switching the consumer back to the utility the ESCO uses the consumers' inaction to substantially increase the price without further notice or explanation as to how the new rate is determined.

70. Statistics from the New York Attorney General's ("NYAG") office confirm the pattern of activity this consumer class action seeks to combat. From at least the year 2000 to the present, the NYAG has investigated numerous ESCOs' deceptive and illegal business practices. These investigations have resulted in seven settlements providing for extensive injunctive relief and millions in restitution and penalties.

71. In the last three years, the NYAG has also directly received more than 600 complaints against ESCOs. These complaints demonstrate that the ESCO practices that were the subject of the NYAG's previous settlements continue, and that industry participants like Just Energy view regulatory enforcement actions as simply the cost of continuing their fraudulent business practices.

72. The deceptive conduct of ESCOs like Just Energy has been devastating to consumers nationwide. For example, based on data recently provided by the major New York electric and gas utilities, the PSC calculated that for the 30 months from December 30, 2013 to June 30, 2016 New York's ESCO customers paid nearly \$820 million more for energy than they would have had they stayed with their local utility. New York's low-income consumers have

also been hit hard. The utilities reported that low-income ESCO customers paid almost \$96 million more than residential utility customers for the same period.

73. Based in large part on the flood of consumer complaints, negative media reports, and data demonstrating massive overcharges the PSC announced in December 2016 an evidentiary hearing to consider primarily whether ESCOs should be “completely prohibited from serving their current products” to New York residential consumers.<sup>36</sup> In other words, to reassess whether New York’s deregulation experiment has failed everyday consumers.

74. This class action, which seeks more than \$100,000,000 in damages, restitution, penalties, and equitable relief is further proof that residential energy deregulation has been an abject failure.

## **II. Just Energy Misled Its Customers and Then Gouged Them Compared to What They Would Have Paid Had They Stayed with Their Local Utility.**

75. To convince consumers to switch, Defendants represented that customers would save money on their energy costs by switching over from their current utilities.

76. As evidenced by the fact that Just Energy used to be called “U.S. Energy Savings,” Defendants understand that the potential for saving money on their home energy costs is the primary, if not exclusive, reason consumers switch to Just Energy.

77. Defendants’ primary way of enticing consumers with promised savings is through Just Energy’s teaser rates. Defendants make the consuming public aware of Just Energy’s teaser rates through various means, including via company-controlled in-person solicitations, telemarketing calls from Defendants’ call centers, internet ESCO price aggregators such as [www.chooseenergy.com](http://www.chooseenergy.com) and [www.saveonenergy.com](http://www.saveonenergy.com) that Defendants pay to showcase Just

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<sup>36</sup> CASE 12-M-0476, Notice of Evidentiary and Collaborative Tracks and Deadline for Initial Testimony and Exhibits, at 3 (December 2, 2016).

Energy's prices, or through state utility ESCO pricing websites such as New York's [www.newyorkpowertochoose.com](http://www.newyorkpowertochoose.com).

78. Just Energy's teaser rates consistently misrepresent the cost of Defendants' energy because they suggest Just Energy's rates are lower than what Just Energy knows it will eventually charge consumers once the teaser period expires. Just Energy's teaser rates also misleadingly suggest to the consumer that Just Energy's rates are lower than their utility's rates. The truth is that Just Energy has a long history of charging substantially more than customers' local utilities.

79. To compound the deception, Defendants do not adequately disclose that the quoted rates are introductory teaser rates and that when Just Energy's teaser rates expire the consumer will pay a rate that is much higher than the utility's rate.

80. Defendants also do not adequately disclose when Just Energy's teaser rates expire. Instead, Just Energy enrolls consumers into variable rate plans knowing (but failing to disclose) that once the teaser rate expires Just Energy's rates will surpass the utility's rates.

81. Just Energy also actively misrepresents the rates it will charge when its teaser rates expire. For example, in April 2012 Just Energy sent Plaintiff Donin an email stating that she would be charged an electric rate of 8¢ per kWh once her "intro period" lapsed. Yet Just Energy consistently charged Ms. Donin more than 8¢ per kWh. The Just Energy billing data Ms. Donin has in her possession shows that Just Energy's charges were far in excess of 8¢ per kWh.

82. Despite having ample advance notice of the variable rates it will impose on customers, Just Energy also fails to advise consumers of the rates they will be charged.

83. Defendants' entire sales model is structured to take advantage of well-studied patterns of human decision-making. Just Energy lures consumers to switch with misleading

teaser rates and then exploits consumer inertia once those rates expire to bill consumers for its high-priced residential energy.

84. It is well-established that defaults are powerful drivers of consumer behavior. There are various factors underlying this human tendency that have been discussed in the judgment and decision-making literature, such as the work about defaults and the “status quo bias,”<sup>37</sup> and “Nudges.”<sup>38</sup>

85. In this case, Defendants know that once they have the consumer enrolled they can charge high energy rates and many consumers (if not most) will simply pay Defendants’ exorbitant charges.

86. Defendants’ cynical exploitation of consumer inertia is further exacerbated by the fact that (i) it is extremely difficult for consumers to compare Just Energy’s prices with what their local utility charges, and (ii) Just Energy tacks on early termination fees as a disincentive to consumer mobility and choice.

87. Upon being shown Just Energy’s teaser rate, a reasonable consumer understands—and expects—Just Energy’s rates would typically be lower than the utility’s rates.

88. But Just Energy’s rates do no such thing. Instead, during the class period and during the time Plaintiffs were Just Energy customers, there were extended lengths of time in which Just Energy’s rates were higher than the utility’s rates.

89. Further, there are extended periods of time when the wholesale market price of gas or electricity declined or remained steady, yet Just Energy’s prices rose. Moreover, even

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<sup>37</sup> Daniel Kahneman, Jack L. Knetsch and Richard H. Thaler (1991), “Endowment Effect, Loss Aversion, and Status Quo Bias,” *The Journal of Economic Perspectives*, Vol. 5, pp. 193–206.

<sup>38</sup> R. Thaler and S. Sunstein (2008), *Nudge*, Yale University Press.

when market prices rise, Just Energy's rates often increase at a faster and higher rate than the market rates. But Just Energy does not disclose these material facts to its prospective or current customers.<sup>39</sup>

90. Just Energy misleads consumers into thinking that its rates are lower than consumers' utilities' rates. Yet for the period Plaintiff Donin was able to obtain comparison data for what her electric utility would have charged, May 2015 to July 2016, Just Energy billed Ms. Donin more than the utility *every single month*. These overcharges total more than \$375. For Plaintiff Donin's gas utility, Just Energy charged more than the utility *every single month* for the 31 months from December 2013 to July 2016 for which data was available to Ms. Donin. For this period Ms. Donin paid Just Energy \$1,929.06 more than she would have paid her gas utility.

91. No reasonable consumer exposed to Just Energy's marketing would expect that Just Energy would charge them more than the utility by so much money for so long.

92. The rates Just Energy actually charges in comparison to the utility rate demonstrates the deceptive nature of Just Energy's marketing.

93. Thus, Just Energy's statements with respect to the rates it will charge are materially misleading. Instead, consumers are charged rates that are substantially higher. Just Energy fails to disclose this and other material fact to its customers.

94. No reasonable consumer who knows the truth about Just Energy's exorbitant rates would choose Just Energy as an electricity or natural gas supplier.

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<sup>39</sup> The wholesale cost of energy is the most significant and potentially volatile component of electricity and natural gas costs that ESCOs like Just Energy incur for supplying energy. Costs associated with transmission or transportation costs or other similarly static market and business price related factors do not account for the extent to which Just Energy's prices are disassociated from changes in wholesale prices.

95. Just Energy intentionally makes these misleading statements regarding its rates to induce reasonable consumers to rely upon its statements and switch their energy supply.

**III. Just Energy Violates New York’s Statutory Disclosure Requirements for ESCOs that Charge Variable Rates.**

96. Because of the New York Legislature’s concerns with skyrocketing variable rates, New York adopted N.Y. GEN. BUS. LAW § 349-d(7), which requires that “[i]n every contract for energy services and in all marketing materials provided to prospective purchasers of such contracts, all variable charges shall be clearly and conspicuously identified.”

97. Through their conduct, Defendants have violated both the spirit and letter of N.Y. GEN. BUS. LAW § 349-d, the law that is explicitly designed to allow energy consumers to make informed choices: “These provisions will go a long way toward restoring an orderly marketplace where consumers can make informed decisions on their choices for gas and electric service . . . .”<sup>40</sup>

98. At all relevant times Defendants’ marketing materials and contracts never clearly and conspicuously apprised Plaintiffs of the actual factors that make up Just Energy’s variable rate.

99. The marketing materials Defendants produced that were provided to Plaintiffs and the Class violate N.Y. GEN. BUS. LAW § 349-d(7) by not clearly and conspicuously setting forth all of the factors actually affecting Just Energy’s variable rates. Indeed, most of the marketing materials provided to Plaintiffs and the Class do not even mention that Just Energy’s rates are variable, nor do they comply with the statute’s requirement that the factors that comprise Just Energy’s rate be clearly and conspicuously disclosed.

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<sup>40</sup> Exhibit B, New York Sponsors Memo at 4.

100. Further, as described below, the various incarnations of Just Energy's consumer contract provided to Plaintiffs and the Class also violate N.Y. GEN. BUS. LAW § 349-d(7).

101. The Just Energy sales representative who signed up Plaintiffs used Just Energy marketing material and Just Energy's published teaser rates. Among other omissions, that sales representative failed to mention that once the teaser rate expires Just Energy's prices are invariably higher than the utility's rates almost all of the time. Based on the sales representative's statements, Plaintiffs decided to switch to Just Energy.

102. The Just Energy materials the representative provided to Plaintiffs did not contain language clearly and conspicuously describing the factors that affect Just Energy's variable rates or disclose that Just Energy's rates were variable.

103. Following their agreement to switch their accounts to Just Energy, the contracts Plaintiffs received fail to make the clear and conspicuous disclosure of Just Energy's variable rates as mandated by New York's ESCO Consumers Bill of Rights, as noted above.

104. Plaintiffs would have never signed up to purchase energy from Just Energy had Defendants complied with N.Y. GEN. BUS. LAW § 349-d(7).

## **TOLLING OF THE STATUTES OF LIMITATION**

### **I. Discovery Rule Tolling**

105. Plaintiffs and the Class had no way of discovering Just Energy's unlawful conduct. Even New York's public utility regulator, the PSC, has concluded that "it is extremely difficult for mass market retail energy customers to access pricing information relevant to their decision to commence, continue or terminate service through an ESCO."<sup>41</sup> By contrast, Just

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<sup>41</sup> CASE 12-M-0476, Order Taking Actions to Improve the Residential and Small Nonresidential Retail Access Markets, at 11 (Feb. 20, 2014).

Energy was so intent on expressly hiding the fact that consumers had been duped by Defendants' deceptive teaser rates, Defendants concocted a scheme to misrepresent the rates it would charge once the teaser rates expire. Defendants further failed to give customers advance notice of the variable rates it was going to assess, even though Defendants knew well in advance what those rates would be.

106. Within the period of any applicable statutes of limitation, Plaintiffs and the other Class Members could not have discovered Just Energy's illegal conduct through the exercise of reasonable diligence.

107. Plaintiffs and the other Class Members did not discover, and did not know of facts that would have caused a reasonable person to suspect they were victims of Just Energy's illegal conduct.

108. All applicable statutes of limitation have been tolled by operation of the discovery rule.

## **II. Fraudulent Concealment Tolling**

109. All applicable statutes of limitation have also been tolled by Just Energy's knowing and active fraudulent concealment and denial of the facts alleged herein throughout the period relevant to this action.

110. Instead of disclosing that its quoted rates are teaser rates, when those rates will expire, that its energy rates are consistently higher than the rates a customer's existing utility charges, and giving consumers advance notice of the rates Defendants will charge, Just Energy used its teaser rates to falsely represent the cost of its energy and actively misrepresented the rates Defendants would charge once the teaser rate expired.



### **III. Estoppel**

111. Just Energy was under a continuous duty to disclose to Plaintiffs and the other Class Members the truth about its energy rates.

112. Just Energy knowingly, affirmatively, and actively concealed the true nature of its rates from consumers.

113. Just Energy was also under a continuous duty to disclose to Plaintiffs and Class Members that it was receiving thousands of complaints from customers who had been led to believe that they would save money with Just Energy compared to their incumbent utility.

114. Based on the foregoing, Just Energy is estopped from relying on any statutes of limitations in defense of this action.

#### **CLASS ACTION ALLEGATIONS**

115. Plaintiffs sue on their own behalf and on behalf of a Class for damages, injunctive, and all other available relief under Rules 23(a), (b)(2), (b)(3), and (c)(4) of the Federal Rules of Civil Procedure.

116. The Class, preliminarily defined as two subclasses (“Subclasses”), is as follows:

- a. The Multistate Class, preliminarily defined as all Just Energy customers in the United States (including customers of companies Just Energy acts as a successor to) who were charged a variable rate for their energy at any time from [applicable statute of limitations period] to the date of judgment.
- b. The State Classes, preliminarily defined as all Just Energy customers in the state of [e.g., New York, California, etc.] (including customers of companies Just Energy acts as a successor to) who were charged a variable rate for their energy at any time from [applicable statute of limitations period] to the date of judgment.

117. Excluded from the Subclasses (hereafter collectively the “Class” unless otherwise specified) are the officers and directors of Defendants, members of the immediate families of the

officers and directors of Defendants, and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or have had a controlling interest. Also excluded are all federal, state and local government entities; and any judge, justice or judicial officer presiding over this action and the members of their immediate families and judicial staff.

118. Plaintiffs reserve the right, as might be necessary or appropriate, to modify or amend the definition of the Class and/or add additional Subclasses, when Plaintiffs file their motion for class certification.

119. Plaintiffs do not know the exact size of the Class, since such information is in the exclusive control of Defendants. Plaintiffs believe, however, that based on the publicly available data concerning Just Energy's customers in the United States, the Class encompasses more than one million individuals whose identities can be readily ascertained from Defendants' records. Accordingly, the members of the Class are so numerous that joinder of all such persons is impracticable.

120. The Class is ascertainable because its members can be readily identified using data and information kept by Defendants in the usual course of business and within their control. Plaintiffs anticipate providing appropriate notice to each Class Member, in compliance with all applicable federal rules.

121. Plaintiffs are adequate class representatives. Their claims are typical of the claims of the Class and do not conflict with the interests of any other members of the Class. Plaintiffs and the other members of the Class were subject to the same or similar conduct engineered by Defendants. Further, Plaintiffs and members of the Class sustained substantially the same injuries and damages arising out of Defendants' conduct.

122. Plaintiffs will fairly and adequately protect the interests of all Class Members. Plaintiffs have retained competent and experienced class action attorneys to represent their interests and those of the Class.

123. Questions of law and fact are common to the Class and predominate over any questions affecting only individual Class Members, and a class action will generate common answers to the questions below, which are apt to drive the resolution of this action:

- a. Whether Defendants' conduct violates New York General Business Law §349-d;
- b. Whether Defendants' conduct violates New York General Business Law §349;
- c. Whether Defendants' conduct violates various other state consumer protection statutes;
- d. Whether Defendants' representations are fraudulent;
- e. Whether Defendants engaged in fraudulent concealment;
- f. Whether Defendants were unjustly enriched as a result of their conduct;
- g. Whether Class Members have been injured by Defendants' conduct;
- h. Whether any or all applicable limitations periods are tolled by Defendants' acts;
- i. Whether, and to what extent, equitable relief should be imposed on Defendants to prevent them from continuing their unlawful practices; and
- j. The extent of class-wide injury and the measure of damages for those injuries.

124. A class action is superior to all other available methods for resolving this controversy because i) the prosecution of separate actions by Class Members will create a risk of adjudications with respect to individual Class Members that will, as a practical matter, be dispositive of the interests of the other Class Members not parties to this action, or substantially

impair or impede their ability to protect their interests; ii) the prosecution of separate actions by Class Members will create a risk of inconsistent or varying adjudications with respect to individual Class Members, which will establish incompatible standards for Defendants' conduct; iii) Defendants have acted or refused to act on grounds generally applicable to all Class Members; and iv) questions of law and fact common to the Class predominate over any questions affecting only individual Class Members.

125. Further, the following issues are also appropriately resolved on a class-wide basis under FED. R. CIV. P. 23(c)(4):

- a. Whether Defendants' conduct violates New York General Business Law §349-d;
- b. Whether Defendants' conduct violates New York General Business Law §349;
- c. Whether Defendants' conduct violates various other state consumer protection statutes;
- d. Whether Defendants' representations are fraudulent;
- e. Whether Defendants engaged in fraudulent concealment;
- f. Whether Defendants were unjustly enriched as a result of their conduct;
- g. Whether any or all applicable limitations periods are tolled by Defendants' conduct; and
- h. Whether, and to what extent, equitable relief should be imposed on Defendants to prevent them from continuing their unlawful practices.

126. Accordingly, this action satisfies the requirements set forth under FED. R. CIV. P. 23(a), 23(b), and 23(c)(4).

**CAUSES OF ACTION**

**COUNT I**

**N.Y. GEN. BUS. LAW § 349-D(3)**

**(ON BEHALF OF THE NEW YORK CLASS)**

127. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

128. Plaintiffs bring this claim under N.Y. GEN. BUS. LAW § 349-d(3) on their own behalf and on behalf of each member of the New York Class who became a Just Energy customer on or after January 10, 2011, the operative date of Section 349-d.

129. N.Y. GEN. BUS. LAW §349-d(3) provides that “[n]o person who sells or offers for sale any energy services for, or on behalf of, an ESCO shall engage in any deceptive acts or practices in the marketing of energy services.”

130. Defendants offer for sale energy services for and on behalf of an ESCO.

131. Defendants have engaged in, and continue to engage in, deceptive acts and practices in violation of N.Y. GEN. BUS. LAW § 349-d(3), including:

- a. Using introductory teaser rates to misrepresent the cost of Defendants’ energy;
- b. Failing to adequately disclose that quoted rates are introductory teaser rates;
- c. Failing to adequately disclose when Defendants’ introductory teaser rates expire;
- d. Actively misrepresenting the rates Defendants will charge when the teaser rates expire;
- e. Failing to adequately disclose that Defendants’ energy rates are consistently higher than the rates a customer’s existing incumbent utility charges; and

- f. Failing to provide customers advance notice of the variable rate Defendants will charge.

132. The aforementioned acts are willful, unfair, unconscionable, deceptive, and contrary to the public policy of New York, which aims to protect consumers.

133. N.Y. GEN. BUS. LAW § 349-d(10) provides that “any person who has been injured by reason of any violation of this section may bring an action in his or her own name to enjoin such unlawful act or practice, an action to recover his or her actual damages or five hundred dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to ten thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney’s fees to a prevailing plaintiff.”

134. As a direct and proximate result of Defendants’ unlawful deceptive acts and practices, Plaintiffs and the Class have suffered injury and monetary damages in an amount to be determined at the trial of this action but not less than \$500 for each violation, such damages to be trebled, plus attorneys’ fees.

135. Plaintiffs and the other Class Members further seek an order enjoining Defendants from undertaking any further unlawful conduct. Pursuant to N.Y. GEN. BUS. LAW § 349-d(10), this Court has the power to award such relief.

**COUNT II**

**N.Y. GEN. BUS. LAW § 349**

**(ON BEHALF OF THE NEW YORK CLASS)**

136. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

137. Plaintiffs bring this claim under N.Y. GEN. BUS. LAW § 349 on their own behalf and on behalf of each member of the New York Class.

138. Defendants have engaged in, and continue to engage in, deceptive acts and practices in violation of N.Y. GEN. BUS. LAW § 349, including:

- a. Using introductory teaser rates to misrepresent the cost of Defendants' energy;
- b. Failing to adequately disclose that quoted rates are introductory teaser rates;
- c. Failing to adequately disclose when Defendants' introductory teaser rates expire;
- d. Actively misrepresenting the rates Defendants will charge when the teaser rates expire;
- e. Failing to adequately disclose that Defendants' energy rates are consistently higher than the rates a customer's existing incumbent utility charges; and
- f. Failing to provide customers advance notice of the variable rate Defendants will charge.

139. The aforementioned acts are willful, unfair, unconscionable, deceptive, and contrary to the public policy of New York, which aims to protect consumers.

140. As a direct and proximate result of Defendants' unlawful deceptive acts and practices, Plaintiffs and the Class have suffered injury and monetary damages in an amount to be

determined at the trial of this action but not less than \$50 for each violation, such damages to be trebled, plus attorneys' fees.

141. Plaintiffs and the Class Members further seek equitable relief against Defendants. Pursuant to N.Y. GEN. BUS. LAW § 349, this Court has the power to award such relief, including but not limited to, an order declaring Defendants' practices as alleged herein to be unlawful, an order enjoining Defendants from undertaking any further unlawful conduct, and an order directing Defendants to refund to Plaintiffs and the Class all amounts wrongfully assessed, collected, or withheld.

### **COUNT III**

#### **N.Y. GEN. BUS. LAW § 349-D(7)**

#### **(ON BEHALF OF THE NEW YORK CLASS)**

142. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

143. Plaintiffs bring this claim under N.Y. GEN. BUS. LAW § 349-d(7) on their own behalf and on behalf of each member of the New York Class who became a Just Energy customer on or after January 10, 2011.

144. Section 349-d(7) provides that "[i]n every contract for energy services and in all marketing materials provided to prospective purchasers of such contracts, all variable charges shall be clearly and conspicuously identified." N.Y. GEN. BUS. LAW § 349-d(7).

145. The marketing materials Defendants provided to Plaintiffs fail to disclose the actual factors that contribute to Just Energy's variable rates, much less do they make the required disclosure in a clear and conspicuous manner.

146. The marketing materials Defendants provided to Plaintiffs fail to clearly and conspicuously disclose that Plaintiffs will be charged variable rates.



147. The consumer contract Defendants provided to Plaintiffs—while they still had an opportunity to cancel without penalty—likewise does not clearly and conspicuously inform consumers about the actual factors affecting Just Energy’s variable rates.

148. The consumer contract Defendants provided to Plaintiffs does not clearly and conspicuously disclose that Plaintiffs will be charged variable rates.

149. Through their conduct described above, Defendants have violated N.Y. GEN. BUS. LAW § 349-d(7) and have caused financial injury to Plaintiffs and Just Energy’s other variable rate customers in New York.

150. As a direct and proximate result of Defendants’ conduct, Plaintiffs and the New York Class have suffered injury and monetary damages in an amount to be determined at the trial of this action but not less than \$500 for each violation, such damages to be trebled, plus attorneys’ fees.

151. Plaintiffs and the other Class Members further seek an order enjoining Defendants from undertaking any further unlawful conduct. Pursuant to N.Y. GEN. BUS. LAW § 349-d(10), this Court has the power to award such relief.

**COUNT IV**

**UNFAIR AND DECEPTIVE ACTS AND PRACTICES**

**(ON BEHALF OF EACH STATE CLASS OTHER THAN NEW YORK, WHICH UPON INFORMATION AND BELIEF ARE CALIFORNIA, DELAWARE, FLORIDA, GEORGIA, ILLINOIS, INDIANA, MARYLAND, MASSACHUSETTS, MICHIGAN, NEW JERSEY, OHIO, PENNSYLVANIA, AND TEXAS)**

152. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

153. As described above, Plaintiffs and the Class have suffered ascertainable losses of money and have otherwise been harmed as a result of Defendants' unfair and deceptive practices, including:

- a. Using introductory teaser rates to misrepresent the cost of Defendants' energy;
- b. Failing to adequately disclose that quoted rates are introductory teaser rates;
- c. Failing to adequately disclose when Defendants' introductory teaser rates expire;
- d. Actively misrepresenting the rates Defendants will charge when the teaser rates expire;
- e. Failing to adequately disclose that Defendants' energy rates are consistently higher than the rates a customer's existing incumbent utility charges; and
- f. Failing to provide customers advance notice of the variable rate Defendants will charge.

154. The aforementioned acts are willful, unfair, unconscionable, deceptive, and contrary to the public policies of California, Delaware, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, New Jersey, Ohio, Pennsylvania, Texas, and any other state where Just Energy sells variable rate energy, all of which aim to protect consumers.

155. Plaintiffs and the members of each State Class are entitled to recover damages, and all other available relief for Defendants' unfair and deceptive practices under the laws of their states of residence.<sup>42</sup> California—CAL. BUS. & PROF. CODE § 17200 *et seq.*, and CAL. CIV. CODE § 1750 *et seq.*, Delaware—DEL. CODE ANN. TIT. 6 SEC. 2511 *et seq.*, Florida—FLA. STAT. § 501.201, *et seq.*, Georgia—GA. CODE. ANN. § 10-1-393(a) *et seq.*, and GA. CODE. ANN. § 10-1-371(5) *et seq.*, Illinois—815 ILL. COMP. STAT. § 505/1, *et seq.*, Indiana—IND. CODE § 24-5-0.5-3 *et seq.*, Maryland—MD. CODE COM. LAW § 13-303 *et seq.*, Massachusetts—MASS. GEN. LAWS CH. 93A, § 1 *et seq.*, Michigan—MICH. COMP. LAWS § 445.903(1) *et seq.*, New Jersey—N.J. STAT. ANN. § 56:8-2 *et seq.*, Ohio—OHIO REV. CODE § 1345.02 *et seq.*, Pennsylvania—73 P.S. § 201-2(4) *et seq.*, Texas—TEX. BUS. & COM. CODE § 17.46(a) *et seq.*

156. On October 2, 2017 Plaintiffs sent a letter a letter complying with CAL. CIV. CODE § 1782(a). Plaintiffs presently do not claim relief under CAL. CIV. CODE § 1750 *et seq.* until and unless Defendants fail to remedy their unlawful conduct towards the California Class within the requisite time period, after which Plaintiffs seek all damages and relief to which the California Class is entitled.

157. On October 2, 2017 Plaintiffs sent a letter complying with GA. CODE ANN § 10-1-399(b). Plaintiffs presently do not claim relief under GA. CODE. ANN. § 10-1-393(a) *et seq.* until and unless Defendants fail to remedy their unlawful conduct towards the Georgia Class within the requisite time period, after which the Plaintiffs seek all damages and relief to which the Georgia Class is entitled.

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<sup>42</sup> There is no material conflict between New York's consumer fraud law and the state statutes listed here.

158. On October 2, 2017, Plaintiffs sent a letter complying with IND. CODE § 24-5-0.5-5(a). Plaintiffs presently do not claim relief under the IND. CODE § 24-5-0.5-3 *et seq.* for “curable” acts until and unless Defendants fail to remedy their unlawful conduct towards the Indiana Class within the requisite time period, after which the Plaintiffs seek all damages and relief to which the Indiana Class is entitled. Plaintiffs presently seek full relief for Defendants’ “incurable” acts on behalf of the Indiana Class.

159. On October 2, 2017, Plaintiffs sent a letter complying with MASS. GEN. LAWS CH. 93A, § 9(3). Plaintiffs presently do not claim relief under MASS. GEN. LAWS CH. 93A, § 1 *et seq.* until and unless Defendants fail to remedy their unlawful conduct towards the Massachusetts Class within the requisite time period, after which the Plaintiffs seek all damages and relief to which the Georgia Class is entitled.

160. Plaintiffs will comply with N.J. Stat. Ann. § 56:8-20. Within ten (10) days of its filing, Plaintiffs will mail a copy of this Class Action Complaint to New Jersey’s Attorney General.

161. On October 2, 2017, Plaintiffs sent Defendants a letter complying with TEX. BUS. & COM. CODE § 17.505(a). Plaintiffs presently do not claim relief under TEX. BUS. & COM. CODE § 17.46(a) *et seq.* until and unless Defendants fail to remedy their unlawful conduct towards the Texas Class within the requisite time period, after which the Plaintiffs seek all damages and relief to which the Georgia Class is entitled.

162. Plaintiffs will comply with TEX. BUS. & COM. CODE § 17.501. Within thirty days of filing Plaintiffs’ Class Action Complaint, Plaintiffs will provide the consumer protection division of the Attorney General’s office a copy of the Complaint.

**COUNT V**

**COMMON LAW FRAUD**

**(ON BEHALF OF A MULTISTATE CLASS UNDER THE LAWS OF EACH STATE WHERE DEFENDANTS DO BUSINESS, OR, ALTERNATIVELY, ON BEHALF OF EACH OF THE INDIVIDUAL STATE CLASSES AGAINST ALL DEFENDANTS)**

163. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

164. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Multistate Class under the laws of the states where Defendants sold variable rate energy, and on behalf of each member of the individual State Classes under the laws of those States.

165. As discussed above, Defendants (i) used introductory teaser rates to misrepresent the cost of Defendants' energy, and (ii) actively misrepresented the rates Defendants would charge when the teaser rates expire.

166. In deciding to become and remain Just Energy customers, Plaintiffs and the Class reasonably relied on these misrepresentations to form the mistaken belief that Just Energy's teaser rates were representative of Just Energy's ordinary rates and that thus they would save money on their energy compared to what their local utility would have charged.

167. To solidify and further their fraud, Defendants committed numerous fraudulent omissions including (i) failing to adequately disclose that quoted rates are introductory teaser rates, (ii) failing to adequately disclose when Defendants' introductory teaser rates expire, (iii) failing to adequately disclose that Defendants' energy rates are consistently higher than the rates a customer's existing incumbent utility charges, and (iv) failing to provide customers advance notice of the variable rate Defendants will charge.

168. Defendants' fraudulent conduct was knowing and intentional. The misrepresentations and omissions made by Defendants were intended to induce and actually induced Plaintiffs and Class Members to become and remain Just Energy customers.

169. Defendants' fraud caused damage to Plaintiffs and the Class, who are entitled to damages and other legal and equitable relief as a result.

170. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' rights and well-being to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

## COUNT VI

### FRAUD BY CONCEALMENT

**(ON BEHALF OF A MULTISTATE CLASS UNDER THE LAWS OF EACH STATE WHERE DEFENDANTS DO BUSINESS, OR, ALTERNATIVELY, ON BEHALF OF EACH OF THE INDIVIDUAL STATE CLASSES AGAINST ALL DEFENDANTS)**

171. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

172. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Multistate Class under the laws of the states where Defendants sold variable rate energy, and on behalf of each member of the individual State Classes under the laws of those States.

173. Defendants concealed material facts concerning their variable energy rates including (i) failing to adequately disclose that quoted rates are introductory teaser rates, (ii) failing to adequately disclose when Defendants' introductory teaser rates expire, (iii) failing to adequately disclose that Defendants' energy rates are consistently higher than the rates a customer's existing incumbent utility charges, and (iv) failing to provide customers advance notice of the variable rate Defendants will charge.

174. Defendants sold Plaintiffs energy without disclosing these material facts and took active steps to conceal them including by (i) using introductory teaser rates to misrepresent the cost of Defendants' energy, and (ii) actively misrepresenting the rates Defendants would charge when the teaser rates expire.

175. Defendants' material omissions and misrepresentations were intentional and were committed to protect Defendants' profits, avoid damage to Defendants' image, and to save Defendants money, and Defendants did so at Plaintiffs' expense.

176. The information Defendants concealed was material because price is the most important consideration for consumers' energy purchasing decisions.

177. Defendants had a duty to disclose the material information they concealed because this information was known and accessible only to Defendants; Defendants had superior knowledge and access to the facts, and Defendants knew the facts were not known to, or reasonably discoverable by Plaintiffs. Defendants also had a duty to disclose because Just Energy made affirmative misrepresentations about its energy rates, which were misleading, deceptive, and incomplete without disclosure of the material information.

178. Just Energy still has not made full and adequate disclosures and continues to defraud Class Members and conceal material information regarding Just Energy's rates.

179. Plaintiffs were unaware of these omitted material facts and would not have become Just Energy customers if they had known these concealed and/or suppressed facts; and/or would not have continued to be Just Energy customers for as long as they were. Plaintiffs' actions were justified.

180. In deciding to become and remain Just Energy customers, Plaintiffs and the Class reasonably relied on Just Energy's misrepresentations and omissions to form the mistaken belief

that Just Energy's teaser rates were representative of Just Energy's ordinary rates and that thus they would save money on their energy compared to what their local utility would have charged.

181. Defendants' fraud by concealment caused damage to Plaintiffs and the Class, who are entitled to damages and other legal and equitable relief as a result.

182. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' rights and well-being to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

## **COUNT VII**

### **UNJUST ENRICHMENT**

**(ON BEHALF OF A MULTISTATE CLASS UNDER NEW YORK LAW, OR, ALTERNATIVELY THE LAWS OF EACH STATE WHERE DEFENDANTS DO BUSINESS, OR, ALTERNATIVELY, ON BEHALF OF EACH OF THE INDIVIDUAL STATE CLASSES AGAINST ALL DEFENDANTS)**

183. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

184. Plaintiffs bring this claim on their own behalf and on behalf of each member of the individual State Classes.

185. This claim is brought under the laws of all states where Just Energy does business that permit an independent cause of action for unjust enrichment, as there is no material difference in the law of unjust enrichment as applied to the claims and questions in this case.

186. As a result of their unjust conduct, Defendants have been unjustly enriched.

187. By reason of Defendants' wrongful conduct, Defendants have benefited from receipt of improper funds, and under principles of equity and good conscience, Defendants should not be permitted to keep this money.



188. As a result of Defendants' conduct it would be unjust and/or inequitable for Defendants to retain the benefits of their conduct without restitution to Plaintiffs and the Class. Accordingly, Defendants must account to Plaintiffs and the Class for their unjust enrichment.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

- (a) Issue an order certifying the Classes defined above, appointing the Plaintiffs as Class Representatives, and designating the undersigned firms as Class Counsel;
- (b) Find that Defendants have committed the violations of law alleged herein;
- (c) Render an award of compensatory damages of at least \$100,000,000, the precise amount of which is to be determined at trial;
- (d) Issue an injunction or other appropriate equitable relief requiring Defendants to refrain from engaging in the deceptive practices alleged herein;
- (e) Declare that Defendants have committed the violations of law alleged herein;
- (f) Render an award of punitive damages;
- (g) Enter judgment including interest, costs, reasonable attorneys' fees, costs, and expenses; and
- (h) Grant all such other relief as the Court deems appropriate.

Dated: October 3, 2017  
Armonk, New York

**WITTELS LAW, P.C.**

\s\ Steven L. Wittels

By: Steven L. Wittels, Esq.  
J. Burkett McInturff, Esq.  
Tiasha Palikovic, Esq.  
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***Co-Counsel for Plaintiffs and the Class***

# Exhibit A

**CIVIL ACTION COVER SHEET** TRIAL COURT OF MASSACHUSETTS SUPERIOR COURT DEPARTMENT DOCKET NO. 14-40920  
 COUNTY OF SUFFOLK

**PLAINTIFF(S)** **DEFENDANT(S)**  
**Commonwealth of Massachusetts** **Just Energy Group, Inc., et al**

Plaintiff Atty Robert C. Ross, Esq., Assistant Attorney General Type Defendant's Attorney Name  
 Address Office of the Attorney General, One Ashburton Place Defendant Atty Dean Richlin  
 City Boston State MA Zip Code 02108 Address Foley Hoag LLP, Seaport West, 155 Seaport Boulevard  
 City Boston State MA Zip Code 02210-0600  
 Tel. +1 (617) 963-2021 BBO# 642.095

**TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)**  
 CODE NO. TYPE OF ACTION (specify) TRACK IS THIS A JURY CASE?  
D99 Other Equitable Remedies (specify) - Fast Track  Yes  No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

**TORT CLAIMS**  
 (Attach additional sheets as necessary)

A. Documented medical expenses to date:  
 1. Total hospital expenses \$ \_\_\_\_\_  
 2. Total doctor expenses \$ \_\_\_\_\_  
 3. Total chiropractic expenses \$ \_\_\_\_\_  
 4. Total physical therapy expenses \$ \_\_\_\_\_  
 5. Total other expenses (describe) \$ \_\_\_\_\_  
 Subtotal \$ \_\_\_\_\_

B. Documented lost wages and compensation to date \$ \_\_\_\_\_  
 C. Documented property damages to date \$ \_\_\_\_\_  
 D. Reasonably anticipated future medical expenses \$ \_\_\_\_\_  
 E. Reasonably anticipated lost wages and compensation to date \$ \_\_\_\_\_  
 F. Other documented items of damages (describe) \$ \_\_\_\_\_

G. Brief description of plaintiff's injury, including nature and extent of injury (describe) \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

**CONTRACT CLAIMS**  
 (Attach additional sheets as necessary)  
 Provide a detailed description of claim(s):  
 \_\_\_\_\_  
 TOTAL \$.....

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT  
 \_\_\_\_\_

I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods.  
 Signature of Attorney of Record Robert C. Ross Date: 12/31/14  
 A.O.S.C. 3-2007



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

14-4099D

MARTHA COAKLEY  
ATTORNEY GENERAL

(617) 727-2200  
www.mass.gov/ago

December 31, 2014



Clerk-Magistrate  
Suffolk Superior Court -- Civil Department  
New Courthouse  
3 Pemberton Square  
Boston, MA 02108

Re: Assurance of Discontinuance  
In the Matter of Just Energy Group, Inc.

Dear Sir/Madam:

Enclosed for filing please find an Assurance of Discontinuance, filed pursuant to G.L. c. 93A, section 5.

Sincerely,

Robert C. Ross  
Chief  
Business and Labor Bureau

Enclosure

cc: Dean Richlin, Foley Hoag LLP



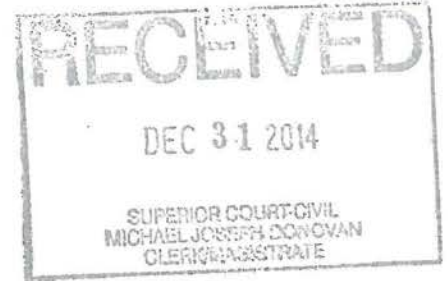
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO.

In the Matter of:

JUST ENERGY GROUP, INC.  
JUST ENERGY (U.S.) CORP.;  
JUST ENERGY MASSACHUSETTS CORP.;  
JUST ENERGY MARKETING CORP.;  
MOMENTIS (U.S.) CORP.; and  
JUST ENERGY CORP.



**ASSURANCE OF DISCONTINUANCE**

The Commonwealth of Massachusetts (the “Commonwealth”), by and through its Attorney General Martha Coakley, hereby enters into this Assurance of Discontinuance (“Assurance”) and its provisions with Just Energy Group, Inc., Just Energy Massachusetts Corp., Just Energy Marketing Corp., Just Energy (U.S.) Corp., Just Energy Corp., and Momentis (U.S.) Corp. (collectively, “Just Energy”), without trial or adjudication of any issue of fact or law. The parties enter into this agreement to resolve the Commonwealth’s alleged claims against Just Energy without the risks and expenses associated with litigation.

**I. DEFINITIONS**

1. “Authorized Representative” shall mean a person who (a) represents to a Just Energy agent that he or she is the spouse of the account holder or (b) any other person who produces to the Just Energy agent a duly executed power of attorney from the account holder.

2. "Basic Service" shall mean that term as it is defined in G.L. c. 164, § 1.
3. "Billing Data Document" shall mean a document, in either an Excel spreadsheet, SQL database, or other industry-standard format as requested by the Monitor or Trustee, containing accurate and complete billing data for each Customer (even if Electricity Supply services were never initiated), including the Customer's name, address, account numbers (both Just Energy's internal account number and the account number used by the Distribution Company), product type, third-party vendor responsible for the Customer's enrollment (if any), and, by month, electricity consumption, any and all Electricity Supply charges, the percentage of Customer's electricity usage matched by Renewable Energy Certificates, any credits or reimbursements provided to the Customer, any and all fees, including early termination fees and late fees, and any taxes billed to, and payments received from, each Customer.
4. "Consumer" shall mean any person, business, educational institution, governmental agency, or any other entity that purchases Electricity Supply services in the Commonwealth.
5. "Consumer Communication" shall mean any contact between Just Energy and a Consumer that is logged in the Just Energy CARE complaint database, pursuant to Subparagraph 40(b)-(c).
6. "Consumer Communication List" shall mean a list of the i) names, ii) addresses, iii) account numbers, and iv) telephone numbers (to the extent items i through iv are available) of the Customer, Consumer, or third-party involved in a Consumer Communication received by Just Energy, as well as a summary where applicable of

- v) the Consumer Communication, vi) any acts undertaken by Just Energy to resolve the matter, and vii) the current status of the account that the Consumer Communication concerns.
7. “Customer” shall mean any person, business, educational institution, governmental agency, or any other entity for which Just Energy (a) initiated Electricity Supply services at a meter or meters located within the Commonwealth; and/or (b) issued bills or charges for Electricity Supply services to be provided within the Commonwealth and/or early termination fees, even if Electricity Supply services were never initiated for such Customers.
  8. “Department” shall mean the Department of Public Utilities.
  9. “Distribution Company” shall mean that term as it is defined in G.L. c. 164, § 1.
  10. “Electricity Supply” shall mean the sale or provision to a Retail Customer (as that term is defined by G.L. c. 164, § 1) of electricity previously purchased at wholesale prices.
  11. “Index Variable” shall describe the products identified by “MA.E.ENG.SVC1.INDEX1,” “MA.E.ENG.SVC2.INDEX2,” and “MA.E.ENG.SVC2.INDEX3” in Excel spreadsheets produced by Just Energy and identified by Bates numbers JE164043 and JE164044.
  12. “Introductory Rate” shall mean an electricity rate charged to a Customer during the initial stages of a contract for Electricity Supply services that is expected to be lower than the rate to be charged over the remaining balance of the contract.
  13. “Marketing Materials” shall mean all sales presentation scripts, third-party verification scripts, form Electricity Supply contracts, training materials, disclosures



required by 220 CMR § 11.06, form correspondence, brochures, and other customer-facing hard-copy or electronic material used in connection with the sale or marketing of Electricity Supply services to Consumers in the Commonwealth.

14. “Renewable Energy” shall mean that term as it is defined in G.L. c. 164, § 1.
15. “Small Business” shall mean an entity, not an individual, whose annual electricity consumption is less than 150,000 kWh.
16. “Supplier” shall mean that term as it is defined in G.L. c. 164, § 1.

## **II. PARTIES SUBJECT TO ASSURANCE**

17. This Assurance shall apply to the Commonwealth, and to Just Energy, acting directly or indirectly, individually or through its employees, agents, successors, and assigns, or through any corporate or other device, regarding the sale or provision of Electricity Supply services in the Commonwealth of Massachusetts, and shall constitute a continuing obligation. Just Energy shall not, for a period of three-years after the effective date of this Assurance, through any affiliate not subject to this Assurance, make unsolicited telephone calls for the purpose of offering residential energy supply services, or unsolicited door-to-door visits to individual residences for the purpose of offering residential energy supply services.

## **III. ALLEGATIONS**

18. The Commonwealth alleges that Just Energy has engaged in policies and practices in violation of G.L. c. 93A and G.L. c. 164, § 1F and the regulations promulgated thereunder, in the course of marketing retail Electricity Supply to residents and Small Businesses in the Commonwealth, beginning in or around May 2010, including through the actions of the third-party telemarketing vendor Infinity Marketing Group,

Inc. d/b/a Infinity Energy Solutions (“IES”). The Commonwealth alleges that as part of its marketing and sales campaign, Just Energy has engaged in door-to-door, telemarketing, and multi-channel marketing solicitations for the sale of long-term Electricity Supply contracts. The Commonwealth alleges that, due to the unfair and deceptive acts and practices of Just Energy, its agents, and IES, certain Consumers in the Commonwealth suffered ascertainable losses.

19. The Commonwealth alleges that Just Energy and its agents have made misleading and false representations concerning Just Energy products to certain Massachusetts Consumers in violation of G.L. c. 93A and G.L. c. 164, § 1F, and the regulations promulgated thereunder, in the form of statements or other communications that:
  - a. Purchasing Just Energy’s product through a contract with Just Energy will save customers money;
  - b. Just Energy offers certain products that would provide “green” or “renewable” energy at prices comparable to basic service;
  - c. Just Energy is affiliated with or represents Distribution Companies, or state agencies such as the Department;
  - d. Just Energy’s electricity products are offered as part of a state-run program; and
  - e. Just Energy makes special efforts to purchase Massachusetts-based renewable energy.
  
20. The Commonwealth also alleges that Just Energy and its agents engaged in other unlawful acts in violation of G. L. c. 93A, G. L. c. 164, § 1F, and regulations promulgated thereunder, in the form of:
  - a. Failing to disclose complete and accurate pricing information to its Customers,

per the provisions of 220 CMR § 11.06 and 940 CMR § 19.05;

- b. Failing to disclose material information, including but not limited to, failure to disclose to Consumers that Just Energy's variable rates following any introductory rate period may be higher than the fixed basic service rates charged by their Distribution Company;
  - c. Switching Consumers from their Distribution Company or from another competitive supplier to Just Energy without those Consumers' authorization;
  - d. Charging early termination fees to Small Businesses in the tens of thousands of dollars;
  - e. Inducing elderly Consumers and Consumers with language barriers to sign contracts when it knew or had reason to know that such persons did not understand the contract terms; and
  - f. Violating the Attorney General's debt collection regulations.
21. Just Energy denies all wrongdoing, including the allegations in Paragraphs 18-20.

#### **IV. PAYMENTS**

22. Pursuant to G.L. c. 93A, § 4, Just Energy agrees to a settlement in the sum of \$4,000,000.
23. Within thirty (30) days of the effective date of this Assurance, an independent trust fund (the "Just Energy Consumer Restitution and Relief Fund" or the "Fund") in the amount of \$3,800,000, shall be established for purposes of making payments of restitution to certain Customers as set forth in this Assurance. The Fund shall be administered pursuant to Attachment 1 to this Assurance.
24. At a date to be agreed upon, and in no event later than thirty (30) business days after

the effective date of this Assurance, Just Energy shall make payments allocated as follows from the balance of the sum remaining:

- a. \$125,000 to the Commonwealth; and
- b. \$75,000 to the AGO, pursuant to G.L. c. 12, § 4A, for the purpose of assisting the AGO in the administration of its duties concerning this Assurance, and, at the AGO's sole discretion, to offset the costs of the AGO's underlying investigation of Just Energy.
- c. Payments under this Section shall be made by Just Energy by certified or cashier's check made payable to the "Commonwealth of Massachusetts" and delivered to Jesse Reyes, Assistant Attorney General, Energy and Telecommunications Division, One Ashburton Place, Boston, Massachusetts 02108.

**V. CONDUCT-BASED RELIEF**

25. Just Energy, and its agents, servants, employees, sales and customer service representatives, successors or assigns, directly or indirectly, alone or in active concert or participation with others, through any corporation, partnership, trust, association, franchise, distributorship or other device, shall cease from engaging or assisting, in any way, now or in the future, in any conduct that is unlawful pursuant to G. L. c. 164, § 1F, G.L. c. 93A and the regulations promulgated pursuant to these statutes, including any conduct that violates 940 CMR § 3.00 et seq., 940 CMR § 6.00 et seq., 940 CMR § 7.00 et seq., 940 CMR § 19.00 et seq., and 220 CMR § 11.00 et seq.
26. Just Energy shall, within forty-five (45) days of the effective date of this Assurance:
  - a. not include in any current, new or revised Marketing Material a representation or

instruction to represent, in any manner, expressly or by implication, that a Consumer will save, or is likely to save, money on electricity bills as a result of switching to Just Energy as an electricity supplier, unless Just Energy contractually obligates itself to provide such savings to such Consumer;

- b. include, in plain language and in a clear and conspicuous manner, in any current, new or revised Marketing Material for a specific product, a complete and accurate disclosure of the length of the contract term and the amount of any early termination fees;
- c. where Just Energy quotes an Introductory Rate in a current, new or revised Marketing Material or in any verbal representation, provide a disclosure that immediately precedes or follows such quote that both informs the Consumer that the quoted rate is an “introductory rate” and discloses the time period during which such “introductory rate” will be effective;
- d. not include in any current, new or revised Marketing Material any representation, statement, image, or graphic purporting to describe or reflect the amount charged by Just Energy for electric power in Massachusetts before May of 2010;
- e. ensure that any current, new or revised Marketing Material complies with G. L. c. 164, § 1F and the Department’s regulations thereunder;
- f. not include in any current, new or revised Marketing Material any representation, in any manner, expressly or by implication that Just Energy’s products provide wind power to its Customers or otherwise support wind power, or any statement regarding Massachusetts wind power or wind power goals, unless and until Just Energy purchases wind power that will be injected into the ISO-NE grid in

amounts in excess of any requirement to do so under state and federal law (such requirements including, but not limited to, the RPS for Class I renewable energy generating sources, as defined in G.L. c. 25A, §11F(a)). Notwithstanding the foregoing, Just Energy may continue to market its electricity products in Massachusetts with its current logo and use generic images of windmills (which do not indicate their presence in any particular geographic region), in any Marketing Material, as representative of renewable energy generally;

- g. ensure that any representation included in its current, new or revised Marketing Materials, in any manner, expressly or by implication, that Just Energy makes special efforts to purchase Massachusetts-based renewable energy, is only made in connection with products for which Just Energy purchases Renewable Energy Certificates in amounts in excess of any requirement to do so under state and federal law (such requirements including, but are not limited to, the Renewable Portfolio Standard as that term is defined in G.L. c. 25A, §11F); and
  - h. not request, or include in any current, new, or revised Marketing Material a request for or instruction to request, a Consumer's electricity account information, including but not limited to any requests for a copy of the Consumer's electricity bill, until such time as the Consumer expressly indicates that he or she is prepared to enter into a contract to purchase their energy supply from Just Energy.
27. Just Energy shall not use the services of any entity, including its own subsidiaries and affiliates, to facilitate or otherwise arrange for the purchase and sale of electricity products, unless said entity has submitted an application for a license to the Department pursuant to 220 CMR § 11.05(2) or received written confirmation from

the Department that no license is required; nor shall Just Energy use the services of any entity, including its own subsidiaries and affiliates, to facilitate or otherwise arrange for the purchase and sale of electricity products in any manner that violates the terms of 220 CMR § 11.05(5) as interpreted by the Department, whether such terms continue to appear at 220 CMR § 11.05(5) or are re-codified at another section of the CMR.

28. For a period of three (3) years following the effective date of this Assurance, Just Energy shall not obligate any Consumer to a new contract for a variable rate (“New Variable Contract”), unless Just Energy complies with the following:
  - a. Within thirty (30) days of a Customer signing a New Variable Contract that includes an Introductory Rate, Just Energy will provide written notice to that Customer of the date on which the Introductory Rate being provided to the Customer will expire;
  - b. Just Energy shall not include in any Marketing Material relating to a New Variable Contract, including in the New Variable Contract itself, any representation that variable rates are set based on “business” or “market” conditions or similar statements, unless Just Energy also provides an explanation that immediately precedes or follows such representation that specifies with particularity what such “business” and “market” conditions may consist of;
  - c. Just Energy shall not include in any Marketing Material relating to a New Variable Contract, including in the New Variable Contract itself, any statement that Just Energy’s variable rate Customers can “lock-in” rates. Just Energy, may, however, make statements to the effect that its Customers may “switch to a fixed

rate product”;

- d. Any New Variable Contract offered to a Consumer shall either:
    - i. include the calculation that will be used to set monthly rates under the contract, where each element of that calculation shall be based on a fixed constant, a cost to Just Energy, or a value ascertainable from publicly available information such that the Customer can calculate the price and any applicable charges in terms of dollars and cents or cents per unit of electricity served; or
    - ii. inform the Customer that he may view upcoming variable rates on the Just Energy website, at least sixty (60) days in advance of when those rates take effect, or call the Just Energy customer service telephone number to obtain the same information.
  - e. Any New Variable Contract offered to a residential Consumer shall indicate that there are no termination fees applicable to that product, except during the time that a Customer is on an Introductory Rate, if any; and
  - f. Any New Variable Contract offered shall contain a statement that the Distribution Company’s rates are available on the Distribution Company’s websites, and through the Distribution Company’s customer service telephone numbers.
29. For all of Just Energy’s Index Variable Rate Customers who executed contracts with Just Energy before the effective date of this Assurance, the monthly rate shall be calculated consistent with prior practice, except that the adder per kWh shall be reduced from 5 cents to 4 cents for the three years following the effective date of this Assurance.



30. For three years following the effective date of this agreement, Just Energy shall comply with the following:
  - a. The variable rates charged by Just Energy to its variable rate Customers who executed contracts with Just Energy before the effective date of this Assurance (“Existing Variable Rate Customers”) shall not exceed 14.25 cents/kWh.
  - b. Beginning forty (40) days after the effective date of this Assurance, Just Energy shall make available to Existing Variable Rate Customers, on its website, in plain language and in a clear and conspicuous manner, its current variable rate for Existing Variable Rate Customers (in cents per kWh), and subsequent variable rates, at least forty-five (45) days in advance of when such rates will take effect.
  - c. Within ninety (90) days after the effective date of this Assurance, Just Energy shall send out a one-time notice by postal mail or email (where an email address has been affirmatively provided by the Customer) to all Existing Variable Rate Customers, explaining the availability of advance pricing information on its website, that the same information is available through Just Energy’s customer service phone number, and providing notice of their ability to terminate without paying termination fees unless they are on an Introductory Rate at the time of requested termination. This notice may be provided concurrently with the quarterly Customer notice required under 220 CMR 11.06(4)(c), as long as the notice is clear and conspicuous.
  
31. For all of Just Energy’s variable rate Customers who executed contracts with Just Energy before the effective date of this Assurance, and who also elected to incorporate renewable energy into their product, Just Energy shall be permitted to

charge an additional premium over and above the rates charged to Customers under Paragraph 30. Those rates shall be increased by 1¢/kWh for those Customers whose products include 100% green energy. The rates shall be increased by an appropriately prorated amount for Customers whose products include between 1% and 100% green energy.

32. Just Energy shall comply with the Attorney General's debt collection regulations, 940 CMR § 7.00 et seq.
33. Just Energy shall make no representation, in any manner, expressly or by implication, in any "Past Due," "De-Enrollment," or other notices and communications related to debt collection, that a Customer's failure to pay will result in the loss of all electricity services to the Customer. Just Energy's notices and communications related to debt collection shall provide, clearly and conspicuously and in plain language, notice that any loss of services as a result of non-payment shall mean only the loss of Just Energy's competitive supply services, and an explanation that the loss of these services will result in the Customer receiving his or her Electricity Supply from the Distribution Company at the fixed Basic Service rate.
34. Immediately upon the effective date of this Assurance, Just Energy shall cease any and all collection activities to collect early termination fees from Customers on residential contracts where such fees are assessed but uncollected as of the date of this Assurance. Just Energy shall waive and shall not legally pursue any and all claims it may have regarding assessed but uncollected early termination fees.
35. Immediately upon the effective date of this Assurance, Just Energy shall cease to assess or collect early termination fees from any variable rate Customer on a

residential contract, unless said Customer was on an Introductory Rate at the time of early termination.

36. Immediately upon the effective date of this Assurance and for a period of three (3) years thereafter, Just Energy shall modify its calculation of early termination fees for Small Business Customers on commercial contracts, so that a Customer will be liable to Just Energy only for the lesser of:
- a. The termination fee described in the contract;
  - b. four (4) months, multiplied by the average monthly usage for the Customer over the previous twelve (12) months, multiplied by the energy rate for the remainder of the contract term; or
  - c. half of the remaining contract term, multiplied by the average monthly usage for the Customer over the previous twelve (12) months, multiplied by the energy rate for the remainder of the contract term.

To the extent that an early termination fee is in excess of the amount that would result from the above calculation, any and all early termination fee payments received from Small Business Customers by Just Energy after the effective date of this Assurance in excess of the amount owed as calculated using the above methodology, shall be returned to the payor no later than fifteen (15) business days after Just Energy receives such payments. As soon as is practicable, and under no circumstances later than five (5) business days after the effective date of this Assurance, Just Energy shall waive its rights under the provision in its Electricity Supply agreements with Small Business Customers to charge early termination fees based on the cost of estimated future consumption during the time that remains on the contract, except that Just

Energy retains the right to collect an amount up to a maximum fee as calculated per methodology described in this Paragraph. Just Energy shall inform its Small Business Customers of the waiver described in the preceding sentence, in the form as attached to this Assurance, no later than thirty (30) days after the effective date of this Assurance. Any and all provisions concerning early termination fees in Just Energy's commercial contracts for Electricity Supply services to Small Businesses entered into after the effective date of this Assurance shall be based on the fee methodology established in this Paragraph and shall be disclosed clearly and conspicuously as required by this Assurance;

37. Within sixty (60) days of the effective date of this Assurance, Just Energy shall provide the AGO with a Consumer Communication List consisting of Consumer Communications received by Just Energy between May 2010 and the effective date of this Assurance. The AGO, in its sole discretion, will determine all such communications alleging that Just Energy engaged in unauthorized initiation of generation service as defined in 220 CMR § 11.07(3) ("Unauthorized Switching Allegation List"). The AGO will provide Just Energy with a copy of the Unauthorized Switching Allegation List for Just Energy's review. Within thirty (30) days of receipt, Just Energy shall provide the AGO with a list of the Customers from the Unauthorized Switching Allegation List it has determined were switched by Just Energy without authorization. These Customers will be deemed eligible for full reimbursement of any and all costs incurred as a result of the unauthorized switch by Just Energy, including any costs related to switching back to the original provider. Just Energy shall also provide the AGO with a detailed proposal of how much it has

already and/or will reimburse each affected Customer. The AGO will review the proposal and, in its sole discretion, make changes as necessary. Upon review and approval by the AGO, Just Energy shall immediately commence reimbursement. Reimbursement paid by Just Energy to any Customer switched without authorization shall be in addition to any amount listed in Section IV of this Assurance.

38. For a period of three (3) years following the effective date of this Assurance, for each complaint of unauthorized switching that Just Energy receives within 30 days of a Customer receiving notice of the switch in the Just Energy welcome letter or in the first bill that reflects Just Energy as electricity supplier, Just Energy shall continue its current practice of immediately informing the Customer making the allegation that he or she may switch back to their original provider within thirty (30) days of such allegation. Just Energy will also inform the Customer that Just Energy will reimburse him or her for any costs incurred as a result of the unauthorized switch by Just Energy, including any costs related to switching back to the original provider, if the complaint is verified. Such complaint shall be verified unless (a) a Just Energy agent speaks with the account holder or his/her Authorized Representative and determines, after listening to the third-party verification call recorded for that transaction, that the voice on the third-party verification call matches the voice of such account holder or such Authorized Representative and (b), if the sale was a door-to-door sale, Just Energy has on file an Electricity Supply agreement that has a signature that matches the name of the account holder or an authorized representative. With respect to any charges incurred for energy provided to the Customer by Just Energy prior to the date of the Customer's allegation, such charges shall be capped at the fixed Basic Service

rate provided by the Customer's Distribution Company. If the Customer has already provided payment to Just Energy, Just Energy shall, if the complaint is verified, provide a reimbursement for the difference between what the Customer would have paid for fixed basic service and the actual charges paid to Just Energy.

39. No later than sixty (60) days after the effective date of this Assurance, and for a period of three (3) years following the effective date of this Assurance, Just Energy shall modify its practices regarding sales and marketing of Electricity Supply services in the Commonwealth to Consumers who participate in a low-income assistance program and/or receive a low-income discount rate from their Distribution Company. Just Energy shall not enroll these low-income Consumers unless Just Energy provides them with rate products that guarantee the Consumer will save money compared to what they would have been charged by their Distribution Company for fixed Basic Service. In one year from the effective date of this Assurance, and each year thereafter throughout the term of this Paragraph, Just Energy shall provide any required refund to those low-income customers enrolled after the effective date of this Assurance.
40. For a period of three (3) years following the effective date of this Assurance, and no later than sixty (60) days after the effective date this Assurance, Just Energy shall modify its policies concerning its "compliance matrix" for sales and marketing of Electricity Supply services to Consumers in the Commonwealth as applied in Massachusetts, a copy of which has been produced to the AGO under the provisions of paragraph 6 of G.L. c. 93A, § 6, as follows:
  - a. "Allegations" under the compliance matrix shall constitute any contact with a

Consumer, reported through the following recognized customer service channels: telephone calls to any phone number that Just Energy has made available to Customers; written and electronic correspondence sent to Just Energy; written, electronic, and oral communications made to, and provided to Just Energy by the Distribution Companies, the Office of the Attorney General, the Department, or law enforcement, where the Consumer describes any conduct of a Just Energy agent that, if proven, would constitute a violation of 940 CMR §§ 3.00 et seq., 6.00 et seq., and/or 19.00 et seq., or where the Consumer claims that he or she had any misunderstanding relative to a contract to purchase Energy Supply from Just Energy arising from such Consumer's contact with any Just Energy agent. For an example of the latter, a call from a Consumer who states that he or she "thought the agent was from the utility" would be logged as an Allegation against the agent.

- b. Just Energy will characterize and classify the contacts described in the preceding subparagraph as "Allegations" and shall not fail to do so for any reason.
- c. Upon receiving notice of any "Allegation," Just Energy shall log such Allegation in its CARE database.
- d. An Allegation shall be presumed "verified" for purposes of Just Energy's compliance matrix if it is from a Customer, or from a Consumer who identifies himself and the address or telephone number at which he was contacted by Just Energy. This presumption that such an Allegation is "verified" may be rebutted if (i) there is affirmative evidence to the contrary in addition to the agent's denial, the third-party verification call, and the terms of a Customer contract and that

Customer's execution of the same; (ii) the Allegation concerns a language barrier of the account holder or the account holder's Authorized Representative, an agent of Just Energy speaks with such account holder or the account holder's Authorized Representative, and after conducting such investigation the Just Energy agent determines to a reasonable certainty both that the voice on the third-party verification call belongs to such account holder or account holder's Authorized Representative and that no such language barrier exists; or (iii) the Allegation is of unauthorized initiation of service, a Just Energy agent speaks with the account holder or his/her Authorized Representative and determines, after listening to the third-party verification call recorded for that transaction, that the voice on the third-party verification call matches the voice of such account holder or such Authorized Representative and, if the sale was a door-to-door sale, Just Energy has on file an Electricity Supply agreement that has a signature that matches the name of the account holder or an authorized representative. If a Just Energy agent conducts his or her review and does not determine that the conditions to rebut the presumption of verification are met, such an Allegation shall be deemed to be verified and is not subject to reversal by any other agent or employee of Just Energy. Notwithstanding the language of subpart (i), above, the recording of a third party verification call conducted as part of Just Energy's statutory obligation under G.L. c. 164, § 1F(8) may be considered relevant affirmative evidence against the Allegation (but shall not be deemed sufficient to cure an actual misrepresentation by a Just Energy sales agent) if, (A) the call was conducted using a script, featuring open-ended questions on key terms, that has



been approved by the AGO (pursuant to the approval process stated in Paragraph 40(h)) as being sufficient to test a Consumer's understanding of the terms of the contract, and (B) upon review, the questions and answers relevant to the Allegation are clear and there is no reasonable indication of Consumer confusion or language barrier. If a Just Energy agent, upon consideration of affirmative evidence from a third party verification call that complies with the preceding sentence, determines that the evidence from that third party verification call is sufficient to rebut an Allegation, that determination shall be reviewable de novo by the Monitor. All Allegations shall be deemed either "verified" or "rebutted," and under no circumstances shall an Allegation be deemed or classified as "indeterminable."

- e. If an Allegation is received from a Consumer who fails to identify himself and the address or telephone number at which he was contacted by Just Energy, that Allegation shall be presumed to be not verified. If such Allegation identifies a specific sales agent, and the sales agent denies the conduct alleged, the Allegation shall be deemed an "Anonymous Complaint." For purposes of the compliance matrix, four Anonymous Complaints against an agent for a single type of misconduct within a twelve (12) month period shall have the effect of one verified Allegation.
- f. All consequences dictated per the terms of the compliance matrix shall be enforced. Just Energy shall not make an exception to the compliance matrix for any reason. Notwithstanding the foregoing, Just Energy may choose to enforce penalties in addition to or in excess of those provided by the compliance matrix.

- g. Just Energy shall require any third-party vendor with whom it commences a new contract to conduct activities relating to the sale or marketing of Electricity Supply services on its behalf in the Commonwealth, as well as any such pre-existing third-party vendor whom it has the right to terminate without cause, to also enforce a third-party compliance matrix, a copy of which has been produced to the AGO under the provisions of paragraph 6 of G.L. c. 93A, § 6, with respect to the activities of the third-party's employees and agents on Just Energy accounts. Just Energy shall make reasonable efforts to oversee such third-parties and to insure that such parties are supervising their agents and enforcing the third-party compliance matrix as to those agents. Just Energy shall immediately terminate any such third party upon the failure of the third-party to correct a violation of the third-party compliance matrix by its agents after the third party has been provided with reasonable notice of the violation and a single opportunity to cure.
  - h. Except as described herein, for a period of three (3) years from the effective date of this Assurance, Just Energy shall not make any changes to its policies and procedures for disciplining agents interacting with Consumers located in Massachusetts, including but not limited to the policies and procedures concerning the compliance matrix, without the express written consent of the AGO, which consent shall not be unreasonably withheld. If the AGO does not respond to a request for consent under this Paragraph within thirty (30) days, the consent shall be deemed granted.
41. For a period of three (3) years after the effective date of this Assurance, Just Energy

shall not renew or extend the term of any contract with a Customer except as expressly provided in this Paragraph. For a variable, Index Variable or fixed rate Customer, Just Energy may, upon sixty (60) days' notice to the Customer, continue the contract on a month-to-month basis with no fee for termination. Just Energy may enter into a new contract with any Customer, but only with that Customer's affirmative consent and after satisfying all of the regulatory requirements that would apply to the enrollment of a new Customer under Massachusetts law and this Assurance.

42. Just Energy shall comply with all requests by the AGO for documents or information related to the subject matter of this Assurance.
43. The AGO shall promptly notify Just Energy of any Consumer complaints that it receives about Just Energy, and provide to Just Energy sufficient information regarding the complaint to allow Just Energy to address the Consumer's concern and take appropriate steps pursuant to Paragraph 40.

#### **VI. COMPLIANCE AND MONITORING PROGRAM**

44. Just Energy shall engage an independent Monitor who shall implement a Compliance and Monitoring Program to ensure that Just Energy is conducting business in compliance with G.L. c. 93A, G.L. c. 164, § 1F; and/or any provision of 220 CMR and 940 CMR and the terms of this Assurance. The provisions of Section VI of this Assurance are material conditions to the AGO's obligation under Paragraph 52 not to object to Just Energy's application for a renewal of its license with the Department. The Compliance and Monitoring Program shall be administered pursuant to the terms in Attachment 2 to this Assurance.

**VII. NOTICES**

45. All notices and documents required by this Assurance shall be provided in writing to the parties as follows:

a. If to the Attorney General:

Nathan C. Forster  
Assistant Attorney General  
Energy & Telecommunications Division  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

b. If to Just Energy:

Dean Richlin  
Foley Hoag LLP  
155 Seaport Boulevard  
Boston, MA 02210-2600

Any party may change the person(s) designated to receive notice under this Assurance on its behalf upon written notice to the other party.

46. Within thirty (30) days of the effective date of this Assurance, Just Energy and its successors and assigns, shall deliver a copy of this Assurance to all current principals, officers, directors, and supervisory personnel with responsibility for the Massachusetts market, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. For new principals, officers, directors, and supervisory personnel with responsibility for the Massachusetts market, Just Energy will, for a period of three (3) years following the effective date of this Assurance provide a copy of this Assurance to each such person prior to their assuming such position or responsibilities. Just Energy shall secure and maintain all such acknowledgements of receipt of this order and shall make them available for

inspection upon request by the AGO.

47. Just Energy shall prepare a handout for its sales agents in Massachusetts, explaining the provisions of this Assurance as they relate to the activities of those sales agents on behalf of Just Energy. Just Energy shall provide this handout to the AGO for its review by January 16, 2015. Just Energy shall present the handout to its current agents, with a presentation on the importance of complying with the provisions, within twenty (20) days after the AGO approves its content. For a period of three (3) years following the effective date of this Assurance, Just Energy shall provide the handout, with the presentation, to any new sales agents in Massachusetts during their initial training.

#### **VIII. GOVERNING LAW**

48. The provisions of this Assurance shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

#### **IX. MISCELLANEOUS**

49. Compliance with this Assurance resolves and settles all civil claims against Just Energy as alleged by the Commonwealth herein, or which the Commonwealth could have alleged herein, based on the same facts; however, this release shall not include any claims that may be brought pursuant to G.L. c. 12, § 5A. The Commonwealth reserves all other claims against Just Energy, including, but not limited to, future claims against Just Energy involving alleged violations of the Consumer Protection Act that arise after the effective date of this Assurance. Nothing in this Assurance resolves, settles, or otherwise affects any claim or action that has been or could be brought against Just Energy by any other person or administrative or regulatory

agency or which is not civil in nature.

50. Pursuant to G.L. c. 93A, §5, violation of this Assurance shall constitute prima facie evidence of a violation of G.L. c. 93A, §2(a), in any action or proceeding commenced by the Commonwealth.
51. Nothing in this Assurance shall be construed as relieving Just Energy of its duty to comply with all applicable federal, state, and local laws, regulations, rules, and permits. Pursuant to G.L. c. 164, § 1F, at all times while Just Energy engages in the marketing and sale of retail energy supply in the Commonwealth, Just Energy shall maintain a license to do so with the Department. The AGO shall not object to the application for, or any renewals of, such license(s) while the Just Energy is in full compliance with this Assurance.
52. Immediately following the effective date of this Assurance, the AGO shall notify the Department of this resolution of its investigations against Just Energy, and shall communicate in writing, with a copy to Just Energy, that it does not object to any renewals of licenses held by Just Energy. Further, the AGO shall not object to the application for, or any renewals of, such license(s) while Just Energy is in full compliance with this Assurance.
53. The provisions of this Assurance shall be severable and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the other provisions of this Assurance shall remain in full force and effect.
54. Consent to this Assurance does not constitute affirmative approval by the Commonwealth of any of the Defendants' business acts and practices, and the Just Energy shall make no representations to the contrary.

55. Except for purposes of its enforcement, no part of this Assurance shall be construed or admitted into evidence in any proceeding as an admission of liability by Just Energy, and any such liability is expressly denied by Just Energy.
56. This Assurance contains the complete agreement between the parties, and supersedes any prior communication, understanding, or agreements, whether written or oral, concerning the subject matter of this Assurance.
57. This Assurance may be amended upon written agreement of all parties. For good cause shown, any time period within which a party must perform, or begin to perform, or complete an obligation of this Assurance shall be extended upon request of any party only upon a material change of circumstances that could not have been reasonably anticipated, or upon other good cause shown, and such extension shall not be unreasonably withheld.
58. This Assurance becomes effective upon December 31, 2014, and all periods of time described herein commence as of that date (the "effective date").

COMMONWEALTH OF MASSACHUSETTS

MARTHA COAKLEY  
ATTORNEY GENERAL

By: 

Robert C. Ross, BBO #642095

Jesse S. Reyes, BBO #634169

Nathan C. Forster, BBO #666324

Elizabeth A. Anderson, BBO #688135

Assistant Attorneys General

Energy and Telecommunications Division

Office of the Attorney General

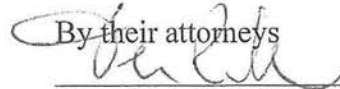
One Ashburton Place

Boston, MA 02108

(617) 727-2200

JUST ENERGY GROUP, INC.  
JUST ENERGY (U.S.) CORP.  
JUST ENERGY MASSACHUSETTS CORP.  
JUST ENERGY MARKETING CORP.  
MOMENTIS U.S. CORP.  
JUST ENERGY CORP.

By their attorneys



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Dean Richlin, BBO #419200

FOLEY HOAG LLP

Seaport West

155 Seaport Boulevard

Boston, MA 02210-2600

(617) 832-1140



\_\_\_\_\_  
Commonwealth of Massachusetts  
By: \_\_\_\_\_,

Dated: \_\_\_\_\_

\_\_\_\_\_  
Just Energy Group, Inc.  
By: \_\_\_\_\_,

Dated: \_\_\_\_\_

\_\_\_\_\_  
Just Energy Massachusetts Corp.  
By: \_\_\_\_\_,

Dated: \_\_\_\_\_

\_\_\_\_\_  
Just Energy Marketing Corp.  
By: \_\_\_\_\_,

Dated: \_\_\_\_\_

\_\_\_\_\_  
Just Energy (U.S.) Corp.  
By: \_\_\_\_\_,

Dated: \_\_\_\_\_

\_\_\_\_\_  
Just Energy Corp.  
By: \_\_\_\_\_,

Dated: \_\_\_\_\_

\_\_\_\_\_  
Momentis U.S. Corp.  
By: \_\_\_\_\_,

Dated: \_\_\_\_\_

Robert C. Ross

Commonwealth of Massachusetts  
By: Robert Ross, Chief, BCB

Dated: 12/31/14

James Lewis

Just Energy Group, Inc.  
By: JAMES LEWIS

Dated: 12/29/14

James Lewis

Just Energy Massachusetts Corp.  
By: JAMES LEWIS

Dated: 12/29/14

James Lewis

Just Energy Marketing Corp.  
By: JAMES LEWIS

Dated: 12/29/14

James Lewis

Just Energy (U.S.) Corp.  
By: JAMES LEWIS

Dated: 12/29/14

James Lewis

Just Energy Corp.  
By: JAMES LEWIS

Dated: 12/29/14

James Lewis

Momentis U.S. Corp.  
By: JAMES LEWIS

Dated: 12/29/14

*momentis  
signature  
12/29/14*



**ATTACHMENT 1: RESTITUTION PROGRAM**

1. Pursuant to this Assurance, Just Energy shall pay \$3,800,000 to the Just Energy Restitution and Relief Fund (“Fund”) for the purposes of Customer restitution. The administration of the Fund shall be overseen by an independent trustee (the “Trustee”) to be mutually agreed upon by the Attorney General’s Office (“AGO”) and Just Energy. If the AGO and Just Energy cannot agree on the selection of the Trustee within thirty (30) days after the effective date of this Assurance, the AGO shall choose the Trustee in its sole discretion.
2. The Trustee shall deposit the Fund into interest-bearing accounts such that, to the extent possible: (i) all of the funds are fully guaranteed by the Federal Deposit Insurance Corporation (“FDIC”) or the United States Department of the Treasury, and (ii) the interest rates at the time of the aforementioned deposit are at least equal to the highest interest rate available from among the five largest banks in the City of Boston for a fully liquid federally insured deposit account holding such a sum of money. The Trustee shall not modify the Fund’s investment criteria as set forth in this Paragraph, and shall not make investments of and disbursements from the Fund, without first obtaining the written consent of the AGO. The fees and costs associated with the Trustee’s administration of the Fund shall be paid by Just Energy, and shall be separate and apart from all other payments required by this Assurance.
3. At a date to be agreed upon, but in no event later than sixty (60) days after the effective date of this Assurance, Just Energy shall provide to the AGO and the Trustee a copy of the Customer List, the Billing Data Document, and the Consumer Communication List.

4. To the extent such information is necessary to allow for the administration of the Fund, Just Energy shall comply with each request by the Trustee or the AGO for additional billing, payment, and other materials and/or information within ten (10) business days after receiving said request.
5. In addition, the AGO will provide to the Trustee and to Just Energy, within sixty (60) days of this Assurance, a list of each Customer who filed a complaint regarding Just Energy with entities other than Just Energy, such as the AGO, the Department, municipalities, NSTAR, and/or National Grid (the "Complaint List"), including enough detail as to the substance of the complaint to allow the Trustee to identify those Complaints pertain to the price of a product the Customer received from Just Energy.
6. The term "restitution," as used herein, is defined as: (1) for Customers enrolled in Index Variable Products ("Index Variable Customers"), the difference between what the Customer paid to Just Energy, including any early termination fees, taxes, or other charges, and what they would have paid had they received basic service at a fixed rate from their Distribution Company, including any taxes or other charges, prior to the effective date of this Assurance ("Delta"); (2) for all entirely non-renewable energy variable rate Customers, the Delta; and (3) for fixed rate or renewable energy variable rate Customers who are not Index Variable Customers and who paid a termination fee to Just Energy, the amount of the termination fee paid. Restitution shall be calculated by the Trustee based on the Billing Data Document and information from the Distribution Company and the AGO, as appropriate ("Restitution Calculation"). The restitution amount for Customers who received a credit or reimbursement from Just

Energy will be discounted by the amount of such credit or reimbursement. Customers whose Delta is less than \$20 will not be eligible for restitution.

7. Under the Just Energy Restitution and Relief Program, (the “Program”), the Trustee shall identify the following Customers, herein collectively referred to as “Group One Customers,” who shall be entitled to automatic Restitution: (i) each variable rate Customer on the Consumer Communication List and/or the Complaint List who reported an issue about the price of the product they received from Just Energy prior to the effective date of this Assurance, and who is eligible for restitution under Paragraph 6, and (ii) each variable rate customer enrolled by IES, and who is eligible for restitution under Paragraph 6. Group One Customers shall receive full Restitution.
8. Under the Program, the Trustee shall identify the following Customers, herein collectively referred to as “Group Two Customers,” who shall also be entitled to automatic Restitution: Customers who did not qualify as Group One Customers, but who are otherwise eligible for restitution under Paragraph 6. Those Customers who are eligible as Group Two Customers solely because they paid a termination fee shall receive full Restitution. Other Group Two Customers shall receive full Restitution, unless the remaining monies in the fund are limited after the restitution process is complete for Group One Customers, in which case, they shall receive a pro-rated share of the remaining monies. The Trustee shall determine the percentage of this proration.
9. The Trustee shall begin the restitution process by sending letters regarding the Assurance and the Just Energy Restitution and Relief Program (the “Just Energy

Restitution and Relief Letters” or the “JERR Letters”) and checks to Group One Customers, as described in Paragraphs 13-16 below.

10. When all checks to Group One Customers have been cashed or had payment stopped, as described in Paragraph 16, the Trustee shall report to the AGO and Just Energy the names and amount of restitution made to Group One Customers, and the names of the Customers who waived their rights to restitution. At that time, the Trustee shall also report to the AGO and Just Energy the total amount of money remaining in the Fund. The Trustee shall then send JERR Letters and checks to Group Two Customers.
11. When all checks to Group Two Customers have been cashed or had payment stopped, as described in Paragraph 16, the Trustee shall report to the AGO and Just Energy the names and amount of restitution made to Group Two Customers, and the names of the Customers who waived their rights to restitution. At that time, the Trustee shall also report to the AGO and Just Energy the total amount of money remaining in the Fund, if any.
12. Any remaining monies in the Fund shall then be transferred to the AGO for distribution to local private and public non-profit organizations that provide services and assistance to low-income individuals. The remaining monies will be provided for the purpose of educating low-income customers about the competitive Electricity Supply market and providing financial assistance to low-income customers who are enrolled with a competitive electricity supplier.
13. The JERR Letters, in the form as attached herein, shall provide a dedicated web address and telephone number for the Trustee and Just Energy, and will advise

recipients that they may contact the Trustee or Just Energy to obtain information concerning the Assurance.

14. The JERR Letters shall provide notice of the following specific information concerning the terms of the Assurance: (1) a website address and a automated hotline number, by which recipients who are current Customers may, within 90 days of the date of the JERR Letter, cancel their account with Just Energy and resume Electricity Supply service from the Distribution Company or with another competitive supplier without paying any termination fees, and notice that residential variable customers may cancel without fees at any time; (2) the amount of restitution provided to that recipient; (3) historic Index Variable and variable rates charged by Just Energy in Massachusetts; and (4) the website address where a Customer can view information regarding the Distribution Companies' Basic Service rates, and a phone number for each Distribution Company, which a Customer can call for the same information
15. If a JERR Letter is returned as undeliverable, the Trustee shall attempt once to contact the recipient by email message or telephone, to the extent such contact information was provided to Just Energy by the Customer. Each email or voicemail message shall inform the Customer of the purpose of the message and state that the Customer will have waived his or her right to restitution if no response is received within thirty (30) days of the date of the email or telephone contact. If alternate Customer contact information is unavailable, the Customer shall be deemed to have waived his rights to restitution.
16. With each JERR Letter, the Trustee shall include a check from the Fund in the appropriate amount and a properly completed IRS Form 1099-Misc. The JERR



Letter shall include in prominent type and font a statement that if any check for payment of restitution sent to a Customer remains un-cashed sixty (60) days after the check issuance date, the Trustee will permanently stop payment on the check, and the Customer will be deemed to have waived his rights to restitution.

17. Upon request from a Customer through one of the methods described in Paragraph 14, Just Energy shall promptly notify the appropriate Distribution Company who shall administer the change of the Customer's Electricity Supply provider in accordance with G. L. c. 164, § 1F(8).
18. The Trustee, Just Energy and the AGO shall maintain and secure records of all communications with Customers regarding the Just Energy Restitution and Relief Program, for a period of at least two years. Each shall make such records available for inspection by the others on fifteen (15) business days' notice.

**ATTACHMENT 2: COMPLIANCE AND MONITORING PROGRAM**

1. Monitor Selection and Payment: An independent Monitor (the "Monitor") mutually agreed upon by the AGO and Just Energy will be selected within thirty (30) days of the effective date of this Assurance. If the AGO and Just Energy cannot agree on the selection of the Monitor within this time frame, the AGO shall choose the Monitor in its sole discretion. The Monitor must have adequate expertise, resources, and independence from Just Energy and the AGO. If, for any reason, the selected Monitor is unable to fulfill its responsibilities, a replacement Monitor mutually agreed upon by the AGO and Just Energy will be selected within thirty (30) days. If the AGO and Just Energy cannot agree on the selection of a replacement Monitor within this time frame, the AGO shall, in its sole discretion, select a replacement Monitor for the duration of the previous Monitor's term. All reasonable expenses and fees of the Monitor will be the sole responsibility of Just Energy, and will be in addition to any amount listed in Section IV of this Assurance.
  
2. Term: Just Energy shall engage a Monitor for a period of three (3) years from the effective date of this Assurance. After a period of two (2) years, Just Energy may request that the AGO terminate or modify the monitoring requirement. The time periods described in this Paragraph shall only apply to the time period that the Monitoring Program is in effect and shall not be construed to apply to any other term of this Assurance. The AGO will give Just Energy's request favorable consideration if the AGO determines: (1) Just Energy has made all required modifications to its business practices as detailed in Section V of this Assurance; (2) the Monitor has not found any significant compliance issues in the prior year; (3) Just Energy has

cooperated with the Monitor in all material respects; and (4) the Chief Executive Officer of Just Energy Massachusetts Corp. executes an affidavit, in a form as attached herein, certifying that the company is in full compliance with the terms of this Assurance and all applicable laws and regulations. At its sole expense, Just Energy may seek a binding review from an independent arbitrator of the AGO's determination of whether to waive or modify the third year of the monitoring requirement, with such independent arbitrator to be selected from a mediation and arbitration service jointly agreeable to Just Energy and the AGO.

3. Monitoring Program: In order to ensure Just Energy's compliance with G.L. c. 93A, G.L. c. 164, § 1F; and/or any provision of 220 CMR or 940 CMR and the terms of this Assurance, the Monitoring Program shall consist of the following during the term as defined in Paragraph 2:

a. Record Reviews: The Monitor shall conduct regular audits of Just Energy's Marketing Materials, not to exceed four (4) within a twelve (12) consecutive month period, regardless of the medium of such materials, including paper and electronic materials. The Monitor shall also conduct quarterly audits of the Billing Data Document and of a Consumer Communication List consisting of Consumer Communications with Just Energy received by Just Energy on or after the effective date of this Assurance.

i. Marketing Materials: For the duration of the term defined in Paragraph 2, Just Energy shall provide to the Monitor, upon the Monitor's request, any new or revised Marketing Materials then in use in Massachusetts.

Requests by the Monitor for new or revised Marketing Materials shall not

exceed four (4) within a twelve (12) consecutive month period.

- ii. Billing Data Document: On April 15, 2015, Just Energy shall provide to the Monitor a Billing Data Document reflecting data from the first quarter following the effective date of the Assurance (January 1, 2015 through March 31, 2015). Just Energy shall thereafter provide an updated Billing Data Document to the Monitor fifteen (15) days after the completion of each quarter for the remainder of the term as defined in Paragraph 2. Just Energy shall not modify the manner in which it provides this report without the express, written consent of the Monitor. Just Energy shall comply with each request by the Monitor for additional billing, payment, and other materials, and/or information within a reasonable period of time after receiving said request.
- iii. Consumer Communication List: On April 15, 2015, Just Energy shall provide to the Monitor a Consumer Communication List reflecting data from the first quarter following the effective date of the Assurance (January 1, 2015 through March 31, 2015). Just Energy shall thereafter provide an updated Consumer Communication List to the Monitor fifteen (15) days after the completion of each quarter for the remainder of the term as defined in Paragraph 2. Just Energy shall not modify the manner in which it provides this report without the express, written consent of the Monitor. Just Energy shall comply with each request by the Monitor for additional billing, payment, and other materials, and/or information within a reasonable period of time after receiving said request.

b. Direct Observation: The Monitor shall conduct regular monitoring of Just Energy's door-to-door sales operations in Massachusetts, in the form of: (1) direct observation of sales force hiring, training, and disciplinary practices; (2) review of communications by Just Energy or its agents to the sales force regarding new or revised scripts, products, brochures, and other training or marketing materials (although this shall not be construed to require pre-approval of such communications by the Monitor); (3) direct passive observations of the conduct of the sales force as it makes door-to-door sales calls and (4) interviewing Consumers who were contacted by Just Energy's door-to-door sales agents. The Monitor shall not undertake more than six (6) instances of each of the categories of the activities listed in the previous sentence within a twelve (12) consecutive month period. Relative to (4), the Monitor shall describe any such interview call to the Consumer as a "Just Energy Quality Assurance Call." The Monitor shall advise the Consumer at the start of the interview call that the Consumer's participation is entirely voluntary, and that all calls are recorded. If the Consumer does not affirmatively consent to being recorded, the interview call shall not proceed. During the interview call, the Monitor shall not make reference to the Attorney General, to the Attorney General's investigation, or to the Assurance; shall not advise the Consumer of legal rights; and shall not make any promises or representations that could be construed by the Consumer as constituting the exercise by the Monitor of actual or apparent authority on behalf of Just Energy. The Monitor shall make recordings of all interview calls available to Just Energy within ten (10) business days of an interview call.

- c. Call Reviews: The Monitor shall conduct regular audits of telephone interactions between Just Energy and Massachusetts Consumers. The Monitor shall not undertake more than six (6) audits under this paragraph within a twelve (12) consecutive month period. For the purpose of this Subparagraph, “telephone interactions” are defined as: (1) telemarketing sales calls by agents of Just Energy; (2) Third Party Verification calls for any and all sales channels that require Third Party Verification under G.L. c. 164, §1F(8) and/or pursuant to Just Energy’s policies and practices; and (3) any and all calls associated with any other multi-channel and/or internet campaigns for the sale or marketing of Electricity Supply services to Consumers in the Commonwealth .
- i. Upon request, within fifteen (15) business days, Just Energy shall make available to the Monitor records from all telephone interactions from the effective date of this Assurance and the Monitor may choose which telephone interactions to audit at the Monitor’s sole discretion.
- d. De Novo Review of Rebutted Allegations: Pursuant to Paragraph 40(d), the Monitor shall review, de novo, all determinations by Just Energy agents that an Allegation has been rebutted when the evidence that led to such determination included a review of the third party verification call.
- e. Additional Reviews Requested by the AGO: At any time during the term, the AGO may request that the Monitor conduct additional audits or record reviews for the limited purpose of investigating concerns relating to Just Energy’s sale or marketing of Electricity Supply services to Consumers in the Commonwealth, or arising from other conduct that is expressly regulated by the terms of this

Agreement. Any such request by the AGO shall be in writing with a copy delivered to Just Energy contemporaneously.

- f. Current Marketing Materials. Within thirty (30) days of the selection of a Monitor, Just Energy shall provide to the Monitor all of the Marketing Materials that are being used by Just Energy and/or its agents to market Electricity Supply services in the Commonwealth as of the effective date of this Assurance (the “Current Marketing Materials”). The Monitor shall review all of the Current Marketing Materials for compliance with the Assurance, G.L. c. 164, G.L. c. 93A, 940 CMR, and 220 CMR, and shall make directions to Just Energy that the Monitor, in its sole discretion, deems to be necessary to bring the Current Marketing Materials in compliance. In the course of the Monitor’s review, the Monitor may request additional information from Just Energy concerning such Current Marketing Materials that the Monitor deems, in the Monitor’s sole discretion, to be reasonably necessary to conduct the review described in this Paragraph, and Just Energy shall comply with such requests. Just Energy shall adopt the Monitor’s directions no later than thirty (30) days after any such direction is communicated to Just Energy. Just Energy may, from time to time at its own election, put into effect new Marketing Materials or revise the Current Marketing Materials.
- g. Pre-Clearance. During the term of this Monitoring Program, Just Energy, at its election, may provide new or revised Marketing Materials to the Monitor and request “Pre-Clearance” of such Marketing Materials before they go into effect. Just Energy shall accompany such transmission with a cover letter that includes

the terms "Request for Pre-Clearance" in its subject line and also provide a copy of such correspondence and its enclosures to the AGO. In the event the position of Monitor is vacant at the time a request for Pre-Clearance is submitted, the AGO shall be obligated to perform the obligations of the Monitor as set forth in this Subparagraph. Just Energy shall only be subject to penalties under Subparagraph (i) regarding the text, form, or imagery of such new or revised Marketing Material if the Monitor determines that such new or revised Marketing Material (1) was put into effect as part of Just Energy's marketing activities in Massachusetts without first receiving Pre-Clearance and (2) violates a provision of this Assurance. In the course of the Monitor's review, the Monitor may request additional information from Just Energy concerning such new or revised Marketing Materials that the Monitor deems, in the Monitor's sole discretion, to be reasonably necessary to make the findings described in the preceding sentence, and Just Energy shall comply with such requests. The Monitor shall specify for which Marketing Materials the additional information is needed. The Monitor shall provide a written explanation for any denial of Pre-Clearance, and the Monitor shall advise Just Energy that it has an opportunity to cure the non-compliance and resubmit the Marketing Materials for Pre-Clearance. If the Monitor fails to grant Pre-Clearance or issue a denial or Pre-Clearance within fifteen (15) calendar days of the date of the transmission cover letter, such Pre-Clearance shall be deemed to be granted. Notwithstanding the foregoing, the time period described in the preceding sentence shall be tolled as to specific Marketing Materials for the period during with any requests by the Monitor to Just Energy



for additional information relating to those Marketing Materials are pending or during the pendency of a dispute concerning the adequacy of Just Energy's compliance with such requests. Upon Just Energy's provision of the requested information, the fifteen-day period shall resume, after which, if the Monitor fails to grant Pre-Clearance or issue a denial or Pre-Clearance, such Pre-Clearance shall be deemed to be granted. If review of more than fifty (50) pages of Marketing Materials is pending, the Monitor may, within the fifteen-day period, inform Just Energy that the Monitor will extend the period by ten (10) calendar days. The Monitor must specify the materials for which the period is being extended, and may only extend the period once for any particular material. If the Monitor does not inform Just Energy of the extension within the fifteen-day period, Pre-Clearance shall be deemed to be granted. The decision of the Monitor on Pre-Clearance will be considered final and Just Energy agrees to not challenge such finding through appeal, additional legal process, or otherwise, except for challenges seeking to compel the Monitor to comply with the terms of this Paragraph. The Monitor may revoke Pre-Clearance if the Monitor later finds that Marketing Material was used in Massachusetts before the Monitor granted Pre-Clearance. If the Commonwealth wishes to bring any claim under G.L. c. 93A or otherwise arising out of new or revised Marketing Materials that have been Pre-Cleared by the Monitor, the Commonwealth shall first provide Just Energy with notice, and a thirty (30)-day period to cure. The Commonwealth shall not bring any claim in connection with behavior Just Energy cures during the thirty-day period.

- g. Reports: For each audit or review conducted, the Monitor will prepare a written report to the AGO and Just Energy to include the following: (1) a narrative description of the Monitor's audit, call review, or on-site visit; (2) an evaluation of the practices, procedures, and policies observed in each instance; and (3) any findings of non-compliance with the terms of this Assurance, G.L. c. 93A, G.L. c. 164, § 1F; and/or any provision of 220 CMR and 940 CMR, and the bases therefor. All notes, audits, reports, documents, and any other work product of the Monitor provided to the AGO shall be deemed responses to Civil Investigative Demands 2013-ETD-32 and 2013-ETD-64 as issued to Just Energy, or supplemental Civil Investigative Demands should the AGO issue them, and entitled thereunder to the same protections of confidentiality from public disclosure as afforded by G.L. c. 93A, § 6(6). For findings of non-compliance not based on the text, form, or imagery of Marketing Materials, the Monitor shall make this report to Just Energy before imposing any penalties, to allow Just Energy time to cure the non-compliance, as described at Subparagraph (i)(ii).
- h. Reports of Non-Compliance: Subsequent to any finding of non-compliance by the Monitor, Just Energy, upon the request of the AGO, will submit to the AGO and to the Monitor, within ten (10) business days of such report, a plan of correction which identifies remedial steps to be taken and a detailed calculation of any applicable restitution payments, based on the Monitor's findings. Within five (5) business days, the Monitor will provide Just Energy with approval or revisions to the plan of correction. Upon receipt of the approval or revisions, Just Energy will immediately proceed to take the approved or revised remedial steps, including

notifying promptly any Customer impacted by non-compliance and refunding any amounts paid by the Customer to Just Energy as a result of such non-compliance.

i. Penalties for Non-Compliance:

- i. For findings of non-compliance based on the text, form, or imagery of Marketing Materials, Just Energy will pay a penalty of \$10,000 per non-compliant Marketing Material. Notwithstanding the foregoing, a finding of non-compliance will not subject Just Energy to a penalty if (1) it is specific to the text, form or imagery of the Current Marketing Materials as revised per the directions of the Monitor, or pending for review by the Monitor, pursuant to Subparagraph (e), or (2) it is specific to the text, form or imagery of Marketing Materials that have been granted Pre-Clearance pursuant to Subparagraph (f). The decision of the Monitor on any such finding of non-compliance will be considered final and Just Energy agrees to not challenge such finding through appeal, additional legal process, or otherwise.
- ii. For findings of non-compliance not based on the text, form, or imagery of Marketing Materials, the Monitor shall impose and Just Energy shall pay a fine of \$5,000, except no penalties shall be imposed for violations by individual agents that had been previously reported to or discovered by Just Energy, including those reported to Just Energy by the Monitor pursuant to Subparagraph (g), and that Just Energy has appropriately cured or is in the process of appropriately curing, including through discipline of the agent pursuant to Paragraph 40 of the Assurance. The decision of the

Monitor on any finding of deficiency or non-compliance will be considered final and Just Energy agrees to not challenge such finding through appeal, additional legal process, or otherwise, except as specifically provided in Subparagraph (iii).

- iii. Just Energy may, at Just Energy's sole expense, appeal fines under Subparagraph (ii) where the Monitor determines that Just Energy has incurred fines (A) within a common twelve-month period, and (B) that are in the aggregate of \$50,000 or greater. Just Energy may also appeal such fines under Subparagraph (ii) if it reasonably believes that it has satisfied the requirements for an appeal but that the Monitor has failed to make the necessary determination relative to appealability and fails to make such determination within thirty (30) days of a demand by Just Energy. The decisions of the Monitor on such findings or determinations of violations or any fines imposed that are appealable pursuant to this Subparagraph, may, at Just Energy's sole expense, be appealed to an independent arbitrator, to be selected from a mediation and arbitration service jointly agreeable to Just Energy and the AGO. Where the threshold for filing an appeal has been met per this Subparagraph, if individual components of the appeal involve common issues, those components shall be consolidated for the purposes of any hearing. No hearing shall consider more than one common error, omission, or practice. Hearings on different errors, omissions, or practices may be held seriatim by the same arbitrator, although the arbitrator shall issue a separate decision on each common

issue. Prior to or concurrent with the payment of a penalty for a finding of non-compliance, Just Energy shall notify the Monitor in writing, with a copy to the AGO, if it intends to appeal either the finding or the penalty imposed, or both. The Monitor shall hold all contested penalty amounts in escrow, in an interest-bearing account. In arbitration, Just Energy expressly waives the right to take a deposition of any member of the AGO. In arbitration, as to any contested decision of the Monitor, Just Energy shall bear the burden of demonstrating that the Monitor's decision was clearly erroneous. At the conclusion of the arbitration, the Monitor shall distribute the contested penalty amounts from the escrow account to the AGO and/or return the contested penalty amounts from the escrow account to Just Energy, in amounts as determined by the arbitrator.

- iv. The AGO agrees that it will not seek civil penalties under G.L. c. 93A, § 4 for any non-compliance findings that have been identified by the Monitor and paid by Just Energy, pursuant to Subparagraphs (i) or (ii) above, but otherwise reserves the right to bring any additional claims for relief against Just Energy for non-compliance findings made by the Monitor under this Assurance.
- v. Any such penalties shall be distributed in the manner and for the purposes described in Paragraph 12 of Attachment 1.

AFFIDAVIT OF \_\_\_\_\_

I, \_\_\_\_\_, the undersigned, hereby state and certify as follows:

1. I am the Chief Executive Officer of Just Energy Massachusetts Corp. (hereinafter "Just Energy").
2. To the best of my knowledge, based upon my personal knowledge and my review of the books and records of Just Energy that are kept in the ordinary course of business, Just Energy is in full compliance with the terms of the December 31, 2014 Assurance of Discontinuance between it and the Commonwealth of Massachusetts, and all applicable laws and regulations.

Signed under the pains and penalties of perjury this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

**NOTARY CERTIFICATE**

On this \_\_\_\_\_ day of \_\_\_\_\_, before me, the undersigned notary public, personally appeared, \_\_\_\_\_, Chief Executive Officer of Just Energy Massachusetts Corp., a Delaware corporation with its principal place of business at 100 King Street, West Suite 2630, Toronto, Ontario, FF M5X 1E1, Canada, proved to me through satisfactory evidence of identification, which was/were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

Name: \_\_\_\_\_

My commission expires:

\_\_\_\_\_

[Affix Notary's Seal]

[JUST ENERGY LETTERHEAD]

\_\_\_\_\_, 2015

[CUSTOMER NAME  
AND ADDRESS]

Dear \_\_\_\_\_:

Thank you for being a valued customer of Just Energy. At the end of last year, Just Energy entered into an agreement with the Massachusetts Office of the Attorney General (the "AGO"). Just Energy does not admit to any wrongful conduct in the agreement, however, in recognition of the concerns of the AGO, Just Energy has agreed to amend the manner in which it calculates termination fees for small businesses on Just Energy commercial contracts.

Accordingly, commencing immediately, if you decide to terminate your commercial contract with Just Energy prior to December 31, 2018, you will be liable to Just Energy only for the lesser of the following three options:

1. The termination fee calculated according to the terms of your contract; or
2. The result of the following calculation:
  - a. four (4) months,
  - b. multiplied by your average monthly consumption over the previous twelve (12) months,
  - c. multiplied by the energy price in your contract; or



3. The result of the following calculation:

- a. one-half of your remaining contract term,
- b. multiplied by your average monthly consumption over the previous twelve (12) months,
- c. multiplied by the energy price in your contract.

If you have questions about the process explained in this letter, you can contact Just Energy at [phone number and hours of operation] or anytime at [website address].

We appreciate your choice of Just Energy as your electricity supplier, and look forward to continuing to serve you.

Sincerely,

Just Energy

[JUST ENERGY LETTERHEAD]

\_\_\_\_\_, 2015

[CUSTOMER NAME  
AND ADDRESS]

Dear \_\_\_\_\_:

Thank you for being a valued customer of Just Energy. At the end of last year, Just Energy entered into an agreement with the Massachusetts Office of the Attorney General (the "AGO"). Just Energy does not admit to any wrongful conduct in the agreement, however, in recognition of both the concerns of the AGO and the importance of providing accurate information to consumers, Just Energy has agreed to establish a trust fund for the benefit of certain of its current and former customers. The Independent Trustee who administers the trust fund has determined that you are eligible to receive reimbursement for a portion of what you have paid to Just Energy for electricity supply services and/or early termination fees.

Accordingly, enclosed is a check in the amount that the Trustee has determined is appropriate:  
\$\_\_\_\_\_.

**If the enclosed check has not been cashed within sixty (60) days of the date of this letter, the Trustee will permanently stop payment, and you will be deemed to have waived your right to reimbursement.**

If you are or were on a variable or index-variable rate product, attached for reference are the rates Just Energy has historically charged for those products. Similar information regarding the historical rates charged by the utility company serving your community is available on their

websites or customer service numbers. For National Grid, [www2.nationalgridus.com/index\\_ma.jsp](http://www2.nationalgridus.com/index_ma.jsp) or 1-800-322-3223. For NSTAR, [www.nstar.com/residential/](http://www.nstar.com/residential/) or 1-800-592-2000.

If you are a current Just Energy customer, for a period of ninety days from the date of this letter, you may choose to terminate your account with Just Energy with no termination fee, and resume electricity supply services from your utility or obtain electricity from another competitive supplier. If you are a Just Energy residential variable rate customer who is not currently on an introductory rate, you will never be subject to a termination fee for the life of your contract. If you wish to cancel your Just Energy account, you can do so at [website] or by calling our automated hotline; [phone number], at any time. If you are interested in the other products Just Energy has to offer, you can call our regular customer service line at [phone number and hours of operation].

If you have any questions about the process explained in this letter, or about the product you have or had with Just Energy, you can contact Just Energy at [phone number and hours of operation] or anytime at [website address]. The Trustee can also answer questions about this process, at [phone number and hours of operation] or anytime at [website address].

We appreciate your choice of Just Energy as your electricity supplier, and look forward to serving you in the future.

Sincerely,

Just Energy

Just Energy's Historical Variable Rates

<b>Month</b>	<b>Rate per kWh</b>  (for brown electricity – not incorporating applicable adders for green energy option)

Just Energy's Historical Index-Variable Rates

<b>Month</b>	<b>Rate per kWh</b> (100% of electricity consumption matched by purchase of renewable energy certificates)

# Exhibit B


[Watch Live](#)

 Bill No.:  
 [Summary](#)  [Actions](#)  [Votes](#)  [Memo](#)  [Text](#) ([Printer friendly text](#))

**A01558 Summary:**

BILL NO A01558C  
 SAME AS SAME AS [S02361-C](#)  
 SPONSOR Gianaris (MS)  
 COSPNSR Pheffer, Robinson, Dinowitz, Gabryszak, Rosenthal, Schimel, Clark, Schroeder, Colton  
 MLTSPNSR Alfano, Boyland, Brennan, Crouch, Errigo, Fields, Galef, Giglio, Glick, Gottfried, Gunther, Hyer-Spencer, Kellner, Koon, Latimer, Lopez V, Magee, Maisel, McDonough, McKeivitt, Millman, Reilly, Rivera J, Saladino, Sweeney, Weisenberg, Wright

Add S349-d, Gen Bus L

Requires energy services companies to provide customers with a consumer bill of rights; establishes civil cause of action and civil penalties for violations of such provisions.

[Go to top](#)
**A01558 Memo:**

BILL NUMBER:A1558C

TITLE OF BILL: An act to amend the general business law, in relation to establishing an energy service company consumers bill of rights

PURPOSE OR GENERAL IDEA OF BILL: This bill establishes important consumer safeguards in the marketing and offering of contracts for energy services to residential and small business customers.

SUMMARY OF SPECIFIC PROVISIONS: Bill S1 adds a new S349-d to the General Business Law to set forth an energy services company consumers bill of rights. Subdivision 1 defines the terms "energy services" (electricity and/or natural gas), "energy services company" or "ESCO" (an entity eligible to sell energy services to end-use customers using the transmission or distribution system of a utility), "customer" (any person sold or offered an energy services contract by an ESCO for residential utility service or through door-to-door sales), and "door to door sales."

Pursuant to subdivision 2, any person who sells or offers for sale any energy services for or on behalf of an ESCO shall (a) properly identify himself or herself and the energy services company or companies which he or she represents; (b) explain that he or she does not represent a distribution utility; (c) explain the purpose of the solicitation; (d) provide each prospective customer with a statement of an "ESCO consumers bill of rights" developed by the Public Service Commission (PSC), in consultation with the Long Island Power Authority (LIPA), the Consumer Protection Board (CPB) and the Department of Law; and (e) provide contracts and other written materials in the language used to solicit the prospective customer.

Subdivision 3 provides that no person selling or offering energy services for or on behalf of an ESCO shall engage in any deceptive acts or practices in such marketing.

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Subdivisions 4-7 set forth the following ESCO contract requirements:

> no required prepayment for energy services - an ESCO may offer a customer an option of prepayment which can be cancelled without penalty within 90 calendar days.

> no fee for termination or early cancellation of the contract in excess of \$100 if less than 12 months remain in the contract term, \$200 if the remaining term is twelve months or more, or twice the estimated bill for energy services for an average month (to charge this fee, an ESCO must provide the customer, when the contract is offered, with that customer's estimated average monthly bill for energy services and the fee that would be charged thereon).

> no material changes in the terms or duration of any contract for energy services without the express consent of the customer, provided that the automatic renewal of contracts is allowed only if the ESCO follows

explicit statutory requirements, including clear advance notice and a period for opting out without any termination fee, and any additional regulatory protections adopted by the PSC or LIPA.

> all variable charges shall be clearly and conspicuously identified.

Per subdivision 8, any contract for energy services which does not comply with the applicable provisions of this section shall be void and unenforceable as contrary to public policy and any waivers by a buyer shall be deemed void and unenforceable by the ESCO.

Subdivision 9 authorizes the Attorney General, upon his own motion or upon referral from the PSC, LIPA or CPB, to bring a civil action against any ESCO that violates any provision of this section and to recover (a) a civil penalty not to exceed \$1000 per violation and (b) costs and reasonable attorney's fees. In any such proceeding the court may direct restitution.

Subdivision 10 authorizes a right of private action by any person who has been injured by reason of any violation of S349-d to enjoin such unlawful act or practice and/or recover actual damages or \$500, whichever is greater. The court may, in its discretion, increase the award to an amount not to exceed three times the actual damages up to \$10,000, if it finds a willful or knowing violation. The court may award reasonable attorney's fees to a prevailing plaintiff.

Subdivision 11 preserves the existing authority of the PSC and LIPA to limit, revoke or suspend an ESCO's eligibility for violation of requirements enforceable by the respective agency.

Subdivision 12 preserves such agencies' existing authority to adopt additional compliance requirements relating to the types of products offered by ESCOs and the manner in which they are marketed to residential and commercial customers.

Bill SS2 & 3 provide that the PSC and LIPA, respectively, shall amend their consumer protection regulations and related guidelines, practices and policies to incorporate the provisions of bill S1.

Bill S4 charges the PSC, in consultation with LIPA, CPB and the Attorney General to develop a short, plain-language statement of an "ESCO consumers bill of rights" which summarizes the protections afforded to consumers of energy services by this chapter and other applicable laws.

Bill S5 sets forth a severability clause for the provisions of the legislation.

SUMMARY OF SPECIFIC AMENDMENTS: New S349-d(1)(d) is amended to clarify that visits to a buyer's premises pursuant to a requested appointment are not considered "door-to-door sales."

Clarifications are made to new S349-d(2) as follows: requirements pertaining to ESCO marketer identification and provision of a copy of the ESCO consumers bill of rights are made applicable to residential



customers and door-to-door sales, while the ban against engaging in deceptive acts and practices is relocated to a new subdivision 3 and remains applicable to all marketing activities. (The ensuing subdivisions are renumbered accordingly.)

Subdivision 4 of S349-d is amended to permit ESCOs to offer customers contracts providing for prepayment on an optional basis only, with an extended rescission period of 90 days. Subdivision 5 was amended to provide that the \$100 limit on early termination fees applies to all contracts with less than a full year remaining in the contract. Longer contracts would be subject to a maximum fee of \$200. ESCOs that offer contracts with a termination fee based on the customer's average monthly bill would have to provide the customer's estimated average bill and the actual fee amount prior to execution of the contract.

Renumbered S349-d(6) is amended to permit renewal of contracts, with additional consumer protections where the renewal is automatic (i.e. without the customer's express consent).

Further amendments also exclude marketing to commercial accounts at trade or business shows, conventions or expositions from the "door-to-door sales" definition, incorporate recommendations to provide a greater role for the Consumer Protection Board in safeguarding the interests of customers, clarify an ESCO's responsibilities in soliciting new or renewal business, and provide a more realistic level of maximum recoverable damages. Finally, the bill is amended to ensure that the existing authority of the PSC and LIPA to protect consumer's interests is preserved.

EFFECTS OF PRESENT LAW WHICH THIS BILL WOULD ALTER: Chapter 686 of 2002 extended the provisions of the Home Energy Fair Practices Act (HEFPA) to cover ESCOs, but its protections only apply after a contract has been executed. This bill would augment recently-adopted PSC guidelines for ESCO marketing, protect consumers from excessive termination fees and deceptive marketing of initial contracts and renewals, make fair marketing standards broadly enforceable on a statewide basis, and extend protections to small business customers who are often targeted by unscrupulous door-to-door marketers without being covered under any current PSC protections.

JUSTIFICATION: Over the past decade, New York has promoted a competitive retail model for the provision of electricity and natural gas. Consumers have been encouraged to switch service providers from traditional utilities to energy services companies. Unfortunately, consumer protection appears to have taken a back seat in this process. The pressing need for consumer protections in dealing with ESCOs is highlighted by recent news items from around the state:

> Stopped outside her home in Flushing by a uniformed salesman promising her utility bills will be cut in half, a senior citizen signs a contract with an energy services company (ESCO). When she finds out later that the contract is for 5 years and her monthly bills are \$200 higher, she tries to cancel - only to be told that she must pay an \$1800 "exit fee".

> A small business owner in Brooklyn is convinced to sign an energy services contract by a sales agent's assurances that the price would be fixed and he could save at least \$200 a month. After a few months, his monthly bill had doubled, and he learned that the contract had a variable charge that fluctuated wildly -- and that canceling it would cost him \$7000.

> Complaints from various communities cite ESCO marketing reps masquerading as utility employees, making misleading statements to induce people to sign a contract, and even switching consumers' energy suppliers without their knowledge or consent.

High-pressure and misleading sales tactics, onerous contracts with unfathomable fine print, short-term "teaser" rates followed by skyrocketing variable prices -- many of the problems recently seen with subprime mortgages are being repeated in energy competition. Although the PSC has recently adopted a set of guidelines, its "Uniform Business Practices" are limited and omit important consumer protections in several

areas. The fact is, competition in supplying energy cannot succeed without a meaningful set of standards to weed out companies whose business model is based on taking unfair advantage of consumers.

This bill would build on the approach taken by the PSC by (1) extending consumer protections statewide, including to customers in LIPA's service territory; (2) protecting small businesses from being victimized by dishonest door-to-door marketing; (3) protecting customers from excessive termination fees, "bait-and-switch" contract changes and deceptive renewal practices; (4) allowing broader enforcement; and (5) providing clear, plain-language notices of an ESCO consumer's rights. The bill requires the PSC and LIPA to adopt regulations including the following mandatory consumer protections:

>requiring ESCO marketing reps to identify themselves as such and explain that they don't represent a utility;

>ensuring that any prepayments are at the customer's discretion and providing an adequate time period for the customer to assess the ESCO's performance before locking in a prepayment option;

>limiting cancellation fees to \$100 (\$200 for a multi-year contract) or an amount twice the initial estimated average monthly bill;

>all variable charges must be clearly and conspicuously identified;

>no contract terms could be changed without the consumer's affirmative consent, and any automatic renewals would have to follow strict guidelines to protect customers; and

> a short, plain language "ESCO consumer bill of rights (to be developed by the PSC, LIPA, CPB and Attorney General) will be given to prospective customers in writing or repeated in telephone sales pitches.

These safeguards would apply to "door-to-door sales" to small businesses as well as residential customers. The Attorney General could prosecute violations of marketing standards including those referred by the PSC, LIPA or CPB, or consumers could enforce the standards themselves through third-party actions.

These provisions will go a long way toward restoring an orderly marketplace where consumers can make informed decisions on their choices for gas and electric service with the confidence that state government will prevent fraudulent practices and ensure a level playing field.

PRIOR LEGISLATIVE HISTORY: A.10180-B (2008) - passed Assembly, referred to Senate Rules Committee.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS: Minimal.

EFFECTIVE DATE: 150th day after becoming law and applicable to all energy services sold or offered for sale on or after such date; provided, however, that the PSC and LIPA are immediately authorized and directed to take any and all actions, including but not limited to the promulgation of any necessary rules, necessary to fully implement the provisions of this bill on such date.

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

FIRA DONIN and INNA GOLOVAN

(b) County of Residence of First Listed Plaintiff Kings (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Wittels Law, P.C., 18 Half Mile Road, Armonk, NY 10504, (914) 319-9945

DEFENDANTS

JUST ENERGY GROUP INC. and JUST ENERGY NEW YORK CORP.

County of Residence of First Listed Defendant Toronto, Ontario, Canada (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332 (Class Action Fairness Act)
Brief description of cause: Consumer Fraud Class Action

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 100,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER 17-5787

DATE 10/03/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Steven L. Wittels

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Steven L. Wittels, counsel for Plaintiffs, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
the complaint seeks injunctive relief,
the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

N/A

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
2.) If you answered "no" above:
a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No
b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: /s/ Steven L. Wittels

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

FIRA DONIN and INNA GOLOVAN,
on behalf of themselves and all others similarly
situated,

Plaintiff(s)

v.

JUST ENERGY GROUP, INC. and
JUST ENERGY NEW YORK CORP.

Defendant(s)

Civil Action No. 17-5787

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) JUST ENERGY GROUP, INC.
100 King Street West, Suite 2630,
Toronto, Ontario M5X 1E1, Canada

JUST ENERGY NEW YORK CORP.
100 King Street West, Suite 2630,
Toronto, Ontario M5X 1E1, Canada

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

Steven L. Wittels
Wittels Law, P.C.
18 Half Mile Road
Armonk, NY 10504

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: 10/03/2017

Signature of Clerk or Deputy Clerk

Civil Action No. 17-5787

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Just Energy's 'Deceptive' Business Practices Spark Lawsuit in New York](#)

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