

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

ROBERT HAMLLEN,

Plaintiff,

v.

GATEWAY ENERGY SERVICES
CORPORATION,

Defendant.

Civil Action No. _____

Class Action Complaint

Plaintiff Robert Hamlen, by his attorneys, Finkelstein, Blankinship, Frei-Pearson & Garber, LLP, as and for his class action complaint, alleges, with personal knowledge as to his own actions, and upon information and belief as to those of others, as follows:

NATURE OF THIS CASE

1. This action seeks to redress the deceptive pricing practices of Gateway Energy Services Corporation (“Gateway”) that have caused thousands of New Jersey consumers to pay considerably more for their natural gas than they should otherwise have paid.
2. Gateway has taken advantage of the deregulation of the retail natural gas market in New Jersey by luring consumers into switching natural gas suppliers with false promises that it offers a market based variable rate for natural gas.
3. Gateway’s representations are deceptive. In fact, Gateway’s variable rates are substantially higher than those otherwise available in the natural gas market, and its rates do not reflect changes in the wholesale cost Gateway pays for the natural gas it supplies to its retail customers. As a result, New Jersey consumers are being fleeced millions of dollars in exorbitant charges for natural gas.

4. This suit is brought pursuant to the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.* and the common law of New Jersey on behalf of a class of New Jersey consumers who were charged a variable rate for natural gas by Gateway Energy Services Corporation from May 2010 to the present. It seeks, *inter alia*, injunctive relief, actual damages and refunds, treble damages, punitive damages, attorneys' fees, and the costs of this suit.

PARTIES

5. Plaintiff Robert Hamlen is a citizen of New Jersey residing in Holmdel, New Jersey. Mr. Hamlen was a customer of Gateway from September 2010 through January 2016, and as a result of Defendant's deceptive conduct, he incurred excessive charges for natural gas.

6. Defendant Gateway is a citizen of New York, having been organized under the laws of New York, and with a principal place of business or corporate headquarters in Montebello, New York, in Rockland County. Defendant has thousands of customers in New Jersey, and it has tens of millions of dollars in combined revenues.

7. Gateway is an energy services company with market-based authority to sell at retail electricity and natural gas to residential and commercial end users in New Jersey and other jurisdictions.

JURISDICTION

8. Subject matter jurisdiction in this civil action is authorized pursuant to 28 U.S.C. § 1332(d), as minimal diversity exists, there are more than 100 class members, and the amount in controversy is in excess of \$5 million.

9. The Court has personal jurisdiction over Defendant because it is headquartered and conducts substantial business in this judicial district.

OPERATIVE FACTS

10. In 1999, New Jersey deregulated the market for retail natural gas and electricity supply, a major break with past policy. Before, retail residential consumers had to purchase both the supply and the delivery of natural gas from the local utility. The policy behind allowing consumers a choice of natural gas suppliers is to enable retail customers to obtain lower costs compared to the heavily regulated utility. The notion is that competition would result in independent energy companies (“ESCOs”) being more aggressive than the utility in reducing wholesale purchasing costs and thereby lower retail residential rates.

11. New Jersey consumers who do not choose to switch to an ESCO for their energy supply continue to receive their supply from their local utility. In New Jersey, the Board of Public Utilities (“NJBPU”) holds market-based auctions that purchase natural gas on behalf of such customers; the utilities then charge these customers a rate based upon the market-based auction outcome. A third-party consultant on behalf of the NJBPU manages the auctions, and the bidding processes and results are made publically available. As a result, these auctions reflect market-determined prices.

12. ESCOs such as Gateway have various options to buy natural gas at wholesale for resale to retail customers in New Jersey, including: owning natural gas production facilities; purchasing natural gas from wholesale marketers and brokers at the price available at or near the time it is used by the retail consumer; and by purchasing natural gas in advance of the time it is used by consumers, either by purchasing physical gas to be used in the future or by purchasing futures contracts for the delivery of natural gas in the future at a predetermined price. The point of deregulation is to allow ESCOs to use these and other innovative purchasing strategies to reduce natural gas costs.

13. As part of the deregulation plan, ESCOs (like Gateway) do not have to file the natural gas rates they charge with the NJBPU or the method by which they set their rates.

14. However, Gateway takes advantage of the deregulation and the lack of regulatory oversight in the energy market to deceptively charge New Jersey consumers exorbitant rates for natural gas. In fact, Gateway's rates are substantially higher than other ESCOs or local utilities.

15. In September 2010, Gateway offered to provide Mr. Hamlen electricity and natural gas. In a recorded telephone conversation in which the representative used a standard and uniform sales pitch, Gateway informed Mr. Hamlen that when his initial rate expired, "your price of electricity and natural gas will be a variable rate set by Gateway Energy based on market conditions and will fluctuate monthly."

16. The representation that Gateway's variable rate would be based on market prices was reinforced by Gateway's standard Residential Terms & Conditions, which Gateway sent to Mr. Hamlen after his initial phone conversation with the Gateway representative. The Terms & Conditions (attached as Exhibit A) represent that the variable rate "is a rate set by us each month based on our evaluation of a number of factors that affect the total price of . . . natural gas . . . the major components that influence our analysis in a typical month [include] . . . the cost of . . . natural gas . . . obtained for delivery to customers in your utility territory for the upcoming month. Because we often acquire supply over time in preparation for future deliver needs (in an effort to mitigate the volatility in price) and do not acquire all of our required . . . natural gas from the spot market, our supply costs may not directly follow spot market prices."

17. Gateway's Terms & Conditions also represents that its prices will be competitive with rates otherwise available in the market: "We evaluate, if known, the prices that your utility and other competitors' in your area plan to charge in the upcoming month."

18. Any reasonable consumer would understand based on these representations that Gateway's variable rate would reflect Gateway's costs for purchasing natural gas at wholesale, and that the variable rate would be competitive with the rate offered by the local utility and other ESCOs. Mr. Hamlen reasonably expected that Gateway's variable rates for natural gas would be based on market conditions, *i.e.*, competitive and reflective of Gateway's wholesale cost for purchasing natural gas.

19. Mr. Hamlen switched from NJNG to Gateway for natural gas in November 2010, and he paid Gateway's variable price until January 2016. The following table identifies each billing period during this time, the variable rate Gateway charged Plaintiff, the corresponding rate NJNG would have charged, and the then-prevailing wholesale rate for natural gas (as represented by the New Jersey City Gate rate, which is a reasonable representation of the available market wholesale rates):

| Billing Period | Gateway Rate Per Therm¹ | NJNG Rate Per Therm | Wholesale Rate Per Therm |
|-----------------------|---|----------------------------|---------------------------------|
| 11/17/10 - 12/17/10 | \$0.7410 | \$0.746019 | \$0.76 |
| 1/19/11 - 2/17/11 | \$0.7410 | \$0.745991 | \$0.75 |
| 2/17/11 - 3/23/11 | \$0.7389 | \$0.745962 | \$0.75 |
| 3/23/11 - 4/19/11 | \$0.7381 | \$0.746009 | \$0.74 |
| 4/19/11 - 5/19/11 | \$0.7373 | \$0.745996 | \$0.70 |
| 5/19/11 - 6/20/11 | \$0.7414 | \$0.745920 | \$0.70 |
| 6/20/11 - 7/20/11 | \$0.7698 | \$0.746083 | \$0.74 |
| 7/20/11 - 8/17/11 | \$0.7976 | \$0.745850 | \$0.78 |

¹ Quantities of natural gas are usually measured in cubic feet. One "therm" is 100 cubic feet of natural gas.

| Billing Period | Gateway Rate Per Therm¹ | NJNG Rate Per Therm | Wholesale Rate Per Therm |
|-----------------------|---|--------------------------------|-------------------------------------|
| 8/17/11 - 9/19/11 | \$0.7990 | \$0.745983 | \$0.75 |
| 9/19/11 - 10/18/11 | \$0.7990 | \$0.674847 | \$0.73 |
| 10/18/11 - 11/16/11 | \$0.7990 | \$0.627184 | \$0.68 |
| 11/16/11 - 12/19/11 | \$0.8248 | \$0.627232 | \$0.76 |
| 12/19/11 - 1/19/12 | \$0.8490 | \$0.627196 | \$0.70 |
| 1/19/12 - 2/17/12 | \$0.8490 | \$0.627215 | \$0.68 |
| 2/17/12 - 3/20/12 | \$0.8202 | \$0.620000 | \$0.66 |
| 3/20/12 - 4/19/12 | \$0.7990 | \$0.620000 | \$0.66 |
| 4/19/12 - 5/21/12 | \$0.7990 | \$0.583646 | \$0.58 |
| 5/21/12 - 6/19/12 | \$0.7990 | \$0.583700 | \$0.61 |
| 6/19/12 - 7/20/12 | \$0.7990 | \$0.583586 | \$0.63 |
| 7/20/12 - 8/17/12 | \$0.7990 | \$0.583604 | \$0.65 |
| 8/17/12 - 9/17/12 | \$0.8173 | \$0.583681 | \$0.64 |
| 9/17/12 - 10/16/12 | \$0.8490 | \$0.582600 | \$0.65 |
| 10/16/12 - 11/20/12 | \$0.8755 | \$0.578322 | \$0.65 |
| 11/20/12 - 12/18/12 | \$0.8990 | \$0.578344 | \$0.65 |
| 12/18/12 - 1/18/13 | \$0.8990 | \$0.578288 | \$0.67 |
| 1/18/13 - 2/15/13 | \$0.8990 | \$0.578293 | \$0.61 |
| 2/15/13 - 3/21/13 | \$0.8818 | \$0.578305 | \$0.60 |
| 3/21/13 - 4/19/13 | \$0.8680 | \$0.578294 | \$0.61 |
| 4/19/13 - 5/20/13 | \$0.8680 | \$0.578179 | \$0.61 |

| Billing Period | Gateway Rate Per Therm¹ | NJNG Rate Per Therm | Wholesale Rate Per Therm |
|-----------------------|---|--------------------------------|-------------------------------------|
| 5/20/13 - 6/21/13 | \$0.8680 | \$0.534349 | \$0.66 |
| 6/21/13 - 7/19/13 | \$0.8680 | \$0.515974 | \$0.68 |
| 7/19/13 - 8/19/13 | \$0.8680 | \$0.515797 | \$0.63 |
| 8/19/13 - 9/17/13 | \$0.8680 | \$0.515642 | \$0.61 |
| 9/17/13 - 10/18/13 | \$0.8680 | \$0.515961 | \$0.61 |
| 10/18/13 - 11/18/13 | \$0.8629 | \$0.517907 | \$0.59 |
| 11/18/13 - 12/18/13 | \$0.8590 | \$0.477281 | \$0.58 |
| 12/18/13 - 1/20/14 | \$0.8590 | \$0.449293 | \$0.59 |
| 1/20/14 - 2/19/14 | \$0.8659 | \$0.449302 | \$0.68 |
| 2/19/14 - 3/19/14 | \$0.9687 | \$0.449300 | \$0.67 |
| 3/19/14 - 4/17/14 | \$0.9515 | \$0.449331 | \$0.62 |
| 4/17/14 - 5/19/14 | \$0.9093 | \$0.449321 | \$0.55 |
| 5/19/14 - 6/18/14 | \$0.8473 | \$0.449163 | \$0.57 |
| 6/18/14 - 7/21/14 | \$0.8226 | \$0.449150 | \$0.60 |
| 7/21/14 - 8/19/14 | \$0.8890 | \$0.449346 | \$0.61 |
| 8/19/14 - 9/17/14 | \$0.8990 | \$0.449188 | \$0.57 |
| 9/17/14 - 10/16/14 | \$0.8990 | \$0.427481 | \$0.57 |
| 10/16/14 - 11/14/14 | \$0.8990 | \$0.405313 | \$0.53 |
| 11/14/14 - 12/18/14 | \$0.8990 | \$0.405413 | \$0.52 |
| 12/18/14 - 1/21/15 | \$0.8990 | \$0.405386 | \$0.53 |
| 1/21/15 - 2/19/15 | \$0.8990 | \$0.405403 | Data Not Available |
| 2/19/15 - 3/23/15 | \$0.8615 | \$0.405387 | \$0.52 |

| Billing Period | Gateway Rate Per Therm¹ | NJNG Rate Per Therm | Wholesale Rate Per Therm |
|-----------------------|---|--------------------------------|-------------------------------------|
| 3/23/15 - 4/21/15 | \$0.8118 | \$0.405373 | \$0.50 |
| 4/21/15 - 5/20/15 | \$0.7990 | \$0.405416 | \$0.44 |
| 5/20/15 - 6/19/15 | \$0.7990 | \$0.405347 | \$0.46 |
| 6/19/15 - 7/23/15 | \$0.7990 | \$0.405378 | \$0.46 |
| 7/23/15 - 8/19/15 | \$0.7990 | \$0.405130 | \$0.45 |
| 8/19/15 - 9/17/15 | \$0.7854 | \$0.405671 | \$0.47 |
| 9/17/15 - 10/16/15 | \$0.7790 | \$0.408681 | \$0.49 |
| 10/16/15 - 11/17/15 | \$0.7516 | \$0.412506 | \$0.43 |
| 11/17/15 - 12/17/15 | \$0.7290 | \$0.412470 | \$0.42 |
| 12/17/15 - 1/19/16 | \$0.7290 | \$0.412518 | \$0.42 |

20. That Gateway's variable rate is not in fact a competitive market rate based on the wholesale cost of natural gas is demonstrated by the fact that Gateway's rate was significantly higher than NJNG's rates. Indeed, from June 2011 until January 2016, Gateway's rate was higher than NJNG *every single month*. In fact, there are numerous months where Gateway's rate was more than double NJNG's rate.

21. NJNG's rates are reflective of market prices because they are based on publicly held auctions. While NJNG and Gateway may not purchase natural gas in precisely the same manner, over time the costs they incur should be commensurate. Gateway represents in its Terms & Conditions that it purchased natural gas supply in advance to mitigate potential price spikes. In fact, there is a highly competitive natural gas market where Gateway can purchase natural gas for future use (either in a physical purchase of natural gas for future use or as a swap

transaction), and therefore its cost for purchasing gas reflects market prices, albeit over a longer term than daily spot rates. Similarly, NJNG and other New Jersey utilities purchase gas in rolling auctions that cover periods of more than just short term daily purchases. Therefore, while NJNG rates may not precisely match Gateways, they should be commensurate. Indeed, Gateway represents that one of its major considerations in setting prices is the price that utilities charge for natural gas.

22. That Gateway's rates do not reflect market costs for wholesale natural gas is also demonstrated by the disconnect between changes in wholesale natural gas prices (as demonstrated by the New Jersey City Gate rate) and Gateway's costs. While the New Jersey City Gate rate might show more short term fluctuations than Gateway's costs (because Gateway claims that it does not purchase all its natural gas on the spot market), over time, the New Jersey City Gate rate is an accurate reflection of wholesale market costs.

23. For example, the wholesale price of natural gas dropped from \$0.78 per therm to \$0.58 from July 2011 to May 2012 (a 25% decline) yet Gateway's rate stayed virtually the same. During this same period, NJNG's rate declined from \$0.74 to \$0.58, a reflection of both the fact that over time the rate NJNG charges is commensurate with market price changes and that Gateway does not charge a market rate but instead gouges consumers by charging outrageously high rates. Indeed, from July 2011 to February 2012, Gateway's rate actually increased from \$0.79 per therm to \$0.84, while wholesale rates actually declined by \$0.10 per therm.

24. Similarly, the wholesale rate fell by 9% from June 2013 to April 2014 (from \$0.68 to \$0.62) yet Gateway's rate rose during that period by 9% (from \$0.86 to \$0.95). As expected, NJNG's rate declined during this period.

25. The cost of wholesale natural gas is the primary component of the non-overhead costs Gateway incurs. Indeed, Gateway concedes and represents as much, listing the “cost of . . . natural gas” as the first factor in the “major components that influence our analysis in a typical month.”

26. The other factors Gateway identified in the Terms & Conditions other than the wholesale cost of natural gas that affect its variable rate in (such as transmission, storage, and transportation costs) are relatively insignificant in terms of the overall costs Gateway incurs to provide retail natural gas, and these costs do not fluctuate over time. Therefore, these other cost factors cannot explain the drastic increases in Gateways’ variable rate or the reason its rates are disconnected from changes in wholesale costs.

27. Gateway’s identification of “profit” amongst the factors it considers does not justify its outrageously high rates. A reasonable consumer might understand that an ESCO will attempt to make a reasonable profit by selling consumers retail natural gas. However, such a consumer would also expect that such profits would be consistent with profit margins obtained by other suppliers of natural gas in the market, and also that Gateway’s profiteering at the expense of its customers would not be so extreme that its rate bears no relation to market prices but is instead outrageously higher.

28. Thus, Gateway’s statements with respect to the natural gas rates it will charge are materially misleading because consumers do not receive a price based on market conditions. Instead, consumers are charged rates that are substantially higher. Gateway fails to disclose this material fact to its customers.

29. Gateway’s statements regarding its natural gas rates are materially misleading, as the most important consideration for any reasonable consumer when choosing an energy supplier

is price. No reasonable consumer who knows the truth about Gateway's exorbitant rates would choose Gateway as a natural gas supplier.

30. In fact, all that Gateway offers customers is natural gas delivered by local utilities, a commodity that has the exact same qualities as natural gas supplied by other ESCOs or local utilities. Other than potential price savings, there is nothing to differentiate Gateway from other ESCOs or local utilities, and the potential for price savings is the only reason any reasonable consumer would enter into a contract for natural gas supply with Gateway.

31. Gateway knows full well that it charges a rate that is unconscionably high, and the misrepresentations it makes with regard to the rate being market based were made for the sole purpose of inducing consumers to sign up for Gateway's natural gas supply so that it can reap outrageous profits to the direct detriment of New Jersey consumers without regard to the consequences high utility bills cause such consumers. As such, Gateway's actions were actuated by actual malice or accompanied by wanton and willful disregard for consumers' well-being.

Class Action Allegations

32. Plaintiff brings this action on his own behalf and additionally, pursuant to Rule 23(b)(2) and (3) of the Federal Rules of Civil Procedure, on behalf of a class of all New Jersey State residents charged a variable rate for natural gas by Gateway from May 2010 to the present.

33. Excluded from the Class are Defendant; any parent, subsidiary, or affiliate of Defendant; any entity in which Defendant have or had a controlling interest, or which Defendant otherwise control or controlled; and any officer, director, legal representative, predecessor, successor, or assignee of Defendant.

34. This action is brought as a class action for the following reasons:

- a. The Class consists of thousands of persons and is therefore so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
- b. There are questions of law or fact common to the Class that predominate over any questions affecting only individual members, including:
 - i. whether Defendant violated N.J.S.A. 56: 8-1 *et seq.*;
 - ii. whether Defendant breached its contract with New Jersey consumers by charging variable rates not based on market conditions;
 - iii. whether Defendant breached the covenant of good faith and fair dealing by exercising its unilateral price-setting discretion in bad faith, i.e., to price gouge;
 - iv. whether Plaintiff and the Class have sustained damages and, if so, the proper measure thereof; and
 - v. whether Defendant should be enjoined from continuing to charge variable rates not based on market conditions;
- c. The claims asserted by Plaintiff are typical of the claims of the members of the Class;
- d. Plaintiff will fairly and adequately protect the interests of the Class, and Plaintiff has retained attorneys experienced in class and complex litigation, including class litigation involving consumer protection and ESCOs;
- e. Prosecuting separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Defendant;
- f. Defendant has acted on grounds that apply generally to the Class, namely representing that its variable rates are based on market conditions, i.e., competitive and reflective

of the wholesale market, when Defendant's rates are in fact substantially higher, so that final injunctive relief prohibiting Defendant from continuing its deceptive practices is appropriate with respect to the Class as a whole;

g. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, for at least the following reasons:

i. Absent a class action, Class members as a practical matter will be unable to obtain redress, Defendant's violations of its legal obligations will continue without remedy, additional consumers and purchasers will be harmed, and Defendant will continue to retain their ill-gotten gains;

ii. It would be a substantial hardship for most individual members of the Class if they were forced to prosecute individual actions;

iii. When the liability of Defendant has been adjudicated, the Court will be able to determine the claims of all members of the Class;

iv. A class action will permit an orderly and expeditious administration of Class claims, foster economies of time, effort, and expense and ensure uniformity of decisions;

v. The lawsuit presents no difficulties that would impede its management by the Court as a class action; and

vi. Defendant has acted on grounds generally applicable to Class members, making class-wide monetary and injunctive relief appropriate.

35. Defendant's violations of N.J.S.A. 56: 8-1 *et seq.* and the common law are applicable to all members of the Class, and Plaintiff is entitled to have Defendant enjoined from engaging in illegal and deceptive conduct in the future.

FIRST CAUSE OF ACTION
(Violation of N.J.S.A. 56: 8-1 et seq.)

36. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above as if fully set forth herein.

37. The Consumer Fraud Act prohibits, *inter alia*:

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

N.J.S.A. § 56:8-2.

38. Defendant's misrepresentations and false, deceptive, and misleading statements with respect to the variable rates it charges for natural gas, as described above, constitute affirmative misrepresentations in connection with the marketing, advertising, promotion, and sale of natural gas in violation of the Consumer Fraud Act.

39. Defendant's false, deceptive, and misleading statements and omissions would have been material to any potential consumer's decision to purchase natural gas from Gateway.

40. Defendant also failed to inform customers that their variable rates for natural gas are substantially higher than those based on the market price of natural gas and do not reflect the wholesale cost of purchasing natural gas. That information would have been material to any consumer deciding whether to purchase natural gas from Gateway.

41. Defendant made these false, deceptive, and misleading statements and omissions with the intent that consumers rely upon such statements.

42. Plaintiff and the other members of the Class entered into agreements to purchase natural gas from Gateway for personal use and suffered ascertainable loss as a

direct and proximate result of Defendant's actions in violation of the Consumer Fraud Act.

43. As a consequence of Defendant's wrongful actions, Plaintiff and the other members of the Class suffered an ascertainable loss of monies based on the difference in the rate they were charged versus the rate they would have been charged had Gateway charged a rate based on market conditions or had they not switched to Gateway from their previous supplier.

44. Plaintiff and other members of the Class suffered an ascertainable loss caused by Defendant's misrepresentations and omissions because they would not have entered into an agreement to purchase natural gas from Gateway if the true facts concerning its rates had been known.

45. By reason of the foregoing, Defendant is liable to Plaintiff and the other members of the Class for trebled compensatory damages, punitive damages, attorneys' fees, and the costs of this suit. N.J.S.A. §§ 56:8-2.11, 8-2.12, 8-19.

46. Gateway knows full well that it charges a rate that is unconscionably high, and the misrepresentations it makes with regard to the rate being market based were made for the sole purpose of inducing consumers to sign up for Gateway's natural gas supply so that it can reap outrageous profits to the direct detriment of New Jersey consumers without regard to the consequences high utility bills cause such consumers. As such, Gateway's actions were actuated by actual malice or accompanied by wanton and willful disregard for consumers' well-being. Defendant is therefore additionally liable for punitive damages, in an amount to be determined at trial.

**SECOND CAUSE OF ACTION
(Breach of Contract)**

47. Plaintiff repeats and re-alleges the allegations contained in the paragraphs

above as if fully set forth herein.

48. Plaintiff and the Class entered into valid contracts with Gateway for the provision of natural gas.

49. Pursuant to the Agreement, Gateway agreed to charge a variable rate for natural gas based on market conditions, in particular, the wholesale cost of purchasing natural gas for delivery to customers from the same utility territory, and the prices charged by local utility companies and other competitors.

50. Pursuant to the Agreement, Plaintiff and the Class paid the variable rates charged by Defendant for natural gas.

51. However, Gateway failed to perform its obligations under the Agreement because it charged a variable rate for natural gas that was not based on the factors upon which the parties agreed the rate would be based.

52. Plaintiff and the Class were damaged as a result because they were billed, and they paid, a charge for natural gas that was higher than it would have been had Gateway based its rate on the agreed upon factors.

53. By reason of the foregoing, Defendant is liable to Plaintiff and the other members of the Class for the damages that they have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial, plus attorneys' fees.

THIRD CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith & Fair Dealing)

54. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above as if fully set forth herein.

55. Every contract in New Jersey contains an implied covenant of good faith and fair dealing in the performance and enforcement of the contract. The implied covenant is an

independent duty and may be breached even if there is no breach of a contract's express terms.

56. Under the contract, Gateway had unilateral discretion to set the variable rate for natural gas based on market conditions and other factors, such as the amount of profit Gateway hoped to earn from the sale of natural gas in a customer's utility area.

57. Plaintiff reasonably expected that the variable rates for natural gas would, notwithstanding Defendant's profit goals, reflect the market and wholesale prices for natural gas and that Defendant would refrain from price gouging. Without these reasonable expectations, Plaintiff and other Class members would not have agreed to buy natural gas from Defendant.

58. Defendant breached the implied covenant of good faith and fair dealing by arbitrarily and unreasonably exercising its unilateral rate-setting discretion to price gouge and frustrate Plaintiff and other Class members' reasonable expectations that the variable rate for natural gas would be commensurate with market conditions.

59. As a result of Defendant's breach, Defendant is liable to Plaintiff and other Class members for actual damages in an amount to be determined at trial and attorney's fees.

**FOURTH CAUSE OF ACTION
(Unjust Enrichment)**

60. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above as if fully set forth herein.

61. By engaging in the conduct described above, Defendant has unjustly enriched itself and received a benefit beyond what was contemplated in the contract, at the expense of Plaintiff and the other members of the Class.

62. It would be unjust and inequitable for Defendant to retain the payments

Plaintiff and the Class made for excessive natural gas charges.

63. By reason of the foregoing, Defendant is liable to Plaintiff and the other members of the Class for the damages that they have suffered as a result of Defendant's actions, the amount of which shall be determined at trial, plus attorneys' fees.

WHEREFORE, Plaintiff respectfully requests that the Court should enter judgment against Defendant as follows:

1. Certifying this action as a class action, with a class as defined above;
2. On Plaintiff's First Cause of Action, awarding against Defendant damages that Plaintiff and the other members of the Class have suffered, trebled, and granting appropriate injunctive relief;
3. On Plaintiff's Second Cause of Action, awarding against Defendant damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions;
4. On Plaintiff's Third Cause of Action, awarding against Defendant damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions;
5. On Plaintiff's Fourth Cause of Action, awarding against Defendant damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions;
6. Awarding Plaintiff and the Class punitive damages;
7. Awarding Plaintiff and the Class interest, costs and attorneys' fees; and
8. Awarding Plaintiff and the Class such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Federal Rule of Civil Procedure Rule 38, Plaintiff hereby demands a trial by jury.

Dated: May 11, 2016
White Plains, New York

**FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP**

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Attorneys for Plaintiff and the Putative Class

EXHIBIT A

New Jersey Residential Terms & Conditions

Your Residential Energy Sales Agreement ("Agreement") with Gateway Energy Services Corporation ("Gateway Energy"), an independent supplier, shall consist of: (i) your telephonic, electronic or written agreement to initiate service and begin enrollment with Gateway Energy ("Enrollment Consent") and (ii) the terms and conditions contained below. Throughout this document, the words "you" and "your" refer to the customer identified in the Enrollment Consent. The words "we", "us" and "our" refer to Gateway Energy.

Electricity or Natural Gas Emergencies

In the event of an electricity or natural gas emergency or service interruption, contact your local distribution company ("utility") at one of the telephone numbers listed below. You should also contact your local emergency personnel.

Atlantic City Electric: (800) 833-7476; Elizabethtown Gas: (800) 492-4009; JCP&L: (888) 544-4877; New Jersey Natural Gas: (800) 427-5325; PSE&G: (800) 436-7734; Rockland Electric (877) 434-4100; or South Jersey Gas: (800) 582-7060

Agreement to Sell and Purchase Energy

You agree to purchase, and we agree to sell to you, all of the electricity or natural gas necessary to satisfy your requirements for the utility account(s) identified in your Enrollment Consent during the term of the Agreement. You agree to initiate service and begin enrollment with us. You appoint us as your agent to acquire the supplies necessary to meet your electricity or natural gas needs. Your utility will continue to provide delivery services and respond to leaks or other emergencies should they occur. You agree to accept the measurements as determined by the utility for purposes of accounting for the electricity or natural gas supplied by the utility. If the utility is unable to read your meter, the utility will estimate your usage and your charges will be calculated accordingly and adjusted on a future bill.

Term

This Agreement shall be binding as of the date your enrollment or re-enrollment is accepted by us, which will not be before the expiration of your 14-day right of rescission as required under the New Jersey Board of Public Utilities ("NJ BPU"). Our actual supply of electricity or natural gas under this Agreement shall begin on the date that the utility deems your switch to us effective or the date that the utility deems your rate change effective for rate-plan changes. Your switch or rate change may take up to 2 billing cycles to take effect. Regardless of the actual effective date of this Agreement, you will only be charged for supply under this Agreement once we have begun the supply of electricity or natural gas. The initial term of the Agreement ("Initial Term") is the term specified in your Enrollment Consent or, if no term is specified, 12 months. Your Agreement shall automatically renew on a month-to-month basis (each a "Renewal Term") at the current rate plan unless one party notifies the other party in writing, at least 30 days prior to the anticipated renewal date, that it does not wish for the Agreement to renew.

Material Change Notice

From time to time, we may make changes to our terms and conditions. If we make any changes that are material to your Agreement, we will send you a written notice at least 30 days prior to making such changes. The changes will automatically take effect unless you notify us within 25 days after the date of our written notice that you wish to terminate this Agreement instead of accepting the changes.

Price

The price for all electricity or natural gas sold under this Agreement during the Initial Term of the Agreement and any Renewal Terms shall be the rate agreed to in the Enrollment Consent, plus all applicable taxes. There are no additional fees for switching your electricity or natural gas service. Our price does not include utility distribution service and other utility-related charges, which are separate amounts that you must pay to the utility. Additional details are below:

Variable-Rate Plan: The price for all electricity or natural gas sold under our Variable-Rate Plan is a rate set by us each month based on our evaluation of a number of factors that affect the total price of electricity or natural gas to a customer. The following description is not exhaustive of all

factors that may influence our pricing decision each month, but it does describe the major components that influence our analysis in a typical month. Each month our management uses the information described below, along with numerous other considerations, to determine how low a price we can charge in the upcoming month.

- We determine the cost of all electricity or natural gas (including, where applicable, transmission costs, storage costs, transportation costs and line losses) that we have already obtained for delivery to customers in your utility territory for the upcoming month. Because we often acquire supply over time in preparation for future delivery needs (in an effort to mitigate the volatility in price) and do not acquire all of our required electricity or natural gas from the spot market, our supply costs may not directly follow spot market prices.
- If additional supplies of electricity or natural gas will be required for the upcoming month, we will determine the anticipated cost to acquire such additional supplies from the spot market.
- If we expect to have surplus supply for the upcoming month, we evaluate the expected income we may receive from selling the surplus. Additionally, with electricity, we may expect to have surplus or shortfall in any given hour of the upcoming month. In this case, we evaluate the expected income or costs that may be incurred by eliminating the surplus or shortfall.
- We evaluate, if known, the prices that your utility and other competitors in your area plan to charge in the upcoming month.
- We evaluate the amount of profit we hope to earn from the sale of electricity or natural gas in your utility territory.
- We evaluate any taxes that must be included in the rate we charge for electricity or natural gas in your jurisdiction.
- From time to time, and as a direct result of sudden or drastic increases in price, we may experience a higher level of cost to supply our customers than we wish to bill our customers in a single period. In these circumstances, we may amortize this expense to our customers over multiple billing cycles.

Price-Protection Plan: The price you will pay for all electricity or natural gas under our Price-Protection Plan is a variable rate, as described above, but with a ceiling rate and a premium as specified in your Enrollment Consent. The premium represents the cost of locking in to your ceiling rate. If the variable rate rises above the ceiling rate, you will pay no more than the ceiling rate plus the premium.

Fixed-Rate Plan: The price you will pay for all electricity or natural gas under our Fixed-Rate Plan is the rate as specified in your Enrollment Consent.

Contact Us

You may contact our Customer Service Department at (800) 805-8586 9 a.m.–8 p.m. ET Monday–Thursday and 9 a.m. –6 p.m. ET Friday. Hours subject to change. You may write to us at: Gateway Energy Services Corporation, 400 Rella Blvd., Suite 300, Montebello, NY 10901 or e-mail us at customerservice@gesc.com.

Customer Rights and Information

You will receive a confirmation notice for your choice of supplier and have 14 calendar days from the date of such notice to contact your utility and rescind the selection. **This agreement is not binding until the 14-day confirmation period has expired and you have not rescinded the supplier selection.** You may obtain additional information by calling us at the contact information above, or the NJ BPU's Division of Consumer Relations at (800) 624-0241. Gateway Energy is licensed by the NJ BPU and its license number is GSL-0020 (for natural gas) and ESL-0022 (for electricity).

Information Release Authorization

Your signature on the Enrollment Consent is your authorization for us and our agents to obtain and review information regarding your credit history from credit-reporting agencies, and information from the utility, which could include: account number; phone number; address; meter-read, service or rate-class data; electric or gas consumption history; billing determinants; and payment history. We may use such information to determine whether to begin or to continue to provide you with energy supply service, and to bill and collect monies owed. These authorizations shall remain in effect as long as the Agreement is in effect. You may rescind these authorizations at any time by either calling or providing written notice to us. We reserve the right to reject your enrollment or terminate our Agreement with you, in whole or with respect to any particular account(s) covered by the Agreement, in the event these authorizations are rescinded, you fail to meet

or maintain satisfactory credit standing as determined by us, or fail to meet minimum or maximum threshold consumption levels as determined by us. If you fail to remit payment in a timely fashion, we may report the delinquency to a credit-reporting agency.

Dispute Resolution

If you have a billing dispute involving our service, please contact our Customer Service Department as provided above. You must still pay your bill in full, but may deduct the specific amount in dispute while the charges remain in dispute. If the dispute cannot be resolved within 45 days, a complaint or request for an Alternate Dispute Resolution procedure may be submitted by either party by contacting the NJ BPU at (800) 624-0241.

Termination

Any or all of your account(s) that are terminated or cancelled shall be returned to the utility unless you contract with another supplier for electricity or natural gas supply. It may take several billing cycles for your account(s) to be returned to the utility. You are required to pay all of the charges for the electricity or natural gas supplied by us until such time as the utility or other supplier actually begins supplying the electricity or natural gas to your account(s).

Termination of Variable-Rate Plan: You may cancel your Variable-Rate Plan Agreement without penalty, at any time, by contacting our Customer Service Department at the number provided. We may terminate the Agreement without penalty at any time; in whole or with respect to any particular account(s) covered by the Agreement by providing you with 30 days' advance written notice of such termination. If we are terminating due to nonpayment or other breach of this Agreement, you will have 30 days to remedy the breach or nonpayment.

Termination of Price-Protection Plan or Fixed-Rate Plan: We may terminate your Price-Protection Plan or Fixed-Rate Plan Agreement, in whole or with respect to any particular account(s), for nonpayment of your energy charges or if you breach this Agreement. If you terminate this Agreement, in whole or with respect to any particular account(s), or if we terminate this Agreement due to breach or nonpayment, you will be charged an early termination fee ("Early Termination Fee"), as liquidated damages, in the amount agreed to in your Enrollment Consent, in addition to any energy charges you may already owe. An Early Termination Fee shall become due and payable immediately upon the effective date of the termination of service to the account(s). The Early Termination Fee is not a penalty, but is intended to compensate us for the cost of buying electricity or natural gas in advance on your behalf.

Termination as a result of Relocation, Disability or Death: You may terminate this Agreement upon 48 hours' notice, without penalty, as a result of relocation, disability and/or death.

Billing and Payment

Depending on your location and other relevant factors, you will receive either: (i) one bill from your utility which will include our charges (for the supply) as well as the utility charges (for the delivery), or (ii) separate bills from Gateway Energy and your utility. Past-due charges may incur a late fee of 1.5% per month or the interest rate posted in your utility's tariff. If you fail to remit payment when due, or if you breach any of the other terms and conditions of the Agreement, then, in addition to any other remedies we may have, we have the right to terminate the Agreement, in whole or with respect to any particular account(s) covered by the Agreement, upon 30 days' written notice, provided that you do not make payment or correct the problem that caused the termination within the 30-day period. Failure to make full payment may be grounds for disconnection of utility services. A \$20 fee per account may be assessed for any payment returned due to insufficient funds. If any payments made by you directly to us are rejected two times in a one-year period, the only form of payment acceptable will be a certified check, money order or electronic funds transfer. If you make a payment for a lesser amount, which includes a statement or letter indicating that the lesser payment constitutes full payment, we may accept such payment without prejudice to any other rights or remedies that we may have against you and we may apply it to your account(s) as a partial payment.

Title

All electricity or natural gas sold pursuant to the Agreement shall be delivered to a location ("Point of Delivery") which shall constitute the point at which the sale occurs and title to the energy passes to you from us. For natural gas, the Point of Delivery shall be the point where the utility interconnects with the interstate pipeline. For electricity, the Point of Delivery shall be, depending on the specific transaction, either a location

outside the State of New Jersey or Gateway Energy's PJM load bus that corresponds to the utility or zone in which the meter is located.,

Default Liability

Our liability shall be limited to direct actual damages only, which will not exceed the amount of your single largest monthly invoice during the preceding 12 months. In no event shall we be liable for any punitive, incidental, consequential, exemplary, indirect, third-party claims or other damages whether based on contract, warranty, tort, negligence, strict liability or otherwise, or for lost profits arising from a breach of the Agreement.

Governing Law

This Agreement is made and shall be construed in accordance with the laws of the State of New Jersey. If, at some future date, there is a change in any law, rule or pricing structure which shall have a detrimental economic impact upon our performance under the Agreement; or in the event that compliance with such change shall result in a material change in the way prices are calculated under the Agreement; or we are otherwise prevented, prohibited or frustrated from fulfilling our obligations under the Agreement; we shall have the right to terminate the Agreement, in whole or with respect to any particular account(s) covered by the Agreement, upon 30 days' notice.

Assignment

You may not assign the Agreement, in whole or in part, or any of your rights or obligations without our prior written consent. We may, without your consent: (a) transfer, sell, pledge, encumber or assign the Agreement or the accounts, revenues or proceeds in connection with any financial or billing services agreement; (b) transfer or assign the Agreement, in whole or in part, to an affiliate of Gateway Energy, or any other approved third party supplier or entity authorized by the NJ BPU. This Agreement shall be binding on each party's successors and legal assigns.

Severability

If any provision of the Agreement is held by a court or regulatory agency of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being invalidated in any way.

No Warranties

We provide no warranties, express or implied, and we specifically disclaim any warranty of merchantability or fitness for a particular purpose. Additionally, unless expressly stated otherwise on your Enrollment Consent, we specifically disclaim any warranty or guaranty that the price charged by us for the energy supplied pursuant to the Agreement will be lower than the price that you would have been charged by the utility or another third-party supplier.

Delay or Failure to Exercise Rights

No partial performance, delay or failure on our part in exercising any rights under the Agreement and no partial or single exercise thereof shall constitute a waiver of such rights or of any other rights hereunder.

Force Majeure

We shall make commercially reasonable efforts to provide service, but do not guarantee a continuous supply of energy. Certain causes and events out of our control ("Force Majeure Events") may result in interruptions in service. We shall not be liable for any such interruptions caused by a Force Majeure Event. We do not transmit or deliver energy. Therefore, we are not and shall not be liable for damages caused by Force Majeure Events, including acts of God; acts of any governmental authority; accidents; strikes; labor disputes; required maintenance work; inability to access the utility's system; non-performance by the utility, including, but not limited to, a facility outage on its distribution lines; changes in laws, rules or regulations of any governmental authority; or any cause beyond our control.

Taxes and Laws

Except as otherwise provided in the Agreement or by law, all taxes due and payable with respect to your performance of your obligations under the Agreement, shall be paid by you. Any lawful tax exemption will only be recognized on a prospective basis from the date that you provide valid tax-exemption certificates to us.

Entire Agreement

The Agreement (including the Enrollment Consent) sets forth the entire agreement between the parties. Any and all prior or contemporaneous agreements, understandings and representations between the parties, whether verbal or written, are superseded by the Agreement.