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SUPERIOR COURT OF NJ
MERCER VICINAGE
CHANCERY

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

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

Plaintiffs,

v.

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

Defendants.

Civil Action

FINAL CONSENT JUDGMENT

The parties to this Action and Final Consent Judgment ("Consent Judgment") are plaintiffs
Robert Lougy, Acting Attorney General of the State of New Jersey,¹ the New Jersey Board of Public

¹ In accordance with R. 4:34-4, the caption has been revised to reflect the current Acting
Attorney General.

Utilities, and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs (collectively, “Plaintiffs”), and defendants Palmco Power NJ, LLC (“Palmco Power NJ”) and Palmco Energy NJ, LLC (“Palmco Energy NJ”) (collectively, “Palmco” or “Defendants”) (collectively, “Parties”). As evidenced by their signatures below, the Parties, for the purpose of resolving this Action (as defined below) without the need for further litigation, do consent to the entry of this Consent Judgment and its provisions without trial, findings or adjudication of any issue of fact or law, and without an admission of any liability or wrongdoing of any kind. The Parties consent to entry of this Consent Judgment to avoid the expenses and uncertainty associated with further investigation and/or litigation.

PRELIMINARY STATEMENT

Plaintiffs commenced this Action on May 23, 2014, alleging that Palmco Power NJ, a third party energy supplier (“TPS”) of natural gas in New Jersey, and Palmco Energy NJ, a TPS of electric power in New Jersey, violated the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. (“EDECA”), the Regulations Governing Energy Licensing and Registration, N.J.A.C. 14:4-5.1 et seq. (“Energy Licensing and Registration Regulations”), the Regulations Governing Retail Choice Consumer Protection, N.J.A.C. 14:4-7.1 et seq. (“Retail Choice Consumer Protection Regulations”), the Regulations Governing Energy Anti-Slamming, N.J.A.C. 14:4-2.1 et seq. (“Energy Anti-Slamming Regulations”), the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), and the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq. (“Advertising Regulations”), arising from their Advertisement and Sale, through Solicitations, of Gas Supply Service and/or Electric Generation Service. Concurrently with the filing of this Consent Judgment, Plaintiffs are filing a First Amended Complaint that includes an eleventh count under the Truth-in-Consumer Contract, Warranty and Notice Act, N.J.S.A. 56:12-14 et seq. (“TCCWNA”).

Specifically, Plaintiffs allege, among other things, that Defendants: (1) engaged in aggressive and deceptive marketing practices which included, without limitation, leading Consumers to believe they were affiliated with a Local Distribution Company (“LDC”); (2) failed to provide rates for Gas Supply Service and/or Electric Generation Service that were competitive, lower than the LDC and/or consistent with the pricing mechanisms set forth in the Palmco Contracts; (3) charged rates for Gas Supply Service and/or Electric Generation Service that were exorbitant compared with the Consumers’ prior energy suppliers; (4) switched Consumers’ energy suppliers without their authorization; and (5) utilized Palmco Contracts that violated the TCCWNA. Defendants have denied all of these allegations.

The Court has reviewed the terms of this Consent Judgment and based upon the Parties’ agreement and for good cause shown:

IT IS HEREBY ORDERED, ADJUDGED AND AGREED AS FOLLOWS:

1. JURISDICTION

1.1 The Parties admit jurisdiction of this Court over the subject matter and over the Parties for the purpose of entering into this Consent Judgment. The Court retains jurisdiction for the purpose of enabling the Parties to apply to the Court at any time for such further orders and relief as may be necessary for the construction, modification, enforcement, execution or satisfaction of this Consent Judgment.

2. VENUE

2.1 Pursuant to N.J.S.A. 56:8-8, venue as to all matters between the Parties hereto relating to or arising out of this Consent Judgment shall lie exclusively in the Superior Court of New Jersey, Chancery Division, Mercer County. However, nothing in this Section 2, or in Section 1 above, is intended to – nor shall it have any effect on – BPU’s jurisdiction over the TPS licensure of

Palmco Power NJ and/or Palmco Energy NJ.

3. EFFECTIVE DATE

3.1 This Consent Judgment shall be effective on the date that it is entered by the Court, which shall be contemporaneous with the filing of the First Amended Complaint (“Effective Date”).

3.2 The terms and conditions of this Consent Judgment are expressly made subject to Plaintiffs’ filing of a First Amended Complaint that includes an additional count under TCCWNA and the assertion of such TCCWNA claim in the Action.

4. DEFINITIONS

4.1 As used in this Consent Judgment, the following capitalized words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Judgment:

4.2 “Action” shall refer to the matter titled Robert Lougy, Acting Attorney General of the State of New Jersey, New Jersey Board of Public Utilities, and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs v. Palmco Power NJ, LLC and Palmco Energy NJ, LLC, Superior Court of New Jersey, Chancery Division, Mercer County, Docket No. MER-C-33-14, and all pleadings and proceedings related thereto, including the Complaint, filed May 23, 2014, and the First Amended Complaint.

4.3 “Account Holder” shall refer to the Person in whose name an account for Gas Supply Service and/or Electric Generation Service is listed and whose name appears on any LDC billing statement and who is responsible for paying the bill as well as that Person’s spouse or authorized adult child.

4.4 “Advertisement” shall be defined in accordance with N.J.S.A. 56:8-1(c) and N.J.A.C. 14:4-1.2. This definition applies to other forms of the word “Advertisement” including, without

limitation, “Advertised” and “Advertising.”

4.5 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

4.6 “BPU” shall refer to the New Jersey Board of Public Utilities.

4.7 “Civil Penalties” shall refer to the civil penalties, in the amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00), pursuant to the EDECA, N.J.S.A. 48:3-82(a)(2), 48:3-83, and 48:3-86(e), the Energy Anti-Slamming Regulations, N.J.A.C. 14:4-2.8, the CFA, N.J.S.A. 56:8-13, and the TCCWNA, N.J.S.A. 56:12-17, to be paid by Palmco in accordance with Section 6.2.

4.8 “Class Actions” shall refer to the King Action and the Komoda Action, collectively.

4.9 “Clear and Conspicuous” or “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such size, color, contrast, duration, location and audibility, compared to the other information with which it is presented, that it is readily apparent and understandable and in language and in terms used in accordance with their common or ordinary usage and meaning. If such statement modifies, explains or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, explains or clarifies in a manner that is readily apparent and understandable.

4.10 “Compliance Officer” shall refer to a Person employed by Palmco to assume the duties and responsibilities set forth in Section 5.130.

4.11 “Consumer” shall refer to any Person who is offered Merchandise for Sale.

4.12 “Division” or “Division of Consumer Affairs” shall refer to the New Jersey Division of Consumer Affairs.

4.13 “Electric Generation Service” shall be defined in accordance with N.J.A.C. 14:4-1.2.

4.14 “Final Class Action Resolution” is defined as: (a) the resolution, after the occurrence of an Initial Class Action Resolution pursuant to Sections 4.17(b) or 4.17(c), of both the Komoda Action and the King Action through the execution of a settlement agreement by Palmco and the parties and counsel for King, and the execution of a settlement agreement by Palmco and the parties and counsel for Komoda, each of which must be approved by all appropriate courts; (b) Palmco obtaining final non-appealable orders dismissing both Class Actions or determining that neither the Komoda Action nor the King Action may proceed on behalf of their respective putative classes; or (c) Palmco not exercising its Final Termination Option.

4.15 “Final Termination Option” shall refer to Palmco’s option, which may be exercised in its sole discretion, to withdraw from the agreement to fund and have the Polar Vortex Customers and the Non-Polar Vortex Customers reimbursed from Restitution Fund B, and to pay such other amounts set forth in Section 9.2, as a result of its failure to obtain a Final Class Action Resolution.

4.16 “Gas Supply Service” shall be defined in accordance with N.J.A.C. 14:4-1.2.

4.17 “Initial Class Action Resolution” is defined as: (a) the resolution of both the Komoda Action and the King Action through the execution of a settlement agreement by Palmco and the parties and counsel for King, and the execution of a settlement agreement by Palmco and the parties and counsel for Komoda, each of which must be approved by all appropriate courts; (b) Palmco obtaining orders from the trial courts in both the Komoda Action and the King Action, as a result of its petition or motion, either dismissing the Class Actions or determining that neither the Komoda Action nor the King Action may proceed on behalf of putative classes in light of, inter alia, the restitution and other relief provided in the Consent Judgment (including, but not limited to, Restitution Fund A and Restitution Fund B); or (c) Palmco not exercising its Initial Termination Option.

4.18 “Initial Termination Option” shall refer to Palmco’s option, which may be exercised in its sole discretion, to withdraw from the agreement to fund and have both the Polar Vortex Customers and the Non-Polar Vortex Customers reimbursed from Restitution Fund A and/or Restitution Fund B and to pay such other amounts as set forth in Section 9.1, where there has been no Initial Class Action Resolution.

4.19 “King” refers to the named class representative in the King Action.

4.20 “King Action” refers to the putative class action titled James King, etc. v. Palmco Power, NJ, LLC, et al., Docket No. MID-L-11668-14.

4.21 “Komoda” refers to the named class representative in the Komoda Action.

4.22 “Komoda Action” refers to the putative class action titled Kurt Komoda, etc. v. Palmco Energy, NJ, LLC, et al., Docket No. ESX-L-3263-14.

4.23 “LDC” or “Local Distribution Company” shall be defined in accordance with N.J.A.C. 14:4-1.2.

4.24 “LMP” shall refer to the invoiced locational marginal price, determined and published by the regional wholesale market operator, which reflects the price of the electric energy at the time, and in the utility zone in which, it is delivered. LMP varies hourly and takes into account electricity demand, generation costs, and the use of and limits on the transmission system.

4.25 “Marketing” shall be defined in accordance with N.J.A.C. 14:4-1.2. This definition applies to other forms of the word “Marketing” including, without limitation, “Market” and “Marketed.”

4.26 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c) and includes Gas Supply Service and Electric Generation Service.

4.27 “New Jersey” and “State” shall refer to the State of New Jersey.

4.28 “Non-Monetary Relief” shall refer to the Injunctive Relief and Business Practices set forth in Section 5.

4.29 “Non-Polar Vortex Customers” shall refer to those Persons who were Palmco customers at any time up to and including the Effective Date, other than during January, February and/or March 2014.

4.30 “Notice Date” shall refer to the date that both counsel for Komoda in the Komoda Action and counsel for King in the King Action have received a copy of the executed Consent Judgment.

4.31 “NYMEX” shall refer to the New York Mercantile Exchange, a commodity futures exchange owned and/or operated by CME Group of Chicago.

4.32 “Palmco Brochure” shall refer to the Palmco Marketing Brochure and the Palmco Retention Brochure.

4.33 “Palmco Contract” shall refer to the two (2) page agreement which has been titled “Natural Gas & Electricity Supply Agreement” or “Natural Gas & Electric Power Supply Agreement” and which is either: (a) presented by or on behalf of Palmco to Consumers for signature during door-to-door solicitations for Gas Supply Service and/or Electric Generation Service; or (b) sent to Consumers who sign up with Palmco for Gas Supply Service and/or Electric Generation Service through telephone solicitations.

4.34 “Palmco Marketing Brochure” shall refer to a brochure through which Palmco has Advertised and/or Marketed Gas Supply Service and/or Electric Generation Service and includes, without limitation, any Marketing flyers provided by Sales Representatives to Consumers before they sign a Palmco Contract or complete a Verification Call.

4.35 “Palmco Retention Brochure” shall refer to any brochure which Palmco provides to

existing customers for the purposes of encouraging the customer to remain with Palmco.

4.36 “Palmco Website” shall refer to the website located at www.palmcoenergy.com, as well as any other website operated by or on behalf of Palmco, to the extent such websites Market, Advertise, offer for Sale, and/or sell Palmco Power NJ’s Electric Generation Service and/or Palmco Energy NJ’s Gas Supply Service.

4.37 “Person[s]” shall be defined in accordance with N.J.S.A. 56:8-1(d) and N.J.A.C. 14:4-1.2.

4.38 “Plaintiffs’ Attorneys’ Fees and Costs” shall refer to Plaintiffs’ attorneys’ fees and investigative costs, which amount constitutes all reasonable attorneys’ fees and investigative costs incurred by Plaintiffs in this Action pursuant to all applicable statutes and regulations, including, but not limited to, the EDECA, N.J.S.A. 48:3-82(c), the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19, and the TCCWNA, N.J.S.A. 56:12-17.

4.39 “Polar Vortex Customers” shall refer to the Persons who were customers of Palmco during January, February and/or March 2014 and who, among the other alleged issues, claims and violations identified in the First Amended Complaint, experienced alleged overcharges by Palmco on their gas and/or electric bills.

4.40 “Promotion” shall refer to any offers provided by or on behalf of Palmco in connection with its Advertisement, Marketing and/or Sale of Gas Supply Service and/or Electric Generation Service, including, without limitation, the Refer a Friend! Restaurant.com gift cards and enrollment in the “PALMco Cares” donation program.

4.41 “Restitution Fund A” shall refer to the fund in the amount of Three Million Five Hundred Two Thousand Seven Hundred Ninety-One and 66/100 Dollars (\$3,502,791.66), to be distributed to the Polar Vortex Customers pursuant to the terms and conditions of this Consent

Judgment.

4.42 “Restitution Fund B” shall refer to the fund in the maximum amount of One Million and 00/100 Dollars (\$1,000,000.00) to be distributed to Polar Vortex Customers and Non-Polar Vortex Customers pursuant to the terms and conditions of this Consent Judgment. As described herein, a portion of Restitution Fund B may include residual monies transferred from Restitution Fund A.

4.43 “Restitution Fund B Payment Date” shall refer to the period of three hundred thirty-five (335) days following the Initial Class Action Resolution as described in Section 4.17(a).

4.44 “Rust Consulting” and “Settlement Administrator” shall refer to Rust Consulting, Inc.

4.45 “Rust Consulting’s Fees and Costs” shall refer to all of the documented reasonable fees and costs of Rust Consulting incurred in connection with this Consent Judgment, in an amount not to exceed \$250,000.00.

4.46 “Sale” shall be defined in accordance with N.J.S.A. 56:8-1(e).

4.47 “Sales Representative” shall be defined as an individual hired by a Third Party Vendor or Palmco as an employee or independent contractor, who directly engages in the Solicitation of Gas Supply Service or Electric Generation Service on behalf of Palmco, in accordance with N.J.S.A. 48:3-51.

4.48 “Senior Citizen” shall be defined in accordance with N.J.S.A. 56:8-14.2.

4.49 “Slamming” shall refer to the unauthorized changes of a Consumer’s gas supplier and/or electric power supplier, as defined in accordance with N.J.A.C. 14:4-1.2.

4.50 “Solicitation” shall refer to both the door-to-door solicitation and telephone solicitation of Consumers by or on behalf of Palmco.

4.51 “Third Party Vendor” shall be defined as any Person hired or engaged by Palmco that

hires a Sales Representative.

4.52 “Valid Claim Form” shall refer to the claim form and supporting documentation, in a form to be mutually agreed upon by the Parties, that shall be submitted by those Polar Vortex Customers and/or Non-Polar Vortex Customers who are seeking a distribution from Restitution Fund B.

4.53 “Verification Calls” shall refer to the telephone calls made during door-to-door solicitations or telephone solicitations, during which a Verifier confirms that Consumers are voluntarily switching their Gas Supply Service and/or Electric Generation Service from the Consumers’ current LDC or TPS to Palmco.

4.54 “Verifier” means any Person employed, engaged or hired by Palmco, as well as its subsidiaries, affiliates, successors, assigns, subcontractors and Third Party Vendors, who conducts a Verification Call with Consumers located in New Jersey.

4.55 “Welcome Letter” shall refer to the letter sent to Consumers who switch their Gas Supply Service and/or Electric Generation Service from their LDC or TPS to Palmco through a telephone solicitation, welcoming them to Palmco and accompanying the Palmco Contract.

5. INJUNCTIVE RELIEF AND BUSINESS PRACTICES

5.1 Defendants shall not engage in any unfair or deceptive acts or practices in the conduct of any business in the State and shall comply with such State and/or Federal laws, rules and regulations as now constituted, including the EDECA, the Energy Licensing and Registration Regulations, the Retail Choice Consumer Protection Regulations, the Energy Anti-Slamming Regulations, the CFA, the Advertising Regulations and the TCCWNA.

Palmco Website:

5.2 Within thirty (30) days of the Effective Date, Defendants shall revise the Palmco

Website to include Palmco Power NJ's electric generation supplier license number and Palmco Energy NJ's gas supplier license number issued by BPU, as required by N.J.A.C. 14:4-7.4(a)(5).

5.3 Within thirty (30) days of the Effective Date, Defendants shall revise the Palmco Website to include a statement indicating whether or not Defendants offer budget billing, as required by N.J.A.C. 14:4-7.4(a)(8).

5.4 Within thirty (30) days of the Effective Date, Defendants shall revise the Palmco Website to include the address of Palmco's New Jersey office which is accessible to the BPU and Consumers, as required by N.J.A.C. 14:4-5.2(b), (c) and (d).

5.5 Within sixty (60) days of the Effective Date, Defendants shall revise the Palmco Website to include pricing information for its Gas Supply Service and/or Electric Generation Service, as required by N.J.A.C. 14:4-7.4(b)(1) and (2).

5.6 Within seventy-five (75) days of the Effective Date, Defendants shall revise the Palmco Website to include: (a) a Clear and Conspicuous table and graph that identifies the highest and lowest price per kWh that Palmco Power NJ billed to its customers under a variable rate offer for each month during 2015; and (b) a Clear and Conspicuous table and graph that identifies the highest and lowest price per therm that Palmco Energy NJ billed to its customers under a variable rate offer for each month during 2015. Defendants shall revise such table and graph on the Palmco Website when the twelve (12) month data becomes available for each successive year (e.g. January through December of 2016).

5.7 Within seventy-five (75) days of the Effective Date, Defendants shall revise the Palmco Website to include a Clear and Conspicuous statement that the unit prices for Gas Supply Service and Electric Generation Service reflected in the tables and graphs referenced in Section 5.6 reflect past performance and is not an indicator of future pricing and/or savings.

5.8 Within sixty (60) days of the Effective Date, Defendants shall revise the Palmco Website to include a statement that switching to a competitive TPS is not mandatory and that the Consumer has the option of remaining with his/her current LDC or TPS for Gas Supply Service and/or Electric Generation Service, as required by N.J.A.C. 14:4-7.4(f).

5.9 Defendants shall not represent on the Palmco Website that Palmco provides “competitive prices,” when such is not the case.

5.10 Defendants shall not represent on the Palmco Website that the Defendants have been in business “since 1938” when Palmco Power NJ and Palmco Energy NJ were established in 2009.

5.11 Within fifty (50) days of the Effective Date, in the event Defendants include any Promotion on the Palmco Website, any exclusions to such Promotion must be Clearly and Conspicuously set forth in at least 10-point font, in accordance with N.J.A.C. 13:45A-9.2(a)(5).

Palmco Brochure:

5.12 Within seventy-five (75) days of the Effective Date, Defendants shall revise the Palmco Brochure to include the address of Palmco’s New Jersey office.

5.13 Within seventy-five (75) days of the Effective Date, Defendants shall revise the Palmco Brochure to include Palmco Power’s gas supplier license number and Palmco Energy’s electric generation supplier license number issued by BPU, as required by N.J.A.C. 14:4-7.4(a)(5).

5.14 Within seventy-five (75) days of the Effective Date, Defendants shall revise the Palmco Marketing Brochure to include a statement identifying the LDC(s) in whose service territory(ies) Defendants are offering Advertised services, as required by N.J.A.C. 14:4-7.3(c)(2) and N.J.A.C. 14:4-7.4(a)(6).

5.15 Within seventy-five (75) days of the Effective Date, Defendants shall revise the Palmco Marketing Brochure to include a statement indicating whether or not Defendants offer

budget billing, as required by N.J.A.C. 14:4-7.4(a)(8).

5.16 Within seventy-five (75) days from the Effective Date, Defendants shall revise any Palmco Marketing Brochure to include Palmco's pricing information for Gas Supply Service and/or Electric Generation Service, as required by N.J.A.C. 14:4-7.4(b)(1) and (2).

5.17 Within seventy-five (75) days of the Effective Date, Defendants shall revise the Palmco Marketing Brochure to include an insert or attachment that provides the following: (a) a Clear and Conspicuous table and graph that identifies the highest and lowest price per kWh that Palmco Power NJ billed to its customers under a variable rate offer for each month during 2015; and (b) a Clear and Conspicuous table and graph that identifies the highest and lowest price per therm that Palmco Energy NJ billed to its customers under a variable rate offer for each month during 2015. Defendants shall revise such table and graph in the Palmco Marketing Brochure when the twelve (12) month data becomes available for each successive year (e.g. January through December of 2016).

5.18 Within seventy-five (75) days of the Effective Date, Defendants shall revise the Section 5.17 insert or attachment for the Palmco Marketing Brochure to include a Clear and Conspicuous statement that the unit prices for Gas Supply Service and Electric Generation Service reflected in the tables and graphs referenced in Section 5.17 reflect past performance and is not an indicator of future pricing and/or savings.

5.19 Within seventy-five (75) days of the Effective Date, Defendants shall revise the Palmco Marketing Brochure to include a statement that switching to a competitive TPS is not mandatory and that the Consumer has the option of remaining with his/her current LDC or TPS for Gas Supply Service and/or Electric Generation Service, as required by N.J.A.C. 14:4-7.4(f).

5.20 Defendants shall not represent in the Palmco Brochure that the Defendants have been

in business “since 1938” when Palmco Power NJ and Palmco Energy NJ were established in 2009.

5.21 Defendants shall not represent in the Palmco Brochure that Palmco offers “Competitive Prices” and “Only Opportunities for Savings,” when such is not the case.

5.22 For any Promotion included in the Palmco Marketing Brochure and/or Palmco Retention Brochure, any exclusions to such Promotion must be Clearly and Conspicuously set forth in at least 10-point font, in accordance with N.J.A.C. 13:45A-9.2(a)(5).

Palmco Contract:

5.23 Defendants shall not provide Gas Supply Service and/or Electric Generation Service to a Consumer without the Account Holder’s written signature on the Palmco Contract or other approved form of verification, as required by N.J.A.C. 14:4-7.6(a).

5.24 Within sixty (60) days of the Effective Date, Defendants shall revise the Palmco Contract to include a Clear and Conspicuous statement that the purpose of the document is to authorize a switch of the Consumer’s supplier of Gas Supply Service and/or Electric Generation Service to Palmco.

5.25 Within sixty (60) days of the Effective Date, Defendants shall revise the Palmco Contract to include a Clear and Conspicuous statement of the precise mechanism or formula by which the variable price for Gas Supply Service will be determined, as required by N.J.A.C. 14:4-7.6(b)(2). Such information shall also indicate if there is a cap, or maximum rate per therm that Defendants can charge.

5.26 Defendants shall charge Consumers a price for Gas Supply Service that is consistent with the precise mechanism or formula by which the variable price per therm will be determined, as set forth in the Palmco Contract, in accordance with N.J.A.C. 14:4-7.6(b)(2).

5.27 Within sixty (60) days of the Effective Date, Defendants shall revise the Palmco

Contract to include a Clear and Conspicuous statement of the precise mechanism or formula by which the variable price for Electric Generation Service will be determined, as required by N.J.A.C. 14:4-7.6(b)(2). Such information shall also indicate if there is a cap, or maximum rate per kWh that Defendants can charge.

5.28 Defendants shall charge Consumers a price for Electric Generation Service that is consistent with the precise mechanism or formula by which the variable price per kWh will be determined, as set forth in the Palmco Contract, in accordance with N.J.A.C. 14:4-7.6(b)(2).

5.29 Within sixty (60) days of the Effective Date, Defendants shall move the statement that a residential customer has a right to rescind his/her decision to switch to Palmco within seven (7) calendar days, as required by N.J.A.C. 14:4-7.6(b)(4), to the front of the Palmco Contract.

5.30 On or before the Effective Date, Defendants shall revise the Palmco Contract to comply with the requirements of the BPU Order, dated September 30, 2014, Docket No. EX14060579 (attached as Exhibit A).

5.31 Within sixty (60) days of the Effective Date, Defendants shall revise the Palmco Contract to include a statement on the front page in at least 10-point font near the customer signature line stating that a residential customer has a right to rescind his/her decision to switch to Palmco within seven (7) calendar days, as required by N.J.A.C. 14:4-7.6(b)(4).

5.32 Within sixty (60) days of the Effective Date, Defendants shall revise the Palmco Contract to include the address of Palmco's New Jersey office.

5.33 Within sixty (60) days of the Effective Date, Defendants shall revise the "Limitation of Liability" section of the Palmco Contract to eliminate any statement waiving the rights New Jersey Consumers have under New Jersey or Federal Consumer protection laws, in accordance with N.J.A.C. 14:4-7.6(b)(6).

5.34 Within sixty (60) days of the Effective Date, Defendants shall revise the “Limitation of Liability” section of the Palmco Contract to eliminate the statement that Defendants’ liability is limited to “the difference between the reasonable price of replacing any undelivered natural gas and/or electricity and the price of natural gas and/or electricity under the [Palmco Contract],” in violation of N.J.A.C. 14:4-7.6(b)(6).

5.35 Within sixty (60) days of the Effective Date, Defendants shall revise the “Miscellaneous” section of the Palmco Contract to state that any assignment by Defendants of the Palmco Contract to another energy supplier be conditioned upon compliance with any applicable BPU rules and procedures.

5.36 Defendants shall not include in the Palmco Contract any provision that permits Defendants to change material terms of the Palmco Contract without the Account Holder’s affirmative authorization, as required by N.J.A.C. 14:4-7.6(l).

5.37 Within sixty (60) days of the Effective Date, Defendants shall revise the “Dispute Procedures And Questions Concerning Your Service” section of the Palmco Contract to include a statement advising customers of their option to request an alternate dispute resolution procedure or to file a formal complaint with the BPU, as required by N.J.A.C. 14:4-7.9(b).

5.38 Defendants shall not include any provision in the Palmco Contract which waives any rights New Jersey Consumers have under New Jersey or Federal Consumer protection laws, in accordance with N.J.A.C. 14:4-7.6(b)(6).

5.39 Defendants shall provide to customers all relevant documents in the time frames required by N.J.A.C. 14:4-7.6(a).

Slamming:

5.40 Defendants shall not switch Consumers from their current LDC or TPS to Palmco

without the Account Holder's authorization, as required by N.J.A.C. 14:4-7.6(a).

5.41 Defendants shall only permit a Consumer's Gas Supply Service and/or Electric Generation Service to be switched from the Account Holder's current LDC or TPS to Palmco if the Account Holder authorizes the switch.

5.42 Through telephone solicitations, Defendants shall not switch a Consumer's Gas Supply Service and/or Electric Generation Service without: (a) a Verification Call made by an independent third party or by Palmco demonstrating the Consumer's agreement, as required by N.J.A.C. 14:4-2.3(c)(2); (b) the Consumer's written signature on the Palmco Contract, as required by N.J.A.C. 14:4-2.3(c)(3); and/or (c) an electronic record of an internet transaction that meets the requirements at N.J.A.C. 14:4-2.3(c)(4) and N.J.A.C. 14:4-2.5.

5.43 Through door-to-door solicitations, Defendants shall not switch a Consumer's Gas Supply Service and/or Electric Generation Service without: (a) a Verification Call made by an independent third party or by Palmco demonstrating the Consumer's agreement, as required by N.J.A.C. 14:4-2.3(c)(2); (b) the Consumer's written signature on the Palmco Contract, as required by N.J.A.C. 14:4-2.3(c)(3); and/or (c) an electronic record of an internet transaction that meets the requirements at N.J.A.C. 14:4-2.3(c)(4) and N.J.A.C. 14:4-2.5.

5.44 Through telephone solicitations, Defendants shall not switch a Consumer's Gas Supply Service and/or Electric Generation Service from an LDC or TPS to Palmco without confirming that the Account Holder affirmatively and voluntarily wishes to make the switch to Palmco, as required by N.J.A.C. 14:4-2.3.

5.45 Through door-to-door solicitations, Defendants shall not switch a Consumer's Gas Supply Service and/or Electric Generation Service from an LDC or TPS to Palmco without confirming that the Account Holder voluntarily wishes to make the switch to Palmco, as required by

N.J.A.C. 14:4-2.3.

5.46 During Solicitations, Defendants shall not attempt to convince a Person who is not the Account Holder to switch the Consumer's Gas Supply Service and/or Electric Generation Service from the Account Holder's current LDC or TPS to Palmco.

5.47 If Defendants have obtained an Account Holder's authorization to switch only one service (e.g. Gas Supply Service) from his/her LDC or TPS to Palmco, Defendants shall not subsequently switch the Account Holder's remaining service (e.g. Electric Generation Service) to Palmco without obtaining a separate authorization, as required by N.J.A.C. 14:4-2.3.

5.48 If an Account Holder authorizes a switch of both Gas Supply Service and Electric Generation Service to Palmco, Defendants shall submit a separate change order to the Account Holder's LDC for each service, as required by N.J.A.C. 14:4-2.3(d).

Solicitations and Verification Calls:

5.49 Within twenty (20) days of the Effective Date, at the beginning of a Solicitation, the Sales Representative shall confirm that the Consumer being solicited is the Account Holder.

5.50 If the Sales Representative determines that the Consumer being solicited is not the Account Holder, the Sales Representative may ask to speak with the Account Holder; provided, however, that if the Account Holder is not available, the Solicitation shall immediately cease (e.g. telephone call shall end).

5.51 During Solicitations, if the Sales Representative determines that the Consumer being solicited has difficulty understanding or communicating in English, the Solicitation shall immediately cease if the Sales Representative does not speak the Consumer's primary language and, in the case of a door-to-door solicitation, the Palmco Contract is not available in the Consumer's primary language.

5.52 Within twenty (20) days of the Effective Date, if at any point during the Solicitation, a Consumer indicates that he/she has no interest in switching from his/her LDC or TPS to Palmco, the Sales Representative shall immediately cease the Solicitation.

5.53 Defendants shall obtain all necessary permits, licenses and/or registrations to conduct door-to-door solicitations.

5.54 Defendants shall not conduct door-to-door solicitations in neighborhoods where such is prohibited.

5.55 Sales Representatives shall not engage in aggressive door-to-door solicitation and/or telephone solicitation of Senior Citizens.

5.56 The Sales Representative shall not make any false or misleading statements, directly or indirectly, to induce an Account Holder to switch from his/her LDC or TPS to Palmco.

5.57 The Sales Representative shall not wear or display any symbols, words, documents, identification cards, identification badges, binders or other items that indicate or suggest in any way that the Sales Representative is a representative of any entity (e.g. PSE&G) other than Palmco.

5.58 Defendants shall take measures to ensure that Sales Representatives engaging in door-to-door solicitation of Consumers affirmatively identify themselves as representatives of Palmco, wear a cap, jacket, shirt, lanyard or other clothing branded with Palmco logos that is visible to the Consumer, as well as display accurate photo identification.

5.59 The Sales Representative shall not represent, directly or indirectly, that the Sales Representative is an employee of any LDC (i.e. PSE&G), is there on behalf of an LDC, is providing any program or service on behalf of the LDC, is working in cooperation with or is in any way associated with or affiliated with an LDC or any other TPS.

5.60 At the beginning of the Solicitation, the Sales Representative shall Clearly and

Conspicuously disclose that: (a) he/she represents Palmco which is an entity separate and apart from the Consumer's LDC; (b) the purpose of the Solicitation is to switch the Consumer's Gas Supply Service and/or Electric Generation Service from his/her LDC or TPS to Palmco; and (c) the switch to Palmco is not mandatory.

5.61 During door-to-door solicitations, the Sales Representative shall not obtain access to a Consumer's utility bills under the guise of investigating illegal overcharges by his/her current LDC, when the actual purpose is to switch the Consumer's Gas Supply Service and/or Electric Generation Service from his/her LDC to Palmco.

5.62 During door-to-door solicitations, the Sales Representatives shall not obtain access to a Consumer's utility bills under the guise of processing a complaint against his/her current LDC, when the actual purpose is to switch the Consumer's Gas Supply Service and/or Electric Generation Service from his/her LDC to Palmco.

5.63 During door-to-door solicitations, the Sales Representatives shall not obtain access to a Consumer's utility bills under the guise of intending to provide a refund or reimbursement for any alleged overcharges by his/her LDC, when the actual purpose is to switch the Consumer's Gas Supply Service and/or Electric Generation Service from his/her LDC to Palmco.

5.64 During door-to-door solicitations, the Sales Representative shall not otherwise represent that the Consumer's current charges for Gas Supply Service and/or Electric Generation Service are illegal or improper charges and/or are subject to refund or reimbursement.

5.65 During door-to-door solicitations, if Defendants sign up Consumers through signature on the Palmco Contract, the Sales Representative shall Clearly and Conspicuously disclose that the document the Consumer is being asked to sign is the Palmco Contract.

5.66 During door-to-door solicitations, if Defendants sign up Consumers through

Verification Calls, the Sales Representative shall Clearly and Conspicuously disclose that the purpose of the Verification Call is to switch the Consumer's Gas Supply Service and/or Electric Generation Service from the Account Holder's current LDC or TPS to Palmco.

5.67 During door-to-door solicitations, the Sales Representative shall not misrepresent the nature of the Palmco Contract (e.g. a form to acknowledge that the Consumer was informed of alleged LDC overcharges).

5.68 During door-to-door solicitations, the Sales Representative shall Clearly and Conspicuously disclose to Consumers that the purpose of the Palmco Contract is to switch the Consumers' supplier of Gas Supply Service and/or Electric Generation Service from the Consumers' LDC or TPS to Palmco.

5.69 During Solicitations, the Sales Representative shall Clearly and Conspicuously disclose to Consumers that Palmco provides variable rates for Gas Supply Service and/or Electric Generation Service, if such is the case.

5.70 During door-to-door solicitations, if Defendants sign up Consumers through signature on a Palmco Contract, the Sales Representative shall provide Consumers with an adequate opportunity to read the Palmco Contract prior to signing.

5.71 During door-to-door solicitations, if Defendants sign up Consumers through a signature on the Palmco Contract, the Palmco Contract shall verify that the signatory is the Account Holder, in accordance with N.J.A.C. 14:4-7.6(a) and N.J.A.C. 14:4-2.3(c)(3)(ii).

5.72 Defendants shall not switch a Consumer's Gas Supply Service and/or Electric Generation Service from his/her LDC or TPS to Palmco without the Account Holder's knowledge or authorization.

5.73 During Solicitations, the Sales Representative shall not make any representations,

directly or indirectly, about savings, including, without limitation, a specific percentage savings, that a Consumer may realize by switching to Palmco as his/her provider of Gas Supply Service and/or Electric Generation Service that are not fully substantiated by a recently conducted comparison of Palmco's rates with the rates of the Consumer's current LDC or TPS for comparable services, such as that required by N.J.A.C. 14:4-7.4(b)(2), which substantiation shall be available upon request to the Plaintiffs or to Consumers.

5.74 During Solicitations, the Sales Representative shall not represent that Palmco's rates for Gas Supply Service and/or Electric Generation Service will be lower than the rates of the Consumer's current LDC, when such is not the case.

5.75 During Solicitations, the Sales Representative shall not represent to Consumers that Palmco's rates for Gas Supply Service and/or Electric Generation Service will not be higher than the rates of the Consumer's current LDC, when such is not the case.

5.76 During Solicitations, the Sales Representatives shall not represent that Palmco offers "Senior Citizen Discounts," when such is not the case.

5.78 If Defendants solicit and sign up a Consumer pursuant to a rate for Gas Supply Service and/or Electric Generation Service that is "fixed" or "firm" for any period of time, Defendants shall Clearly and Conspicuously disclose in the Palmco Contract the time period during which such Gas Supply Service and/or Electric Generation Service is "fixed" or "firm," in accordance with N.J.A.C. 14:4-7.12(a)(1).

5.79 In the event Defendants solicit and sign up a Consumer pursuant to a "fixed" or "firm" rate for Gas Supply Service and/or Electric Generation Service for a specified period, Defendants shall not charge the Consumer a higher rate for such Gas Supply Service and/or Electric Generation Service during that period, except as permitted in N.J.A.C. 14:4-7.6(l), without the

customer's affirmative consent, in accordance with N.J.A.C. 14:4-7.12(a)(2).

5.80 If Defendants represent that after a "fixed" or "firm" rate for Gas Supply Service and/or Electric Generation Service, the Consumer will be switched to a variable rate for Gas Supply Service and/or Electric Generation Service, Defendants must Clearly and Conspicuously disclose that: (a) the Defendants' costs to supply this energy varies from month-to-month; and (b) the Consumer's monthly costs for Gas Supply Service and/or Electric Generation Service from Palmco may be greater or less than the costs that the Consumer would have incurred if the Consumer had continued to purchase such services from his/her LDC.

5.81 Defendants shall Clearly and Conspicuously disclose that the Consumer's utility bill will include charges for the Gas Supply Service and/or Electric Generation Service provided by Palmco, as well as the delivery charges from his/her current LDC.

5.82 Defendants shall Clearly and Conspicuously disclose that: (a) while a Consumer can cancel or "opt out" of Palmco's Gas Supply Service and/or Electric Generation Service at any time, it typically takes between one (1) to two (2) billing cycles or 30 to 60 days (or such time period as may be established by the BPU) for a Consumer's Gas Supply Service and/or Electric Generation Service to be switched from Palmco back to his/her original LDC or to another TPS; and (b) during that period, Palmco will continue to supply and charge the Consumer for Gas Supply Service and/or Electric Generation Service at Palmco's current rates.

5.83 A Sales Representative shall not instruct a Consumer to "just say yes" to all of the questions during the Verification Call.

5.84 A Sales Representative shall not guide a Consumer in any way during the Verification Call.

5.85 If the Consumer has difficulty understanding or communicating in English, then the

Verification Call either must occur in the Consumer's primary language or be terminated.

5.86 For each Consumer who has been signed up with Palmco during a telephone solicitation, Defendants shall provide the Palmco Contract, as required by N.J.A.C. 14:4-7.6(a).

5.87 Defendants shall not fail to honor a Consumer's request to have his/her telephone number placed on the Palmco Do Not Call List, in violation of N.J.A.C. 14:4-7.4(d).

5.88 Within seventy-five (75) days of the Effective Date, if in connection with any Solicitation, Defendants provide Consumers with a document offering a Promotion, any exclusions to such Promotion must be Clearly and Conspicuously set forth in at least 10-point font in accordance with N.J.A.C. 13:45A-9.2(a)(5).

Welcome Letter:

5.89 Defendants shall not represent in the Welcome Letter that Defendants have been "in business since 1938," when Palmco Power NJ and Palmco Energy were established in 2009.

5.90 Within forty-five (45) days of the Effective Date, Defendants shall revise the Welcome Letter to include the address of Palmco's New Jersey office.

5.91 In the event Defendants sign up a Consumer pursuant to a "fixed" or "firm" rate for Gas Supply Service and/or Electric Generation Service for a specified period, the Welcome Letter provided to such Consumer shall Clearly and Conspicuously disclose: (a) such "fixed" or "firm" rate; (b) the specified period such rate will be in effect; and (c) that after such period, the Consumer will be switched to a variable rate for Gas Supply Service and/or Electric Generation Service.

5.92 Defendants shall not make any false or misleading statements in the "Frequently Asked Questions" portion of the Welcome Letter.

5.93 In the Welcome Letter, Defendants shall Clearly and Conspicuously disclose that Palmco provides variable rates for Gas Supply Service and/or Electric Generation Service, if such is

the case.

5.94 Within forty-five (45) days of the Effective Date, Defendants shall revise the Welcome Letter to Clearly and Conspicuously disclose that: (a) while a customer can cancel or “opt out” of Palmco’s Gas Supply Service and/or Electric Generation Service at any time, it typically takes between one (1) to two (2) billing cycles or 30 to 60 days (or such time period as may be established by the BPU) for the customer’s Gas Supply Service and/or Electric Generation Service to be switched from Palmco back to his/her original LDC or to another supplier; and (b) during that time period, Palmco will continue to supply and charge the customer for Gas Supply Service and/or Electric Generation Service at Palmco’s current rates.

5.95 Defendants shall not include in the Welcome Letter any provisions that contradict and/or are inconsistent with, the Palmco Contract.

Customer Service:

5.96 Within forty-five (45) days of the Effective Date, Defendants shall establish an office in New Jersey where customers can contact a live customer service representative and access their customer records, to the extent required by N.J.A.C. 14:4-5.2(b).

5.97 Defendants shall use good faith efforts to respond to and resolve all Consumer complaints promptly, as required by N.J.A.C. 14:4-7.9(a).

5.98 Defendants shall respond to all Consumer e-mails and/or voice mails, in accordance with N.J.A.C. 14:4-7.9(a).

5.99 If Defendants are advised that a customer is not satisfied with Defendants’ response to a complaint, Defendants shall notify the customer, whether the customer has complained in-person, by telephone, e-mail or by letter, that if they are dissatisfied with Defendants’ response, the customer can contact BPU at 1-800-624-0241 to request an alternate dispute resolution procedure or

to file a formal complaint, as required by N.J.A.C. 14:4-7.9(b).

5.100 Defendants shall maintain a customer service representative who is available by toll-free telephone during normal New Jersey business hours, as required by N.J.A.C. 14:4-5.2(c)(2).

5.101 Defendants shall maintain a regulatory affairs representative available by telephone during normal New Jersey business hours to facilitate the resolution of billing complaints and other problems, as required by N.J.A.C. 14:4-5.2(c)(3).

5.102 Defendants shall staff their customer service department at levels sufficient to provide Consumers with timely access, within normal business hours, to a live customer service representative, whether the Consumer seeks such access via an office visit, telephone, and/or e-mail.

5.103 Defendants shall staff their customer service department at levels sufficient to provide a timely response to any voice mail messages left on their customer service toll-free number outside of normal business hours. However, a customer service representative shall be available to BPU staff and/or customers within twenty-four (24) hours, if necessary, to resolve a problem, as required by N.J.A.C. 14:4-5.2(d).

5.104 Defendants shall staff their customer service department at levels sufficient to provide for the check of their voice mail message system at the beginning of each day's normal business hours.

5.105 Defendants shall not permit their voice mail customer service message system to become "full" such that Consumers cannot leave a voice mail message.

5.106 Defendants shall staff their customer service department at levels sufficient to respond to all inquiries made by e-mail, regular mail letter and/or facsimile within the next business day following receipt of said inquiry. However, a customer service representative shall be available to BPU staff and/or customers within twenty-four (24) hours, if necessary, to resolve a problem, as

required by N.J.A.C. 14:4-5.2(d).

5.107 If for some reason, a customer service representative is unavailable to speak with a Consumer who has called Palmco during normal business hours or is unable to resolve the Consumer's issue, a regulatory affairs representative shall speak with the Consumer.

5.108 Defendants shall record all communications between Consumers and customer service representatives and/or regulatory affairs representatives and shall maintain such recordings for a minimum of one (1) year.

Pricing and Billing:

5.109 Defendants shall not include any "fixed" or "firm" rate for Gas Supply Service and/or Electric Generation Service in the Palmco Contract and then fail to provide such pricing.

5.110 Defendants shall not represent that they offer "competitive pricing" when such is not the case.

5.111 Defendants shall provide the unit price for each therm for Gas Supply Service to all LDCs who include charges from Palmco for Gas Supply Service on their utility bills to customers, as required by N.J.A.C. 14:4-7.7(c)(1).

5.112 Defendants shall provide the unit price for each kWh for Electric Generation Service to all LDCs who include charges from Palmco for Electric Generation Service on their utility bills to customers, as required by N.J.A.C. 14:4-7.7(c)(1).

Cancellation:

5.113 Whenever a customer informs Palmco that he/she wishes to cancel his/her Palmco Contract and switch back to the LDC or another TPS, Defendants shall notify the appropriate LDC within two (2) business days.

Training:

5.114 Within one hundred (100) days of the Effective Date, Defendants shall develop and implement revised training materials to ensure that its customer service representatives, regulatory affairs representatives and Sales Representatives are familiar with the terms of this Consent Judgment. Such training shall include at a minimum:

- a. The specific practices that are required and prohibited pursuant to this Consent Judgment, the EDECA, the Energy Licensing and Registration Regulations, the Retail Choice Consumer Protection Regulations, the Energy Anti-Slamming Regulations, the CFA, the Advertising Regulations and the TCCWNA; and
- b. A description of the remedial and/or disciplinary steps that will be taken against any Sales Representative who engages in deceptive or improper sales practices, including forfeiture of commissions and possible termination.

5.115 Defendants shall ensure that all customer service representatives, regulatory affairs representatives and/or Sales Representatives who are employed by Defendants as of the Effective Date receive the required training within one hundred thirty (130) days of the Effective Date.

5.116 Defendants shall ensure that any customer service representatives, regulatory affairs representatives and/or Sales Representatives hired by Defendants after the Effective Date receive the required training within one hundred thirty (130) days of the Effective Date or (20) days of their date of hire by Defendants, whichever is later.

5.117 In the event that Defendants utilize Third Party Vendors for the purposes of door-to-door solicitations and/or telephone solicitations, within one hundred thirty (130) days of the Effective Date, Defendants shall provide such training to the management personnel or Sales Representatives of those Third Party Vendors responsible for such Solicitations and working for Defendants as of the Effective Date. If Defendants have not directly trained the Sales Representatives, then within one hundred forty-five (145) days of the Effective Date, such

management personnel shall provide such training to all Sales Representatives working for such Third Party Vendors as of the Effective Date. Defendants shall provide or shall require that such management personnel provide such training to all Sales Representatives hired after the Effective Date, within one hundred forty-five (145) days of the Effective Date, or twenty (20) days of their date of hire by the Third Party Vendors, whichever is later. If management personnel of Third Party Vendors train Sales Representatives, Defendants shall require that Third Party Vendors provide written confirmation to Defendants of the training to all Sales Representatives.

5.118 Within one hundred forty-five (145) days of the Effective Date, Defendants shall ensure that no Sales Representatives engage in Solicitations prior to receiving the required training.

5.119 Defendants shall maintain a written form signed by each customer service representative, regulatory affairs representative, Sales Representative and/or Third Party Vendor manager acknowledging that he/she has received the training materials and attended the required training for a period of eighteen (18) months from the last day that each worked for Defendants.

Auditing/Monitoring Sales Practices:

5.120 Within thirty (30) days of the Effective Date, Defendants shall record all telephone solicitations between its Sales Representatives and Consumers and shall maintain recordings that result in an enrollment, including, without limitation, the marketing portion, for a period of eighteen (18) months.

5.121 Within thirty (30) days of the Effective Date, Defendants shall implement a rule that no commissions will be paid to any Sales Representative or Third Party Vendor for any telephonic enrollment unless a recording of the entire sales presentation is provided to Palmco within five (5) days of the Sale.

5.122 Defendants shall ensure that all Verification Calls are recorded, pursuant to N.J.A.C.

14:4-2.3(c)(2). However, Consumers may waive the requirement that the entire duration of the call be recorded, pursuant to N.J.A.C. 14:4-2.3(c)(2)(ix). Defendants shall maintain such recordings that result in an enrollment for a period of three (3) years.

5.123 Within thirty (30) days of the Effective Date, Defendants shall conduct a prompt and thorough investigation of all Consumer complaints, however received, including, without limitation, those which report that Sales Representatives: (a) falsely promised savings on Gas Supply Service and/or Electric Generation Service; (b) misrepresented that he/she worked on behalf of the LDC; (c) used high pressure sales tactics; and/or (d) failed to comply with mandatory disclosures as outlined above. With respect to each Consumer complaint, Defendants shall at a minimum:

- a. attempt to identify the Sales Representative;
- b. review the recordings if the Solicitation or Verification Call was made by telephone, as required by N.J.A.C. 14:4-2.5(c), N.J.A.C. 14:4-2.3(c)(2), Section 5.120 and/or Section 5.122, as applicable;
- c. review all applicable documents, including, without limitation, if applicable, the relevant Palmco Contract;
- d. attempt to determine whether the Sales Representative engaged in deceptive or improper sales practices of any kind; and
- e. attempt to resolve the Consumer's complaint in a fair and expeditious manner.

5.124 Within thirty (30) days of the Effective Date, if a Consumer's complaint is received within six (6) months of the alleged enrollment (provided that such enrollment has occurred after the Effective Date), and the investigation determines that any deceptive or improper sales practice occurred, Defendants shall: (a) reimburse the Consumer an amount equal to the difference between what the Consumer paid Defendants and what the Consumer would have paid his/her LDC by reference to that utility's rates during the same period; and (b) provide the Consumer with the opportunity to be switched back to his/her LDC.

5.125 Within thirty (30) days of the Effective Date, if a Consumer's complaint concerning deceptive or improper sales practices is substantiated, Defendants shall further investigate the six (6) month period prior to the date of such complaint to determine whether additional Consumers enrolled by the same Sales Representative, if such can be identified, were subjected to any such practices. At a minimum, such investigation shall include, without limitation, examination of Consumer enrollment records, sales call notes, and in the case of telephone solicitations, where such Sales Representative can be identified, listening to a random selection of Solicitations made by the relevant Sales Representative.

5.126 Within thirty (30) days of the Effective Date, at least every seven (7) days, Defendants shall randomly select no less than five percent (5%) or fifteen (15) recordings, whichever is greater, of telephone solicitations that resulted in an enrollment and review them for compliance with this Consent Judgment.

5.127 Within thirty (30) days of the Effective Date, at least every thirty (30) days, Defendants shall randomly select no less than five percent (5%) or fifteen (15) Consumers, whichever is greater, who were signed up with Palmco during a door-to-door solicitation and attempt to confirm, through three (3) telephone calls or three (3) letters, that the Sales Representatives complied with the terms and conditions of this Consent Judgment during such door-to-door solicitation.

5.128 Defendants' auditing of telephone solicitations and door-to-door solicitations under sections 5.123 and 5.125 shall also be initiated by a Consumer complaint and/or an inquiry by a governmental agency or other entity such as the Better Business Bureau.

5.129 Defendants shall make sales commissions earned by Sales Representatives and Third Party Vendors subject to forfeiture whenever Defendants determine, within six (6) months of

enrollment, that a Consumer was subjected to deceptive or improper sales practices. In addition, Defendants shall take prompt remedial and/or disciplinary action against the Sales Representative, which may include termination. In the case where a Sales Representative employed by a Third Party Vendor is terminated, Defendants shall ensure that such Sales Representative no longer participates in Solicitations on behalf of Palmco.

Compliance:

5.130 Within fifteen (15) days of the Effective Date, Defendants shall employ a Compliance Officer on a full-time basis and within five (5) days of such hiring, shall provide Plaintiffs with written notification of the Compliance Officer's name, business address, email address and telephone number.

5.131 The Compliance Officer's duties shall include at a minimum:

- a. developing and implementing policies and procedures to ensure that Sales Representatives and customer service representatives comply with the terms of this Consent Judgment, as well as all applicable laws and regulations;
- b. developing and implementing training materials and training programs as required by Section 5.114;
- c. ensuring that all required personnel receive the training referenced in Section 5.114;
- d. overseeing the random audits of telephone solicitations and door-to-door solicitations; and
- e. overseeing the investigation of all Consumer complaints of deceptive or improper sales tactics and taking appropriate remedial action.

5.132 Within seven (7) days of hiring a new Compliance Officer, Defendants shall provide Plaintiffs with written notification of the new Compliance Officer's name, business address, email address and telephone number.

5.133 Within sixty (60) days of the Effective Date, Defendants shall provide Plaintiffs with

a written certification as to their compliance with the requirements of Section 5.96.

5.134 Within sixty (60) days of the Effective Date, Defendants shall provide Plaintiffs with a written certification as to their compliance with the requirements of Section 5.90.

5.135 Within seventy-five (75) days of the Effective Date, Defendants shall provide Plaintiffs with a written certification as to their compliance with the requirements of Sections 5.24 through 5.39.

5.136 Within ninety (90) days of the Effective Date, Defendants shall provide Plaintiffs with a written certification as to their compliance with the requirements of: (a) Sections 5.2 through 5.11; and (b) Sections 5.12 through 5.22.

5.137 Within one hundred sixty (160) days of the Effective Date, Defendants shall provide Plaintiffs with a written certification as to their compliance with the requirements of Sections 5.114 through 5.119.

6. SETTLEMENT PAYMENT

6.1 In settlement of this Action, the Parties have agreed to Defendants' payment, subject to the terms and conditions of this Consent Judgment, of Restitution Fund A, Restitution Fund B, Civil Penalties, reimbursement of Plaintiffs' Attorneys' Fees and Costs, and Rust Consulting's Fees and Costs ("Settlement Payment").

6.2 No later than ten (10) days from the Effective Date, Defendants shall pay Seven Hundred Eighty-Six Thousand Two Hundred Fifty-Four and 54/100 Dollars (\$786,254.54), which is comprised of the following: Five Hundred Thousand and 00/100 Dollars (\$500,000.00) in Civil Penalties; and Two Hundred Eighty-Six Thousand Two Hundred Fifty-Four and 54/100 Dollars (\$286,254.54), in reimbursement of Plaintiffs' Attorneys' Fees and Costs incurred by Plaintiffs as of the Effective Date.

6.3 Subject to Sections 6.4(e), 6.5(c) and 6.6(c), Defendants shall pay Rust Consulting's Fees and Costs.

6.4 If an Initial Class Action Resolution as described in Section 4.17(a) is obtained, then:

- (a) No later than forty-five (45) days following the date of such Initial Class Action Resolution, Defendants shall pay Two Million and 00/100 Dollars (\$2,000,000.00) to Plaintiffs to be applied to Restitution Fund A;
- (b) No later than ninety (90) days following the date of such Initial Class Action Resolution, Defendants shall pay One Million Five Hundred Two Thousand Seven Hundred Ninety-One and 66/100 Dollars (\$1,502,791.66) to be applied to the remainder of monies owed to Restitution Fund A;
- (c) No later than fifteen (15) days prior to the Restitution Fund B Payment Date, Plaintiffs shall provide Defendants an accounting of the amount of the additional payment as is necessary to fund Restitution Fund B in the amount of One Million and 00/100 Dollars (\$1,000,000.00);
- (d) No later than the Restitution Fund B Payment Date, Defendants shall make such additional payment as is necessary (taking into account any residual amounts transferred from Restitution Fund A to Restitution Fund B) to fund Restitution Fund B in the amount of One Million and 00/100 Dollars (\$1,000,000.00); and
- (e) Provided that Rust Consulting has provided Defendants with a written itemization of Rust Consulting's Fees and Costs incurred as of the date the final payment of funds were made from Restitution Fund A and Restitution Fund B (documented to Defendants' satisfaction), then no later than forty-five (45) days following the date of Defendants' receipt of such itemization, Defendants shall pay Rust Consulting's Fees

and Costs.

6.5 If an Initial Class Action Resolution as described in Sections 4.17(b) or 4.17(c) is obtained, then:

- (a) No later than forty-five (45) days following the date of such Initial Class Action Resolution, Defendants shall pay Two Million and 00/100 Dollars (\$2,000,000.00) to Plaintiffs to be applied to Restitution Fund A;
- (b) No later than ninety (90) days following the date of such Initial Class Action Resolution, Defendants shall pay One Million Five Hundred Two Thousand Seven Hundred Ninety-One and 66/100 Dollars (\$1,502,791.66) to be applied to the remainder of monies owed to Restitution Fund A; and
- (c) Provided that Rust Consulting has provided Defendants with a written itemization of Rust Consulting's Fees and Costs incurred as of the date the final payment of funds were made from Restitution Fund A (documented to Defendants' satisfaction), then no later than forty-five (45) days following the date of Defendants' receipt of such itemization, Defendants shall pay Rust Consulting's Fees and Costs.

6.6 If a Final Class Action Resolution is obtained, then:

- (a) No later than seventy-five (75) days following the date of the Final Class Action Resolution or fifteen (15) days prior to the Restitution Fund B Payment Date, whichever is later, Plaintiffs shall provide Defendants an accounting of the amount of the additional payment as is necessary to fund Restitution Fund B in the amount of One Million and 00/100 Dollars (\$1,000,000.00);
- (b) No later than ninety (90) days following the date of the Final Class Action Resolution or the Restitution Fund B Payment Date, whichever is later, Defendants

shall make such payment as is necessary (taking into account any residual amount transferred from Restitution Fund A to Restitution Fund B) to fund Restitution Fund B in the amount of One Million and 00/100 Dollars (\$1,000,000.00); and

- (c) Provided that Rust Consulting has provided Defendants with a written itemization of the balance of Rust Consulting's Fees and Costs incurred as of the date the final payment of funds were made from Restitution Fund A and/or Restitution Fund B (documented to Defendants' satisfaction), then no later than forty-five (45) days following the date of Defendants' receipt of such itemization, Defendants shall pay Rust Consulting's Fees and Costs.

6.7 Defendants' payments for Restitution Fund A, Restitution Fund B, Civil Penalties and Plaintiffs' Attorneys' Fees and Costs shall be by certified or cashier's check, wire transfer, money order or credit card made payable to "New Jersey Division of Consumer Affairs" and forwarded to:

Lorraine K. Rak, Deputy Attorney General
Chief, Consumer Fraud Prosecution Section
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

6.8 Except as set forth in Section 7.21, upon making the payments referenced in Sections 6.1, 6.2, 6.3, 6.4, 6.5, and/or 6.6, Defendants shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Plaintiffs pursuant to the terms herein.

6.9 In the event that Defendants fail to make any portion of the Settlement Payment as required under this Consent Judgment, Plaintiffs shall provide Defendants with written notice of

non-compliance requesting payment of any required unpaid portion of the Settlement Payment. Defendants shall have fifteen (15) days from their receipt of such notice within which to cure any such non-compliance, unless Defendants claim that such amount is not owed. In the event of Defendants' continued failure to make any portion of the Settlement Payment, Plaintiffs may move on notice for relief pursuant to R. 1:10-3.

7. DISTRIBUTION OF RESTITUTION

7.1 No later than thirty (30) days from the Effective Date, Plaintiffs shall retain Rust Consulting to administer Restitution Fund A and/or Restitution Fund B.

7.2 Subject to the terms and conditions of this Consent Judgment, Restitution Fund A, in the maximum amount of Three Million Five Hundred Two Thousand Seven Hundred Ninety-One and 66/100 Dollars (\$3,502,791.66), will be distributed to the Polar Vortex Customers.

7.3 Subject to the terms and conditions of this Consent Judgment, Restitution Fund B, in the maximum amount of One Million and 00/100 Dollars (\$1,000,000.00) will be distributed to Polar Vortex Customers and Non-Polar Vortex Customers. A portion of Restitution Fund B may include residual monies transferred from Restitution Fund A.

Distribution of Restitution After The Initial Class Action Resolution Described in Section 4.17(a):

If an Initial Class Action Resolution as described in Section 4.17(a) is obtained, then:

7.4 No later than twenty (20) days following Plaintiffs' receipt of funds for Restitution Fund A pursuant to Sections 6.4(a) and 6.4(b), Plaintiffs shall transfer to the Settlement Administrator the amount of Three Million Five Hundred Two Thousand Seven Hundred Ninety-One and 66/100 Dollars (\$3,502,791.66). Upon receipt, the Settlement Administrator shall deposit Restitution Fund A into a Qualified Settlement Fund within the meaning of Treasury Regulation Section 1.468B-1 of the U.S. Internal Revenue Code of 1986, as amended.

7.5 Notwithstanding anything else contained herein, the distribution from Restitution Fund A to any Polar Vortex Customer will be reduced by: (i) any satisfactorily documented credits/refunds provided by Palmco to such Polar Vortex Customer for his/her gas and/or electric bills during the period of January, February and/or March 2014; and/or (ii) any satisfactorily documented introductory rates and/or other discounts provided by Palmco to such Polar Vortex Customer for his/her gas and/or electric bills during the period of January, February and/or March 2014.

7.6 No later than one hundred thirty-five (135) days following the date of an Initial Class Action Resolution as described in Section 4.17(a), Rust Consulting will distribute Restitution Fund A to the Polar Vortex Customers, by mailing them a settlement check with a cover letter that includes information explaining the settlement of the Action, the release in this Consent Judgment, and the claims process for Restitution Fund B, including, but not limited to, how to submit a Valid Claim Form. Such settlement check shall include the following statement: "This settlement check is subject to the terms and conditions contained in the Final Consent Judgment entered by the Court in Lougy, et al. v. Palmco Power NJ, LLC, et al., Docket No. MER-C-33-14 (N.J. Super. Ct.) on [insert date]." Polar Vortex Customers will not be required to submit a claim form or other documentation to receive a settlement check from Restitution Fund A. Settlement checks not cashed within one hundred eighty (180) days of mailing will be automatically deemed void.

7.7 Within one hundred ninety (190) days of the mailing of the settlement checks pursuant to Section 7.6, and subject to uncashed settlement checks being deemed automatically void within one hundred eighty (180) days of mailing, any residual monies remaining in Restitution Fund A will be transferred to Restitution Fund B, as per Section 7.8.

7.8 No later than twenty (20) days following Plaintiffs' receipt of funds for Restitution Fund B pursuant to Section 6.4(d), Plaintiffs shall transfer to the Settlement Administrator the additional payment (including the residual monies to be transferred to Restitution Fund B from Restitution Fund A) as is necessary to fund Restitution Fund B in the amount of One Million and 00/100 Dollars (\$1,000,000.00). Upon receipt, the Settlement Administrator shall deposit Restitution Fund B into a Qualified Settlement Fund within the meaning of Treasury Regulation Section 1.468B-1 of the U.S. Internal Revenue Code of 1986, as amended.

7.9 Within one hundred ninety (190) days of the mailing of the settlement checks from Restitution Fund A pursuant to Section 7.6, Rust Consulting will mail to the Non-Polar Vortex Customers, a postcard that includes information explaining the settlement of this Action, the release in this Consent Judgment, and a description of the claims process for Restitution Fund B, including, but not limited to, how to submit a Valid Claim Form.

7.10 No later than forty-five (45) days from the deadline for submitting a Valid Claim Form, which deadline shall be mutually agreed upon by the Parties, Rust Consulting will distribute Restitution Fund B to both those Polar Vortex Customers (for periods of time other than January, February and/or March 2014) and Non-Polar Vortex Customers who have submitted a Valid Claim Form to Rust Consulting, by mailing them a settlement check. Such settlement check shall include the following statement: "This settlement check is subject to the terms and conditions contained in the Final Consent Judgment entered by the Court in Lougy, et al. v. Palmco Power NJ, LLC, et al., Docket No. MER-C-33-14 (N.J. Super. Ct.) on [insert date]."

7.11 Existing Palmco customers may elect to receive billing credits in lieu of cash payments, but cash must remain an option for both current and former Palmco customers eligible for payment from Restitution Fund B.

7.12 Notwithstanding anything else contained herein, the distribution from Restitution Fund B to any Polar Vortex Customer (for periods of time other than January, February and/or March 2014) or Non-Polar Vortex Customer will be reduced by: (i) any satisfactorily documented credits/refunds provided by Palmco to such customer for his/her gas and/or electric bills during the period from January 1, 2009 to the Effective Date (excluding the time period of January, February and/or March 2014); and/or (ii) any satisfactorily documented introductory rates and/or other discounts provided by Palmco to such customer for his/her gas and/or electric bills during the period from January 1, 2009 to the Effective Date (excluding the time period of January, February and/or March 2014).

**Distribution of Restitution After The Initial Class
Action Resolution Described in Sections 4.17(b) and 4.17(c):**

If an Initial Class Action Resolution as described in Sections 4.17(b) or 4.17(c) is obtained, then:

7.13 No later than twenty (20) days from Plaintiffs' receipt of funds for Restitution Fund A pursuant to Sections 6.5(a) and 6.5(b), Plaintiffs shall transfer to the Settlement Administrator the amount of Three Million Five Hundred Two Thousand Seven Hundred Ninety-One and 66/100 Dollars (\$3,502,791.66). Upon receipt, the Settlement Administrator shall deposit Restitution Fund A into a Qualified Settlement Fund within the meaning of Treasury Regulation Section 1.468B-1 of the U.S. Internal Revenue Code of 1986, as amended.

7.14 Notwithstanding anything else contained herein, the distribution from Restitution Fund A to any Polar Vortex Customer will be reduced by: (i) any satisfactorily documented credits/refunds provided by Palmco to such Polar Vortex Customer for his/her gas and/or electric bills during the period of January, February and/or March 2014; and/or (ii) any satisfactorily documented introductory rates and/or other discounts provided by Palmco to such Polar Vortex

Customer for his/her gas and/or electric bills during the period of January, February and/or March 2014.

7.15 No later than one hundred thirty-five (135) days from the date of the Initial Class Action Resolution described in Sections 4.17(b) or 4.17(c), Rust Consulting will distribute Restitution Fund A to the Polar Vortex Customers, by mailing them a settlement check with a cover letter that includes information explaining the settlement of this Action, the release in this Consent Judgment, and the claims process for Restitution Fund B. Such settlement check shall include the following statement: “This settlement check is subject to the terms and conditions contained in the Final Consent Judgment entered by the Court in Lougy, et al. v. Palmco Power NJ, LLC, et al., Docket No. MER-C-33-14 (N.J. Super. Ct.) on [insert date].” Polar Vortex Customers will not be required to submit a claim form or other documentation to receive a settlement check from Restitution Fund A. Within one hundred ninety (190) days of the mailing of the settlement checks pursuant to this Section 7.15, and subject to uncashed settlement checks being deemed automatically void within one hundred eighty (180) days of mailing, any residual monies remaining in Restitution Fund A will be transferred to Restitution Fund B.

**Distribution of Restitution After
The Final Class Action Resolution:**

If a Final Class Action Resolution is obtained, then:

7.16 No later than twenty (20) days from Plaintiffs’ receipt of funds for Restitution Fund B pursuant to Section 6.6(b), Plaintiffs shall transfer to the Settlement Administrator any additional payment (including the residual monies to be transferred to Restitution Fund B from Restitution Fund A) as is necessary to fund Restitution Fund B in the amount of One Million and 00/100 Dollars (\$1,000,000.00). Upon receipt, the Settlement Administrator shall deposit Restitution Fund B into a

Qualified Settlement Fund within the meaning of Treasury Regulation Section 1.468B-1 of the U.S. Internal Revenue Code of 1986, as amended.

7.17 No later than one hundred thirty-five (135) days from the Final Class Action Resolution or the Restitution Fund B Payment Date, whichever is later, Rust Consulting will mail to the Non-Polar Vortex Customers, a postcard that includes information explaining the settlement of this Action, the release in this Consent Judgment, and a description of the claims process for Restitution Fund B, including, but not limited to, how to submit a Valid Claim Form.

7.18 No later than forty-five (45) days from the deadline for submitting a Valid Claim Form, which deadline shall be mutually agreed upon by the Parties, Rust Consulting will distribute Restitution Fund B to both the Polar Vortex Customers (for periods of time other than January, February and/or March 2014) and Non-Polar Vortex Customers who have submitted a Valid Claim Form to Rust Consulting, by mailing them a settlement check. Such settlement check shall include the following statement: "This settlement check is subject to the terms and conditions contained in the Final Consent Judgment entered by the Court in Lougy, et al. v. Palmco Power NJ, LLC, et al., Docket No. MER-C-33-14 (N.J. Super. Ct.) on [insert date]."

7.19 Existing Palmco customers may elect to receive billing credits in lieu of cash payments, but cash must remain an option for both current and former Palmco customers eligible for payment from Restitution Fund B.

7.20 Notwithstanding anything else contained herein, the distribution from Restitution Fund B to any Polar Vortex Customer (for periods of time other than January, February and/or March 2014) or Non-Polar Vortex Customer will be reduced by: (i) any satisfactorily documented credits/refunds provided by Palmco to such customer for his/her gas and/or electric bills during the period from January 1, 2009 to the Effective Date (excluding the time period of January, February

and/or March 2014); and/or (ii) any satisfactorily documented introductory rates and/or other discounts provided by Palmco to such customer for his/her gas and/or electric bills during the period from January 1, 2009 to the Effective Date (excluding the time period of January, February and/or March 2014).

**Distribution of Unclaimed Monies from
Restitution Fund A and/or Restitution Fund B:**

7.21 Any unclaimed monies from either Restitution Fund A or Restitution Fund B shall be allocated and disbursed no later than thirty (30) days following the final distribution of funds by Rust Consulting from: (a) Restitution Fund B if there is an Initial Class Action Resolution pursuant to Section 4.17(a) or a Final Class Action Resolution; or (b) Restitution Fund A if Palmco exercises its Final Termination Option. The allocation of funds shall be as follows: (a) the first Four Hundred Thousand and 00/100 Dollars (\$400,000.00) in unclaimed funds will be disbursed to Plaintiffs and shall be retained as additional Plaintiffs' Attorneys' Fees and Costs; and (b) any remaining funds, net of the first Four Hundred Thousand and 00/100 Dollars (\$400,000.00), will be disbursed to Defendants.

8. CONTINGENT RETURN OF RESTITUTION FUNDS

8.1 Promptly following the Effective Date, the Parties shall forward a copy of the executed Consent Judgment to counsel for King in the King Action and counsel for Komoda in the Komoda Action.

8.2 Palmco shall engage in good faith negotiations with counsel for King in the King Action and counsel for Komoda in the Komoda Action to obtain the Initial Class Action Resolution under Section 4.17(a). Upon request of Palmco's counsel, Plaintiffs will use their best efforts to cooperate with and support Palmco and actively participate in any such negotiations.

8.3 If the Initial Class Action Resolution as described in Section 4.17(a) is not obtained

within sixty (60) days of the Notice Date, Palmco may exercise its Initial Termination Option. Palmco may exercise such Initial Termination Option pursuant to this Section 8.3 no later than sixty (60) days from the Notice Date.

8.4 If Palmco does not exercise its Initial Termination Option pursuant to Section 8.3, and in the absence of the Initial Class Action Resolution as described in Section 4.17(a) being obtained within sixty (60) days of the Notice Date, Palmco will attempt to obtain an Initial Class Action Resolution as described in Section 4.17(b). Plaintiffs will join Palmco in any petitions and/or motions described in Section 4.17(b) and use their best efforts to cooperate with and support Palmco in any such petitions and/or motions.

8.5 If the Initial Class Action Resolution as described in Section 4.17(b) is not obtained, then Palmco may, in its sole discretion, exercise its Initial Termination Option. Palmco may exercise its Initial Termination Option pursuant to this Section 8.5 no later than thirty (30) days after the trial court hearing either the King Action or the Komoda Action enters the last of the orders denying or dismissing Palmco's petition or motion. If Palmco does not exercise its Initial Termination Option pursuant to this Section 8.5 within such thirty (30) day period, the Initial Class Action Resolution as described in Section 4.17(c) shall be deemed to occur on the thirty-first (31st) day after the date of the last of the trial court orders.

8.6 If the Initial Class Action Resolution described in Section 4.17(b) is not obtained, but the Initial Class Resolution is obtained pursuant to Section 4.17(c) because Palmco has not exercised its Initial Termination Option pursuant to Section 8.5, then Plaintiffs will use their best efforts to cooperate with, support, and join Palmco in: (a) any motions, petitions, and/or appeals by Palmco from such trial court orders to obtain a Final Class Action Resolution pursuant to Section 4.14(b); or (b) any settlement negotiations, to obtain a Final Class Action Resolution pursuant to Section

4.14(a).

8.7 If the Initial Class Action Resolution as described in Section 4.17(b) is obtained, then Plaintiffs will join Palmco in any appeals, petitions and/or motions filed arising from any trial court orders triggering the Initial Class Action Resolution as described in Section 4.17(b), and Plaintiffs will use their best efforts to cooperate with and support Palmco in any such petitions and/or motions.

8.8 If Final Class Action Resolution as described in Sections 4.14(a) and 4.14(b) is not obtained, then Palmco may, in its sole discretion, exercise its Final Termination Option. Palmco may exercise its Final Termination Option no later than thirty (30) days after a final appellate court declines to issue the last of the final non-appealable orders as described in Section 4.14(b). If Palmco does not exercise its Final Termination Option within such thirty (30) day period, the Final Class Action Resolution described in Section 4.14(c) shall be deemed to occur on the thirty-first (31st) day after the adverse final non-appealable order is received.

8.9 To the extent Palmco may, as part of the process of seeking the settlement and dismissal of the Komoda Action and the King Action, agree to make additional payments (i.e. a fee to Komoda's or King's counsel, incentive payments to the named plaintiffs and/or additional notice to the putative class), those additional costs will be paid by Palmco, and will not reduce the Settlement Payment.

9. EFFECT OF TERMINATION OPTIONS

9.1 Notwithstanding anything else contained herein, if Palmco exercises its Initial Termination Option: (a) Palmco shall have no obligation to fund and/or pay Restitution Fund A and Restitution Fund B; (b) Plaintiffs shall not release their restitution claims for the Polar Vortex Customers and the Non-Polar Vortex Customers and may continue to prosecute them; (c) Palmco shall have no obligation to pay Plaintiffs' Attorneys' Fees and Costs incurred after the Effective

Date, provided, however, that Plaintiffs may apply for reimbursement of Plaintiffs' Attorneys' Fees and Costs incurred after the Effective Date, and Palmco may oppose any such application for reimbursement; and (d) Palmco shall have no obligation to pay Rust Consulting's Fees and Costs incurred after the date Palmco exercises its Initial Termination Option.

9.2 Notwithstanding anything else contained herein, if Palmco exercises its Final Termination Option: (a) Palmco shall have no obligation to fund and/or pay Restitution Fund B; (b) Plaintiffs shall release their restitution claims for the Polar Vortex Customers for the period of January, February and/or March 2014, but Plaintiffs shall not release their restitution claims for (i) the Polar Vortex Customers for periods of time other than January, February and/or March 2014 and (ii) the Non-Polar Vortex Customers, and may continue to prosecute them; (c) Palmco shall have no obligation to pay Plaintiffs' Attorneys' Fees and Costs incurred after the Effective Date, provided, however, that Plaintiffs may apply for reimbursement of Plaintiffs' Attorneys' Fees and Costs incurred after the Effective Date, and Palmco may oppose any such application for reimbursement; and (d) Palmco shall have no obligation to pay Rust Consulting's Fees and Costs incurred following the date that Palmco exercises its Final Termination Option, with the exception of Rust Consulting's Fees and Costs incurred in connection with the final payment of funds from Restitution Fund A.

9.3 Notwithstanding anything else contained herein, if Palmco exercises its Initial Termination Option or Final Termination Option, the only provisions of the Consent Judgment that will remain in full force and effect are the following: (a) the Non-Monetary Relief, as set forth in Section 5; (b) Palmco's obligations to pay the Civil Penalties pursuant to Section 6.2; (c) Palmco's obligation to pay Plaintiffs' Attorneys' Fees and Costs as of the Effective Date pursuant to Section 6.2; (d) Palmco's obligation to pay Rust Consulting's Fees and Costs pursuant to the terms and conditions of this Consent Judgment; and (e) Plaintiffs' release of claims and monetary relief (other

than restitution) as set forth in Section 12.1.

9.4 If Plaintiffs continue to prosecute this Action as to their restitution claims under Sections 9.1 or 9.2, then: (a) Defendants shall retain their right to seek dismissal (by a motion to dismiss, a motion for summary judgment, or otherwise) of all claims including, but not limited to, the TCCWNA claim, and Plaintiffs may oppose any such motion on its merits, but will not assert that the motion is out-of-time; and (b) the Parties will present to the Court a Case Management Order which provides for deadlines for the completion of discovery, dispositive motions, and trial.

10. DISMISSAL OF ACTION

10.1 The entry of this Consent Judgment constitutes a dismissal with prejudice of the Action, subject to Section 9, and provided, however, that the Court shall retain jurisdiction to enforce the terms of the Consent Judgment.

11. GENERAL PROVISIONS

11.1 This Consent Judgment is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Judgment.

11.2 This Consent Judgment shall be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey.

11.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Judgment and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Judgment.

11.4 This Consent Judgment contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Judgment shall be modified only by a written instrument signed by or on behalf of the Plaintiffs and Defendants.

11.5 Except as otherwise explicitly provided for in this Consent Judgment, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

11.6 If any portion of this Consent Judgment is held invalid or unenforceable by operation of law, the remaining terms of this Consent Judgment shall not be affected.

11.7 This Consent Judgment shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Judgment avoid compliance with this Consent Judgment.

11.8 This Consent Judgment is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Judgment nor any action taken hereunder shall constitute, or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division, the BPU or any other governmental unit of the State of any act or practice of the Defendants; and/or (b) an admission by the Defendants that any of their acts or practices described in, required in, or prohibited by this Consent Judgment were or are unfair or deceptive or violate or are governed by the Consumer protection laws of the State. Neither the claims asserted in the Action, nor any other matters specifically addressed in this Consent Judgment, other than the Defendants' failure to pay Restitution Fund A pursuant to this Consent Judgment, are intended, and shall not be deemed, to constitute evidence or precedent of any kind whatsoever in any judicial, regulatory and/or administrative proceeding, except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms of this Consent Judgment; or (b) any action or proceeding involving Released Claims (as defined in Section 12.1) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

11.9 The Parties represent and warrant that their signatories to this Consent Judgment have authority to act for and bind the respective Parties.

11.10 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Judgment may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Judgment.

11.11 The Parties acknowledge that Defendants shall have the right to seek from Plaintiffs and, if necessary, the Court, a modification to any of the terms and conditions contained in Section 5, including, but not limited to, for the purpose of complying with changes and/or amendments to the law.

12. RELEASE

12.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Judgment and conditioned on Defendants making the Settlement Payment provided by this Consent Judgment, Plaintiffs, through their agents and/or employees, acting directly, indirectly, representatively, derivatively and/or in any other capacity to protect the interests of the citizens of New Jersey, hereby agree to release Defendants and all of their current and former members, officers, successors and/or assigns, from any and all civil claims and/or causes of action and/or Consumer related administrative claims and/or causes of action, to the extent permitted by State law, which the Plaintiffs brought or could have brought prior to the Effective Date against Defendants and all of their current and former members, officers, successors and/or assigns, arising from Defendants' Advertisement, Marketing and Sale of Gas Supply Service and Electric Generation Service to New Jersey Consumers, including, but not limited to, the alleged violations of the EDECA, the Energy Licensing and Registration Regulations, the Retail Choice Consumer Protection Regulations, the Energy Anti-Slamming Regulations, the CFA, the Advertising

Regulations and the TCCWNA as alleged in the Action, as well as the matters specifically addressed in Section 5 of the Consent Judgment (“Released Claims”).

12.2 Notwithstanding any term of this Consent Judgment, the following do not comprise Released Claims: (a) restitution for the Polar Vortex Customers and the Non-Polar Vortex Customers if Palmco exercises its Initial Termination Option; (b) restitution for the Polar Vortex Customers (for Palmco’s alleged activity, conduct or wrongdoing occurring in months other than January, February and/or March 2014) and the Non-Polar Vortex Customers if Palmco exercises its Final Termination Option; (c) actions to enforce this Consent Judgment; and (d) any claims against Defendants by any other agency or subdivision of the State for claims and/or causes of action other than those stated in Section 12.1.

12.3 Any restitution paid by Palmco to a Polar Vortex Customer and/or Non-Polar Vortex Customer in this Action and/or either of the Class Actions shall be used as an off-set against any future restitution Palmco is required to pay to such Polar Vortex Customer and/or Non-Polar Vortex Customer.

13. PENALTIES FOR FAILURE TO COMPLY

13.1 Notwithstanding Section 11.8, the Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Judgment, seek sanctions or other relief for violations of this Consent Judgment or both, through any judicial, regulatory and/or administrative proceeding.

13.2 If after the Effective Date, Plaintiffs identify any violations of Section 5 of this Consent Judgment, they will provide written notification to Defendants identifying such violations. No later than twenty-one (21) days following Defendants’ receipt of such notification, the Parties will engage in best efforts discussions to address and resolve the issues identified in such

notification. If such resolution cannot be attained, Plaintiffs may undertake any appropriate enforcement action with respect to those violations identified in such notice.

13.3 The Parties agree that any future violations of the provisions of Section 5 of this Consent Judgment shall constitute a second or succeeding violation under N.J.S.A. 56:8-13 and/or N.J.S.A. 48:3-83 and that the Defendants may be liable for enhanced civil penalties.

14. COMPLIANCE WITH ALL LAWS

14.1 Except as provided in this Consent Judgment, no provision herein shall be construed as:

- (a) Relieving Defendants of their obligations to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- (b) Limiting or expanding any right the Plaintiffs may otherwise have to obtain information, documents or testimony from Defendants pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Defendants may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Plaintiffs to obtain such information, documents or testimony.

15. NOTICES UNDER THIS CONSENT JUDGMENT

15.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Judgment shall be sent by the United States Mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Plaintiffs:

Lorraine K. Rak, Deputy Attorney General
Chief, Consumer Fraud Prosecution Section
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

For the Defendants:

Joseph P. La Sala, Esq.
McElroy, Deutsch, Mulvaney & Carpenter, LLP
1300 Mount Kemble Avenue
P.O. Box 2075
Morristown, New Jersey 07962-2075


James G. Ryan, Esq.
Cullen and Dykman LLP
100 Quentin Roosevelt Boulevard
Garden City, New York 11530

Peter M. Metzger, Esq.
Cullen and Dykman LLP
44 Wall Street
New York, New York 10005-2407

Copies of the certifications required pursuant to Sections 5.133 through 5.137 shall also be filed with the following:

Irene Kim Asbury
Secretary, New Jersey Board of Public Utilities
44 South Clinton Avenue, Suite 314
P.O. Box 350
Trenton, New Jersey 08625-0350

IT IS ON THE 23rd DAY OF May 2016, SO ORDERED, ADJUDGED
AND DECREED.



HON. PAUL INNES P.J. Ch.

JOINTLY APPROVED AND
SUBMITTED FOR ENTRY:

FOR THE PLAINTIFFS:

ROBERT LOUGY
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 

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

124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 877-1280

Dated: May 20, 2016

FOR THE DEFENDANTS:

McELROY, DEUTSCH,
MULVANEY & CARPENTER, LLP

By: _____

Joseph P. La Sala, Esq.

1300 Mount Kemble Avenue
P.O. Box 2075
Morristown, New Jersey 07962-2075
Telephone: (973) 993-8100

Dated: _____, 2016

IT IS ON THE _____ DAY OF _____ 2016, SO ORDERED, ADJUDGED
AND DECREED.

HON. PAUL INNES P.J. Ch.

JOINTLY APPROVED AND
SUBMITTED FOR ENTRY:

FOR THE PLAINTIFFS:

ROBERT LOUGY
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: _____

Dated: _____, 2016

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

124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 877-1280

FOR THE DEFENDANTS:

McELROY, DEUTSCH,
MULVANEY & CARPENTER, LLP

By: _____

Joseph P. La Sala, Esq.

Dated: May 20, 2016

1300 Mount Kemble Avenue
P.O. Box 2075
Morristown, New Jersey 07962-2075
Telephone: (973) 993-8100

CULLEN AND DYKMAN LLP

By: Roxanne L. Tashjian
Roxanne L. Tashjian, Esq.

Dated: May 19, 2016

100 Quentin Roosevelt Boulevard
Garden City, New York 11530
Telephone: (516) 357-3750

PALMCO POWER NJ, LLC

By: _____
Robert Palmese, Managing Member

Dated: _____, 2016

1350 60th Street
Brooklyn, New York 11219

PALMCO ENERGY NJ, LLC

By: _____
Robert Palmese, Managing Member

Dated: _____, 2016

1350 60th Street
Brooklyn, New York 11219

CULLEN AND DYKMAN LLP

By: _____
Roxanne L. Tashjian, Esq.

Dated: _____, 2016

100 Quentin Roosevelt Boulevard
Garden City, New York 11530
Telephone: (516) 357-3750

PALMCO POWER NJ, LLC

By: Robert Palmese
Robert Palmese, Managing Member

Dated: May 19, 2016

1350 60th Street
Brooklyn, New York 11219

PALMCO ENERGY NJ, LLC

By: Robert Palmese
Robert Palmese, Managing Member

Dated: May 19, 2016

1350 60th Street
Brooklyn, New York 11219

EXHIBIT A



Agenda Date: 9/30/14

Agenda Item: 7F

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

IN THE MATTER OF THIRD PARTY SUPPLIERS-)	ORDER
<u>N.J.A.C. 14:4 ET SEQ. THE BOARD'S REVIEW OF</u>)	
CONSUMER PROTECTION PROVISIONS OF ITS)	
RULES CONCERNING THIRD PARTY SUPPLIERS)	DOCKET NO. EX14060579

Parties of Record:

Mark A. Lazaroff, Esq., Cozen O'Connor on behalf of FirstEnergy Solutions Corp.
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Divesh Gupta, Esq., Constellation NewEnergy, Inc.
Evelyn Liebman, AARP
Murray E. Bevan, Esq., Bevan, Mosca, Giuditta & Zarillo on behalf of the Retail Energy Supply Association
Craig Goodman, National Energy Marketers Association
Alexander C. Stern, Esq., PSEG Services Corporation on behalf of PSE&G, ACE, E'Town Gas, JCP&L, RECO, and SJG
Andrew K. Dembia, Esq., New Jersey Natural Gas Company
Jodi Larison, UGI Energy Services, LLC
Ambrosio Casarez, Ambit Northeast, LLC
Lauren M. Lepkoski, Esq., on behalf of Jersey Central Power & Light Company

BY THE BOARD:

Since 1999, through the Electric Discount and Energy Competition Act ("EDECA"), New Jersey deregulated the State's energy industry for residential, as well as commercial and industrial, customers. EDECA allows all New Jersey energy consumers to shop and chose the energy provider that best suits their budgets and service requirements. The New Jersey Board of Public Utilities ("Board") developed energy competition rules at N.J.A.C. 14:4 et seq., to ensure that consumer protection safeguards, inherent to traditional public utility regulation, were maintained, without unduly impeding competitive markets.

This past winter saw historic cold snaps in the North Eastern United States. These cold snaps resulted in price spikes in wholesale natural gas and electricity prices. Many New Jersey energy consumers who had exercised their right to shop for gas and/or electric supply through third party suppliers ("TPSs") and selected variable rate contracts, have asserted that they found themselves with utility bills that went up far beyond their expectations. According to

information that has been provided to the Board, in some cases, this may have been due to complicated contract terms, terms that were not sufficiently brought to customers' attention at the time they signed up with the TPSs, or lack of understanding regarding the impact that volatility in the energy market could have on their utility bills.

The Board is now reviewing its rules at N.J.A.C. 14:4 et seq. to ensure that sufficient consumer safeguards are in place for customers who shop for their energy supplier(s). As part of this process, the Board held stakeholder meetings on July 17, 2014 and September 4, 2014 to obtain input from the public, the utilities and the TPSs. Several possible modifications to the current rules were presented, commented on, and in some cases critiqued, by the stakeholders. However, there was a general consensus that it would be helpful for shopping customers to receive a standardized TPS contract summary in addition to the actual TPS contract when they sign up with a TPS for gas or electric supply.

Based upon Staff's review and the aforementioned stakeholder process, Staff recommends the Board require the TPS to provide the attached TPS Contract Summary to all TPS residential customers along with the TPS contract upon initiation or renewal of service. As a rulemaking process could not be completed by this upcoming winter, Staff recommends that the Board require the TPS to begin providing the TPS Contract Summary to customers now, rather than waiting for the completion of the rulemaking process.

DISCUSSION

The Board has reviewed this matter and, based on the information provided to the Board to date **FINDS** that a TPS Contract Summary should assist customers in understanding the terms of their TPS contracts and serve to highlight and summarize the most relevant contract terms, which could otherwise be overlooked in the fine print of a long contract. Therefore, the Board **DIRECTS** Staff to initiate a rulemaking proceeding to review the current consumer protections for customers who shop for their energy supply and, as part of that rulemaking process, to require TPSs to include a TPS Contract Summary to all residential shopping customers.

As the rulemaking process will not be completed by this winter and the Board believes it is beneficial for switching customers to begin receiving the TPS Contract Summary as soon as possible, the Board **HEREBY ORDERS** all TPSs to complete the attached TPS Contract Summary for each residential customer that they sign up or renew for service on or after November 15, 2014. The TPSs **SHALL** conspicuously display the completed TPS Contract Summary at the front of the proposed residential customer's contract, and provide it to the customer when the customer signs up for service or contracts for a renewal of service, using the delivery method selected by the customer.

Accordingly, the Board **HEREBY DIRECTS** that each TPS serving residential customers **SHALL** fill out the attached TPS Contract Summary as follows:

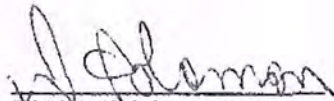
1. The TPS shall fill out the Contract Summary using plain language.
2. The TPS shall fill out the Contract Summary with a font size no smaller than 12 point.
3. The TPS shall fill out the sheet in a manner that it will fit on a single 8.5" x 11" page.
4. The TPS shall list the customer's name, address, and local distribution company account number at the top of the Contract Summary as shown.
5. The TPS shall utilize all of the exact headings shown in the boxes on the left side of the Contract Summary, except that the first box shall use the word "electric" or "gas" as appropriate instead of "electric/gas."

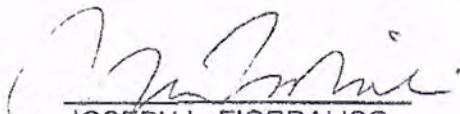
6. The TPS shall put the appropriate information in all of the boxes on the right side of the Contract Summary based upon the instructions shown in the boxes on the right side of the Contract Summary.
7. The TPS shall use gas or electric terminology as appropriate when filling out the sheet.

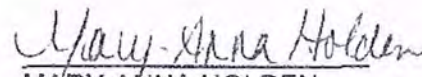
This Order shall be effective October 10, 2014.

DATED: 9/30/14

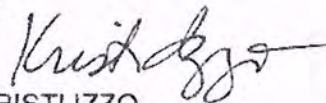
BOARD OF PUBLIC UTILITIES
BY:


DIANNE SOLOMON
PRESIDENT

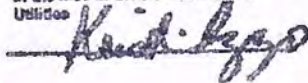

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COMMISSIONER


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ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



IN THE MATTER OF THIRD PARTY SUPPLIERS - N.J.A.C. 14:4 ET SEQ. THE BOARD'S
REVIEW OF CONSUMER PROTECTION PROVISIONS OF ITS RULES CONCERNING
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**Include individual customer name, address & local distribution company
account number**

Third Party Supplier Contract Summary

Third Party Supplier Information: By entering into this contract, you are agreeing to purchase your electric/gas¹ supply from this supplier.	Name, telephone number, website, email, New Jersey mailing address and BPU license #. Plain language statement that TPS is responsible for your supply.
Price Structure	Fixed, or variable. If fixed then variable, indicate the time frame of the fixed rates. If variable for any portion of the contract, state whether or not there are any applicable ranges/ceilings and whether a price change is tied to a published index or the utility Price to Compare, or what other method the supplier will use to change the variable rate.
Generation/Supply Price	Cost per therm or kilowatt hour. If variable rate, the first billing cycle's rate. Any introductory rate with length of term.
Statement Regarding Savings	Plain language that the supply price may not always provide savings to the customer. If the contract provides for a specified level of savings, how that will be calculated (description of reference price).
Amount of time required to change from TPS back to default service or to another TPS	Provide an estimated time frame in which a consumer can expect to be switched back to the EDC/GDC or to another TPS if the consumer cancels service with the current TPS - 30 days, one billing cycle, etc.
Incentives	Any bonuses, discounts, cashback, offers, etc., and any associated terms, in plain language.
Right to Cancel/Rescind	Plain language statement that customer will have seven calendar days from the date of the LDC's confirmation notice to contact its LDC and cancel this contract.
Contract Start Date	Plain language regarding expected start of TPS service (meter reads/billing cycles/etc.)
Contract Term/Length	In months, billing cycles, or provide exact end date, etc.
Cancellation/Early Termination Fees	Yes or no. If yes, describe the amount of the fee and how to avoid that fee, if possible.
Renewal Terms	Explain what the customer's options are at the end of the contract in plain language. Also explain what happens at the end of a contract when affirmative consent is not obtained for renewal.
Distribution Company Information	Name, emergency and toll-free customer service telephone numbers, and website. Plain language statement that the GDC/EDC will continue to deliver the gas/electric and that the customer will continue to pay the GDC/EDC for this service. Plain language statement that the customer should call the GDC/EDC in the event of any emergencies/outages/etc.

¹ This document shall be prepared by the TPS using gas or electric terminology as appropriate, not both. If a customer contracts for both gas and electric supply service, a separate Contract Summary shall be completed for each service.