

**STATE OF CONNECTICUT  
PUBLIC UTILITIES REGULATORY AUTHORITY**

JOINT PETITION OF GEORGE	:	DOCKET NO. 12-07-XX
JEPSEN, ATTORNEY	:	
GENERAL FOR THE STATE OF	:	
CONNECTICUT, AND THE OFFICE	:	
OF CONSUMER COUNSEL FOR AN	:	
INVESTIGATION INTO THE	:	
MANNER AND OPERATION OF	:	
ENERGY PLUS HOLDINGS, LLC	:	JULY 26, 2012

**PETITION OF GEORGE JEPSEN, ATTORNEY  
GENERAL FOR THE STATE OF CONNECTICUT, AND THE OFFICE OF  
CONSUMER COUNSEL FOR AN INVESTIGATION INTO THE MANNER AND  
OPERATION OF ENERGY PLUS HOLDINGS, LLC**

Pursuant to Conn. Gen. Stat. §§ 16-41, 16-245, 16-245o, 16-245t and 16-245u, George Jepsen, Attorney General for the State of Connecticut (“Attorney General”), and the Office of the Consumer Counsel (“OCC”) (jointly “Petitioners”) hereby petition the Connecticut Public Utilities Regulatory Authority (“PURA” or “Authority”) to commence an investigation into the manner of operation and conduct of Energy Plus Holdings, LLC (“Energy Plus”), a Connecticut licensed electric supplier.<sup>1</sup> The Attorney General has received multiple customer complaints concerning Energy Plus and Petitioners have also reviewed other Energy Plus marketing and solicitation materials. These complaints and materials appear to demonstrate that Energy Plus has engaged in a pattern of soliciting customers with the direct or implied promise of competitive, market-

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<sup>1</sup> The Authority has plenary power to open an investigation, issue fines and / or revoke the licenses of licensed electricity suppliers and has regularly opened such proceedings upon the request of the Attorney General, the OCC, or upon its own motion. See Docket No. 10-02-08, *Joint Petition of Richard Blumenthal, Attorney General for the State of Connecticut and the Office of Consumer Counsel for an Investigation into Raymond Sanzone and Turriz Associates, LLC*; Docket No. 11-10-06, *PURA Investigation of Public Power, LLC*; Docket No. 06-03-12, *DPUC Investigation into Dominion Customers’ January 2006 Electric Bills*.

based rates and savings on their electric bills, but then rapidly increasing customers' charges substantially above competitive market rates or the utilities' standard service rates. The Petitioners further assert that Energy Plus may have misrepresented its promotional rates in its customer solicitations.

These allegations, if true, may violate the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a *et seq.*, Conn. Gen. Stat. § 16-245o(e), which requires electric suppliers to provide clear and conspicuous statements to customers about the rates they will be paying, including the circumstances under which the rate may change, and possibly other Connecticut statutes. Such violations could subject Energy Plus to civil penalties under § 16-41 and potential suspension or revocation of its supplier license. Petitioners therefore request that the Authority notice a proceeding pursuant to the above-referenced statutes and specifically state that the Authority will consider the imposition of fines as well as the termination of Energy Plus's license as an electric supplier. The Authority should also consider enacting new regulations requiring the utilities to disclose on customers' bills the standard service rate, as well as the customers' relative savings or additional costs customers incurred by enrolling with their competitive supplier. Petitioners further request that the Authority designate the Connecticut Light and Power Company ("CL&P") and the United Illuminating Company ("UI") as participants in this matter to assist the PURA by providing relevant customer account information.

## **I. BACKGROUND**

The Attorney General has received a number of complaints from Connecticut customers concerning Energy Plus. Petitioners have also found a number of online internet websites cataloguing numerous additional similar complaints, both in and outside

of Connecticut,<sup>2</sup> and at least two class action lawsuits filed against Energy Plus in New York and New Jersey.<sup>3</sup>

These complaints strongly suggest an elaborate scheme by Energy Plus to deceive potential customers into enrolling with Energy Plus. Energy Plus offers electric generation supply to its customers and “offers rewards to all of its customers each month just for paying their energy bills – rewards that can be turned into free flights, hotel stays, money for college or retail bonuses.”<sup>4</sup> Energy Plus describes these offers as an “innovative approach to the deregulated electricity market,”<sup>5</sup> and advertises these rewards programs in a manner that would lead reasonable consumers to conclude they would save money by enrolling with Energy Plus. For example, the Company’s website

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<sup>2</sup> For example, a search for “Energy Plus” or “Energy Plus scam” in an internet search engine will yield many sites including the “Ripoff Report” and “Complaints Board,” including articles written in Connecticut under CTWatchdog.com. A small but representative sample follows:

<http://ctwatchdog.com/govt/consumer-frustrated-by-energy-plus-refusing-to-provide-electric-rates-it-charges-in-connecticut> (last visited July 25, 2012).

<http://www.complaintsboard.com/complaints/energy-plus-holdings-llc-c236122.html> (last visited July 25, 2012).

<http://www.electricrates.com/35584/energy-plus-scam/> (last visited July 25, 2012).

<http://www.flyertalk.com/forum/continental-onepass-pre-merger/1168650-continental-energy-plus-promotion-scam.html> (last visited July 25, 2012).

<sup>3</sup> <http://www.lawyersandsettlements.com/lawsuit/energy-plus-class-action-energy-plus-rate-hikes.html> (last visited July 25, 2012).

<http://classactionblog.mdpcelaw.com/2012/05/03/federal-court-sustains-consumer-fraud-class-action-claims/> (last visited July 25, 2012).

<sup>4</sup> <http://www.energypluscompany.com/company/company.php> (last visited July 25, 2012).

<sup>5</sup> <http://www.energypluscompany.com/company/company.php> (last visited July 25, 2012).

promises to “[p]ut money back in your pocket”<sup>6</sup> and help its customers “[s]ave money for college or pay back student loans with our UPromise program.”<sup>7</sup>

Energy Plus presents its “rewards” programs in such a manner that potential customers are led to believe they will receive benefits – airline miles, cash back, college savings – *in addition to competitive electricity prices*. For example, Energy Plus markets its product as “competitive,”<sup>8</sup> states that its rates “reflect the state of each power market”<sup>9</sup> and promises that “we’re constantly taking advantage of the best market prices.”<sup>10</sup> A reasonable consumer would naturally assume that Energy Plus’s electric rates would be competitive with other market participants and the “rewards” program would be an additional benefit to the competitive electric rates – setting Energy Plus apart from those other competitive suppliers. In fact, customers who sign with Energy Plus end up paying prices that are far higher than those charged by other electric suppliers or the standard service rate. Any “savings” or “rewards” that customers might achieve through the rewards program are far outweighed by the exorbitant prices Energy Plus charges for its electric supply.<sup>11</sup>

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<sup>6</sup> <http://www.energypluscompany.com/> (last visited July 25, 2012).

<sup>7</sup> <http://www.energypluscompany.com/> (last visited July 25, 2012).

<sup>8</sup> <http://www.electricrates.com/35584/energy-plus-scam/> (last visited July 25, 2012).

Attachment A, February 9, 2011 PW Complaint.

<sup>9</sup> <http://www.energypluscompany.com/residential/rates.php> (last visited July 25, 2012).

<http://www.complaintsboard.com/complaints/energy-plus-holdings-llc-c236122.html?page=2> (last visited July 25, 2012).

<sup>10</sup> <http://ctwatchdog.com/govt/consumer-frustrated-by-energy-plus-refusing-to-provide-electric-rates-it-charges-in-connecticut> (last visited July 25, 2012).

<sup>11</sup> For example, Energy Plus offers to credit 3% of the supplier charges customers pay for each bill into a “UPromise” college savings account.

<http://www.energypluscompany.com/company/company.php> (last visited July 26, 2012). If, as several customers allege, Energy Plus charges double the prevailing market rate for its supply, a customer whose generation service charge would have been \$100 will have to pay an additional \$100 in higher than market electricity costs to Energy Plus to earn \$6

Energy Plus offers an initial one month “promotional rate” in Connecticut, which is currently slightly higher than the Standard Service rates for both CL&P and UI.<sup>12</sup> Energy Plus does not, however, disclose to its customers the rates they will pay after the initial month. After one month, the promotional rate converts to a “monthly variable price.” The customer complaints state that this “variable monthly rate” is generally much higher -- sometimes more than double -- either the utilities’ standard service rates or the prevailing competitive market rates.

Moreover, as more fully described in the Connecticut Watchdog news article referenced above, as well as the various online complaint boards, Energy Plus representatives also reportedly repeatedly refused to disclose to potential customers the variable rate the company was currently charging,<sup>13</sup> making it impossible for customers to protect themselves before they enrolled and obligated themselves to pay Energy Plus’s exorbitant rates.<sup>14 15</sup> Because it normally takes one to two full billing cycles before a

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in credits to a college savings account (3 percent of \$200 is \$6). Rational investors would not knowingly pay \$100 for every \$6 college fund contribution when they could contribute the \$100 directly to a college investment fund. Customers might, however, join a college investment “rewards program” if they believed that the electricity supply costs were competitive.

<sup>12</sup> Energy Plus offers promotional rates of 8.28 cents per kWh in CL&P’s service territory, compared to 8.279 cents for CL&P and offers 8.73 cents per kWh in UI’s service territory, compared to 8.728 cents for UI.

<sup>13</sup> Energy Plus representatives claimed that “[b]ecause we’re constantly taking advantage of the best market prices, our rates are variable and may change daily; therefore, it is not possible to give you an exact rate.” <http://ctwatchdog.com/govt/consumer-frustrated-by-energy-plus-refusing-to-provide-electric-rates-it-charges-in-connecticut> (last visited July 25, 2012). This response could make sense if the customers wanted to know what Energy Plus’s rates would be in one or two months. It makes no sense when the customer is asking for a sample of Energy Plus’s current rates.

<sup>14</sup> <http://ctwatchdog.com/govt/consumer-frustrated-by-energy-plus-refusing-to-provide-electric-rates-it-charges-in-connecticut> (last visited July 25, 2012).

customer can cancel Energy Plus as their electric supplier, a diligent customer would still be stuck paying increased charges, no matter how exorbitant, for at least one month.

The Petitioners offer the following excerpts from e-mails received by the Attorney General as representative of the many complaints directed at Energy Plus:

[t]wo months ago, I switched my supplier to Energy Plus. They claimed they would provide a rate around 10% less than CL&P and [www.ctenergyinfo.com](http://www.ctenergyinfo.com) showed a rate less than CL&P's rate. And they did for two months, providing a rate of \$.085. Imagine my surprise when this month's electric bill showed a rate of \$.14 from Energy Plus! I'm very unsure about the rate they charged. They claim that it is variable based on the market, but [ctenergyinfo.com](http://ctenergyinfo.com) shows every other supplier offering between \$.0815 and \$.1089 (and the last rate is 100% renewable - a claim Energy Plus cannot make).

Attachment A, May 12, 2011 AN Complaint.

I am a residential customer of CL&P who signed up for “competitive” generation services with Energy Plus Holdings LLC several months ago. They offered airline miles to switch.

The generation rates over the last 4 months are as follows:

Statement dates-

Nov 1: 0.1094

Dec 2: 0.1194

Jan 4: 0.1399

Feb 3: 0.1490

I believe that they are taking advantage of Connecticut customers. When I called them today to cancel, they said that they would, but I was with them until at least the next billing cycle. I was offered a rate of 0.11 to stay with them, which I

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<sup>15</sup> Although Energy Plus does not disclose the actual price customers will be charged, most customers apparently view the company as offering a “variable rate” that is “market-based” or generally reflective of prevailing market condition. For example, one online complaint reads as follows:

“Do not go with Energy Plus! I'm a New York City resident. Just cancelled my billing with Energy Plus. I went with Energy Plus on the assumption I would save money. NO CHANCE !! Their rates this month were 18.8 cents, Con ed was 7 cents. I've been with Energy Plus for 6 months now. Every bill higher and higher ! We're not even into the summer months. Do not go with Energy Plus!”

<http://www.complaintsboard.com/complaints/energy-plus-holdings-llc-c236122.html>  
(last visited July 25, 2012).

declined because several suppliers are offering rates below .09 (Ref: Ctenergyinfo.com website).

They say “Oh there must have been a spike, we buy at a daily rate”, but if that is the case, why could they offer me a lower rate to stay? The trend is for escalating rates that don’t reflect the other suppliers. I am apprehensive about next months rate.

Attachment A, February 9, 2011 PW Complaint.

I switched my electric supplier from CL&P to Energy Plus (Philadelphia) about six months ago. Since that time, Energy Plus has raised my rates every month by about 10%, so in 6 months I was paying 50% more than CL&P. Their rate is variable, but electricity hasn't gone up 50% in 6 months. This is deceptive and fraudulent. The 10% monthly increase wasn't enough each month to notice. I cancelled my contract with them, but other people will fall into this trap.

Attachment A, May 27, 2011 SS1 Complaint.

I would like to lodge a formal complain[t] against Energy Plus for supplying energy at ridiculous and unfair rates. Although I understand it is my choice to pick a supplier, I firmly believe they are over-charging what it costs them to supply energy. Since August 2011, I am paying an additional 5 cents per kWh - it was already 10 cents, so now I am paying a full 15 cents. This is double what CL&P would have charged me.

Attachment A, February 1, 2012 SS2 Complaint.<sup>16</sup> As the Authority is aware,

competitive electric supply rates in Connecticut are now below 7 cents per kWh. It

appears that the exorbitant prices charged by Energy Plus are not “market” prices in the

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<sup>16</sup> These complaints are similar and consistent to those reported on the online complaint databases, which include the following:

“I went from 8.2 per kWh to 22.875 per kWh — more than a scam, it is really misleading, when i called to complain, they said they could change my program to 10.12 per kWh. Good thing I caught in 2nd month but my bill had already gone up by \$250 for one month.”

<http://www.electricrates.com/35584/energy-plus-scam/> (last visited July 25, 2012).

“Yes they are a rip-off. Our rate went up from .075 to .09 to .13 in 3 months.”

<http://www.electricrates.com/35584/energy-plus-scam/> (last visited July 25, 2012).

sense that they go up and down in accordance with market conditions, but rather that the prices fluctuate upward only independent of market conditions.

## **II. PETITION**

The Petitioners request that the Authority immediately open a proceeding to investigate the conduct and manner of operation of Energy Plus. Petitioners request that the Authority notice a proceeding pursuant to Conn. Gen. Stat. §§ 16-41, 16-245, 16-245o, 16-245t and 16-245u and state that the Authority will in that proceeding consider the imposition of fines as well as the termination of Energy Plus's license as an electric supplier. The Authority should further make clear that, at the conclusion of this proceeding, it may refer this matter to the Office of the Attorney General or the Connecticut Department of Consumer Protection for further investigation and enforcement action pursuant to Conn. Gen. Stat. § 16-245u.

### **A. Energy Plus's Marketing Practices Appear to be Deceptive and Misleading**

Energy Plus appears to have engaged in a practice of deceptive marketing in order to persuade potential consumers that Energy Plus's prices were reasonably comparable both to competitors' prices and to prevailing market rates. The complaints discussed herein clearly show the fruit of the company's marketing: customers believed that they would receive rates comparable to prevailing market rates, but were surprised to find themselves paying rates that were much higher, and in some instances more than twice the market rates.<sup>17</sup>

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<sup>17</sup> Attachment A.  
<http://www.complaintsboard.com/complaints/energy-plus-holdings-llc-c236122.html?page=2> (last visited July 25, 2012).



Energy Plus markets its product as “competitive”<sup>18</sup> or states that its rates “reflect the state of each power market”<sup>19</sup> – assertions that appear to be untrue. Indeed, the evidence appears to indicate that Energy Plus’s variable rate increased sharply or remained steady even during periods of declining electricity market prices. According to a number of complainants, Energy Plus representatives promised them that the company’s rates would be 7 to 10 percent below the utility’s standard service rate.

In addition, on its website, Energy Plus describes its variable rate plan as follows:

How much will my service cost?

In a variable rate model, your price is based on market prices and other factors. *We use an average for your specific region to calculate the cost for each month of service.*<sup>20</sup>

(emphasis added). Energy Plus’s prices do not appear to reflect any regional average but, as noted above, appear to move up regardless of the regional market conditions.

Moreover, if the complaints are accurate, Energy Plus may be charging different customers within the same region different rates, which would seem inconsistent with Energy Plus’ representation that it calculates its prices based upon a regional average. At the very least, Energy Plus is using some additional undisclosed metric for setting its electricity prices, and Energy Plus’s failure to disclose that metric may be deceptive and a violation of its obligation to make full and fair disclosure of the terms of its offer. As the Connecticut Supreme Court has held:

[i]n this connection, we emphasized that “[a] failure to disclose can be deceptive only if, in light of all the circumstances, there is a duty to

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<sup>18</sup> <http://www.electricrates.com/35584/energy-plus-scam/> (last visited July 25, 2012). Attachment A, February 9, 2011 PW Complaint.

<sup>19</sup> <http://www.energypluscompany.com/residential/rates.php> (last visited July 25, 2012). <http://www.complaintsboard.com/complaints/energy-plus-holdings-llc-c236122.html?page=2> (last visited July 9, 2012).

<sup>20</sup> <http://www.energypluscompany.com/residential/faqs.php> (last visited July 25, 2012).

disclose. . . . *Olson v. Accessory Controls & Equipment Corp.*, 254 Conn. 145, 180, 757 A.2d 14 (2000). Regarding the duty to disclose, the general rule is that . . . silence . . . cannot give rise to an action . . . to set aside the transaction as fraudulent. Certainly this is true as to all facts which are open to discovery upon reasonable inquiry. . . . *Duksa v. Middletown*, 173 Conn. 124, 127, 376 A.2d 1099 (1977). A duty to disclose will be imposed, however, on a party insofar as he voluntarily makes disclosure. *A party who assumes to speak must make a full and fair disclosure as to the matters about which he assumes to speak.* . . .

*Macomber v. Travelers Property and Casualty Corporation*, 277 Conn. 617, 622 (2005)

(*emphasis added*). At a minimum, once Energy Plus stated that its pricing was based upon a regional average, if those prices differed from the regional average Energy Plus had an obligation to disclose how and why they might differ. Finally, many online complaints repeatedly state that Energy Plus representatives claimed that the rates were in fact “market based”<sup>21</sup> and or likely to save customers money over the long term.<sup>22</sup>

Petitioners therefore request that the Authority open a proceeding to consider whether Energy Plus’s marketing of its rewards program was consistent with its obligations of full and fair disclosure or was otherwise deceptive and/or designed to make a reasonable

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<sup>21</sup> “We currently offer a market-rate product.” See <http://ctwatchdog.com/govt/consumer-frustrated-by-energy-plus-refusing-to-provide-electric-rates-it-charges-in-connecticut> (last visited July 25, 2012). One online complaint site lists the following representation:

“The following excerpt is from Energy Plus’s web site as of 2/13/2011, ‘As with all variable rate plans, your supply price may fluctuate on a monthly basis – lower or higher – to reflect the current state of each power market. However, in order to make an informed comparison to competitive offers, customers should average their bills over the course of several months or seasons, rather than taking a snapshot of just one month. Our goal is to be competitive with other energy suppliers and your local utility company over the long run, while offering valuable rewards.’”

<http://www.electricrates.com/35584/energy-plus-scam/> (last visited July 25, 2012).

<sup>22</sup>

“Over two years ago I switched to Energy Plus after speaking to one of their sales people. They told me I should see and an average of 7% savings over my current supplier’s charges in addition to getting 3% back into my son’s Upromise account as well as a \$25 signing bonus that would also go into the Upromise account.”

<http://www.electricrates.com/35584/energy-plus-scam/> (last visited July 25, 2012).

consumer believe that they would receive a rate comparable to the prevailing market rate or competitors' rates, and, if so, what further remedies, sanctions and procedures are appropriate.

**B. Energy Plus May be Misleading Consumers About its Promotional Rate**

In February and March 2012, Energy Plus mailed solicitations to potential customers to enroll in the Energy Plus / Best Buy Reward Zone program. Attachment B. In that solicitation, Energy Plus represented that “[t]he Energy Plus rate for new customers as of March 2012 is approximately 10% below the generation rate posted by CL&P and UI. The posted rates are available online at [www.cl-p.com](http://www.cl-p.com) under Rates and Tariffs and at [www.uinet.com](http://www.uinet.com) under Customer Care > Billing Rates.” Attachment B, p 2. According to these utility websites, CL&P’s rate for March 2012 is 8.279 cents per kWh and UI’s rate is 8.7806 cents per kWh. According to Energy Plus’s mandatory compliance filing in PURA Docket No. 07-05-33: *DPUC Administration of Disclosure Label Requirements and Examination of Direct Billing by Electric Suppliers*, however, Energy Plus’s promotional rates for March 2012 were 8.28 cents per kWh for CL&P and 8.73 cents per kWh for UI. Attachment C, Energy Supplier Price Form, 1.

It appears, therefore, that the Energy Plus promotional rate as disclosed on PURA’s mandatory compliance filing in Docket No. 07-05-33 was slightly higher than both CL&P’s and UI’s rates and not, as Energy Plus had represented, “approximately 10% below” those rates. Moreover, while Energy Plus states that its prices can change from month to month, it does not notify its customers that the 10 percent savings will not continue during the variable pricing period, again potentially violating its obligation to

make a full and fair disclosure of all of its offer conditions. *See Macomber v. Travelers Property and Casualty Corporation*, 277 Conn. 617 (2005).

Petitioners therefore request that the PURA open a proceeding to consider whether Energy Plus is misleading its customers about its promotional rates and, if so, what further remedies, sanctions and procedures are appropriate.

**C. The Authority Should Enact New Regulations Requiring Electric Utilities to Disclose Electric Supply Costs on Bills Showing Savings or Costs Associated with Competitive Electric Supply**

The Authority should also consider enacting new regulations requiring the utilities to disclose on customers' bills, in a prominent specified location, manner and format, the standard service rate and the customers' relative savings or additional costs incurred by enrolling with a competitive supplier. As the record in this matter clearly shows, many of Energy Plus's customers did not notice they were being charged exorbitant rates for many months, compounding their losses. Requiring the utilities to disclose the standard service rate on customer bills as a price-to-compare would promote transparency and make it easier for customers to compare their rate and to more quickly evaluate whether their electric supplier is saving them money.

**WHEREFORE**, for the reasons stated herein, the Petitioners respectfully request that the Authority open an investigation as requested herein. The Petitioners further request that the Authority designate CL&P and UI as participants in this matter to assist the PURA by providing relevant customer account information. Finally, the Authority should consider enacting new regulations that would require the electric utilities to disclose standard service rates on all bills, as well as any savings or additional costs each customer incurred with their chosen electric supplier.

Respectfully submitted,

GEORGE JEPSEN  
ATTORNEY GENERAL

By: \_\_\_\_\_  
John S. Wright  
Michael C. Wertheimer  
Assistant Attorneys General  
Attorney General's Office  
10 Franklin Square  
New Britain, CT 06051  
Tel: (860) 827-2603  
Fax: (860) 827-2893

ELIN SWANSON KATZ  
CONSUMER COUNSEL

By: \_\_\_\_\_  
Joseph Rosenthal  
Principal Attorney  
Office of Consumer Counsel  
10 Franklin Square  
New Britain, CT 06051  
Tel: (860) 827-2906  
Fax: (860) 827-2929

Service is hereby provided to:

Energy Plus Holdings, LLC  
Connecticut Light and Power Company  
United Illuminating Company

\_\_\_\_\_  
John S. Wright  
Assistant Attorney General