

CIVIL COVER SHEET

JS 44 (Rev. 12/12)

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

I. (a) PLAINTIFFS

Paul T. Edwards

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Izard Nobel LLP, 29 South Main Street, Suite 305
West Hartford CT 06107
860-493-6294

DEFENDANTS

North American Power and Gas, LLC

County of Residence of First Listed Defendant Fairfield
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

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

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

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332(d)

Brief description of cause:

Unfair trade/consumer protection; breach of implied covenant of good faith; unjust enrichment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/18/2014

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING-FPP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PAUL T. EDWARDS, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

NORTH AMERICAN POWER AND:
GAS, LLC,

Defendant.

No. 3:14-cv-01714

CLASS ACTION COMPLAINT

1. Plaintiff Paul T. Edwards (“Plaintiff”), on behalf of himself and all persons similarly situated, by and through his attorneys, alleges as follows.

INTRODUCTION

2. Plaintiff Paul T. Edwards brings this action on behalf of himself and a class of all similarly situated customers against Defendant North American Power and Gas, LLC (“NAP”) in Connecticut, Rhode Island, New Hampshire and Maine, arising out of NAP’s unfair, deceptive, unconscionable and bad faith billing for “supplying” electricity to residential consumers.

3. NAP entices residential customers to sign up for its service by offering low initial rates for electricity. When the “teaser rate” period expires, however, customers are rolled over into a month-to-month variable rate plan with exorbitant rates.

4. NAP represents in its marketing materials and in its contracts that it offers a “variable rate” electricity plan to residential consumers that is tied to the market rate in the wholesale power market. However, contrary to NAP’s representations and obligations, NAP consistently and improperly charges an extraordinarily high premium rate for electricity *regardless*

of fluctuations in the underlying market price. Indeed, as set forth below, NAP routinely charges its consumers *three to four times* the underlying market rate, notwithstanding NAP's representations that its variable rates "reflect" monthly wholesale electric prices.

5. Specifically, NAP's rates go *up* to match spikes in the underlying market price. However, when the market price goes *down*, NAP's rate remains at an inflated level several times higher than the market rate. Through this scheme, NAP subjects consumers to consistent and unlawful "heads I win, tails you lose" pricing.

6. This unfair and deceptive scheme of charging inflated electric prices that match *increases* in the underlying market price while failing to pass-along *decreases* is intentionally designed to maximize revenue for NAP.

7. Plaintiff and other NAP customers have been injured by NAP's unlawful practices. Accordingly, Plaintiff, on behalf of himself and the class, seeks damages, restitution and injunctive relief for NAP's violation of state consumer protection statutes (Count I), breach of the implied covenant of good faith and fair dealing (Count II), and unjust enrichment (Count III).

PARTIES

8. Plaintiff Paul T. Edwards is a resident of Cheshire, Connecticut.

9. Defendant North American Power and Gas, LLC is a limited liability company organized under the laws of Delaware whose principal place of business is located at 20 Glover Avenue, Norwalk, CT 06851.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this civil action under 28 U.S.C. § 1332(d) because this is a class action filed under Rule 23 of the Federal Rules of Civil Procedure, the amount in

controversy exceeds \$5,000,000 and there are members of the Class who are citizens of a different state than Defendant NAP.

11. This Court has personal jurisdiction over NAP because NAP maintains its headquarters in Connecticut and because NAP has tens of thousands of customers in Connecticut and thereby conducts business in this state.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because NAP resides in Norwalk, Connecticut.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

A. Energy Deregulation and the Role of Electric Suppliers

13. In the late 90s and early 2000s, many states moved to deregulate at least part of the electricity supply services then performed by large public utilities. Delivery of electricity to a consumer requires both the creation of electricity and the transmission of that electricity from the power plant to the consumer. The typical pattern was to require the public utilities to divest their power generation assets such as coal, gas and nuclear power plants. But, the regulated utilities continued distributing power from these power plants to consumers through transmission lines.

14. When deregulation occurred, the business of power *supply* was opened to competition and consumers were allowed to select the companies from whom they would purchase their power. However, states generally set a “standard offer,” available to all customers in each public utility’s service area. In some states, such as Connecticut, the standard offer is a single, flat rate which is fixed for a period of months, while other states such as Rhode Island have both a fixed rate standard offer and a standard offer rate that varies each month.

15. As a result of the deregulation of power supply, several different parties are now involved in the supply of electric power to residential consumers. Certain companies, such as Dominion, produce electric power (“Generation Companies”). Other companies, such as Connecticut Light & Power (“CL&P”) in Connecticut, distribute electricity from Generation Companies to the end user (“Distribution Companies”). Although some Generation Companies have sold power directly to consumers, including residential customers, most sell the power they generate on the wholesale market to companies that market to retail customers (“Electric Suppliers”).

16. The market for wholesale power in the New England States is under the administration of an independent, not-for-profit corporation formed in accordance with the recommendations of the Federal Energy Regulatory Commission, called ISO New England (for “Independent System Operator”). ISO New England coordinates and directs the generation and flow of electricity throughout the region, ensuring that electric supply exactly meets demand throughout the network. The wholesale market managed by ISO New England determines where and when electricity will be made by Generation Companies and the wholesale prices that will be paid for that electricity through competitive bids. “More than 500 companies participate in these markets, buying and selling between \$6-\$14 billion of electric power and related products annually.” <http://www.iso-ne.com/about/what-we-do/three-roles/administering-markets>. The bid process determines the Generation Company that will make each unit of electricity and the wholesale price each Energy Supplier will pay to each Generator for each unit of energy delivered to specific locations throughout the region.

17. Electric Suppliers play a middleman role: they purchase power directly or indirectly from Generation Companies and sell that electricity to end-user consumers. However,

Electric Suppliers do not *deliver* that electricity to consumers. Rather, Generation Companies deliver the electricity to Distribution Companies, which in turn deliver the electricity to the ultimate consumer. Electric Suppliers merely buy electricity at the wholesale rate and then sell that power to end-users with a mark-up. Thus, Electric Suppliers are essentially brokers and traders: they neither make nor deliver electricity, but merely buy electricity from the Generation Companies and re-sell it to end users.

18. Like other Electric Suppliers, NAP purchases power on the wholesale market and sells it to consumers. The rates that NAP charges are not approved by states' regulatory authorities such as Connecticut's Public Utility Regulatory Authority ("PURA") or the Public Utilities Commissions ("PUC's") of Rhode Island, Maine or New Hampshire. Rather, NAP and other Suppliers are free to set their own rates for supplying electricity to consumers. And NAP, like all other suppliers, relies upon the Distribution Companies to deliver the electricity it purchases on the wholesale market to its customers. The Distribution Companies charge separately for their distribution-related services, using rates that are reviewed and approved by the states' regulatory agencies.

19. Electric Suppliers may contract with consumers to supply electricity on either a "Fixed" or "Variable" rate basis. Under a Fixed contract, the Supplier agrees to supply electricity at a set rate for a certain number of months.

20. Under a Variable rate contract, the Supplier may vary the rate it charges on a periodic basis (often monthly).

B. North American Power's Excessive Rates

21. NAP has offered various Fixed and Variable rate plans, including contracts that charge a low promotional “teaser” rate which is fixed for a set number of months before automatically rolling into a Variable rate plan.

22. Throughout its contracts, marketing materials and required disclosures, NAP represents that its Variable rate plan is based upon the wholesale market rate. Indeed, that is the entire hook by which NAP attracts consumers to Variable rate plans.

23. For example, NAP directs its sales representatives to explain the relative benefits of Variable and Fixed rate plans as follows:

A variable rate is subject to change with market pricing, which means when market prices go down, so does the variable rate. . . . A fixed rate means that the price per unit remains steady for a specific period of time, regardless of market price fluctuations. The benefit of that is that you are protected in the event market prices rise. . . . *A variable rate is subject to change with market pricing, which means when market prices go down, so does the variable rate. That enables you to take advantage of market lows, which isn't necessarily the case when you're locked into a fixed-rate.*

(“Frequently Asked Questions” Chart filed by NAP in PURA Docket No. 13-07-18, Document OCC-22, on March 21, 2014, at pp. 46-47) (emphasis added).

24. NAP confirms that its rates are market-based in follow-up confirmatory phone calls. In the script that NAP uses for that confirmatory phone call, NAP requires variable rate consumers to confirm their understanding that “you will be paying a month-to-month, *market-based* variable rate that can fluctuate from time to time.” (Script filed by NAP in PURA Docket No. 13-07-18, Document No. OCC-36, on March 21, 2014.) Similarly, NAP’s marketing materials routinely represent that the company’s Variable rate is “market based” (Advertising Material filed by NAP in PURA Docket No. 13-07-18 on April 7, 2014, at pp. 4, 14).

25. Most importantly, NAP's Variable rate "Terms of Service" also make this express link between the Variable rate charged by the company and the underlying wholesale market rates from ISO New England charged by Generation Companies, stating "[t]he variable rate may increase or decrease to reflect the changes in the wholesale power market." (Contracts filed by NAP in PURA Docket No. 09-10-21 and in Docket No. 13-07-18, Document No. OCC-37, on March 21, 2014, at p. 1.)

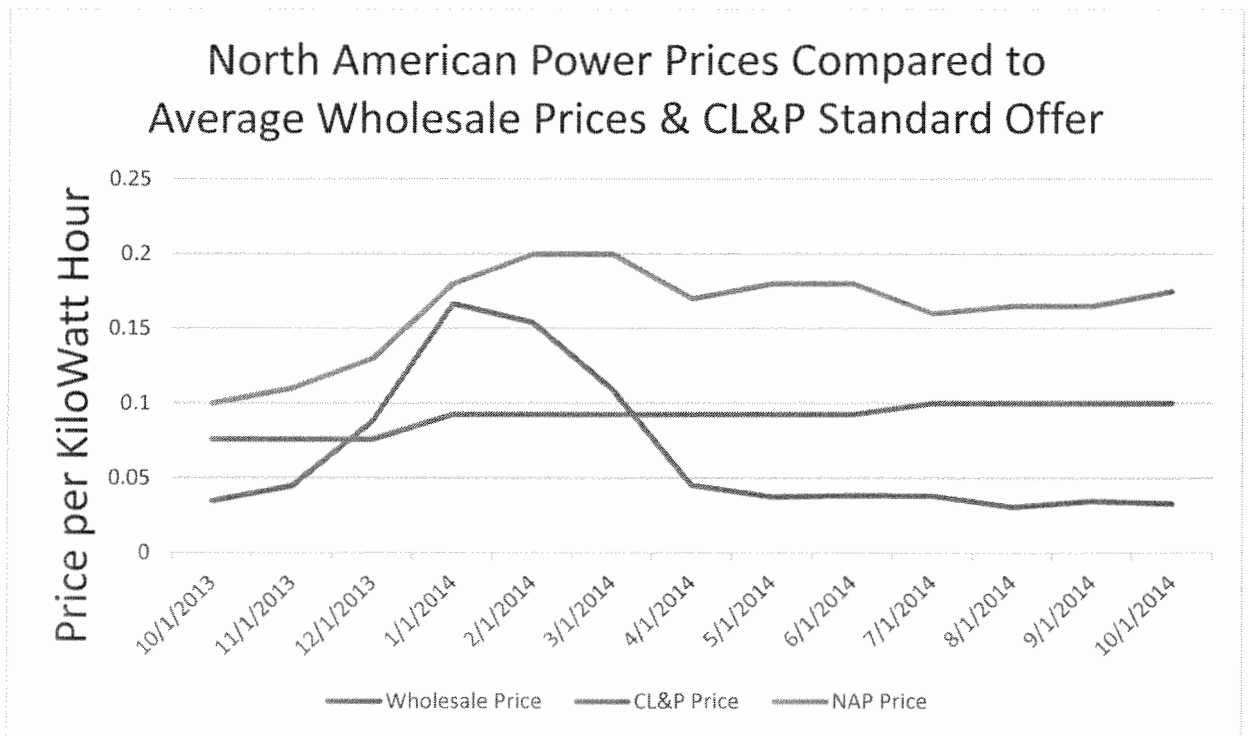
26. Accordingly, a reasonable consumer would understand that NAP's Variable rates fluctuate in a manner correlated with the underlying wholesale market rate, and that, although prices would go up when wholesale prices rose, they would also go down when wholesale prices decreased, enabling consumers to take advantage of market lows.

27. Instead, and contrary to reasonable consumer expectation, NAP used its Variable rates as a pure profit center, increasing the rates charged to class members when wholesale prices rose, but staying at a level as much as *double, triple or quadruple* the wholesale market rates when the wholesale prices fell.

28. For example, the chart below sets forth (1) the average wholesale price (in dollars per kilowatt hour) of electricity delivered to Connecticut for each month during the period from October 2013 through October 2014, as reported by ISO New England; (2) the non-promotional variable rates NAP charged to consumers in Connecticut for those same months; and (3) the resulting percentage premium that NAP charged consumers over the wholesale rate on an average per-month basis:

	<u>OCT-13</u>	<u>NOV-13</u>	<u>DEC-13</u>	<u>JAN-13</u>	<u>FEB-14</u>	<u>MAR-14</u>	<u>APR-14</u>	<u>MAY-14</u>	<u>JUN-14</u>	<u>JUL-14</u>	<u>AUG-14</u>	<u>SEPT-14</u>	<u>OCT-14</u>
Average Wholesale	\$0.0345	\$0.0447	\$0.0880	\$0.1664	\$0.1539	\$0.1092	\$0.045	\$0.0373	\$0.0381	\$0.0379	\$0.0305	\$0.0345	\$0.0329
NAP	\$0.0999	\$0.1099	\$0.1299	\$0.1799	\$0.1999	\$0.1999	\$0.1699	\$0.1799	\$0.1799	\$0.1599	\$0.1649	\$0.1649	\$0.1749
NAP Premium ABOVE Wholesale Price	189%	146%	48%	8%	30%	83%	278%	383%	372%	322%	441%	378%	432%

29. The extreme divergence between the wholesale price paid by NAP and the retail price it charged its Connecticut customers during the period from October 2013 through October 2014 is likewise illustrated on the following graph (and, for purposes of comparison, the Standard Service Rate charged by CL&P during the same period):



30. Accordingly, NAP routinely charges class members a Variable electric rate that is as much as four times higher than the underlying market rate.¹ Additionally, upon information and belief, NAP's non-promotional variable rates haven't matched, much less beat, the standard offer fixed rates in over two years.

31. Moreover, NAP's essential representation to consumers concerning its Variable pricing plan – that “when market prices go down, so does the variable rate,” that the Variable rate is “market-based,” and that “[t]he variable rate may increase or decrease to reflect the changes in the wholesale power market” – is patently false. Although NAP *increases* its Variable rate in response to *rising* wholesale prices (as illustrated in the period from October 2013 through January 2014 above), and in fact raised its Connecticut prices three times in a *single week* to account for rising wholesale prices in January of 2014, NAP fails to *decrease* its prices in response to a *falling* wholesale market price. For example, from January to March, 2014, the wholesale price dropped 34 percent, while NAP's price actually *rose* by 11 percent. The same pattern is clear in the periods from April to May, 2014, July to August, 2014, and September to October, 2014. Even when NAP's price moved downward, it did not decline *nearly* as far or as fast as the wholesale price. For example, from March to April, 2014, the wholesale price declined by 59 percent, from 10.92 cents to 4.5 cents per kilowatt hour, while NAP's price declined a mere 15 percent, from 19.99

¹ The NAP rates reflected in the above chart and graph reflect NAP's lowest-cost Variable rate, which includes “25% Renewable” energy. Connecticut presently only requires that electricity be derived from 18% renewable sources. However, upon information and belief, the increased cost to NAP for providing 25% (rather than 18%) renewable energy is negligible. For example, CL&P offers a “Sterling Energy” *100%* renewable energy plan for only *\$0.01* more than its Standard rate. NAP itself offers a *100%* renewable energy plan with rates approximately \$0.02 more than under its 25% renewable energy plan rates. Accordingly, the fact that NAP's basic Variable Rate plan offers 25% renewably-sourced electricity does not explain the tremendous discrepancy of as much as 14 or 15 cents between that rate and contemporaneous wholesale electric rates.

cents to a still-astronomical 16.99 cents per kilowatt hour. As a result, NAP routinely priced its services at two, three, and even *four* times the price it paid to the companies that actually generated the power. At one point, NAP's price premium was an incredible *441 percent* above the wholesale price.

32. Notably, NAP charges these exorbitant premiums without adding any value to the consumer whatsoever. As detailed above, NAP does not either produce or transport electricity. It has no role in running or maintaining power plants or power lines; it does no hook-ups or emergency response. Indeed, NAP does not even handle customer billing: that, too, is handled by the Distribution Company. Essentially, all that NAP does is act as a trader in the transaction. Yet it charges several multiples of the amount the Generation Companies receive for making electricity and the Distribution Companies receive for transmitting power, maintaining power lines, and handling emergency services and customer billing and calls.²

C. Plaintiff Paul Edwards Suffered Injury Due To NAP's Improper Business Practices

33. Plaintiff Paul Edwards has been on NAP's Variable rate plan since at least August 2013.

34. Plaintiff reasonably relied on NAP's false statements that NAP's Variable rate was based on the underlying wholesale market rate.

35. Plaintiff paid NAP's exorbitant Variable electricity rates and thereby suffered monetary damages as a result of NAP's conduct as set forth above.

² For example, CL&P currently charges 6.4 cents per kilowatt hour plus a flat charge of \$16 for distribution services, while NAP's price for its services is 17.5 cents per kilowatt hour. According to the U.S. Energy Information Administration, the average household in Connecticut uses 731 kilowatt hours per month. <http://www.eia.gov/tools/faqs/faq.cfm?id=97&t=3>. Such an average household will pay CL&P about \$63 this month for distribution services, while paying NAP \$128 – twice as much.

CLASS ACTION ALLEGATIONS

36. Plaintiff brings this class action pursuant to Rule 23 of the Federal Rules of Civil Procedure behalf of himself and the following class of similarly situated persons:

All persons enrolled in a North American Power & Gas, LLC, variable rate electric plan in connection with a property located within Connecticut, Rhode Island, New Hampshire and Maine at any time within the applicable statutes of limitations preceding the filing of this action through and including the date of class certification (the “Class”).

37. Plaintiff reserves the right to modify or amend the definition of the proposed Class or to propose sub-classes as might be necessary or appropriate.

38. Excluded from the Class are Defendant, including any parent, subsidiary, affiliate or person controlled by Defendant; Defendant’s officers, directors, agents or employees; the judicial officers assigned to this litigation; and members of their staffs and immediate families.

39. The proposed Class and meets all requirements for class certification. The Class satisfies the numerosity standard. The Class is believed to number in the tens of thousands of persons as NAP has over 50,000 residential customers in Connecticut alone according to information the company filed in PURA docket 13-07-18. As a result, joinder of all class members in a single action is impracticable. On information and belief, class members can be identified by NAP and Distribution Company records.

40. There are questions of fact and law common to the Class which predominate over any questions affecting only individual members. The questions of law and fact common to the Class arising from NAP’s actions include, without limitation, whether NAP:

- a. Committed unfair or deceptive trade practices by its Variable electric rate policies and practices;

- b. breached its covenant of good faith and fair dealing with regard to its Variable electric rate contracts;
- c. was unjustly enriched through its Variable electric rate policies and practices; and
- d. continues to commit wrongdoing through its Variable electric rate policies and practices.

41. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity to other available methods for the fair and efficient adjudication of this controversy.

42. Plaintiff is an adequate representative of the Class because he is a member of the Class and his interests do not conflict with the interests of the members of the class he seeks to represent. The interests of the members of the Class will be fairly and adequately protected by Plaintiff and his undersigned counsel, who have extensive experience prosecuting complex class action litigation.

43. Plaintiff's claims are typical of the claims of the Class because they arise out of the same conduct, policies, and practices of NAP with respect to its Variable electric rate policies and practices. Plaintiff has suffered the harm alleged and has no interests antagonistic to the interests of any other putative class member.

44. Maintenance of this action as a class action is a fair and efficient method for the adjudication of this controversy. It would be impracticable and undesirable for each class member who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent

adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

45. Notice can be provided to Class members by using techniques and forms of notice similar to those customarily used in other class actions.

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF STATE UNFAIR TRADE PRACTICES ACTS,

46. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set forth herein.

47. Plaintiff brings this count individually and as a class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and the Class.

48. NAP is engaged in “trade” and “commerce” as it offers electricity for sale to consumers.

49. NAP’s conduct as alleged above constitutes unfair practices:

- a. NAP’s contracts do not accurately describe the rates the customer will be paying or the circumstances under which the rates may change.
- b. NAP’s acts and practices with regard to its exorbitant Variable electric rates as alleged above are immoral, unethical, oppressive and unscrupulous.
- c. NAP’s conduct is substantially injurious to consumers. Such conduct has caused, and continues to cause, substantial injury to consumers because consumers would not have paid such a high price for electricity but for NAP’s immoral, unethical, oppressive and unscrupulous practices and procedures. Consumers have thus overpaid for their electricity and such injury is not

outweighed by any countervailing benefits to consumers or competition. No benefit to consumers or competition results from NAP's conduct, nor could consumers reasonably have avoided the injury.

50. NAP's conduct as alleged above also constitutes a deceptive act or practice. NAP's Variable electric rate representations as set forth above were and are likely to mislead consumers and NAP intended that consumers rely upon those representations. Plaintiff and other reasonable consumers reasonably interpreted Defendant's representations to mean that NAP's Variable rates track the underlying wholesale power rates (when in fact they do not). NAP's representations were material to a reasonable consumer and likely to affect consumer decisions and conduct, including purchases of power from NAP pursuant to Variable rate contracts.

51. The foregoing unfair and deceptive practices directly, foreseeably and proximately caused Plaintiff and the Class to suffer an ascertainable loss and substantial injury when they paid an exorbitant premium for electricity over wholesale market rates.

52. The foregoing actions constitute unfair and deceptive practices in violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a *et seq.*, the Maine Unfair Trade Practices Act, Me. Rev. Stat. tit. 5, § 205-A *et seq.*, the New Hampshire Consumer Protection Act, N.H. Rev. Stat. Ann. § 358-A:1 *et seq.*, and the Rhode Island Unfair Trade Practices and Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1 *et seq.*

53. Plaintiff and the Class are entitled to recover damages and other appropriate relief, as alleged below.

COUNT II

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

54. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set forth herein.

55. All contracts contain an implied covenant of good faith and fair dealing, including Plaintiff's and Class members' contracts with NAP.

56. NAP's Terms of Service with customers gives NAP discretion concerning the monthly rates charged under Variable rate contracts and any "increase[s] or decrease[s]" to the rate "to reflect the changes in the wholesale power market."

57. As alleged herein, NAP has used its discretion to bill exorbitant rates that are not tied to the wholesale market and to *increase* the monthly Variable rate when wholesale markets rise, but not to commensurately *decrease* the monthly Variable rate when wholesale markets fall. As a result, consumers are billed exorbitant electric rates several multiples of the wholesale market rate.

58. NAP's performance of its discretionary functions under the Terms of Service as alleged herein to maximize its revenue from Variable electric rates impedes the right of Plaintiff and other Class Members to receive benefits that they reasonably expected to receive under the contract.

59. On information and belief, NAP's actions as alleged herein were performed in bad faith, in that the purpose behind the practices and policies alleged herein was to maximize NAP's revenue at the expense of its customers and in contravention of their reasonable expectations as customers of NAP.

60. NAP has breached the covenant of good faith and fair dealing in the Terms of Service through its Variable electric rate policies and practices as alleged herein.

61. Plaintiff and members of the putative Class have sustained damages as a result of NAP's breaches as alleged herein.

COUNT III

UNJUST ENRICHMENT

62. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set forth herein.

63. NAP has been, and continues to be, unjustly enriched as a result of its wrongful conduct alleged herein to the detriment of Plaintiff and the Class.

64. NAP has been enriched by a benefit in the form of payment of exorbitant Variable electric rates.

65. NAP's enrichment was at the expense of Plaintiff and the Class.

66. It would be unjust to allow NAP to retain the benefit.

67. Plaintiff and the Class are entitled to disgorgement and restitution of all wrongfully-obtained gains received by NAP as a result of its wrongful conduct alleged herein.

68. Plaintiff and members of the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the putative Class, requests that this Court enter judgment against Defendant and in favor of Plaintiff and award the following relief:

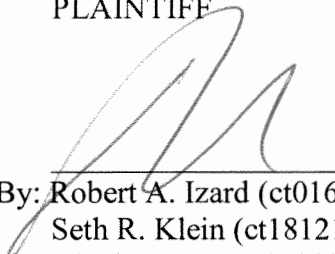
- (a) Certification of the proposed Class;
- (b) Injunctive relief enjoining NAP from charging exorbitant Variable electric rates under their current policies and from engaging in the wrongful, deceptive, unfair, and unconscionable practices alleged herein;
- (c) Damages in an amount to be determined at trial, including actual and punitive damages;
- (d) Disgorgement and restitution of all exorbitant rates paid to NAP by Plaintiff and the putative Class as a result of the wrongs alleged herein;
- (f) Pre- and post- judgment interest at the maximum rate permitted by applicable law;
- (g) Attorneys' fees, costs, and expenses as available under the law.
- (h) Such other and additional relief as the Court may find just and equitable.

JURY DEMAND

Plaintiffs demand a trial by jury on all causes of action so triable.

DATED: November 18, 2014

PLAINTIFF



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