

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

STEVEN BASILE, on behalf of  
himself and all others similarly situated,

No:

Plaintiff,

**CLASS ACTION COMPLAINT**

vs.

**JURY TRIAL DEMANDED**

STREAM ENERGY PENNSYLVANIA, LLC;  
STREAM ENERGY PENNSYLVANIA, LLC d/b/a  
STREAM ENERGY; STREAM ENERGY d/b/a  
STREAM ENERGY PENNSYLVANIA, LLC,

Defendants.

**CLASS ACTION COMPLAINT**

**AND NOW**, Plaintiff Steven Basile brings this action individually and on behalf of all others similarly situated (the Proposed Class), and alleges as and for their Class Action Complaint against: Stream Energy Pennsylvania, LLC; Stream Energy Pennsylvania, LLC d/b/a Stream Energy; Stream Energy d/b/a Stream Energy Pennsylvania, LLC (hereafter collectively referred to as Defendant Stream Energy or Defendant), upon personal knowledge as to himself and his own acts, and as to all other matters upon information and belief, based upon, *inter alia*, the investigation made by his attorneys, as follows:

**INTRODUCTION**

1. This is a proposed class action brought by Plaintiff on behalf of himself and other similarly situated customers of Defendant. Defendant has in the past and continues to promise customers competitive market-based rates and savings on their electric energy bills if they switch from their local utilities or other energy suppliers to Defendant Stream Energy.

2. However, despite these promises, a Defendant Stream Energy customer may end up paying in excess of 50% more for electricity than what he or she would have paid if he or she had not converted to Defendant Stream Energy. Instead of benefitting from switching to Defendant Stream Energy, a typical customer loses hundreds or even thousands of dollars per year. Thus, Defendant Stream Energy deceptively causes its customers to pay considerably more for energy than they should have, and otherwise would have, paid. Defendant Stream Energy's acts and/or omissions, as set forth herein, in connection with its energy supply activities constitute breach of contract, breach of the covenant of good faith and fair dealing, unjust enrichment, violate the *Pennsylvania Unfair Trade Practices And Consumer Protection Law*, and warrant declaratory relief.

### **PARTIES**

3. Plaintiff Steven Basile is an adult individual and a resident of Harleysville, Pennsylvania. Mr. Basile signed up to receive electric supply service from Defendant Stream Energy on June 1, 2011.

4. Defendants Stream Energy Pennsylvania, LLC; Stream Energy Pennsylvania, LLC d/b/a Stream Energy; Stream Energy d/b/a Stream Energy Pennsylvania, LLC are believed to be the same entity which is a Delaware corporation whose registered agent is *The Corporation Trust Company* with a service address of Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. Defendant Stream Energy has an office address located at P.O. Box 7287, Philadelphia, Pennsylvania 19101-7287 and an office address located at 1950 N Stemmons Fwy, Ste 3000, Dallas, Texas 75207-3115. It is believed and therefore averred that Defendant Stream Energy is a residential and commercial retail energy service company (ESCO) and/or electric generation supplier that is licensed in the Commonwealth of Pennsylvania by the

Pennsylvania Public Utility Commission to provide said services with a license number of: A-2010-2181867. It is further believed and therefore averred that at all times relevant to the instant action, Defendant Stream Energy systematically and continuously conducted business throughout the Commonwealth of Pennsylvania.

5. At all times relevant hereto, Defendant Stream Energy was engaged in the business of marketing, advertising and selling electric utility services to consumers in Pennsylvania.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the claims asserted herein pursuant to 28 U.S.C. § 1332(d)(2)(A) in that the amount in controversy exceeds the sum or value of \$5,000,000.00, exclusive of interest and costs, and is a class action in which members of the Putative Class are citizens of States different from Defendant Stream Energy.

7. No administrative or other non-judicial adjudicative body in the Commonwealth of Pennsylvania has jurisdiction or authority to hear the disputes raised in this litigation regarding Plaintiff's and the proposed class' claims against Defendant Stream Energy.

8. Venue is proper pursuant to 15 U.S.C. § 80b-14 and 28 U.S.C. § 1391. Defendant Stream Energy regularly transacts and solicits business in this District.

### **OVERVIEW**

9. In 1996, Pennsylvania deregulated energy supply in the Commonwealth. Energy deregulation has enabled consumers to purchase their energy supply from an Energy Services Company (ESCO), like Defendant Stream Energy, of their choice. The intent of the deregulation law was to provide consumer choice and allow competition to drive down customer rates. Since deregulation, the utility company is no longer the only option for energy supply. Customers may

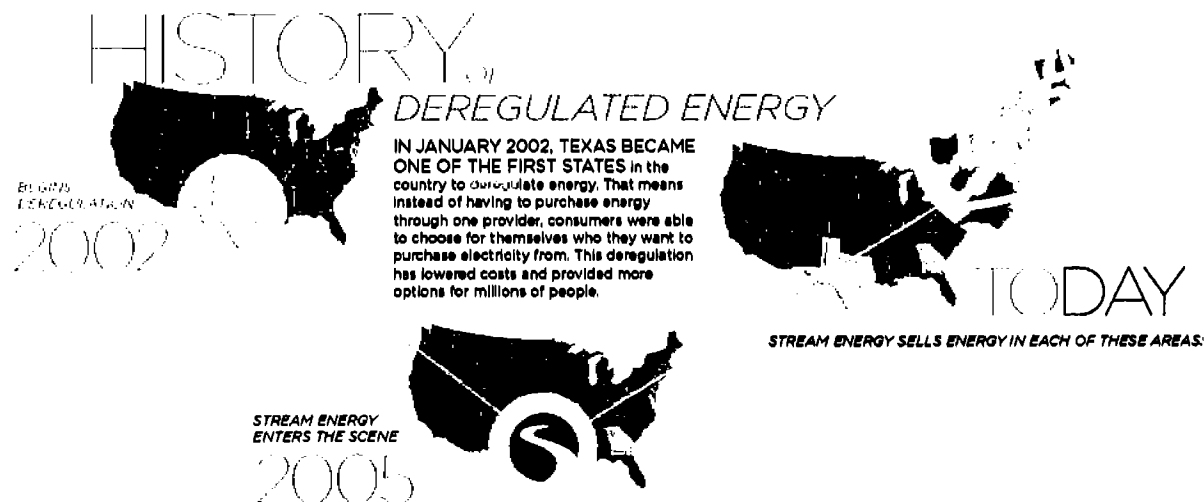
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now purchase electricity through ESCOs while continuing to obtain delivery from their local public utilities.

10. Defendant “Stream Energy began in 2005 with a simple, innovative idea—selling energy by word of mouth. In doing so, [Defendant Stream Energy] created a unique position in a crowded marketplace, quickly becoming the largest direct selling energy company in the world.” <https://mystream.com/en/company/about>. Defendant Stream Energy claims that “In fact, Stream has paid millions of dollars to real, everyday people, just for telling their family and friends about us and enrolling new customers.” *Id.* However, Defendant Stream Energy neglects to mention that by choosing Stream Energy, customers will end up increasing rather than decreasing their energy costs each year.

11. Defendant Stream Energy’s practices emerge from, and take advantage of, the deregulation of the energy supply markets in Pennsylvania and other states where Defendant Stream Energy does business - including Maryland, New Jersey, New York, Texas, Georgia and Washington D.C. <https://mystream.com/en/services/electricity>. Under these States' deregulation laws, in theory, customers can freely shop around for the best price for their energy. Through their harmful actions, Defendant Stream Energy subverts the consumer-friendly purpose of the laws and prevents its customers from making a free, informed choice. Defendant Stream Energy states on its webpage: “This deregulation has lowered costs and provided more options for millions of people.” *Id.* (See corresponding graphic from Defendant Stream Energy’s webpage below). In reality, most customers would be far better off staying with their local utilities or

another supplier than switching to Stream Energy.



11.

12. Defendant Stream Energy’s harmful actions are as follows: Defendant Stream Energy offers a standard service contract to its customers with an initial competitive “teaser” rate that is then replaced by a variable rate plan once the fixed rate plan terminates. It is interesting to note that nowhere, in Defendant Stream Energy’s *Disclosure Statement for Residential and Small Business Electric Service* or *Welcome to Stream Energy! Letter*, does Defendant Stream Energy inform the customer of the length of the contract term they have signed up for. (Defendant Stream Energy’s *Disclosure Statement for Residential and Small Business Electric Service* and *Welcome to Stream Energy! Letter* are attached hereto as Exhibits “A” and “B” respectively).

13. Defendant Stream Energy promises in its *Welcome to Stream Energy! Letter* “Our goal is to provide service, **competitive rates** and dedicated relationship to ensure your energy experience is unlike any other”; and “We look forward to helping you take full advantage of the Stream Difference - namely, **Greater Savings** and Personalized Service.” (Emphasis added) *Exhibit B*. Defendant Stream Energy confirms its promises for competitive rates and greater

savings in its *Disclosure Statement for Residential and Small Business Electric Service* by confirming that “[w]hile this Agreement is in effect, the price for the Variable Price Plan may fluctuate and is subject to change at the sole discretion of Stream Energy, ***based upon the fluctuation of wholesale natural gas prices or other inputs to wholesale electric prices***; the rates will change based upon updates in pricing to the Variable Price Plan as posted on Stream Energy's website.” (Emphasis added) *Exhibit A*. However rather than provide such competitive rates, after the initial “teaser” rate, Defendant Stream Energy charges customers an exorbitant monthly rate far out of line with the competition or market factors. The rates Defendant Stream Energy actually charged Plaintiff and the Proposed Class were not competitive and did not provide greater savings, as Defendant Stream Energy failed to base the rates upon wholesale electric prices despite Defendant Stream Energy’s contractual obligation to do so.

14. Further, Defendant’s promises are reinforced on their webpage where they attempt to solicit people to sell energy for them. “There are plenty of programs that reward you for selling. They often involve a huge initial investment, inventory that takes up space, and products that few people want or need. However, energy and mobile are *something everyone needs and uses every day*.” (Emphasis supplied). <https://mystream.com/en/opportunity/why-energy>. “They’re the bills that get paid first every month. Since everyone is looking for ways to save on basic costs, Stream’s affordable rates and flexible plans speak for themselves. There is a growing demand for energy, and even more demand for mobile. These services are renewable, consumable, and people will never stop needing them.” *Id.*

15. Defendant Stream Energy states on a different portion of its webpage that, “Electricity is more than just a luxury—it’s a must.” <https://mystream.com/en/services/electricity>. Defendant Stream Energy is correct, electricity is a

must. Defendant Stream Energy clearly knows this fact of modern life and has decided to exploit it for its own financial gains. Defendant Stream Energy has offered savings on a necessity of life to Plaintiff and the Proposed Class but has instead knowingly and intentionally delivered substantial losses to its customers.

16. Notwithstanding the aforementioned promises, Defendant Stream Energy's rates (after the initial "teaser" rate) are not competitive with other suppliers, other wholesale market services, or in line with genuine market-related factors. Customers who switch to Defendant Stream Energy will pay in many cases over 50% more than a competitive rate in their area. Defendant Stream Energy's customers regularly complain that their rates far exceed that of any other supplier, that their rates have more than doubled after the expiration of the teaser rate, and that they are often being overcharged by hundreds of dollars a year as compared to remaining with their local utilities (the old monopolies). Below are some of the complaints about Defendant Stream Energy's services:

Stream Energy are thieves! Stay away from them. I've spent hundreds (\$400-\$500) of dollars more last winter than I would have with PECO. I thought I signed up for a 12 months fixed rate but they put me on a month to month after 6 months adding about 40% to the price and of course there was "nothing they could do". For just the idea of maybe saving a couple of dollars it's definitely not worth switching your electricity provider unless you have the time of day to monitor your electric bill on a day to day basis.  
<http://www.ripoffreport.com/r/Stream-Energy/Select-StateProvince/Stream-Energy-Stream-Energy-Thievery-Dallas-Texas-1146188>.

I switched to Stream Energy month-to-month electric service plan in 5/2008 when my neighbor, an Ignite Inc. salesman, [sic] told me about the company. He showed me a price list compared Stream to major electric providers such as Reliant, TXU, etc... In that list, Stream rates are always a few pennies lower than their competitors in every plans. Well, that is far from the truth.

While I was under the impression that Stream rate is 0.14/Kwh they actually charged me 0.18/Kwh on my May bill and 0.22/Kwh on my June bill. For both months, the rates are 4 cents higher than my old provider. This is completely contradict [sic] to the price list shown to get me to switch. I called Stream today to complain and they told me there is nothing they can do about it. Yep. Bend over and take it.

So please do your research and STAY AWAY FROM STREAM ENERGY and its middeman, [sic] IGNITE INC. I would have paid about \$60 and \$90 less for the two months if I stayed with my old provider.

I registered to switch to another provider but that won't happen for another month. I'm bracing for their last robbery.

Dave

Tomball, Texas

U.S.A.

<http://www.ripoffreport.com/r/Stream-Energy-And-Ignite-Inc/Dallas-Texas-75219/Stream-Energy-And-Ignite-Inc-DO-NOT-SWITCH-TO-STREAM-ENERGY-THEY-CHARGE-RIP-OFF-VARIA-354150>.

Hi, I am new customer with Stream energy. I have one bedroom apartment & staying alone. I have full-time job. I only use one room all the time. But for my surprise... my first month bill is \$200 dollar. wow... I never expected that much bill from any company... in bill it said i used 1400 Kwh in one month... impossible... for my case...

I call them & no good customer service... I am going to switch my company... I am writing this to keep everyone aware that this is a big scam company.. so run run run... don't waste your time & money... do not experiment with this.

<http://www.complaintsboard.com/bycompany/stream-energy-a62096.html>.

Something needs to be done about Stream. If there is a class action suit or any court action against them for their practices I would join. They are very tricky. When I complained that they should have informed me of other plans that they had to lock in my rates or save me some money long term, they had no answer. The very next day, I received my first promotional email from them.



Never had they done this before. They would not even include promotional fliers with the bill or anything of the sort. Instead they spike their rates from \$0.13 to \$0.21 and expect you to be grateful it wasn't more than that.

<http://www.complaintsboard.com/complaints/stream-energy-houston-texas-c169039.html>.

DALLAS, TEXAS -- Beware of Stream Energy, they are crooks, they're ripping people off by what they call cramming, adding more unknown charges on your bill and lying about what the meter readings are. I had a simple transfer from the house I was moving out of, to the new address I was moving to. OK, so I had two accounts, the old address and the new address. The old address, I told them to leave the account active for two weeks so I could have light and air while I was moving, which by the way was only on weekends and during the weekdays no one was there, lights off no air or anything.

For two weeks only on weekend I did my moving, so normally my bill was about \$125.00 a month. So I finally got moved and they sent my bill from my old address. For two weeks they charged me \$434.00 and said "that's what the meter read." I cussed all of them out and switched to someone else. Watch out for those crooks, they start you off good and then they rip you off in the end. Now my credit is bad until I pay that BS THEY CHARGED ME, LOOK OUT!

<http://mythreecents.com/reviews/stream-energy>.

Stream Energy, a Texas-based company licensed in six states and DC, claims it has earned more than \$5 billion since it was founded in 2005. Among its leaders are top executives of a bankrupt MLM long-distance phone company; in 2011, some of its salespeople filed a class action suit against Stream and its MLM arm, Ignite, alleging the operation was a pyramid scheme. Stream's variable-rate customers pay significantly more than those of the state's monopoly utilities, in some cases two or three times as much per kilowatt-hour. (Stream says its rates are competitive.)

*Electric Shadyland: How Power Companies Rip You Off*,  
MotherJones,

<http://www.motherjones.com/environment/2014/01/deregulation-energy-enron-company-electricity>.

17. Defendant Stream Energy is a direct seller multi-level marketing organization that reaches its prospective lower level sellers and potential customers through internet advertising on company websites, through social media and with online presentations and conferences as well as directly through in person presentations, brochures, meetings and conference calls.

18. Defendant Stream Energy recruits potential customers in Pennsylvania and other states through a direct sales channel of salespeople Defendant refers to as “Stream Associates.”

19. It is believed and therefore averred that Defendant Stream Energy charges newly recruited Stream Associates almost \$400.00 for the privilege of selling energy supply services for Defendant Stream Energy.

20. Defendant Stream Energy’s Associates are the primary vehicle by which Defendant sells its energy services to the public.

21. Defendant Stream Energy attempts to attract customers with promises of Free Energy, Referral Rewards and Travel Rewards programs. Further Defendant Stream Energy represents that its rates will be tied to market factors and that its rates will be competitive with the market, a feature that is drilled into the “Stream Associates” and repeated *ad nauseum* including in Defendant’s agreement with its customers. *Exhibits A and B*. This is further illustrated in the snip below from the Q&A sections of Defendant Stream Energy’s website:

<http://mystream.com/en/faq>.



#### **What am I shopping for?**

You are shopping for a company that provides first-class customer service, should you ever need anything, along with competitively-priced rate plans that can be customized to the needs of you and your family. You also want a supplier that views you as more than just a rate-payer and instead, values its relationship with you as a consumer and a person.

### **What does it mean that a state's energy is deregulated?**

In the past, one utility company provided all parts of your energy service—from the generation of energy to the transportation and distribution. The utility also billed you for your energy.

With deregulation, the retail supply of electricity and gas — that is, the actual “energy” supplied to your home or business — is now opened to competition among various retailers who compete to provide better service and prices. What that means is that you can now choose your energy supplier. Deregulated retail supply includes customer service, rate plans and other customer incentive programs. When companies compete for your business, you as the consumer see the benefit through competitively priced offerings. Even after you switch to a new retail supplier, you're still able to enjoy the same reliability that you did in the past.

### **Who is Stream Energy?**

Stream Energy is an American retail electricity and natural gas firm headquartered in Dallas, TX, active in the Texas, Georgia, Washington D.C., Pennsylvania, Maryland, New Jersey and New York deregulated energy markets. As a leading Pennsylvania electric company we are committed to being the industry leader in customer loyalty, built upon excellent customer service, competitive utility rates and innovative products. But our true point of difference is the priority we place on our relationships with our customers and business partners. Rather than employing a “one size fits all” mentality or viewing our customers simply as “rate payers,” our team of industry experts strive to understand your unique requirements and work to design and deliver creative solutions to exceed your expectations.

We know we have to earn your trust; that we have to work hard to get your business and work hard to keep it. That is exactly why we provide excellent customer service and competitive energy rates compared to other Pennsylvania electric companies.

22. Defendant Stream Energy engages in unfair, unlawful and deceptive acts in trade and commerce, breached its contracts with Plaintiff and the Proposed Class and/or breached the covenant of good faith and fair dealing. Defendant Stream Energy's acts and omissions as set forth herein warrant declaratory relief.

23. Defendant Stream Energy knew (or but for its reckless indifference would have known) prior to agreeing to supply electricity to Plaintiff and the Proposed Class that it would be

unable or unwilling to provide the savings and/or competitive rates that it agreed/promised to provide.

24. Defendant Stream Energy knew (or but for its reckless indifference would have known) prior to agreeing to act as Plaintiff's and other customer's agent in acquiring sufficient energy supplies to meet Plaintiff's and other customer's needs in the energy supply market that Defendant Stream Energy would be incapable, unable or unwilling to timely, skillfully, knowledgeably, reliably and/or honestly make the necessary and/or appropriate energy purchases to provide the savings and/or competitive prices that it contracted/promised to provide.

25. It is clear that Plaintiff and other customers on the one hand and Defendant Stream Energy on the other did not deal with each other on equal terms due to Defendant's purported skill and experience in purchasing electric energy supplies timely, skillfully, knowledgeably, reliably, honestly and efficiently in the open market and Plaintiff and other customers depended on and trusted Defendant to do so.

26. By making promises and contracts it did not intend honor and by engaging in unfair dealings, Defendant Stream Energy has subverted the consumer-friendly purpose of the deregulation of utilities in Pennsylvania and prevented its customers from receiving the benefits they were promised by Defendant Stream Energy. In reality, most customers would have been far better off staying with their local utilities or another supplier rather than switching to Stream Energy.

27. Upon information and belief, the proposed class consists of tens of thousands to hundreds of thousands of current and former customers with variable rate plans, each of whom has sustained damages of as much as hundreds or even thousands of dollars annually.

28. Plaintiff brings this class action to recover damages, penalties and other relief for himself and the Proposed Class who have suffered damages from Defendant Stream Energy's imposition of unreasonable and exorbitant energy rates in violation/breach of the Defendant's *Disclosure Statement for Residential and Small Business Electric Service* and representations and marketing. Only a class action will provide Plaintiff and the Proposed Class with any possibility of relief. Plaintiff and the Proposed Class are therefore entitled to a class-wide remedy.

### **PLAINTIFF'S ALLEGATIONS**

29. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

30. Based upon information Mr. Basile was provided/received from Defendant Stream Energy, Mr. Basile's Stream Energy account was established on June 1, 2011.

31. Mr. Basile was initially placed on a fixed rate contract for a one year period at 9.10¢ per kWh and a June 1, 2012 expiration date.

32. Mr. Basile's contract was renewed on May 3, 2012 with a 12 month fixed rate plan at 8.80¢ per kWh and a May 20, 2013 expiration date.

33. Mr. Basile did not receive notice from Defendant Stream Energy that his contract term was about to expire and that he was about to be placed in a variable rate plan.

34. Mr. Basile was placed in a variable rate plan where he was consistently over-charged well above market rates for electricity until he canceled his service with Defendant Stream Energy on September 22, 2014.

35. While Mr. Basile was on Defendant Stream Energy's variable rate plan, Defendant Stream Energy gradually began creeping the rate higher and higher until Mr. Basile

was being charged in excess of 50% more than he would have been paying had he been receiving service from PECO, his legacy utility.

36. Plaintiff would not have enrolled in Defendant Stream Energy's program but for Defendant's promises of savings and rates competitive with the market. Had Plaintiff known that the rates he would be charged by Defendant would be substantially higher than the rates he would have paid with PECO he would not have agreed to receive Defendant's services.

37. Because of Defendant Stream Energy's deceptive, misleading conduct, as discussed herein, Mr. Basile has incurred significant overcharges for his electrical service.

38. Defendant Stream Energy failed to abide by its own *Disclosure Statement for Residential and Small Business Electric Service*, representations, and marketing. Given knowledge of the relevant facts regarding Defendant's exorbitant rates when compared to their local energy supplier, no reasonable consumer would choose Defendant as an energy supplier.

### **CLASS ACTION ALLEGATIONS**

39. Plaintiff brings all claims herein as class claims pursuant to Fed. R. Civ. P. 23. The requirements of Fed. R. Civ. P. 23(a), (b)(2) and (b)(3) are met with respect to the class defined below.

#### **A. Class Definition(s)**

40. The (b)(2) Injunctive Relief Class consists of: All persons who contracted with Defendant to act as their electric supplier.

41. Excluded from the Class(es) are: Defendant, any entities in which it has a controlling interest, any of its parents, subsidiaries, affiliates, officers, directors, employees and members of such person's immediate families and the presiding judge(s) in this case and his, her or their immediate family.

**B. Numerosity**

42. At this time, Plaintiff does not know the exact size of the Class; however, due to the nature of the trade and commerce involved, Plaintiff believes that the Class members are so numerous that joinder of all members is impracticable. The number and identities of Class members is administratively feasible and can be determined through appropriate discovery.

**C. Commonality**

43. There are questions of law or fact common to the class, including at least the following:

- a. What Defendant's contractual rate term was;
- b. Whether Defendant breached the rate term of its contract in setting the actual rate charged to its customers irrespective of the market and/or its competitors;
- c. Whether Defendant breached the covenant of good faith and fair dealing in making the promises it did regarding its rates;
- d. Whether Defendant breached the covenant of good faith and fair dealing in setting the actual rates it charged;
- e. Whether Defendant violated the provisions of the *Pennsylvania Unfair Trade Practices and Consumer Protection Law*, 73 PS. § 201-1 *et seq.*
- f. Whether and the amount to which Plaintiff and other members of the Class have been damaged;
- g. Whether Defendant Stream Energy was unjustly enriched by its conduct; and

h. The amount of Defendant's unjust enrichment at the expense of the class.

**D. Typicality**

44. Plaintiff has the same interests in this matter as all other members of the Class, and her claims are typical of all members of the class.

**E. Adequacy**

45. Plaintiff is committed to pursuing this action and has retained competent counsel experienced in the prosecution and successful resolution of consumer class actions. Plaintiff will fairly and adequately represent the interests of the Class members and does not have interests adverse to the Class.

**F. The Prerequisites of Rule 23(b)(2) are Satisfied**

46. The prerequisites to maintaining a class action for injunctive and equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) exist as Defendant Stream Energy has acted or refused to act on grounds generally applicable to the Class thereby making final injunctive and equitable relief appropriate with respect to the Class as a whole.

47. The prosecution of separate actions by members of the Class would create a risk of establishing incompatible standards of conduct for Defendant Stream Energy. For example, one court might decide that the challenged actions are illegal and enjoin them, while another court might decide that those same actions are not illegal. Individual actions may, as a practical matter, be dispositive of the interest of Class members, who would not be parties to those actions.

48. Defendant Stream Energy's actions are generally applicable to the Class as a whole, and Plaintiff seeks, inter alia, equitable remedies with respect to the Class as a whole.



49. Defendant Stream Energy's systemic policies and practices make declaratory relief with respect to the class as a whole appropriate.

**G. The Prerequisites of Rule 23(b)(3) are Satisfied**

50. This case satisfies the prerequisites of Fed. R. Civ. P. 23(b)(3). The common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class, and a class action is the superior method for fair and efficient adjudication of the controversy. The likelihood that individual members of the Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially when compared to the relatively modest amount of monetary, injunctive and equitable relief at issue for each individual Class member. This action will be prosecuted in a fashion to ensure the Court's able management of this case as a class action on behalf of the Proposed Class defined above.

**CAUSES OF ACTION**

**COUNT I**

**(BREACH OF CONTRACT)**

51. Plaintiff and the Proposed Class Members incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

52. Defendant Stream Energy entered valid and enforceable agreements with Plaintiff and the Proposed Class Members, which included terms relating to the rate to be charged for the electricity sold by Defendant as discussed herein.

53. Defendant Stream Energy breached its agreements with Plaintiff and the Proposed Class Members by charging rates that did not meet the contractual obligation to offer a competitive rate "based upon the fluctuation of wholesale natural gas prices or other inputs to wholesale electric

prices.” *Exhibits A and B*. Instead, Defendant Stream Energy charged excessive arbitrary rates that were divorced from any competitive market and which were not based on wholesale electric prices.

54. Defendant Stream Energy’s breach of its agreement caused harm to Plaintiff and the Proposed Class Members.

## **COUNT II**

### **(BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING)**

55. Plaintiff and the Proposed Class Members incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

56. Defendant Stream Energy created in Plaintiff and the Proposed Class Members the reasonable expectation that Defendant would set rates that were competitive in the marketplace and were otherwise based on wholesale market factors.

57. Defendant Stream Energy was entrusted by Plaintiffs and the Proposed Class Members to purchase electricity at competitive rates in the wholesale marketplace and, in turn, resell electricity to them at competitive, market based rates in the retail marketplace.

58. In violation of its duty to act in good faith under its agreements with Plaintiff and the Proposed Class Members and by its course of unfair dealing with Plaintiff and the Proposed Class Members as set forth above, Defendant caused Plaintiff and the Proposed Class Members harm.

## **COUNT III**

### **(DECLARATORY RELIEF)**

59. Plaintiff and the Proposed Class Members incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

60. Defendant Stream Energy has acted in a uniform manner under the standard and common terms relating to the price of electricity it has agreed to charge Plaintiff and the Proposed Class Members.

61. Defendant Stream Energy has acted or refused to act on grounds that apply generally to the declaratory relief of Plaintiff and the Proposed Class Members, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Proposed Class as a whole within the meaning of Fed.R.Civ.P. 23(b)(2).

62. Plaintiff and the Proposed Class Members seek a declaration of Defendant Stream Energy's obligations to them under the agreement regarding the pricing of its electricity.

#### **COUNT IV**

#### **(VIOLATION OF 73 P.S. § 201-1, ET SEQ., PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW)**

63. Plaintiff and the Proposed Class Members incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

64. The Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL") protects consumers against "unfair or deceptive acts or practices" in connection with the sale or advertisement of any merchandise. 73 PS. § 201-1 *et seq.*

65. Defendant Stream Energy engaged in unfair, unlawful, and deceptive acts in trade and commerce which have the capacity and tendency to deceive and did deceive Plaintiff and the Proposed Class members and damaged Plaintiff and the Proposed Class members.

66. Defendant represented that its energy supply rates would be market-based and competitive and/or that customers would on average save money over their local public utilities and other alternative providers. However, consumers did not save money with Defendant

Stream Energy. In fact, Defendant Stream Energy's actual rates were excessive, unreasonable, and bore no reasonable relationship to market conditions.

67. Defendant Stream Energy committed an unlawful, deceptive, and unconscionable trade practice by inducing its customers to switch from other providers and/or to remain with Stream Energy and then charging them exorbitant, arbitrary rates that were not based on market conditions and not competitive with Defendant Stream Energy's competitors.

68. Defendant Stream Energy wrongfully concealed, suppressed, and omitted to disclose that its average rates were far higher than its competitors' rates and that the main goal of the so-called "competitive," "market-based" pricing system was not to save money on behalf of Plaintiff and the Proposed Class Members but to reap undue profits at their expense.

69. Defendant Stream Energy's misrepresentations and omissions had the capacity to mislead Plaintiff and the Proposed Class members into believing: (i) that Defendant Stream Energy's rates would be significantly lower than the amounts Defendant actually charged, and (ii) that these rates would be substantially equivalent to or better than the rates charged by Plaintiff s and the Proposed Class Members' local public utilities. Plaintiff and the Proposed Class Members suffered damages as a result Defendant Stream Energy's misrepresentations and omissions.

70. Defendant Stream Energy's practices are grossly disproportionate with the industry. Upon information and belief, most ESCOs do charge competitive market-based rates which generally meet or beat a customer's local public utility. On the occasions where a private supplier's rates are higher than the public utility, it is usually only by a very small percentage.

71. Because of Defendant's unlawful, deceptive, unfair, and unconscionable trade practice and scheme, Plaintiff and the Proposed Class Members have suffered injuries and

damages in an amount to be determined at trial. Pursuant to the *Pennsylvania Unfair Trade Practices and Consumer Protection Law*, this Court has the power to enjoin Defendant Stream Energy's conduct. Unless enjoined by this Court, Defendant Stream Energy will continue its unlawful practice of charging excessive undisclosed rates to its customers.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of the Proposed Class of persons described herein, pray for an Order as follows:

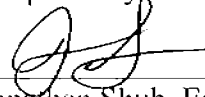
- a) Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and/or (b)(3), and certifying the Class defined herein;
- b) Designating Plaintiff as representative of the Class and his counsel as Class counsel;
- c) Entering judgment In favor of Plaintiff and the Class and against Defendants;
- d) Awarding Plaintiff and Class Members their individual damages including interest thereon;
- e) Awarding treble damages pursuant to law;
- f) Awarding Plaintiff all costs and disbursements, including attorneys' fees, experts' fees, and other class action related expenses;
- g) Imposing a constructive trust, where appropriate, on amounts wrongfully collected from Plaintiff and the Class Members pending resolution of their claims herein;
- h) Issuing appropriate declaratory and injunctive relief to declare the rights of Plaintiff and the Class Members; and
- i) Granting such further relief as the Court deems just.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all claims and issues.

Date: June 9, 2015

Respectfully Submitted By:



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Jonathan Shub, Esquire  
Kohn Swift & Graf, P.C.  
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Phone: (215) 564-2300  
Fax: (215) 851-8029

And

Troy M. Frederick, Esquire  
MARCUS & MACK, P.C.  
Identification No: 207461  
57 South Sixth Street  
Indiana, PA 15701  
Phone: (724) 349-5602  
Fax: (724) 349-8362  
TFrederick@MarcusandMack.com

*Attorneys for Plaintiff*

# EXHIBIT A

**Stream Energy Pennsylvania, LLC, PaPUC License #A-2010-2181867****Disclosure Statement for Residential and Small Business Electric Service Version 1.0; Effective Date: December 5, 2013**

This document sets forth the terms and conditions that apply to your purchase of electricity from Stream Energy Pennsylvania, LLC ("Stream Energy") for residential or small business electric services, as applicable. The terms "includes" or "including" shall mean "including without limitation." For purposes of this Agreement, the terms "Customer" or "you" or "your" shall mean: for residential service, the person whose name appears on the bill for service under this Agreement, or that person's spouse, or an authorized agent thereof; for small business service, the person or entity whose name appears on the bill for service under this Agreement, or that person's spouse, or an authorized agent thereof.

**Background**

Stream Energy is licensed by the Pennsylvania Public Utility Commission (PaPUC) to offer and supply electric generation and related services in Pennsylvania. Our PUC license number is A-2010-2181867. We set the generation prices and charges that you pay. The PaPUC regulates distribution prices and services. The Federal Energy Regulatory Commission regulates transmission prices and services.

**Definitions**

Generation Charge - Charge for production of electricity.

Transmission Charge - Charge for moving high voltage electricity from a generation facility to the distribution lines of an electric distribution company (EDC).

Distribution Charge - Charge for delivering electricity over a distribution system to your home or business from the transmission system.

**1. Contact Information.** Stream Energy:

By Phone: Toll Free: 1-877-369-8150; between 8 a.m. to 9 p.m. Monday to Friday, EST, excluding holidays

For any formal notices to Stream Energy pursuant to this Agreement, the following mailing address shall apply: **Stream Energy, Attn: Customer Operations, P.O. Box 7287, Philadelphia, PA 19101-7287.** It is Customer's sole responsibility at all times to provide to Stream Energy—at the address listed in this paragraph—with a valid mailing address to receive invoice(s) and notices under this Agreement and as required by any applicable state or federal law. Customer has the right to provide Stream Energy or its affiliates with Customer's email contact information to additionally receive this Disclosure Statement or other notices, electronic communications, emails (including mass communication emails) at Customer's discretion. By providing email contact information, Customer agrees to accept notices and communications electronically.

**2. Purchase of Electric Service from Stream Energy and Term.** Customer agrees to purchase electric generation and related services from Stream Energy for the Account Number(s) and Service Address(es) identified by Customer during the Quality Confirmation call ("QC") which serves as the Customer's telephonic enrollment. The Product Type (i.e., Fixed vs. Variable), and the Term (i.e., length of the Agreement), shall be the type and term selected by Customer during the QC. Service from Stream Energy will begin on your next regularly scheduled meter read date after your EDC has switched your account to us and will continue for the selected term or until either you or Stream Energy cancels service under this agreement as provided in Section 6 below. Customer shall not resell electricity to any third party.

**3. Moving/Relocation.** The Agreement is cancelled automatically if Customer moves from the Service Address(es) identified during enrollment. If Customer no longer wishes to receive service in Customer's name (e.g., because of a new occupant) at said Service Address(es), Customer agrees to call Stream Energy at the Toll-Free Number above or to notify Stream Energy in writing via U.S. mail at the mailing address set forth in Section 1. Customer acknowledges and agrees that Stream Energy does not have control over, and shall not be responsible for, any delay, failure or inability by any other entity that is responsible for performing actions necessary to discontinue service in Customer's name. Customer agrees to remain responsible for all Stream Energy charges incurred while the Agreement is in effect. Customer agrees to provide Stream Energy with a valid forwarding address to receive Customer's remaining invoice(s).

**4. Price per Kilowatt Hour.** You have selected a **12 Month Fixed Rate Plan** at a current rate of **0.0880 per kWh with an Early Cancellation Fee of 150.00.** Customer agrees to pay the price per kWh that Customer agreed to during QC. The Price per Kilowatt Hour ("kWh") provided by Stream Energy for both Fixed and Variable rate plans is the price published for the effective date of this Agreement to Stream Energy's website at [www.streamenergy.net/pennsylvania](http://www.streamenergy.net/pennsylvania), and which was confirmed orally to the Customer for that specific product or plan at time of the QC and is included in your Welcome package. The Price includes the price for electric generation, transmission and related services and includes all recurring charges, including reimbursement for the state gross receipts tax. It does not include distribution charges, state and local sales taxes, if applicable, or non-recurring charges such as (for illustration purposes only) collection fees. The Price for both types of product plans is a flat pricing structure. The energy charge portion of the customer's monthly bill will be the greater of ten dollars or an amount calculated by multiplying the rate the customer agreed to by the customer's actual monthly usage (measured in kilowatt-hours).

**5. Changes in Price.** Variable Price Plan. While this Agreement is in effect, the price for the Variable Price Plan may fluctuate and is subject to change at the sole discretion of Stream Energy, based upon the fluctuation of wholesale natural gas prices or other

P.O. Box 7287 • Philadelphia, PA 19101-7287 • Phone: 1-877-369-8150



inputs to wholesale electric prices; the rates will change based upon updates in pricing to the Variable Price Plan as posted on Stream Energy's website. Customers who enroll on the Variable Price Plan may monitor the rates for the Variable Price Plan on a daily basis by visiting [www.streamenergy.net/pennsylvania](http://www.streamenergy.net/pennsylvania), or by calling Stream Energy Customer Operations.

For Customers on a Fixed Rate Term Plan only: Prior to expiration of this Agreement, changes in the length or duration of Customer's Fixed Rate Product may be made only by the Customer's entering into a new Agreement with Stream Energy.

- 6. Cancellation Provisions; Early Cancellation Penalties:** Variable Price Plan: Customers on a Variable Price plan may cancel this Agreement at any time without penalty by written notice via U.S. mail at the address indicated in Section 1 of this Agreement or by completing a switch to another supplier. Customer's obligations under the Agreement will end when the outstanding balance on Customer's account is paid in full.

Fixed Rate Term Plan: Customers on a Fixed Rate Term Plan may cancel the Agreement at any time with thirty (30) days advance written notice to Stream Energy via U.S. mail at the address indicated in Section 1. If the Customer cancels the Agreement 30 or more days prior to the end of the term of the Agreement, an Early Cancellation Fee (ECF) of 150.00 shall be due. If the Customer owes any prior ECF or other outstanding balance to Stream at the time of enrollment for service under this Agreement, Stream reserves the right to require full payment of the outstanding balance or ECF prior to initiation of service under this Agreement and may refuse service until all amounts are paid in full.

In the event that Customer is cancelling this Agreement because Customer is moving to a new premise, then Early Cancellation Fees shall NOT apply. Stream Energy may bill Customer directly for any ECFs. In the event that Customer defaults in the payment any ECF due under this Agreement and such indebtedness is placed in the hands of an attorney or collection agent for collection, or suit is brought on same, or the same is collected through probate, bankruptcy or other judicial proceedings, then Customer agrees to pay reasonable fees and expenses (including attorney fees) incurred by Stream Energy or the attorney/collection agent in the collection of such indebtedness.

Stream reserves the right to cancel this Agreement in the event there is a change in the terms of this Agreement (including pricing) between the time that Customer requests enrollment for service and the time that Stream Energy completes its internal processes to begin the initiation of service by your EDC. Stream Energy may also cancel this Agreement at any time for non-payment, fraud or misrepresentation by Customer. In addition, Stream Energy may cancel this Agreement at any time for its convenience with advance written notice to you of at least fifteen (15) days. Upon cancellation by either you or Stream Energy, you will be responsible for all Stream Energy charges incurred hereunder until your account is transferred to another electricity supplier.

**Right of Rescission.** You may rescind this Agreement without penalty at any time before midnight of the 3rd business day after receiving this Disclosure Statement. Please include: a statement requesting rescission; name, address and phone number(s); and account number. To rescind, you must contact Stream Energy with this information by midnight of the 3rd business day: Phone at 1-877-369-8150.

- 7. Notification of Expiration of Contract Term.** For Customers on a Fixed Rate Term Plan approaching the expiration date, we will send you two advance written notice(s) in accordance with PaPUC rules – an Initial Notice between fifty-two (52) and ninety (90) days prior to the expiration date, and an Options Notice at least forty-five (45) days prior to the expiration date. We will explain your options in these advance notice(s). If Customer does not take action to ensure continued receipt of service in accordance with the notices, Customer will continue to be served by Stream Energy under a default renewal product on a month-to-month basis after the end of the initial contract term, until Customer switches to another provider, selects another Stream Energy plan (if Customer has not already done so), or Stream Energy cancels this Agreement as provided in Section 6. The default renewal product contains a rate that will vary and could be higher or lower than the Customer's Fixed Rate Plan that has expired. Customer may cancel this monthly default renewal product at any time without penalty by providing notice to Stream Energy as provided in Section 6 or by completing a switch to another supplier. Customer's obligation under the default renewal product will end when the outstanding balance on the account is paid in full.
- 8. Billing, Invoices and Payment.** You will continue to receive one bill from your EDC for each billing cycle for the electric generation and related services provided by Stream Energy and the distribution and other services provided by your EDC. You will make payment for all of these services directly to your EDC in accordance with the payment terms stated in your EDC's tariffs.
- 9. Cancellation of Agreement for Non-Payment.** For Fixed Rate Plan Customers: cancellation could be deemed an early cancellation of Customer's contractual obligations triggering an Early Cancellation Fee (ECF).
- 10. Discrimination.** Stream Energy does not discriminate, deny service, or require prepayment or a deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, sexual

orientation, disability, familial status, location of customer in an economically distressed geographic area or qualification for low income or energy efficiency services.

- 11. Disputes or Complaints.** If you have a comment, question or dispute concerning any matter arising under this Agreement, please contact Stream Energy using the contact information set forth in Section 1. In the event that the Customer Service Department of Stream Energy cannot properly assist you or you are not satisfied that the issue at hand has not been resolved, you may also contact the PaPUC at P.O. Box 3265 Harrisburg, PA 17105-3265, UTILITY CHOICE HOTLINE: 1-800-692-7380.
- 12. EDC Contact Information.** If you have an electric outage, service interruption or other emergency, please contact your EDC: PECO at 1-800-841-4141. **Universal Service Program:** Your EDC also has programs available to customers who are on a limited or fixed income to assist them with utility bills. Some of these programs might include bill payment assistance and weatherization services. Information on your EDC's Universal Service Program can be obtained by contacting: PECO at 1-800-841-4141.
- 13. Limitations of Liability.** STREAM ENERGY WILL ENDEAVOR TO PROVIDE SERVICE IN A COMMERCIALLY REASONABLE MANNER; HOWEVER WE DO NOT GUARANTEE A CONTINUOUS SUPPLY OF ELECTRICAL ENERGY. EVENTS THAT ARE OUTSIDE OF OUR CONTROL, REFERRED TO AS FORCE MAJEURE EVENTS, MAY RESULT IN SERVICE INTERRUPTIONS. STREAM WILL NOT BE LIABLE FOR SERVICE INTERRUPTIONS CAUSED BY FORCE MAJEURE EVENTS. STREAM ENERGY DOES NOT GENERATE ELECTRICITY, NOR DOES IT TRANSPORT IT FROM THE GENERATION POINT TO CUSTOMER'S SERVICE ADDRESS, NOR DOES STREAM ENERGY OWN OR OPERATE SERVICES RELATED TO THE CUSTOMER'S METER.

FURTHERMORE, CUSTOMER SPECIFICALLY AGREES THAT STREAM ENERGY HAS NO LIABILITY OR RESPONSIBILITY FOR THE OPERATIONS OF REGIONAL TRANSMISSION ORGANIZATION OR INDEPENDENT SYSTEM OPERATOR AND MAINTENANCE OF ITS SYSTEM OR THE ELECTRICAL GRID SYSTEM, AS APPLICABLE, OR FOR INTERRUPTIONS, TERMINATION, REPAIR OR RECONSTRUCTION, TIMELY SERVICING, OR DETERIORATION OF THAT SERVICE. IF THE LOCAL DISTRIBUTION UTILITY OR OTHER THIRD PARTY EXPERIENCES AN EVENT OF FORCE MAJEURE, THAT, DIRECTLY OR INDIRECTLY, AFFECTS THE DELIVERY AND CUSTOMER'S RECEIPT OF ELECTRICITY, STREAM ENERGY IS LIKEWISE ENTITLED TO CLAIM AN EVENT OF FORCE MAJEURE UNDER THE TERMS OF SERVICE. LIABILITIES NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AND SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGE. THERE ARE NO THIRD PARTY BENEFICIARIES TO THIS AGREEMENT.

- 14. Representations and Warranties.** THE ELECTRICITY SOLD UNDER THE TERMS OF SERVICE WILL BE SUPPLIED FROM A VARIETY OF GENERATING SOURCES. THE LOCAL DISTRIBUTION UTILITY OR ISO SYSTEM WILL NOT FACILITATE THE DELIVERY OF ELECTRICITY FROM A SPECIFIC GENERATING SOURCE TO CUSTOMER'S SERVICE ADDRESS. STREAM ENERGY MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THE TERMS OF SERVICE AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY, CONFORMITY TO MODELS OR SAMPLES AND FITNESS FOR A PARTICULAR PURPOSE.
- 15. Assignment.** Customer may not assign this Agreement, in whole or in part, or any of its rights or obligations hereunder without the prior written consent of Stream Energy. Stream Energy may, without Customer's consent: (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangement; (ii) transfer or assign this Agreement to an affiliate of Stream Energy; (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Stream Energy; and/or (iv) transfer or assign this Agreement to a certified retail electric provider. In the case of (ii), (iii) or (iv), any such assignee shall agree in writing to be bound by the terms and conditions hereof. Upon any such assignment, Customer agrees that Stream Energy shall have no further obligations.
- 16. Title, Risk of Loss and Indemnity.** Customer acknowledges that Stream Energy does not have care, control or custody of Customer's property or premises, or of any electrical facilities, including, but not limited to, lines, wires, or the meter, located on or near Customer's property or premises. Customer further acknowledges that Customer is in exclusive control (and responsible for any damages or injury caused thereby) of electricity at and from such meter. Title to electricity and risk of loss related to electricity shall transfer from Stream Energy to Customer at respective meter/or Service Address. **CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD STREAM ENERGY HARMLESS FROM ANY CLAIMS, INCLUDING CLAIMS FOR PERSONAL INJURY, DEATH, PROPERTY DAMAGE AND ATTORNEY'S FEES, ARISING FROM ANY ACT OR INCIDENT OCCURRING WHEN TITLE TO ELECTRIC SERVICE IS DEEMED TO BE IN THE EXCLUSIVE CONTROL OF THE CUSTOMER, DESPITE OUR NEGLIGENCE OR STRICT LIABILITY.**
- 17. Waiver.** No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure of either party to exercise any right hereunder shall not constitute a waiver hereunder and shall not impair the exercise of such rights at any later time.

- 18. Governing Law.** THE TERMS OF SERVICE ARE MADE UNDER AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF PENNSYLVANIA, EXCLUSIVE OF ANY CONFLICT OF LAWS PROVISIONS THEREOF THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION. EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF SERVICE, THE PENNSYLVANIA UNIFORM COMMERCIAL CODE ("UCC") SHALL APPLY TO THE TERMS OF SERVICE AND ELECTRICITY SHALL BE CONSIDERED A "GOOD" (AND NOT A "SERVICE") FOR PURPOSES OF THE UCC.

The parties hereto agree that all civil actions or proceedings (including any action/proceeding in small claims court) arising in connection with this Agreement or related in any way to the provision or cessation of service(s) provided hereunder (including, but not limited to, rate or billing disputes, disconnection of service, reconnection of service, and negligence) shall be tried and litigated exclusively in the State and Federal courts located in Dauphin County, PENNSYLVANIA.

The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this paragraph. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the State and Federal courts located in Pennsylvania shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement. Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this paragraph by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement. Any final judgment rendered against a party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law. The section does not abrogate the parties' right to file a complaint with the PaPUC.

- 19. Complete Agreement.** Customer's contract with Stream Energy ("Agreement" as defined herein) contains the complete understanding between Stream Energy and the Customer and supersedes all other written or oral communications and representations. Any modifications made to this Agreement following negotiations between Customer and Stream Energy may only take effect if reduced to a separate type-written agreement approved by Stream Energy's Contract Administrator, including this provision. No sales agent or any other representative has any binding authority to modify this Agreement and any such changes shall not be binding on Stream Energy. Customer agrees not to make any changes to this Disclosure Statement and agrees that any of the aforementioned unapproved modifications shall not be binding on Stream Energy even if Stream Energy receives any of the aforementioned modifications and processes them. In that instance, the sole and exclusive remedy available to Customer shall be to cancel the Agreement without penalty and Customer shall remain responsible for all charges incurred prior to cancellation; provided, however, the charges and terms that shall apply shall be those that would have applied had the Agreement not been modified.
- 20. Miscellaneous Fees.** Customers may be required to pay a fee to third-party vendors for bill payment transaction. Fees vary depending upon payment type and vendor. Please check with the vendor for applicable fees before posting payment. Except as otherwise prohibited by law, in addition to those fees charged by your EDC, you agree to pay Stream Energy a \$15 Cancellation Service Fee in the event that Stream Energy sends a request to your EDC to cancel service to a premise for non-payment. Regardless of whether the premise's service has been cancelled or not, this service fee may be assessed. The purpose of this fee is to cover Stream Energy's costs associated with initiating and processing a cancellation request transaction.
- 21. Effective Date of Price (for Renewals/Conversions ONLY).** This Section (Section 21) only applies to this Agreement if Customer is on an existing Stream Energy product (whether fixed or variable) and is either: (i) renewing to another Stream Fixed Rate term product with a term of one (1) year or longer; or (ii) converting from a Stream variable price plan to a Stream fixed rate product with a term of one (1) year or longer. This Section also only applies if a Customer's application for conversion/renewal is validly completed pursuant to the requirements of Section 2 herein and applicable PaPUC legal requirements for renewals. Notwithstanding the foregoing, the provisions in this section do not apply in situations where Customer is placed on a default renewal product pursuant to Section 7.

For Customers on an Existing Stream Fixed Rate Product Plan Renewing to Another Stream Fixed Rate Product: If the Customer's fixed rate plan is in effect at the time of application for renewal is within 60 days of its expiration, Stream Energy will determine whether the new rate under this Section is higher or lower than Customer's existing rate. If the rate for this Section is higher, Stream will allow Customer to complete the existing Agreement and will honor the existing product's lower rate until its expiration date before putting the new rate under this Section into effect. If this Section provides a rate that is lower, Stream will put this renewal rate and term into effect on Customer's next full billing cycle that falls within 45 days or less of the date of the existing Agreement's expiration.

For Customers on an Existing Variable Price Plan Converting to a Fixed Rate Product: If Customer is on an existing Stream variable price plan and converts to a Stream fixed product plan, the new rate under this Section will take effect on the next full billing cycle after conversion.

- 22. Customer Information Release Authorization:** By entering into this Agreement, you agree that your EDC may release to us certain information that we need to provide service to you, including your address, telephone number, account numbers, historical usage information and peak electricity demand. We will not give or sell your personal information to any unaffiliated party without your consent unless we are required to do so by law or it is necessary to enforce this Agreement.

# EXHIBIT B

**STREAM ENERGY**  
**P.O. Box 7287**  
**Philadelphia, PA 19101-7287**



**Steven Basile**  
**507 Creekview Dr**

**Harleysville, PA 19438**

## **Welcome to Stream Energy!**

**Dear Steven Basile,**

Welcome to the Stream Energy family! Your request on 05/30/2011 to complete your enrollment with Stream Energy has been processed. Please expect your first invoice showing Stream Energy as your supplier to arrive about 30 days after your enrollment has been active.

We think of you as more than just a customer. You are someone's relative, friend or neighbor and we want to make sure that we always exceed your expectations. It is for this reason that Stream Energy has become one of the fastest growing companies in America. Our goal is to provide service, competitive rates and dedicated relationship to ensure your energy experience is unlike any other.

Steven Basile, thank you again for joining the Stream Energy family. We look forward to helping you take full advantage of the Stream Difference - namely, Greater Savings and Personalized Service.

Kindly,

A handwritten signature in black ink, appearing to read "Rob Snyder", written in a cursive style.

Rob Snyder  
Chairman  
Stream Energy & Ignite

JS 44 (Rev 12/12)

**CIVIL COVER SHEET**

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

**I. (a) PLAINTIFFS**

STEVEN BASILE, on behalf of himself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Montgomery County

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jonathan Shub, Kohn, Swift &amp; Graf, P.C., One South Broad Street, Suite 2100, Philadelphia, PA 19107 (Ph: 215-238-1700)

**DEFENDANTS**

STREAM ENERGY PENNSYLVANIA, LLC, et al.

County of Residence of First Listed Defendant \_\_\_\_\_

(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☐ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☒ 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 type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" 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 type="checkbox"/> 190 Other Contract <input checked="" type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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 <b>LABOR</b> <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 <b>IMMIGRATION</b> <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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <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
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <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 <b>Other:</b> <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 - Diversity of Citizenship

Brief description of cause:

Breach of Contract

**VII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$  
5,000,000.00CHECK YES only if demanded in complaint  
JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions)

JUDGE: GERALD A. MCHUGH

DOCKET NUMBER 14-cv-04464

DATE  
06/04/2015

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

**FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.**

Address of Plaintiff: 507 Creekview Drive Harleysville, PA 19438-2437  
 Address of Defendant: P.O. Box 7287 Philadelphia, PA 19101-7287  
 Place of Accident, Incident or Transaction: Throughout Eastern District of Pennsylvania  
 (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☐
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☐
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☐
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☐

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

**A. Federal Question Cases:**

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
(Please specify) \_\_\_\_\_

**B. Diversity Jurisdiction Cases:**

1. ☒ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify) \_\_\_\_\_
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
(Please specify) \_\_\_\_\_

**ARBITRATION CERTIFICATION**

(Check Appropriate Category)

I, Jonathan Shub, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 6/4/15

[Signature]  
Attorney-at-Law

53965  
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 6/4/15

[Signature]  
Attorney-at-Law

53965  
Attorney I.D.#



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Steven Basile

CIVIL ACTION

v.

Stream Energy Pennsylvania, LLC  
et al

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (X)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

6/4/2015  
Date

Jonathan Shub  
Attorney-at-law

Plaintiff  
Attorney for

215-238-1700

215-238-1968

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