

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JOHN MELVILLE, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

SPARK ENERGY, INC. and SPARK ENERGY
GAS, LP

Defendants.

Civil Action No. _____

CLASS ACTION COMPLAINT

Plaintiff, John Melville, as and for his class action complaint, alleges, with personal knowledge as to his own actions, and upon information and belief as to those of others, as follows:

I. Nature of the Case

1. This lawsuit arises from a fraudulent and deceptive scheme perpetrated by Defendant Spark Energy, Inc. and Spark Energy Gas, LP (collectively, “Defendant” or “SPARK”) relating to the excessive prices SPARK charged consumers for natural gas.

2. Plaintiff, John Melville, is a New Jersey resident who had previously purchased natural gas for heating and cooking in his home from the local public utility, PSE&G, through the Fall of 2011.

3. In 1999, New Jersey deregulated energy supply in the state. Energy deregulation has enabled consumers to purchase their energy supply from an Energy Services Company (ESCO) of their choice. The intent of the deregulation law is to provide consumer choice and

allow competition to drive down customer rates. Since deregulation, the local utility, PSE&G, is no longer the only option for energy supply.

4. In the wake of deregulation, SPARK has become a competing electricity and natural gas supplier in New Jersey. SPARK promises customers savings on their monthly energy bills if they switch from their local utilities (such as PSE&G) to SPARK.

5. A “therm” is the unit of measurement for natural gas consumption. Utility companies typically charge consumers a dollar rate per therm, on a monthly basis, for their consumption of natural gas.

6. SPARK offers consumers two general options to purchase natural gas – either a fixed rate or variable rate. A fixed rate means the cost per therm will be a constant dollar amount each month. A variable rate will fluctuate from month to month over the course of the agreement, typically one year.

7. SPARK has taken advantage of New Jersey energy deregulation by engaging in a deceptive, bait-and-switch scheme. SPARK promises customers competitive variable rates based on market rates. But, after enticing customers to switch from their local utilities or other energy suppliers to SPARK, Defendant routinely increases its customers’ rates well above the market and applies rates that are untethered to fluctuations in the wholesale price of energy. Customers often end up paying two, three, or even four times more for natural gas than what they paid before converting to SPARK, or what they would pay with their local public utility.

8. The end result is that, instead of benefitting from switching to SPARK, a typical customer loses out – to the tune of hundreds or even thousands of dollars per year. Thus, SPARK deceptively causes its customers to pay considerably more for natural gas services than they should have and otherwise would have paid.

9. Plaintiff John Melville, on behalf of the class he seeks to represent, brings this lawsuit to redress Defendant's unlawful and unconscionable consumer practices under the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1 *et seq.*, as well as under New Jersey common law based on contract and the covenant of good faith and fair dealing. Plaintiff also brings a claim in the alternative for unjust enrichment. Through its deceptive and unconscionable practices, upon information and belief, SPARK bilked the class, consisting of hundreds or thousands (or tens of thousands) of current and former customers with variable-rate natural gas plans in New Jersey, out of millions of dollars.

II. Jurisdiction and Venue

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

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because SPARK is subject to personal jurisdiction here and regularly conducts business in the District of New Jersey, Plaintiff resides in this district, and because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this district.

III. The Parties

12. Plaintiff John Melville is a resident of the State of New Jersey.

13. Defendant Spark Energy, Inc., is a Delaware corporation with its principal place of business in Texas, and, either directly or through its subsidiaries, is licensed as an electricity and natural gas supplier in the State of New Jersey.

14. Defendant Spark Energy Gas, LP is a Delaware limited partnership with its principal place of business in Texas, and, either directly or through its subsidiaries, is licensed as

IV. Operative Facts

15. SPARK takes advantage of the regime in deregulated states such as New Jersey by adopting deceptive and unconscionable business tactics. Defendant misleads consumers to believe that by switching to SPARK, they will save money over their local public utilities. SPARK further represents that its rates will be tied to market factors and its rates will be competitive with the market. In fact, as many customers soon discover, SPARK's representations only hold true, if it all, initially; after a period of time, their rates skyrocket, completely divorced from prevailing market conditions or the wholesale cost of energy. At a minimum, SPARK exploits ambiguities in its representations and customer agreements to draw consumers in by creating the expectation of competitive prices they will never see. SPARK fails to disclose that, on a consistent and pre-programmed basis, its regular rates are substantially higher than the public utility company, and are exorbitant when compared to the market.

16. SPARK's solicitations state that customers such as Mr. Melville who switch to SPARK for electricity would save money on their energy bills as compared to their local utility company. Upon information and belief, SPARK's advertisements and promotional materials routinely indicated that customers would save on their energy rates.

17. For example, SPARK's website states that "When companies compete for business, you win" and "Competition drives prices down. And customers pay less." Moreover, when asked, SPARK salespeople and representatives also attempt to reassure customers that the company's prices are "competitive" and will average out over time.

18. These statements are misleading because they fail to indicate that SPARK's rates are generally substantially higher than the local utility company and that new customers were virtually assured of receiving far more expensive service.

19. But as most customers eventually realize, they will not save money on their variable-rate natural gas bills. After an initial period with SPARK, customers' rates go up and will never reflect market prices. In fact, SPARK's rates are not competitive with the local provider and are not in line with market factors. Customers who switch to SPARK can wind up paying as much as two to three times above the going rate in the area. The company's customers in New Jersey and nationwide regularly complain that SPARK's rates far exceed that of the public utility, that their rates have doubled or more after the first month, and that they are often being overcharged by more than 100% as compared to remaining with their local utilities.

20. Moreover, SPARK's claims that its rates are market sensitive are undermined by the fact that there is no correlation between the prices it charges its customers and the local cost of energy; often SPARK's rates remain the same from month-to-month or increase, even in periods where market costs decline.

21. SPARK does not disclose these material facts to its customers but rather actively encourages the false perception that switching to and remaining with SPARK will mean savings to the cost-conscious consumer.

22. SPARK's various representations regarding price are materially misleading to consumers and have the capacity to mislead. Given knowledge of the relevant facts regarding SPARK's exorbitant rates after the first month, no reasonable consumer would choose it as an energy supplier.

V. Factual Allegations Regarding John Melville

23. In the summer of 2011, a sales representative for SPARK knocked on the door of Mr. Melville's home and told him that he would save a minimum of 10% on his monthly energy bill if he enrolled with SPARK.

24. After viewing the company's advertisements, website, and other representations, Plaintiff John Melville submitted an application on or about August 2011 to switch to SPARK as his energy supplier. The company accepted and he began receiving electricity from SPARK in October of 2011 and natural gas in November of 2011.

25. For the first few months of SPARK service, the SPARK rate under his variable rate plan for natural gas per therm remained somewhat competitive with the PSE&G rate. But eventually, the SPARK rate per therm was consistently higher than the PSE&G rate per therm.

26. The disparity between the SPARK rate per therm and what would have been Mr. Melville's rate per therm had he stayed with PSE&G became noticeably apparent in or about late 2013.

27. By November 2013, the SPARK rate per therm more than tripled the prevailing PSE&G rate, or \$0.9990152 versus \$0.2987982. In January 2014, the SPARK rate per therm increased to \$1.0337811, while the PSE&G rate was \$0.4466825. In the next two months, the SPARK rate per therm increased to \$1.2990009 (in February 2014) and \$1.3990008 (in March 2014), while the PSE&G rate actually *dropped* to \$0.4075572 (in February 2014) and \$0.2940676 (in March 2014). The March 2014 rates, for example, reveal how SPARK charged *more than four times* the prevailing PSE&G rate. This and other discrepancies cannot be explained as a seasonal variation, as the SPARK rate consistently was more than double the PSE&G rate into the ensuing spring, summer, and fall months.

28. In total, SPARK overcharged Mr. Melville by at least hundreds of dollars for gas as compared to what PSE&G was charging.

29. SPARK's misstatements and omissions caused Mr. Melville injury because he believed that he would be charged less for natural gas than he was actually charged by SPARK. Mr. Melville would not have enrolled in SPARK's service but for Defendant's deceptive and unconscionable marketing and business practices. Had Mr. Melville known that the rates he would be charged by SPARK would in fact be substantially higher than the rates available from his previous natural gas supplier, PSE&G, he would not have enrolled with SPARK. Mr. Melville has sustained economic injury, an ascertainable loss, caused by Defendant's omissions and misstatements.

30. Similarly, the other members of the class have routinely paid substantially more for SPARK service as compared with their previous suppliers and have not received the competitive rates and savings they have been told to expect by the company.

31. SPARK's unfair and deceptive scheme as alleged herein constitutes a continuing violation over the course of each and every time Mr. Melville (or any other class member) was overcharged for natural gas. Further, SPARK actively concealed its wrongful conduct by maintaining to Mr. Melville and other members of the class, in SPARK's marketing, invoicing, and other communications directed to consumers, that the prices SPARK charged for natural gas were the result of competitive market forces when, in reality, they were the result of SPARK's fraud. Mr. Melville and other members of the class could not discover through reasonable diligence the nature of SPARK's wrongful conduct earlier by virtue of SPARK's active concealment of its wrongdoing.

VI. Class Action Allegations

32. Plaintiff John Melville brings this action to recover damages and other relief on behalf of himself and a class of all SPARK customers with variable-rate plans who used SPARK as their natural gas supplier in New Jersey during the applicable statutory period.

33. Defendant has engaged in an ongoing unlawful practice of deceptively inducing customers to switch energy providers to SPARK and to retain their SPARK accounts by misrepresenting that they will receive competitive market-based rates and/or will likely save money on average over their local public utilities.

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

- (a) The class consists of at least hundreds of members and is so numerous that joinder of all members is impractical.
- (b) There exist questions of law and fact common to the class which predominate over any questions affecting only individual members, including:
 - (1) whether Defendant charged exorbitant, undisclosed energy supply rates in violation of its representations to the class members;
 - (2) whether Defendant's conduct violates the New Jersey Consumer Fraud Act;
 - (3) whether Defendant breached the contract and/or the implied covenant of good faith and fair dealing inherent in all New Jersey contracts;
 - (4) whether Defendant's conduct has resulted in the unjust enrichment of SPARK, to the detriment of the class members, requiring restitution and/or disgorgement of unjustly retained monies;
 - (5) whether Defendant should be enjoined from continuing its unlawful practices; and
 - (6) whether Defendant is liable to the Class and the measure of damages.

- (c) Plaintiff John Melville's claims are typical of the claims of the class. In common with all class members, Plaintiff was injured by Defendant's imposition of exorbitant, undisclosed energy supply rates that were not commensurate with the market. Plaintiff has suffered the same kind of harm as other class members.
- (d) Plaintiff has hired counsel able and experienced in class action litigation and will fairly and adequately protect the interests of the class.
- (e) A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Individual damages to any one class member may be relatively small, making the expense of individual litigation prohibitive or impractical for class members.

COUNT I
VIOLATION OF THE NEW JERSEY
CONSUMER FRAUD ACT, N.J.S.A. 56:8-1, ET SEQ.,

35. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs of this complaint and incorporates such paragraphs by reference.

36. Plaintiff and other members of the class are "persons" within the meaning of *N.J.S.A. 56:8-1(d)*.

37. Defendant's conduct alleged herein constitutes a "sale" within the meaning of *N.J.S.A. 56:8-1(e)*.

38. The New Jersey Consumer Fraud Act ("NJCFA") declares unlawful "[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby[.]" *N.J.S.A. 56:8-2*.

39. Defendant SPARK has engaged in unfair, unlawful and deceptive acts in trade and commerce which have the capacity and tendency to deceive and, in fact, did deceive Plaintiff and the class, and damaged Plaintiff and class members.

40. 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. But consumers did not save money. In fact, Defendant's actual rates were excessive and unreasonable and bore no reasonable relationship to market rates.

41. Defendant committed an unlawful, deceptive, and unconscionable trade practice by inducing its customers to switch to or remain with SPARK and then proceeding to charge them exorbitant rates far out of line with the gas market.

42. Defendant wrongfully concealed, suppressed, and omitted to disclose that its average rates were far higher than local public utilities 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 class members but to reap undue profits at their expense.

43. Defendant's misrepresentations and omissions had the capacity to mislead Plaintiff and the members of the class into believing (i) that SPARK's rates would be significantly lower than the amounts SPARK actually charged, and (ii) that these rates would be substantially equivalent to or better than the rates charged by Plaintiff's and the class members' local public utilities. Plaintiff and the class members were injured as a result.

44. Defendant'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.

45. Because of Defendant's unlawful, deceptive, unfair, and unconscionable trade practice and scheme, Plaintiff and other members of the class have suffered injury and damages in an amount to be determined at trial. Pursuant to the NJCFA, this court has the power to enjoin the Defendant's conduct. Unless enjoined by this court, Defendant will continue their unlawful practice of charging excessive undisclosed rates to SPARK's New Jersey customers.

COUNT II
BREACH OF CONTRACT/BREACH OF THE
COVENANT OF GOOD FAITH AND FAIR DEALING

46. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs of this complaint and incorporate such paragraphs by reference.

47. Plaintiff and SPARK entered into a valid contractual agreement. The Contract is attached hereto as Exhibit A.

48. The act of imposing unreasonable and exorbitant energy prices – unrelated to the market values – in violation of the company's representations amounts to a breach of a valid contract, which caused Plaintiff and class members to suffer actual, ascertainable losses.

49. Plaintiff and other members of the class have performed all material obligations imposed on them in the contract. Defendant has not performed the obligations imposed on them in the contract.

50. In addition, every contractual arrangement inherently carries with it a covenant of good faith and fair dealing. Under this covenant, we are not to suppose that one party is put at the mercy of the other but will read in any necessary conditions to ensure a mutuality of obligation under fair terms.

51. When a contract contains an indefinite price term – such, as here, Defendant's variable, market-based pricing – the seller does not have unfettered discretion to set the price.

52. Here, Defendant has failed to satisfy this obligation. Instead of setting their rates in good faith consistent with the market, Defendant has unilaterally imposed exorbitant, undisclosed rates on its customers, including Plaintiff and the members of the class. In actuality, Defendant's rates bear no reasonable relationship to market rates. While Defendant represents that, on average, their rates will be competitive with and/or undercut the market (as represented by the local public utilities that most SPARK customers switch from), in reality, SPARK's rates generally far exceed that market.

53. Under the covenant of good faith and fair dealing, SPARK should have billed customers like Plaintiff at a reasonable, market-based rate as promised – that is, a rate similar, competitive, or equivalent to the rate charged by the class members' local public utilities during the class period. All monies paid above this reasonable amount should be restored to the class as damages.

54. Plaintiff and the class have been damaged by SPARK's breach of the covenant of good faith in an amount to be determined at the trial of this action.

COUNT III
UNJUST ENRICHMENT
(IN THE ALTERNATIVE)

55. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs of this complaint and incorporate such paragraphs by reference.

56. Should the Court determine that a valid, enforceable, and binding contractual relationship did not exist between the parties at any time or covering any aspect of their relationship, Plaintiff brings this claim in the alternative for unjust enrichment.

57. Because of the wrongful activities described above, including charging Plaintiff exorbitant rates grossly out of line with market rates, Defendant has received money belonging to the Plaintiff and the class.

58. By collecting exorbitant and unreasonable rates from SPARK customers, Defendant has benefited from receipt of the excessive rates, and under principles of equity and good conscience, Defendant should not be permitted to keep this money.

59. Defendant has reaped illegal profits and unjustly enriched themselves at the expense of Plaintiff and class members.

60. As a result of Defendant's imposition of these excessive and unreasonable energy rates, Defendant must account to the Plaintiff and class members for such unjust enrichment and disgorge their unlawful profits as restitution to the class.

61. By reason of the foregoing, Plaintiff and the class have suffered money damages in an amount to be determined at the trial of this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the class pray for judgment:

- A. declaring this action to be maintainable as a class action;
- B. awarding compensatory damages to Plaintiff and the class members;
- C. awarding double or treble damages pursuant to law;
- D. enjoining Defendant from continuing to implement its unlawful and illegal trade practices and schemes;
- E. awarding Plaintiff all costs and disbursements, including attorneys' fees, experts' fees, and other class action related expenses;

- F. awarding pre-judgment and post-judgment interest to Plaintiff and the class members on their damages; and
- G. granting such other and further relief as may be just and proper.

Jury Demand

Pursuant to Federal Rule of Civil Procedure Rule 38, Plaintiff and the class demand a trial by jury of all issues.

GOLOMB & HONIK, P.C.

/s/ Kenneth J. Grunfeld

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Kenneth J. Grunfeld, Esquire
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Attorneys for Plaintiff

DATED: December 17, 2015

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

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

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

DEFENDANTS

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, 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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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):

Brief description of cause:

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 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT A



August 8, 2011

John Melville
210 W BROWNING RD
COLLINGSWOOD, NJ 08108

Utility Account #:
PG000008065930338740
210 W BROWNING RD
COLLINGSWOOD, NJ 08108

Dear John Melville,

Thank you for choosing Spark Energy, L.P. to be your gas provider and for your participation in the Gas Choice Program.

This letter acknowledges your enrollment with Spark Energy and confirms that you have selected the Spark Preferred Flex-Rate Plan. The Spark Preferred Flex-Rate Plan provides you a month-to-month plan where your rate may vary according to market conditions. This plan does not include a monthly maintenance fee or an early termination fee. A copy of the product terms and conditions of this plan are included for your records.

While Spark Energy is your new gas provider, please remember that PSEG will continue to deliver your gas, read your meter, maintain equipment, issue your invoices, and respond to your service needs. However, Spark Energy is always available and willing to assist with any questions or concerns that may arise.

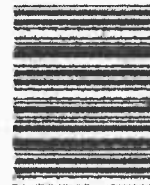
We at Spark Energy know you have a choice of energy providers, and we appreciate your business. Our customer service team is available Monday -Friday, 8:00 am – 8:00 pm and Saturdays from 10:00 am to 5:00pm (EST) to respond to any questions you may have regarding your account. Please feel free to call us at 1-800-411-7514 for assistance or email us at customer@sparkenergy.com. You may also visit our website at www.SparkEnergy.com for more information about our company.

Thank you again for your business. We're committed to a better customer experience for every Spark Energy customer, and are confident you'll be glad you chose us as your provider.

Sincerely,

Spark Energy, L.P.

Empower what matters™



**New Jersey Residential and Small Commercial
Customer Disclosure Statement and Terms of Service**

This is an agreement for natural gas service between Spark Energy Gas, LP (Spark Energy) and you, for the service address or addresses set forth in your Welcome Letter or Natural Gas Service Agreement. Together, this Customer Disclosure Statement (CDS), including the terms of service set forth herein, and your Welcome Letter or Natural Gas Service Agreement (NGSA) collectively describe your agreement with respect to your purchase of natural gas service from Spark Energy (Agreement). You will be bound by all the provisions of the Agreement, as they may be amended from time to time. Spark Energy is licensed as a Third Party Supplier (TPS) by the New Jersey Board of Public Utilities to offer and supply natural gas service in New Jersey. We set the supply prices and charges that you pay. Your Local Distribution Utility will deliver the natural gas to you. The Board of Public Utilities regulates distribution prices and services. The Federal Energy Regulatory Commission regulates transmission prices and services.

Definitions

- **Small Commercial Customer** -- A nonresidential customer that has a peak demand of less than 20,000 therms during the most recent consecutive 12 month period.
- **Local Distribution Utility (LDU)** -- A gas or electric corporation owning, operating or managing electric or gas facilities for the purpose of distributing gas or electricity to end users.
- **Commodity Charge** -- Charge for the supply of natural gas.
- **BPU** -- the New Jersey Board of Public Utilities.
- **Transmission Charge** -- Charge for moving natural gas from a supply point to the distribution system of a natural gas distribution company.

Right of Rescission - Residential customers may contact the LDU to rescind this Agreement within fourteen (14) calendar days from the date of the LDU's confirmation notice of switch to Spark Energy.

Terms of Service

1. Basic Service Prices.

Your rate plan will be as specified in your CDS.

Fixed Rate Plan. You will pay the fixed rate per therm as specified in your CDS or Natural Gas Service Agreement for the length of your Term. You may also pay a monthly administrative fee, the amount of which, if applicable, is disclosed in your CDS or Natural Gas Service Agreement.

Immediate Savings Plan. For the first two months of your plan, you will receive a specified percentage savings (shown in your CDS) off of the LDU's base energy rate for natural gas supply. Thereafter, you will receive Spark Energy's standard variable rate which will vary according to market conditions. You may also pay a monthly administrative fee, the amount of which, if applicable, is disclosed in your CDS or Natural Gas Service Agreement.

Variable Rate Plan. A month-to-month plan where your rate may vary according to market conditions.

The rate you pay Spark Energy will include the Commodity Charge and Transmission Charge. Your price includes applicable New Jersey sales and use taxes imposed by New Jersey State Tax Law. You are responsible for any and all additional taxes (whether passed through to you on LDU's bill as a separate line item or as part of the price of natural gas, as required by law, rule or regulation) and LDU charges for delivery and distribution services. Except as otherwise provided in this Agreement or as required by law, all taxes of whatsoever kind, nature and description, due and payable with respect to your performance of your obligations under this Agreement, will be paid by you. If you are a tax-exempt entity, you must provide Spark Energy with the necessary certificates and other documentation to qualify for such status.

2. Billing. Your LDU will continue to issue a monthly bill and the bill will include both your Transmission Charge and your Commodity Charge, and any other charges incurred in accordance with this Agreement. Bills will continue to be based on actual or estimated meter readings. Unless otherwise provided herein, your payment terms and late payment penalties will be governed by the terms of the LDU's tariff. Spark Energy does not pay or arrange for the payment of any outstanding debts owed by you to the LDU or a previous TPS.

3. Length of Agreement (Term). The Term of this Agreement is shown on your CDS. With the exception of a new meter installation or special meter reading date, you will buy your natural gas service for the service addresses set forth in your Welcome Letter or Natural Gas Service Agreement from Spark Energy on the next regularly scheduled meter reading date available and will continue to do so for the entire Term. This Agreement shall remain in effect until you notify Spark Energy in writing or by phone of your intent to cancel at least 30 days prior to your requested end date and until such time as the LDU completes the termination in accordance with its rules.

4. Penalties, Fees and Exceptions.

You may be assessed an early termination fee if you cancel or terminate this Agreement prior to the end of the Term. If an early termination fee is applicable, the amount of the early termination fee will be as specified in your Disclosure Statement, Welcome Letter or Natural Gas Service Agreement.

Notwithstanding the foregoing, you may cancel this Agreement without penalty if you move to another location and provide a forwarding address and, if required, reasonable evidence that you no longer occupy the service address. You will be responsible for amounts due, up to the switch date, of all outstanding charges incurred prior to cancellation by you.

If you default in the prompt payment of amounts due under this Agreement, you will be liable for any and all fees or charges, including reasonable attorney fees and court costs, incurred in connection with the collection of delinquent balances. Spark Energy may use the services of debt collection agencies, consumer reporting agencies, and other remedies as allowed by law to collect any unpaid balances on your account.

5. Cancellation Provisions. Residential customers may cancel this Agreement without any penalty any time before midnight of the fourteenth calendar day after the date of the confirmation notice from the LDU of your enrollment. Otherwise, you may cancel this Agreement at any time by calling Spark Energy, but you will be required to pay the early termination fee described in Section 4 above, if applicable. If you are a residential customer, with 48 hours notice you may cancel this Agreement without penalty as a result of relocation, or if disability renders you unable to pay for service, or upon your death. If you request to cancel this Agreement, the cancellation will not take effect until the next actual meter read date following the date Spark Energy notifies your LDU. You will be responsible for all payments due hereunder until the cancellation of natural gas service is completed. If for any reason Spark Energy is no longer able to economically continue this Agreement, Spark Energy may terminate this Agreement at any time with at least thirty (30) calendar days notice to you after complying with applicable regulations. This Agreement may be cancelled at the sole discretion of Spark Energy if you fail to meet any of the terms and conditions of this Agreement or if any of the information you have provided to Spark Energy is or becomes untrue. If this Agreement is canceled, expires, or otherwise terminated, you will receive uninterrupted service from the LDU until you designate another provider of natural gas service or service is shut off by the LDU. Only the LDU may shut off your electric power.

6. Agreement Expiration/Change in Terms. If you have a fixed term agreement with us and it is approaching the expiration date, we will send you advance notice either in your bill or in a separate mailing at least 30 days before the expiration date. We will explain your options in this advance notice and we will follow your instructions. If you do not respond to the notice, at our discretion, we may renew your natural gas service under a month-to-month Variable market rate.

If we propose to change our terms of service, Spark Energy will provide written notice to you of any material change to this Agreement at least 30 days prior to the date any such change becomes effective. Upon receipt of written notice of a material change, you may terminate this Agreement without penalty prior to the date such change becomes effective.

7. Information Release and Authorization. You designate Spark Energy as your authorized agent and hereby authorize Spark Energy to obtain historical usage, billing and payment history, and credit history. Acceptance of this Agreement is an authorization for the release of the information. You also hereby authorize Spark Energy to arrange delivery and other services for the purpose of serving your account. This authorization will remain in effect during the Term and any renewal term of this Agreement. You may rescind your authorization at any time by providing written notice thereof to Spark Energy.

8. Dispute Procedures. Contact us by any of the means provided at the bottom of these Terms and Conditions with any questions concerning our terms of service or your bill. You may contact the New Jersey BPU to file a complaint if you are not satisfied after discussing your questions or concerns with us.

9. Warranties. SPARK ENERGY MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESSED OR IMPLIED, WITH REGARD TO THE PROVISION OF NATURAL GAS SERVICE AND DISCLAIMS ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

10. Limitation of Liability. You will be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the natural gas power after receipt at the delivery point or points. SPARK ENERGY WILL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES (INCLUDING LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES), WHETHER BY STATUTE, IN CONTRACT OR TORT, EVEN IF THE RESULT OF NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE). ALL OTHER LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, AND SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY. YOU HEREBY WAIVE ALL OTHER REMEDIES AT LAW OR IN EQUITY. THERE ARE NO THIRD PARTY BENEFICIARIES TO THIS AGREEMENT. To the extent any damages required to be paid hereunder are liquidated, the parties acknowledge that the damages are not intended and shall not be construed as a penalty, such damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient or impossible, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

11. Miscellaneous.

(a) Spark Energy will not assess a charge to a residential customer for starting or stopping service, if done within the terms of this Agreement. This provision does not prohibit an early termination fee or penalty for failure to adhere to this Agreement.

(b) If Spark Energy is rendered unable to perform, in whole or in part, by a Force Majeure event, its performance under this Agreement will be excused for the duration of such event. "Force Majeure" means any act or event that is beyond the reasonable control of Spark Energy that adversely affects, interrupts, or precludes its performance. In addition, acts of other parties, including without limitation, RTOs, aggregators, other TPSs, qualified scheduling entities, LDUs, any governmental authority, and the respective employees and agents of such parties, will also be deemed to be events of Force Majeure.

(c) Energy delivery shall continue to be provided by your LDU. You should contact your LDU in the event of a power outage or emergency. Your natural gas service will be provided in accordance with your existing connection requirements unless you

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request a change by the LDU and pay for the cost of that change. You may not resell or use any natural gas provided under this Agreement as an auxiliary or supplement to any other source of power. The supply of natural gas under this Agreement will be measured at the delivery point by the LDU providing the delivery service in accordance with the terms of the applicable tariff for natural gas service. Spark Energy and you will be bound by the measurement from the meters owned, installed, maintained and read by the LDU.

(d) This Agreement will be governed by, interpreted, construed and enforced in accordance with the laws of the State of New Jersey, without regard to principles of conflicts of laws.

(e) A wet or faxed signature on a Natural Gas Service Agreement is an agreement to initiate service and begin enrollment with Spark Energy. These Terms of Service, along with your Welcome Letter or Natural Gas Service Agreement, constitute the entire agreement between you and Spark Energy relating to the subject matter hereof and supersede any other agreements, written or oral, between you and Spark Energy concerning the subject matter of the Agreement.

(f) You may not assign this Agreement or your obligations under this Agreement without Spark Energy's prior written consent. Spark Energy may assign this Agreement, together with all rights and obligations hereunder, to (i) Spark Energy's natural gas supplier, or such supplier's designee, (ii) an affiliate of Spark Energy or to any other person succeeding to all or substantially all of Spark Energy's assets, or (iii) in connection with any financing or other financial arrangement.

(g) Any failure by Spark Energy to enforce any term or condition of your natural gas service or otherwise exercise any right it may have under this Agreement will not be deemed a waiver of any rights to thereafter enforce any or all of the terms or conditions of your service or to exercise rights under this Agreement.

(h) Should any provision of this Agreement for any reason be declared invalid or unenforceable by final and applicable order by a court or any regulatory body having jurisdiction, such decisions shall not affect the validity of the remaining portions, and the remaining portions shall remain in effect as if this Agreement had been agreed to without the invalid portion. If any provision of this Agreement is declared invalid, the remainder of this Agreement will be construed so as to give effect to its original intent and effect as near as possible.

(i) The provisions of this Agreement concerning payment, limitation of liability, and waivers will survive the termination or expiration of this Agreement.

12. Contact information. Please see below.

Third Party Supplier:	Spark Energy Gas, LP BPU License #: <u>GSL-0079</u> 2105 CityWest Boulevard, Suite 100 Houston, TX 77042 1-800-411-7514 www.sparkenergy.com Hours of Operation: Monday through Friday (except holidays), 8:00 a.m. to 8:00 p.m., and Saturday 10 a.m. to 5 p.m. Eastern Standard Time
Local Distribution Utility	Public Service Electric & Gas (PSEG) PO Box 14444 New Brunswick, NJ 08906 (bill pay address) 1-800-436-7734 www.pseg.com
In the case of an outage, call:	1-800-436-7734
BPU:	New Jersey Board of Public Utilities Two Gateway Center, Suite 801 Newark, NJ 07102 1-800-624-0241 www.state.nj.us/bpu