

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

GARY W. RICHARDS, on behalf of himself and all others similarly situated,	§	Civil Action No. 3:14-cv-01724 (JAM)
	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	
DIRECT ENERGY SERVICES, LLC,	§	
	§	
<i>Defendant.</i>	§	November 2, 2015
	§	

**DIRECT ENERGY SERVICES, LLC’S ORIGINAL ANSWER TO
PLAINTIFF’S ORIGINAL COMPLAINT**

1. Paragraph 1 of Plaintiffs’ Class Action Complaint (the “Complaint”) contains no allegations to which any response is required. To the extent any response is required, Direct Energy denies the allegations contained in paragraph 1 of the Complaint.
2. Direct Energy admits only that Gary Richards brings this action on behalf of himself and a putative class of Connecticut residents. Direct Energy otherwise denies the allegations contained in paragraph 2 of the Complaint.
3. Direct Energy admits only that it sold electricity to Connecticut residents at competitive rates that were commonly fixed for a year or more but could be terminated by its customers at any time for the customers’ convenience. Direct Energy further admits that when the fixed-rate period ended, if the customer did not renew or terminate, his/her rates were set monthly and the customer still had the ability to terminate service at any time. Direct Energy otherwise denies the allegations contained in paragraph 3 of the Complaint.
4. Direct Energy denies the allegations contained in paragraph 4 of the Complaint.
5. Direct Energy denies the allegations contained in paragraph 5 of the Complaint.

6. Direct Energy denies the allegations contained in paragraph 6 of the Complaint.

7. Direct Energy denies the allegations contained in paragraph 7 of the Complaint.

PARTIES

8. Direct Energy lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 8 of the Complaint, and therefore denies them.

9. Direct Energy admits the allegations contained in paragraph 9 of the Complaint.

JURISDICTION & VENUE

10. Direct Energy does not dispute the jurisdiction of the Court or that venue is proper in this Court.

11. Direct Energy does not dispute the jurisdiction of the Court or that venue is proper in this Court.

12. Direct Energy does not dispute the jurisdiction of the Court or that venue is proper in this Court.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

13. Direct Energy admits that in the late 1990s and early 2000s, many states moved to deregulate at least part of the electricity supply services performed by public utilities; and, that delivery of electricity to a consumer requires the creation and transmission of electricity. Direct Energy lacks knowledge about a “typical pattern” for deregulation and therefore denies the remaining allegations contained in paragraph 13 of the Complaint.

14. Direct Energy admits that an element typical of energy deregulation is that the business of power supply is opened to competition and consumers are allowed to select the company from whom they purchase energy. Direct Energy further admits that a standard offer is available in Connecticut that is fixed for a period of months. Direct Energy lacks knowledge

about the allegations that states generally set a “standard offer” and therefore denies the remaining allegations contained in paragraph 14 of the Complaint.

15. Direct Energy admits the allegations contained in paragraph 15 of the Complaint.

16. Direct Energy admits that ISO New England performs three critical roles—grid operation, market administration and power system planning—as described at <http://www.iso-ne.com/about/what-we-do/three-roles>. To the extent any further response is required, Direct Energy denies the allegations contained in paragraph 16 of the Complaint.

17. Direct Energy admits that one of the functions Electric Suppliers perform is to purchase power from Generation Companies and sell it to end-user consumers. Direct Energy denies the remaining allegations contained in paragraph 17 of the Complaint.

18. Direct Energy admits that it is an “Energy Supplier” as that term is defined in the Complaint, that it buys and resells electricity to Connecticut consumers, and that its Disclosure Label speaks for itself. Direct Energy denies the remaining allegations contained in paragraph 18 of the Complaint.

19. Direct Energy admits that it utilizes Distribution Companies to deliver electricity to its customers and that Distribution companies charge for their services. Direct Energy denies the remaining allegations contained in paragraph 19 of the Complaint.

20. Direct Energy admits the allegations contained in paragraph 20 of the Complaint.

21. Direct Energy admits the allegations contained in paragraph 21 of the Complaint.

22. Direct Energy admits that during the relevant time period it offered fixed-rate contracts to Connecticut customers; and, that, once the fixed term expired, the customer was charged a variable monthly rates if he/she did not renew or terminate the contract. Direct Energy denies the remaining allegations contained in paragraph 22 of the Complaint.

23. Direct Energy denies the allegations contained in paragraph 23 of the Complaint. Direct Energy specifically denies that there is a single “wholesale market rate,” since there are various rates paid in the wholesale market depending on when the purchase is made (day-ahead, real-time, etc.).

24. Direct Energy admits that its ‘Frequently Asked Questions’ speak for themselves. Direct Energy denies the remaining allegations contained in paragraph 24 of the Complaint.

25. Direct Energy admits that its Residential & Small Terms and Conditions (the “Contract”) speak for themselves, and that they state that “the rate for electricity will be variable each month at Direct Energy’s discretion” and that “the rate may be higher or lower each month based on business and market conditions” as quoted in this paragraph of the Complaint. Direct Energy denies the remaining allegations contained in paragraph 25 of the Complaint, and specifically denies that the Terms and Conditions refer to the “wholesale market” or make an express link between the variable rate and the wholesale market rate (whatever Richards intends the term “wholesale market rate” to mean).

26. Direct Energy denies the allegations contained in paragraph 26 of the Complaint.

27. Direct Energy denies the allegations contained in paragraph 27 of the Complaint.

28. Direct Energy denies the allegations contained in paragraph 28 of the Complaint. Direct Energy specifically denies that the rates Richards claims that Direct Energy charged accurately reflect the rates it charged to residential customers in Connecticut. Direct Energy also specifically denies that Richards was its customer during the time period reflected on the chart contained in paragraph 28 of the Complaint.

29. Direct Energy denies the allegations contained in paragraph 29 of the Complaint. Direct Energy specifically denies that there is an “extreme divergence” between the “wholesale

price paid by Direct Energy and the retail price it charged” Connecticut customers. Direct Energy also specifically denies that Richards was its customer during the time period reflected on the chart contained in paragraph 29 of the Complaint.

30. Direct Energy denies the allegations contained in paragraph 30 of the Complaint.

31. Direct Energy denies the allegations contained in paragraph 31 of the Complaint. Direct Energy specifically denies the characterization that “market-based” rates means the rates have a direct correlation to the “wholesale market” only.

32. Direct Energy admits that its Contract with Mr. Richards speaks for itself and expressly grants Direct Energy discretion to set the variable rates in accordance with the terms of that Contract. Direct Energy specifically denies the characterization of its discretion as “unfettered,” and the characterization of a rate that is fixed for a year as a “teaser rate.” Direct Energy denies the remaining allegations contained in paragraph 32 of the Complaint.

33. Direct Energy denies the allegations contained in paragraph 33 of the Complaint. Direct Energy specifically denies that it charges “exorbitant premiums” or that it does not add “any value to the consumer whatsoever.”

34. Direct Energy denies the allegations contained in paragraph 34 of the Complaint.

35. Direct Energy admits only that for the time period beginning with the week of April 22-28, 2013 and ending with the week of July 22-28, 2013, New England ISO’s Weekly Market Summaries reported average Locational Marginal Pricing for the New England Hub (Day-Ahead Energy Market; All Hours) between 3.3 and 4.9 cents per kWh for every week except one (during which the average day-ahead price was 8.204 cents per kWh). Direct Energy otherwise denies the allegations contained in paragraph 35 of the Complaint.

36. Direct Energy denies the allegations contained in paragraph 36 of the Complaint. Direct Energy specifically denies that it ever made any “false statement,” or that it stated that its “Variable rate was based on the underlying wholesale market rate.”

37. Direct Energy admits only that Richards paid his monthly electricity bill for the period of time that he was a Direct Energy customer. Direct Energy denies the remaining allegations contained in paragraph 37 of the Complaint. Direct Energy specifically denies that its rates were “exorbitant” or that Richards suffered monetary damages.

CLASS ACTION ALLEGATIONS

38. Paragraph 38 of the Complaint contains statements of law or legal conclusions to which no response is required. To the extent any response is required, Direct Energy denies the allegations contained in paragraph 38 of the Complaint.¹

39. Paragraph 39 of the Complaint is a purported reservation of rights to which no response is required. To the extent any response is required, Direct Energy denies the allegations contained in paragraph 39 of the Complaint.

40. Paragraph 40 of the Complaint contains statements of law or legal conclusions to which no response is required. To the extent any response is required, Direct Energy denies the allegations contained in paragraph 40 of the Complaint.

41. Paragraph 41 of the Complaint contains statements of law or legal conclusions to which no response is required. To the extent any response is required, Direct Energy denies the allegations contained in paragraph 41 of the Complaint.

¹ The Court’s August 4, 2015 Ruling on Defendant’s Motion to Dismiss eliminated all claims based on Massachusetts law; and, consequently, the reference to Massachusetts customers in paragraph 38 of the Complaint.

42. Paragraph 42 of the Complaint contains statements of law or legal conclusions to which no response is required. To the extent any response is required, Direct Energy denies the allegations contained in paragraph 42 of the Complaint.

43. Paragraph 43 of the Complaint contains statements of law or legal conclusions to which no response is required. To the extent any response is required, Direct Energy denies the allegations contained in paragraph 43 of the Complaint.

44. Paragraph 44 of the Complaint contains statements of law or legal conclusions to which no response is required. To the extent any response is required, Direct Energy denies the allegations contained in paragraph 44 of the Complaint.

45. Paragraph 45 of the Complaint contains statements of law or legal conclusions to which no response is required. To the extent any response is required, Direct Energy denies the allegations contained in paragraph 45 of the Complaint.

46. Paragraph 46 of the Complaint contains statements of law or legal conclusions to which no response is required. To the extent any response is required, Direct Energy denies the allegations contained in paragraph 46 of the Complaint.

47. Paragraph 47 of the Complaint contains statements of law or legal conclusions to which no response is required. To the extent any response is required, Direct Energy denies the allegations contained in paragraph 47 of the Complaint.

CLAIMS FOR RELIEF

COUNT I:

VIOLATION OF UNFAIR TRADE PRACTICES ACTS

48. Direct Energy repeats and realleges the preceding and subsequent paragraphs as though set forth herein.

49. Paragraph 49 of the Complaint contains statements of law or legal conclusions to which no response is required. To the extent any response is required, Direct Energy denies the allegations contained in paragraph 49 of the Complaint.

50. Paragraph 50 of the Complaint contains statements of law or legal conclusions to which no response is required. To the extent any response is required, Direct Energy denies the allegations contained in paragraph 50 of the Complaint.

51. Direct Energy denies the allegations contained in paragraph 51 of the Complaint.

52. Direct Energy denies the allegations contained in paragraph 52 of the Complaint.

53. Direct Energy denies the allegations contained in paragraph 53 of the Complaint.

54. Direct Energy denies the allegations contained in paragraph 54 of the Complaint.

55. Direct Energy denies the allegations contained in paragraph 55 of the Complaint.

COUNT II:

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

56. Direct Energy repeats and realleges the preceding and subsequent paragraphs as though set forth herein.

57. Paragraph 57 of the Complaint contains statements of law or legal conclusions to which no response is required. To the extent any response is required, Direct Energy denies the allegations contained in paragraph 57 of the Complaint.

58. Direct Energy admits that its Terms and Conditions speak for themselves and expressly grant Direct Energy discretion to set the variable rates in accordance with the Terms and Conditions. Direct Energy specifically denies that its Terms and Conditions require that its rate setting “reflect the changes in the wholesale power market.” Direct Energy denies the remaining allegations contained in paragraph 58 of the Complaint.

59. Direct Energy denies the allegations contained in paragraph 59 of the Complaint.
60. Direct Energy denies the allegations contained in paragraph 60 of the Complaint.
61. Direct Energy denies the allegations contained in paragraph 61 of the Complaint.
62. Direct Energy denies the allegations contained in paragraph 62 of the Complaint.
63. Direct Energy denies the allegations contained in paragraph 63 of the Complaint.

COUNT III:

UNJUST ENRICHMENT²

64. Direct Energy repeats and realleges the preceding and subsequent paragraphs as though set forth herein.

65. Direct Energy denies the allegations contained in paragraph 65 of the Complaint.
66. Direct Energy denies the allegations contained in paragraph 66 of the Complaint.
67. Direct Energy denies the allegations contained in paragraph 67 of the Complaint.
68. Direct Energy denies the allegations contained in paragraph 68 of the Complaint.
69. Direct Energy denies the allegations contained in paragraph 69 of the Complaint.
70. Direct Energy denies the allegations contained in paragraph 70 of the Complaint.

WHEREFORE, Direct Energy denies that Plaintiff Gary Richards is entitled to any of the requested relief sought in the Class Action Complaint, denies each and every allegation contained in the Complaint that has not been specifically admitted, and prays that upon resolution of this matter that Plaintiff Gary Richards and the class he seeks to represent take nothing.

AFFIRMATIVE AND OTHER DEFENSES

1. Plaintiff's claims are barred, in whole or in part, because the Complaint fails to state a claim upon which relief can be granted.

² The Court's August 4, 2015 Ruling on Defendant's Motion to Dismiss eliminated Count III of the Complaint.

2. Plaintiff's claims are barred, in whole or in part, by the doctrine of primary jurisdiction.

3. Plaintiff's claims are barred, in whole or in part, by the express terms of written agreements to which Plaintiff is a party.

4. Plaintiff's claims are barred in whole or in part because Plaintiff failed to perform conditions precedent.

5. Plaintiff's claims are barred in whole or in part by the doctrines of contributory and/or comparative negligence.

6. Plaintiff's claims are barred because he lacks standing to assert claims against Direct Energy, in part (and without limitation) because he sustained no injury in fact.

7. Plaintiff's claims are barred in whole or in part by the doctrine of unjust enrichment.

8. Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, laches and/or estoppel

9. Plaintiff's claims are barred, in whole or in part, because their alleged damages (if any) are caused by his failure to mitigate.

10. Plaintiff's claims are barred, in whole or in part, because his own acts or omissions caused or contributed to his alleged damages (if any).

11. Plaintiff's claims are barred, in whole or in part, because any alleged damages he sustained must be offset by any value rendered by Direct Energy, and by the doctrine of offset generally.

12. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

13. Plaintiff's claims are barred, in whole or in part, because his alleged damages (if any) resulted solely from acts or omissions of persons or entities other than Direct Energy. Further, Direct Energy could not have reasonably foreseen such acts or omissions on the part of others. These acts or omissions by others constitute independent and intervening causes, or sole proximate causes of Plaintiff's alleged damages (if any).

14. Direct Energy has not breached any duty to Plaintiff.

15. Plaintiff is not entitled to an award of attorneys' fees in the absence of a contract, statute, or law authorizing such fees.

16. Plaintiff's claims are barred because at all times mentioned in the Complaint, Direct Energy's actions and conduct were undertaken in a permissible way and in good faith, without malice, and with the reasonable belief that such actions and conduct were lawful and valid.

17. Plaintiff's claims are barred because he knowingly or recklessly assumed the risks asserted in the Complaint, including that his contract would be charged under a variable rate after his fixed-rate term expired.

18. Direct Energy reserves the right to assert other affirmative defenses that may arise in the course of discovery or otherwise.

Respectfully submitted,

/s/ Bobby Debelak

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed with the Court's CM/ECF system on November 2, 2015, which should have generated and delivered electronic notice of filing to all counsel of record.

/s/ Bobby Debelak

Bobby Debelak