

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUREAU OF CONSUMER FRAUDS & PROTECTION**

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**In the Matter of the
Investigation by Letitia James,
Attorney General of New York, of**

AOD No. 21-081

Family Energy, Inc.,

Respondent.

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**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW § 63(15)**

The Office of the Attorney General of the State of New York (“NYAG”) commenced an investigation into the marketing and provision of retail natural gas and electricity services by Family Energy, Inc. (“Family Energy”) pursuant to Executive Law § 63(12), General Business Law (“GBL”) §§ 349, 349-d, 350, 350-d, GBL §§ 399-p, 399-pp, 399-z, the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*, and the Telemarketing Sales Rule (“TSR”) 16 C.F.R. § 310.1 *et seq.* This Assurance of Discontinuance (“Assurance”) contains the findings of the NYAG’s investigation and the relief agreed to by the NYAG and Family Energy (collectively, the “Parties”).

1. For purposes of this Assurance, the following definitions apply.
 - a. “**Advertising**” shall include any brochures, websites, promotions, home and telephone solicitations or other electronic, internet-based or print media used to market Family Energy’s Retail Electricity or Natural Gas Service.
 - b. “**Clear and Conspicuous**” (including “Clearly and Conspicuously”) shall mean that the statement, representation or term being disclosed is of such size, color, contrast and/or

audibility and is so presented as to be readily noticed and understood by the person to whom it is being disclosed. If such statement is necessary as a modification, explanation or clarification to other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner so as to be readily noticed and understood. In addition to the foregoing, in interactive media, the disclosure shall also be unavoidable (i.e., no click-through required to access it) and shall be presented prior to the consumer incurring any financial obligation.

- c. **“Commodity Service Charges”** shall mean the charges pertaining to the electricity or natural gas product supplied by an ESCO or, for Full Service Customers, by a Distribution Utility.
- d. **“Customer Disclosure Statement”** shall mean the recitation of essential contract terms as required by Section 5 of the Uniform Business Practices adopted by the PSC in PSC Case 98-M-1343 – In the Matter of Retail Access Business Rules (the “UBP”).
- e. **“Customer of Record”** shall mean the individual consumer or business owner named in the Distribution Utility account that has responsibility for payment of the account bills.
- f. **“Customer Service Representative”** shall mean any employee of Family Energy, any independent agent or Contractor, or any employee of an independent agent or Contractor whose duties include answering telephone calls, emails or letters from customers making inquiries or complaints about their Family Energy service or seeking to dispute their Family Energy charges or cancel their Family Energy service.
- g. **“Delivery Service Charges”** shall mean the charges by the local electricity or natural gas Distribution Utility to deliver the commodity to the customer.

- h. “**Distribution Utility**” shall mean an electricity or natural gas corporation owning, operating or managing electric or natural gas facilities for the purpose of distributing natural gas or electricity to end users in New York.
- i. “**Distribution Utility Services**” shall mean the services provided by a Distribution Utility including, but not limited to, the delivery of electricity and natural gas delivered by the Distribution Utility, the responsibility for periodically reading ESCO consumers’ meters to determine usage amounts, and billing consumers for both the utility’s Delivery Service Charges and the ESCO’s Commodity Service Charges.
- j. “**Energy Service Company**” or “**ESCO**” shall mean an entity that sells electricity and/or natural gas to end users using the transmission or distribution system of a Distribution Utility.
- k. “**ESCO Consumers Bill of Rights Notice**” shall mean the ESCO Consumers Bill of Rights required by GBL § 349-d and specified in Section 10 of the UBP.
- l. “**Financial Difference**” shall mean the difference between Family Energy’s Commodity Services Charges paid by the consumer for the period enrolled and what the consumer would have paid the Distribution Utility under that Distribution Utility’s rates during the same period.
- m. “**Fixed Rate**” shall mean a Commodity Service Charge that is not changed by the ESCO for a specified period.
- n. “**Full Service Customer**” shall mean an electricity or natural gas consumer who purchases his/her energy from the local Distribution Utility.
- o. “**Guaranteed Savings Plan**” shall mean a Variable Rate plan that offers guaranteed savings over the utility price, as reconciled on an annual basis or following termination.

- p. **“In-Person Marketing”** or **“In-Person Solicitation”** shall mean offering products or services to prospective customers by means of having a Sales Representative visiting the prospective customer’s home or place of business or meeting the prospective customer at another location.
- q. **“In-Person Solicitor”** shall mean a Sales Representative who performs In-Person Marketing or Solicitation.
- r. **“Marketing Contractor”** or **“Contractor”** shall mean an entity or individual retained by Family Energy to solicit consumers by Telemarketing, In-Person Solicitation, or by soliciting them over the Internet.
- s. **“Required Disclosures”** shall mean any disclosures, notices, or other written documents required to be given or sent to the consumer by the UBP.
- t. **“Retail Electricity Service”** or **“Retail Natural Gas Service”** (together, “Retail Electricity and Natural Gas Service”) shall mean any electricity and/or natural gas service marketed or provided to end user customers in New York State.
- u. **“Sales Representative”** shall mean any employee of Family Energy, any independent agent or Contractor, or any employee of an independent agent or Contractor offering Family Energy’s Retail Electricity and/or Natural Gas Service to consumers, including In-Person Solicitors, Telemarketers, and Customer Service Representatives offering Family Energy’s Retail Electricity and/or Natural Gas Service to consumers via the Internet.
- v. **“Telemarketer”** shall mean a Sales Representative who performs Telemarketing.

- w. “**Telemarketing**” shall mean a sales program or campaign which is conducted to induce the purchase of services by the use of telephone, including by inbound and outbound calls.
- x. “**Uniform Business Practices**” or “**UBP**” shall mean the ESCO business practices and marketing rules adopted by the New York State Public Service Commission in PSC Case 98-M-1343, as amended.
- y. “**Variable Rate**” shall mean a Commodity Service Charge that is adjusted by the Distribution Utility or ESCO at will and without prior notice to consumers, who only learn the actual price they must pay for Retail Electricity or Natural Gas Service after each billing cycle ends. An ESCO’s Variable Rate may be greater or less than the Distribution Utility’s rate for the same time period.
- z. “**Third Party Verification**” or “**TPV**” shall mean the recorded telephone process described in Section 5, Attachment 1 of the UBP.

I. THE NYAG’S FINDINGS

A. Retail Energy Competition in New York

2. Beginning in 1996, the New York State Public Service Commission (“PSC”) permitted private energy service companies, called ESCOs, to sell natural gas and electricity directly to New York residential and business customers. The goals of allowing ESCOs were to promote competition and to provide consumers with a choice of providers and services and lower prices.¹

¹See PSC Case 94-E-0952, Opinion 96-12, In the Matter of Competitive Opportunities Regarding Electric Service, *Opinion and Order Regarding Competitive Opportunities for Electric Service* (May 20, 1996) at 28.

3. New ESCOs must first apply to and be deemed eligible by the PSC in order to sell electricity and/or natural gas to residential and business customers. To standardize practices among Distribution Utilities and ESCOs and to protect consumers, the PSC adopted the UBP standards, which it has amended multiple times in order to provide greater protections for energy consumers.²

4. Consumers can purchase electricity and/or natural gas from either an ESCO or their local Distribution Utility. However, electricity and gas are delivered only by the Distribution Utility. Thus, consumers who purchase Retail Electricity and/or Natural Gas Services from an ESCO still receive their energy over the distribution system (wires or pipes) owned and maintained by their local Distribution Utility. The Distribution Utility remains responsible for periodically reading ESCO consumers' meters to determine usage amounts and billing consumers for both the Distribution Utility's Delivery Service Charges and the ESCO's Commodity Service Charges.

5. The UBP requires that consumers solicited by an ESCO, or its agent, receive certain notices and disclosures depending on the sales channel used to solicit the customer, the type of agreement used to initiate service, and the type of customer being solicited. During any In-Person Solicitation, the UBP requires ESCOs and their Marketing Contractors to provide residential consumers with the ESCO Consumers' Bill of Rights Notice and Customer Disclosure Statement along with the contract terms and conditions prior to obtaining the consumer's acceptance of an ESCO offer. During any door-to-door solicitation, the UBP requires ESCOs and their Marketing Contractors to provide all customers with these notices. Following telephone enrollments, the UBP requires the ESCO to mail consumers these notices.

² See PSC Case 98-M-1343, Opinion 99-3, Opinion and Order Concerning Uniform Business Practices (Feb. 16, 1999).

6. For sales resulting from either door-to-door or telephonic marketing, the UBP requires an ESCO, or its agent, to verify certain aspects of enrollments through the use of an independent third-party service provider that conducts a Third-Party Verification, which asks specific questions to confirm the customer's understanding of the agreement, and requires certain statements be made to the customer, including but not limited to a statement whether savings are guaranteed.

7. The UBP also provides that when a consumer contracts with an ESCO, the ESCO notifies the Distribution Utility to switch the consumer's provider.

8. The UBP requires the Distribution Utility to mail the consumer a notice to confirm the ESCO enrollment was authorized, and the ESCO mails the consumer a welcome package containing the Contract and Notices listed above, if not previously delivered.

9. Over the years, switching service to an ESCO has often been a process that has taken up to 30 or more days. Consumers then did not receive a utility bill showing the amount owed to the ESCO for their initial month's service until 60 or more days after enrolling. In recent years, the PSC has implemented changes to the UBP designed to accelerate the time in which account transfers occur. As of early 2015, switching retail electricity service now takes as few as five business days and up to one billing cycle, plus five business days, depending on the timing of the customer's request and the date of the customer's meter reading.³ As of early 2016, switching retail natural gas service now takes as few as 10 business days and up to two billing cycles.⁴

³ See PSC Case 12-M-0476, Order Authorizing Accelerated Switching of Commodity Suppliers (Dec. 15, 2014).

⁴ See PSC Case 12-M-0476, Order Authorizing Accelerated Switching of Natural Gas Commodity Suppliers and Related Matters (Dec. 23, 2015).

10. In December 2019, the PSC issued an order implementing a number of reforms designed to protect New York’s retail energy consumers, which it further clarified in an order addressing various petitions for rehearing, reconsideration, and clarification in September 2020.⁵ Among other things, the order restricted the types of products that ESCOs were permitted to offer. The reforms directed by the PSC went into effect in April 2021.

B. Family Energy’s Business

11. Family Energy, Inc. is a New York corporation with its principal offices located at 77 Water Street, New York, New York.

12. Since 2009, Family Energy has been authorized by the PSC as an ESCO to sell Retail Natural Gas or Electricity Services to residential and commercial customers in New York State. It began In-Person Marketing of such services in New York in 2010 and began Telemarketing in 2013.

13. Family Energy currently provides Retail Natural Gas and Electricity Services to New York consumers at both Fixed Rates and Variable Rates. Since 2015, Family Energy had tens of thousands of customers enrolled to receive both Retail Natural Gas and Electricity Services.

14. Family Energy’s Fixed Rate contract is available for one-, two- or three-year terms. These plans often have a slightly lower introductory or “teaser” rate that lasts for a month or two at the beginning of their term, before switching to a higher Fixed Rate for the rest of the term.

⁵ See PSC Case 12-M-0476, Order Adopting Changes to the Retail Access Energy Market & Establishing Further Process (Dec. 12, 2019); PSC Case 12-M-0476, Order on Rehearing, Reconsideration, and Providing Clarification (Sept. 18, 2020).

15. Although Family Energy does not currently market month-to-month Variable Rate plans, thousands of its customers were still enrolled in such plans, due to enrollment in such plans from 2011 to 2013 or due to their Fixed Rate contracts automatically renewing into Variable Rate ones, at least until December 2021.

16. By not guaranteeing its Variable Rate consumers a Fixed Rate for the electricity and natural gas it sells, Family Energy could adjust consumer prices in response to wholesale energy market volatility. Family Energy's Variable Rate customers learned what price they must pay for Family Energy's supply service only after the end of each monthly billing period, when their Distribution Utility mailed a consolidated statement containing both Family Energy's Commodity Service Charges and the Distribution Utility's Delivery Service Charges.

17. Family Energy also advertises "green" energy or "earth save" programs for both electricity and gas that purport to provide benefits to the environment. According to Family Energy's contracts, these programs provide "100% electricity carbon footprint elimination" and "1.5 tonnes of the natural gas carbon footprint elimination." When consumers sign up for these "green" programs they typically pay an additional amount per kilowatt hour ("kWh") for electricity and per therm or CCF for natural gas.

18. Some Family Energy agreements carry early cancellation fees, some do not. For small business customers solicited "via door-to-door sales," the early cancellation fee is typically either \$100 or \$200 depending on how long is left on the agreement at the time of cancellation, which follows the early termination fee caps required by the UBP. But for any other method of solicitation, including by telephone or during "a scheduled appointment," the early termination fee is calculated as a fee per therm or kWh for estimated usage of electricity and natural gas, respectively, for the remainder of the term of agreement. For example, in one contract, the early

cancellation fee, when solicited via a method other than door-to-door sales, was 18 cents per therm and 1.5 cents per kWh for the estimated usage of natural gas and electricity for the remainder of the agreement term. Under this fee structure, Family Energy's cancellation fees for small business customers can amount to hundreds, or even thousands, of dollars.

19. Because Family Energy buys the electricity and gas it supplies to its customers from the same sources as the Distribution Utilities and other ESCOs, there is no qualitative difference between the electricity and natural gas supplied by Family Energy and that of its competitors. Yet Family Energy's customers pay, on average, more to Family Energy than they would have paid if they were not enrolled with the ESCO.

20. Family Energy solicits new customers through Telemarketing and In-Person Solicitations. Family Energy contracts with various Marketing Contractors, who employ Sales Representatives to conduct In-Person Solicitations and Telemarketing on Family Energy's behalf. Family Energy has marketed primarily through Marketing Contractors.

21. Since at least January 2014, Family Energy failed to effectively monitor and supervise the activities of its Sales Representatives to ensure that their conduct was lawful and not deceptive. Family Energy's Sales Representatives repeatedly engaged in deceptive and unlawful business practices, described below, and more than 500 consumer complaints were lodged with the PSC about Family Energy's practices from 2015 to 2018. In 2018, Family Energy had the second highest number of consumer complaints filed with the PSC of all ESCOs operating in New York State.

C. Family Energy's Deceptive Practices

22. Family Energy and its Sales Representatives have engaged in multiple and repeated deceptive and unlawful business practices in violation of Executive Law § 63(12), GBL

Article 22-A, §§ 349, 349-d, 350, 350-d, GBL Article 26, §§ 399-pp, 399-z, the TCPA, 47 U.S.C. § 227 *et seq.*, the TSR, 16 C.F.R. §§ 310.1 *et seq.*, and the UBP since at least January 2014.

1. Impersonating the Utility

23. Sales Representatives repeatedly failed to disclose that they were agents of Family Energy and instead impersonated representatives from consumers' Distribution Utilities.

24. Sales Representatives repeatedly gained entry to a consumer's home or access to consumers' bills by misrepresenting that they represented the Distribution Utility. Family Energy's own call logs show repeated cancellations due to "Misrepresentation of Program."

25. In order to switch consumers to Family Energy without their knowledge, Sales Representatives repeatedly made various misrepresentations, including that they needed to correct a billing error, verify a "service code" or the presence of a logo on the bill, verify enrollment in a discount or rebate program, or verify that a consumer was not being overcharged or was getting savings.

2. Slamming

26. Sales Representatives obtained consumers' utility account numbers in order to switch their accounts to Family Energy repeatedly without disclosing to consumers that they were doing so and without obtaining their authorization. This practice is known as "slamming."

27. Sales Representatives also repeatedly obtained signatures on Family Energy contracts by falsely representing that they were not contracts for the purchase of Retail Electricity and Natural Gas Services and that the Sales Representatives were not actually selling anything.

28. Sales Representatives also repeatedly were present during TPVs and/or coached consumers on the answers they were to give during the TPV.

3. False and Misleading Promises of Savings and Misrepresenting Pricing and the “Cash Back” Program

29. Sales Representatives repeatedly made false and misleading savings claims in their In-Person Solicitations and Telemarketing. They promised consumers savings with Family Energy over their Distribution Utility and failed to disclose to them that Family Energy does not guarantee those savings.

30. Family Energy’s contracts did not clearly and conspicuously disclose that savings were not guaranteed.

31. Many of Family Energy’s TPVs also failed to tell the consumer that Family Energy does not guarantee savings. In other TPVs, the statement that “savings are not guaranteed” is buried in a very large amount of other information that the consumer must acknowledge all at once. For example, many TPVs require only a single acknowledgement of all of the following:

This program has a cash back feature. Savings under this program cannot be guaranteed. However, if at the end of the term, if you don’t see savings you may receive up to \$50 back on a two year program or up to \$75 back on a three year program. You also have the right to rescind this agreement if you choose within three business days after you receive a copy of the agreement by contacting Family Energy by telephone, mail, or e-mail at the contact information provided on the agreement. If you do not rescind, an enforceable agreement will be created, the cancellation fee which would be a \$25 fee per commodity per each year or partial year remaining on the program. Do you understand?

This list contains the vast majority of disclosures that are most important to the consumer, is often read quickly, and does not use simple and easily understood language.

32. In Family Energy’s TPVs, the statement that “savings are not guaranteed” was also repeatedly introduced with the “cash back program” in a way that misleads consumers. For example, as set forth in paragraph 31, some of the TPV scripts read, “[t]his program has a cash back feature, savings are not guaranteed, however, if at the end of the term, you don’t see savings you may receive up to \$50 back for a 2 year program or up to \$75 back on a 3 year program.” In fact, Family Energy’s own internal calculations of the difference in Family Energy’s rates and the Distribution Utilities’ rates show that the cash back amount is often several hundred dollars less than the amount Family Energy is overcharging.

33. Sales Representatives also repeatedly misrepresent the terms of the cash back program, promising consumers monthly or annual checks, when reimbursement actually only occurs at the end of a completed contract term, and only if the term is completed.

34. In addition, to obtain a payment from Family Energy’s cash back program, consumers must contact Family Energy in writing within 90 days at the end of their agreement term. This onerous requirement is not disclosed to consumers by the Sales Representatives, and Family Energy’s TPV’s misleadingly suggest that once its agreement term ends, consumers need take no additional steps to obtain cash back. Nor do Sales Representatives or TPVs disclose that any additional charges incurred from the green energy programs do not count towards eligibility for the cash back program.

35. In addition, some of Family Energy’s contracts only clearly and conspicuously disclose the discount introductory rate and fail to clearly and conspicuously identify the rate that will be charged for the rest of the term.

4. Failure to Clearly and Conspicuously Disclose Cost and Voluntary Nature of “Green” Electricity and “Eco-Gas” Programs

36. Many of Family Energy's contracts do not clearly and conspicuously indicate on the first page that charges for participation in the "green" or "eco" programs are in addition to the per kWh and per therm rates listed above in the contract.

37. In addition, in many cases, Family Energy's TPVs also do not clarify that the consumer must pay more to participate in the "Eco Gas Program." For example, one TPV script reads, "THANK YOU for choosing the Eco Gas Program! It will eliminate about 1.5 Tons of natural gas carbon footprint annually, for just 15 cents/therm." There is no clear indication that this 15 cents per therm rate is in addition to the per therm rate for gas Family Energy already charges.

38. And in many cases, Sales Representatives misrepresented or failed to explain the nature of the "green" programs, including that enrollment was optional and cost extra.

5. Failure to Clearly and Conspicuously Disclose Early Termination Fees

39. Early termination fees are not clearly and conspicuously disclosed in any of Family Energy's contracts. And the phrasing of the early termination fees provision is complex and difficult to understand. For example, one of Family Energy's contracts provides: "[a]n early cancellation fee for each month or partial month remaining on the natural gas and/or electric supply Agreement(s) Term of \$2.50 plus applicable taxes will apply, if the Agreement(s) is/are terminated prior to the end of the Term selected above." As noted above in paragraphs 31 and 32, the TPV's language on this point is equally, if not more, complex.

40. For small business customers, TPVs often do not describe the early termination fees in any way. For example, it is a common practice for a TPV to say "if you cancel before this agreement expires, there may be an associated exit fee." In fact, as described above in paragraph 18, the cancellation fee for small businesses solicited by telephone is typically quite

substantial amounting to at least hundreds and at times thousands of dollars. In addition, the provision of Family Energy's contracts describing the early termination fee for small business customers is in complex language that is difficult to understand.

D. Family Energy's Violations of the Do Not Call Laws

41. Family Energy Sales Representatives repeatedly solicited consumers by telephone despite the fact that their telephone numbers had been registered on the Federal Do Not Call Registry. On February 10, 2017, the New York Department of State issued a consent order fining Family Energy \$23,000.00 for this violation of GBL § 399-z.

E. Conclusion

42. The NYAG finds that Family Energy's practices as described in paragraphs 2 through 41 above constitute repeated violations of Executive Law § 63(12), GBL §§ 349, 349-d, 350, 350-d, 399-pp, 399-z, the TCPA, 47 U.S.C. § 227 *et seq.*, the TSR, 16 C.F.R. § 310.1 *et seq.*, and the UBP.

43. Family Energy neither admits nor denies the NYAG's Findings, paragraphs 2 through 41 above.

44. The NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the NYAG is willing to accept this Assurance pursuant to Executive Law 63(15), in settlement of conduct described above and in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12), GBL §§ 349, 349-d, 350, 350-d, 399-pp, 399-z, the TCPA, 47 U.S.C. § 227 *et seq.*, the TSR, 16 C.F.R. § 310.1 *et seq.*, and the UBP, based on that conduct.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties, that, as of the Effective Date (except as otherwise noted):

II. RELIEF

GENERAL INJUNCTION:

45. Family Energy shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to Executive Law § 63(12), GBL §§ 349, 349-d, 350, 350-d399-p, 399-pp, 399-z, the TCPA, 47 U.S.C. § 227 *et seq.*, the TSR, 16 C.F.R. § 310.1 *et seq.*, and the Uniform Business Practices adopted by the PSC in Case 98-M-1343 – *In the Matter of Retail Access Business Rules*, and any further amendments to the foregoing laws and regulations that may be adopted subsequent to the execution of this Assurance. Family Energy expressly agrees and acknowledges that any such conduct occurring on or after the Effective Date is a violation of this Assurance, and that the NYAG thereafter may commence the civil action or proceeding contemplated in paragraph 44 above, in addition to any other appropriate investigation, action, or proceeding.

PROGRAMMATIC RELIEF:

46. Family Energy shall provide a copy of this Assurance to its officers and employees. Family Energy also shall be responsible for ensuring that Sales Representatives and other agents, whether employed directly by Family Energy, by Marketing Contractors working on behalf of Family Energy, or other agents working on behalf of Family Energy, comply with paragraph 45 above and adhere to the business practices enumerated in paragraphs 48 through 86 below. Family will be responsible for including the requirements of this AOD in training of its Marketing Contractors or other agents working on behalf of Family Energy pursuant to paragraph 72 and shall provide copies of such training materials to the NYAG pursuant to paragraph 71.

47. Family Energy agrees to adhere to the following business practices listed in paragraphs 48 through 86 in connection with the solicitation, enrollment, and servicing of customers in New York.

A. Sales Practices and Enrollment Process

48. Sales Representatives and Family Energy employees, when marketing to or enrolling new customers, shall not orally or in any written materials do any of the following:

- a. make any false or misleading representations, directly or by implication, to induce consumers to purchase Retail Electricity Service and/or Natural Gas Service;
- b. refer to any purchase of Retail Electricity Service and/or Natural Gas Service from Family Energy as a “price protection plan” or as providing “price protection” or any variant of those terms;
- c. make representations, directly or by implication, about savings that consumers may realize by switching to Family Energy plans that are not Guaranteed Savings Plans;
- d. make representations, directly or by implication, about savings that consumers may realize by switching to a Family Energy Guaranteed Savings Plan without Clearly and Conspicuously disclosing the requirements that must be met in order to qualify for such savings;
- e. make any written representation, directly or by implication, about savings that consumers may realize by switching to any Family Energy Variable Rate program unless Family Energy Clearly and Conspicuously discloses in close physical proximity to such representation and before the consumer accepts the offer that:
 - i. Family Energy’s Commodity Service Charge varies from month-to-month; and

- ii. A consumer's total monthly electricity and/or natural gas costs under Family Energy's pricing structure, in any given month, may be greater than or less than the costs that the consumer would have incurred if the consumer had continued to purchase electricity and/or natural gas from the Distribution Utility or another ESCO;
- f. make any oral representation, directly or by implication, about savings that consumers may realize from switching to Family Energy's Variable Rate program unless Family Energy discloses clearly and in easily understood language the information in paragraph 48(e)(i)-(ii) before the consumer accepts the offer;
- g. make any misrepresentations, directly or by implication, about a Family Energy cash back, rebate, partial refund or other similar program, including but not limited to the timing and amounts of any reimbursement;
- h. make any misrepresentations, directly or by implication, that Family Energy's Commodity Service Charge is the only fee for Retail Natural Gas and/or Electricity Services that consumers will pay if they enroll with Family Energy or that enrolling with Family Energy will prevent or stop the Distribution Utility from charging consumers any fees or the Delivery Charge;
- i. promise savings or represent, directly or by implication, that savings are guaranteed when the Family Energy contract being sold does not expressly provide for any such promise or guarantee;
- j. represent, directly or by implication, that Family Energy is working on behalf of, in cooperation with, or "for" the consumer's Distribution Utility, or is affiliated in any way

with the Distribution Utility, including but not limited to wearing any apparel or insignia resembling any Distribution Utility uniform;

- k. represent, directly or by implication, that Family Energy is working on behalf of, in cooperation with, or “for” the New York State Public Service Commission or any other governmental regulatory agency, or is affiliated in any way with such entities;
- l. as of 90 days after the Effective Date, enter into a sales agreement or change the commodity provider for any customer that is not personally accepted or chosen, respectively, by the Customer of Record or his/her spouse or legal guardian (and Sales Representatives shall make reasonable efforts to verify that any person who grants consent to a service change on behalf of a Customer of Record is, in fact, so authorized and, if it is subsequently discovered that the Customer of Record or his/her spouse or legal guardian did not so authorize the change, Family Energy shall take all reasonable actions to return the customer to his or her prior provider);
- m. offer or enter into an agreement or present to the consumer the Required Disclosures in any language that is not the primary language used in the discussions between the Sales Representative and the Consumer; or
- n. instruct consumers as to the manner in which to respond to questions, other than to instruct the consumer to answer “yes” or “no” to each question as required in the UBP, or participate in the TPV of any sale other than to address logistical requirements. For example, Family Energy shall not instruct consumers to answer “Yes” to all questions or discourage asking questions during a TPV call.

49. As of 90 days after the Effective Date, when marketing to customers, Sales Representatives and Family Energy employees shall clearly and in easily understood language disclose the following orally:

- a. the material terms of any cash back, rebate, partial refund, or other similar program, including but not limited to any requirement that the customer must complete the entire agreement term to obtain any reimbursement; and
- b. that any Retail Electricity Service and/or Natural Gas Service programs offered as “green,” “eco,” or to otherwise benefit the environment are optional and will cost the consumer additional money, if those two things are true.

50. As of 90 days after the Effective Date, prior to enrolling new customers, Sales Representatives and Family Energy employees shall also disclose all of the information in paragraph 49 Clearly and Conspicuously in writing.

51. Family Energy’s In-Person Solicitors shall wear clothing branded with Family Energy logos and display accurate photo identification, affirmatively identify themselves as representatives of Family Energy when soliciting consumers, and disclose at the onset of the solicitation that (i) the purpose of the solicitation is to sell products and services offered by Family Energy, not the local Distribution Utility, and (ii) Family Energy is independent of the consumer’s local Distribution Utility. Family Energy’s In-Person Solicitors shall not carry any papers bearing the name or logo of the Distribution Utility.

52. When enrolling new consumers, Sales Representatives shall provide consumers with the Required Disclosures **before** requiring the consumer’s signature and inform consumers that the document sets out their rights and obligations. When a consumer is enrolled via telephone, Family Energy shall mail the consumer the Required Disclosures and the contract

terms and conditions via regular mail, electronic mail, or facsimile within three (3) business days.

53. If the Required Disclosures and contract terms and conditions are shown to consumers on a tablet, consumers must be given adequate time and opportunity to scroll through and read all text of the document they are acknowledging or signing, and the Sales Representative must provide an option for the consumer to (a) request a hard copy of the sales agreement, and if so requested, shall send the hard copy of the sales agreement by mail within three business days after the consumer's request or (b) request an electronic copy of the sales agreement, and if so requested, shall send the electronic copy of the sales agreement by electronic mail within one business day after the consumer's request.

54. Family Energy shall develop and maintain "Do Not Solicit" and "Do Not Call" lists which shall contain the names and relevant contact information for any consumer who has requested that Family Energy not contact them. Family Energy shall ensure that its Sales Representatives, including those of Contractors, have access to and consult these lists for the purposes of any In-Person Solicitation or Telemarketing. The In-Person Solicitation portion of this requirement shall be implemented as of 90 days after the Effective Date.

55. As of 60 days after the Effective Date, in all Advertising to consumers, Family Energy shall include a Clear and Conspicuous notice that Family Energy is independent of the consumer's Distribution Utility, and that if the consumer receives services from Family Energy, that the consumer's bill will reflect a Commodity Service Charge to Family Energy for its commodity, and, if the consumer is billed directly by the Distribution Utility, a Delivery Service Charge to the Distribution Utility for its delivery of the commodity. In the future, if Family Energy bills consumers directly, Family Energy's bills shall comply with the foregoing sentence.

All Advertising shall Clearly and Conspicuously display Family Energy brand identification information and may not identify any Distribution Utility by name except to identify that a product is only available in a specific Distribution Utility's service territory. For avoidance of doubt, the Power to Choose website maintained by the New York Department of Public Service is excluded from this paragraph insofar as Family Energy represents that it does not control the content of such website beyond limited product type, term length and price information.

B. TPVs

56. As of 90 days after the Effective Date, on its TPVs, Family Energy shall ask the consumer, as a single stand-alone question not delivered with any other information, using terms that are easily understandable, whether the consumer understands that Family Energy does not guarantee savings on its contracts, if that statement is true, and as a result, signing up with Family Energy may not save the consumer money on his or her electric and/or natural gas bill. A clear "yes" response, without any additional follow-up questions, is required before Family Energy can proceed with the sale. In explaining that savings are not guaranteed, Family Energy cannot include any information about a cash back or rebate program; it must provide any such information separately and **after** any consumer acknowledgment that savings are not guaranteed.

57. As of 90 days after the Effective Date, on its TPVs, Family Energy shall disclose the terms and calculation method for any early cancellation fee policy as a single stand-alone statement not delivered with any other information, using terms that are easily understandable. The phrasing "there may be associated exit fees" is not sufficient to meet the requirements of this paragraph. The phrasing "\$25 [or \$50] plus applicable taxes for each year or partial year remaining on the natural gas and/or electricity Agreement(s) Term," or any similar phrase, is not sufficiently clear and easily understandable to satisfy the requirements of this paragraph. If early

cancellation fees are calculated on a per remaining year or month basis, Family Energy must provide an example to consumers of how much the total fee will be across both Retail Electricity and Natural Gas services if he or she cancels one month after signing up. Family Energy shall then ask the consumer whether he or she understands the early cancellation fee that will be charged. A clear “yes” response, without any additional follow-up questions, is required before Family Energy can proceed with the sale. Nothing in this paragraph is intended to impose requirements that are inconsistent with the UBP.

58. As of 90 days after the Effective Date, on its TPVs for consumers who have chosen to enroll in “green energy,” “eco-gas” or other programs offered as a benefit to the environment, Family Energy shall tell the consumer in a single stand-alone statement not delivered with any other information, using terms that are easily understandable, that participating in such a program is voluntary and will cost a premium above standard service. Family Energy shall then ask the consumer in a single stand-alone statement not delivered with any other information, using terms that are easily understandable, whether the consumer agrees to enroll in such a program. A clear “yes” response, without any additional follow-up questions, is required before Family Energy can proceed with the sale.

59. As of 90 days after the Effective Date, on its TPVs for Fixed Rate plans, Family Energy must disclose in a single number the full price per day, per month, per kWh or per therm of its electricity and/or natural gas offerings. Family Energy must deliver the information described in the previous sentence on its own without any other information, using terms that are easily understandable. Family Energy must then ask the consumer whether he or she agrees to pay this price. A clear “yes” response, without any additional follow-up questions, is required before Family Energy can proceed with the sale. If the full price in the contract includes a

“teaser rate,” which is any rate or price charged for less than the full agreement term, both that teaser rate and the rate applicable to the rest of the contract term must be disclosed in the TPV, using terms that are easily understandable, but the rate that will apply to the longest period of time under the agreement must be disclosed first.

60. As of 90 days after the Effective Date, on its TPVs for Variable Rate plans, Family Energy must disclose clearly in a single stand-alone statement not delivered with any other information, and in language that is easily understood, that the rate Family Energy will charge changes from month-to-month and may be either greater than or less than the utility’s rates in any given month. Family Energy must then ask the consumer whether he or she agrees to pay this price. A clear “yes” response, without any additional follow-up questions, is required before Family Energy can proceed with the sale.

61. In addition to the information in paragraph 60, as of 90 days after the Effective Date, on TPVs for Variable Rate plans where the consumer has chosen “green” or “eco” programs or any other programs that purport to benefit the environment, Family Energy must disclose clearly in a single stand-alone statement not delivered with any other information, and in plain language, and in language that is easily understood that participating in such programs will increase the monthly price the consumer pays for natural gas and/or electricity. Family Energy must then ask the consumer whether he or she agrees to pay this higher price. A clear “yes” response, without any additional follow-up questions, is required before Family Energy can proceed with the sale.

C. Contract Provisions, Term, Renewal, and Early Cancellation Policy

62. All contracts for Retail Electricity and/or Natural Gas Service executed after the Effective Date (unless another timeline is indicated) shall disclose the following Clearly and Conspicuously on the front side:

- a. That savings are not guaranteed, if they are not;
- b. The length or term of the agreement that the consumer is signing as well as the terms of any renewal provisions;
- c. As of 90 days after the Effective Date, that “green” or “eco” programs or any other programs that are offered as a benefit to the environment are optional and will cost the consumer additional money, if those two things are true;
- d. As of 90 days after the Effective Date, for Fixed Rate contracts, the full price in a single number per day, per kWh or per therm of Family Energy’s electricity and/or natural gas offerings, including in that single figure the additional cost of any add-on product including but not limited to “green” or “eco” programs or any other programs that are offered as a benefit to the environment;
- e. As of 90 days after the Effective Date, if a contract has a “teaser” price or a price applies for less than a contract’s full term, both the teaser rate and the rate that applies for the remaining term of the contract but the disclosure of the rate that applies for the longest part of the contract shall be displayed first and the most prominently;
- f. As of 90 days after the Effective Date, all material terms of any cash back, rebate, partial refund or other similar program; and
- g. A description of the nature and amount of any early termination fees as well as what conditions trigger the application of such fees.

63. Any contract renewals that involve a material change, including but not limited to a switch from a Fixed Rate to a Variable Rate, cannot occur automatically and may only occur after Family Energy has obtained the consumer's affirmative, informed consent, except for automatic renewals to commodity-only variable rate guaranteed savings products.

64. For all new contracts as of 90 days after the Effective Date of this AOD, Family Energy shall not require, as a term of a cash back, rebate, partial refund, or other similar program, that the consumer contact Family Energy in writing to obtain the benefits of such a program. The distributions of the benefits of any such program shall occur automatically within thirty (30) days of the event that triggers the distribution of such benefits. For example, if the program offers cash back to the consumer at the end of the contract term, if they do not see savings when compared to the Distribution Utility rates, the benefits shall be distributed within thirty (30) days of the date on which the contract ends.

65. As of 90 days after the Effective Date, Family Energy shall limit the early cancellation fees for all new small business consumers, solicited via any method, to either (a) one hundred dollars for any contract with a remaining term of less than twelve months; (b) two hundred dollars for any contract with a remaining term of more than twelve (12) months; or (c) twice the estimated bill for energy services for a single average month.

66. Whenever Family Energy is notified by telephone or in writing of a consumer's desire to terminate a service contract, Family Energy shall confirm this desire with the consumer and then notify the appropriate Distribution Utility within the number of days provided for in the UBP and applicable laws and regulations, as amended, to switch the consumer back to the provider of Retail Electricity or Natural Gas Service indicated by the consumer. There shall be no charge to the consumer by Family Energy for switching to another provider unless the

consumer's Family Energy contract Clearly and Conspicuously provides for such a fee. As of 60 days after the Effective Date, if Family Energy delays giving the Distribution Utility notice of the consumer's cancellation beyond the amount of time provided above, Family Energy shall reimburse the consumer the difference between what the customer paid Family Energy from the date of the consumer's notice to terminate and the date the consumer was switched to his or her chosen provider, and what the customer would have paid to the Distribution Utility for supply services during that time period. Family Energy will not be obligated to reimburse the customer for any damages resulting from delays or errors resulting from the actions or inactions of the Distribution Utility

67. As of 90 days after the Effective Date, Family Energy shall ensure that its customer service telephone numbers are adequately staffed by properly trained employees so that consumer calls are consistently answered promptly. Family Energy shall have an operable voice-mail which allows consumers to leave messages. Family Energy shall also ensure that any such messages left by consumers on a voice-mail system are returned or acted upon within three (3) business days.

68. Family Energy shall not charge consumers early termination fees where such consumers allege that they did not knowingly sign up for Family Energy services and later cancelled such services and where Family Energy does not have documented proof otherwise.

69. Family Energy shall not charge consumers early termination fees where such consumers allege that they attempted to cancel services within the applicable deadline but were unable to do so because they could not speak with a Family Energy customer service representative or leave a voice-mail cancelling service, and where Family Energy does not have documented proof otherwise.

D. Training

70. Following the Effective Date, Family Energy shall develop and maintain training materials and a training program for Sales Representatives and Customer Service

Representatives that accurately and comprehensively cover:

- a. The requirements of this Assurance, Executive Law § 63(12), GBL §§ 349, 349-d, 350, 350-d, 399-p, 399-pp, 399-z, the TCPA, 47 U.S.C. § 227 *et seq.*, the TSR, 16 C.F.R. § 310.1 *et seq.*, and the UBP, and any amendments made to those laws and regulations at any time after the execution of this Assurance and including both prohibited practices and affirmative requirements;
- b. An express warning that deceptive or unlawful sales practices will not be tolerated by Family Energy;
- c. An express warning that deceptive sales practices may carry legal consequences for Sales Representatives, including both civil and criminal liability;
- d. A description of the remedial steps that will be taken against any Sales Representative who violates any term of this Assurance or otherwise engages in improper sales practices, including withholding commissions and termination; and
- e. A description of the quality assurance, monitoring and auditing practices maintained to prevent or identify improper sales practices.

71. Family Energy shall provide to the NYAG a copy of all training materials, electronic or paper, prepared pursuant to this Assurance (the “Training Submittal”) within sixty (60) days of the date this Assurance. Family Energy shall respond to any concerns raised by the NYAG regarding the Training Submittal within ten (10) days.

72. Training using materials revised consistent with paragraph 70 above for all Sales Representatives and Customer Service Representatives shall be conducted within thirty (30) days of the date that any NYAG concerns, described in paragraph 71, are addressed. This training shall be conducted either in-person or through video that allows the trainer and trainees to see and speak to each other in real time. All newly hired Sales Representatives and Customer Service Representatives must also complete this training prior to conducting any Telemarketing or In-Person Solicitations. Family Energy shall obtain and maintain a written form signed by each Sales Representative and Customer Service Representative acknowledging that he or she has received and understood the information provided in the training.

E. Monitoring Sales and Other Practices

73. Family Energy shall record all telephone communications between consumers and Family Energy's Sales Representatives or Customer Service Representatives that resulted in a sale. Family Energy shall maintain such recordings for at least one (1) year following the date of the communication. No commissions shall be paid to any Contractor and/or Sales Representative for any enrollment made after the Effective Date unless a recording of the entire sales presentation to that consumer is supplied to Family Energy within ten (10) days of the sale.

74. Family Energy shall ensure that all of its Sales Representatives, even if employed by Contractors, are conducting Telemarketing on behalf of Family Energy in compliance with federal and New York Telemarketing laws and regulations, including the TSR, 16 C.F.R. § 310.1 *et seq.* and GBL §§ 399-pp and 399-z, and federal and New York do not call laws and regulations, including the do not call provisions of the TSR, 16 C.F.R. § 310.1 *et seq.*, and GBL § 399-z, as well as any amendments made to those laws and regulations at any time after the execution of this Assurance.

75. Family Energy shall also ensure that all of its Sales Representatives, even if employed by Contractors, are conducting Telemarketing on behalf of Family Energy in compliance with federal and New York laws and regulations governing the use of automated dialing equipment and pre-recorded messages, including the TPCA, 47 U.S.C. § 227 *et seq.*, the TSR, 16 C.F.R. § 310.1 *et seq.*, and GBL §§ 399-p, 399-z, including any amendments made to those laws or related regulations at any time after the execution of this Assurance.

76. Family Energy shall conduct a prompt and thorough investigation of all oral, electronic and written consumer complaints submitted to it, a regulatory agency, and/or the Distribution Utility that are received by Family Energy of Sales Representatives engaging in the practices listed above in paragraph 48, failing to comply with paragraphs 49 through 55, or failing to comply with the UBP. With respect to each such complaint involving a sale after the Effective Date, Family Energy shall:

- a. identify the Sales Representative responsible for the alleged misconduct;
- b. review the recordings of communications with the consumer made by Sales Representatives and Customer Service Representatives;
- c. determine whether the Sales Representative violated the provisions of this Assurance or the UBP in any manner;
- d. resolve the consumer's complaint in a fair and expeditious manner; and
- e. reimburse the consumer any Financial Difference whenever the investigation concludes that it is more likely than not any of the following deceptive sales practices occurred:
 - i. As of 90 days after the Effective Date, the Customer of Record or his/her spouse or legal guardian or, for a small business customer an authorized business representative, did not authorize the Family Energy enrollment;

- ii. The consumer was given a promise of savings or lower utility bill(s) during the sale of a non-Guaranteed Savings Plan;
- iii. The consumer was given a promise of savings or lower utility bill(s) during the sale of a Guaranteed Savings Plan but was not informed of requirements that must be met in order to qualify for such savings;
- iv. The Sales Representative misrepresented that savings were guaranteed when the Family Energy contract the consumer signed did not provide for such a guarantee;
- v. The Sales Representative or any Family Energy employee referred to Family Energy's offering as a "price protection program" or as providing "price protection" or any variant of those terms;
- vi. As of 90 days after the Effective Date, for a Fixed Rate program, the Sales Representative failed to disclose the full price in a single figure of the per day, per month, per therm or per kWh price of Family Energy's offering, including any add on products that cost additional such as limited to "green" or "eco" programs or any other programs that are offered as a benefit to the environment, prior to the consumer signing the contract;
- vii. For a Variable Rate program, the Sales Representative failed to disclose that Family Energy's Variable Rate changes from month-to-month and may be either greater than or less than the utility's rate in any given month;
- viii. The Sales Representative failed to clearly disclose that he or she was offering services for purchase from Family Energy;

- ix. The Sales Representative failed to clearly disclose that Family Energy is not affiliated in any way with any Distribution Utility;
- x. The Sales Representative misrepresented that he/she was working for or at the direction of or impersonated any Distribution Utility or any government agency;
- xi. The Sales Representative failed to provide the consumer with a copy of the Required Disclosures and contract terms and conditions prior to enrolling the consumer;
- xii. The Sales Representative used high pressure sales tactics to intimidate the consumer into signing up for Family Energy's Retail Electricity and/or Natural Gas Services;
- xiii. As of 90 days after the Effective Date, the Sales Representative failed to clearly disclose that Family Energy's "green" or "eco" programs or any other programs that are offered as a benefit to the environment are voluntary and will cost additional amounts, if those statements are true;
- xiv. As of 90 days after the Effective Date, the Sales Representative failed to clearly and accurately disclose and describe the nature and amount of any early termination fees;
- xv. As of 90 days after the Effective Date, the Sales Representative failed to clearly and accurately disclose the material terms of any cash back or refund program;
- xvi. The Sales Representative solicited the consumer at his or her home or place of business in violation of local municipal home solicitation registration or licensing requirements;

- xvii. The Sales Representative prompted consumer responses or instructed consumers to the manner in which to respond to question(s) on a TPV other than as permitted in Paragraph 48(n);
- xviii. The Sales Representative solicited the consumer by telephone in violation of the do not call provisions of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), and/or GBL § 399-z;
- xix. The Sales Representative caused any telephone to ring or engaged consumers in telephone conversation repeatedly or continuously in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(i); or
- xx. The Sales Representative solicited the consumer by telephone using an automated dialing system or a prerecorded message in violation of the TCPA, 42 U.S.C. § 227(b)(1)(A)-(B), the TSR, 16 C.F.R. § 310.4(b)(1)(v), and/or GBL §§ 399-p, 399-z.

77. For each consumer complaint Family Energy receives regarding a sale or conduct after the Effective Date, Family Energy shall review the related sale and note in writing whether or not each of the deceptive and unlawful practices identified in paragraph 76(e)(i) through (xx) occurred and whether any of the terms of paragraphs 48 through 55 of this Assurance were violated.

78. Regarding sales after the Effective Date, successful completion of a TPV cannot cure or remediate a failure to comply with any of the requirements of paragraphs 48 through 55 or 76(e)(i) through (xx) of this Assurance. In other words, for any sale after the Effective Date, if a Sales Representative violated any of the requirements of paragraphs 48 through 55 or 76(e)(i) through (xx) or violated any other term of this Assurance, he or she has violated the

terms of this Assurance, even if the consumer has successfully completed a TPV. The consumer's response to a validly obtained TPV may be used to determine whether a complaint is substantiated, whether it is more likely than not that a deceptive sales practice occurred and, if applicable, the nature and extent of any reimbursement, but a validly obtained TPV is not, by itself, sufficient to conclude that a complaint regarding conduct after the Effective Date is unsubstantiated.

79. Any substantiated consumer complaint about a Sales Representative relating to (a) failure to comply with any of the requirements listed in paragraphs 48 through 55 or 76(e)(i) through (xx) of this Assurance, (b) any other deceptive or unlawful practices, or (c) any other violation of the terms of this Assurance, but in all cases involving conduct after the Effective Date, shall trigger an investigation by Family Energy into whether any other consumers enrolled by that Sales Representative were subjected to any of the above-mentioned deceptive and unlawful sales practices. Such investigation shall, at a minimum, include examination of consumer enrollment records and sales service call notes for ten (10) consumers enrolled by the Sales Representative immediately following and ten (10) consumers enrolled immediately preceding the enrollment that triggered the substantiated consumer complaint. If Family Energy identifies additional non-compliant sales (as specified in paragraphs 76(e)(i) through (xx) above), the applicable Marketing Contractor and/or Sales Representative, as the case may be, if then contracted with Family, shall forfeit all sales commissions applicable to the non-compliant sales. Commissions claimed by Sales Representatives arising from sales involving any of the above-mentioned deceptive practices shall be subject to forfeiture by Sales Representatives to Family Energy for a period of six (6) months following the sale, provided that such Sales

Representative's agreement with Family Energy has not been terminated before the non-compliant sale is identified.

80. As of 90 days after the Effective Date, Family Energy's Customer Service Representatives shall ask any consumer who cancels the provision of Retail Electricity and/or Natural Gas Service from Family Energy from a contract made after the Effective Date the reason(s) for the cancellation and shall accurately record the reasons in Family Energy's consumer contact log. If the stated reasons concern a Sales Representative's violation of any of the requirements listed in paragraphs 76(e)(i) through (xx) concerning conduct relating to a sale that occurred after the Effective Date, Family Energy shall follow the procedure set forth in paragraphs 83-85 below.

81. In addition, within fifteen (15) days of the end of each month, Family Energy shall review a random sample of no less than fifty (50) recordings of sales made by Sales Representatives (pursuant to paragraph 73 above) during the prior month to evaluate the sales practices employed by the Sales Representative and ensure that his or her conduct complied with this Assurance. The sample shall include no fewer than three (3) sales for each Sales Representative, unless fewer than three (3) sales were made during the month by said Sales Representative, in which case all sales shall be reviewed. Family Energy shall review each sale by noting compliance or non-compliance with paragraphs 48 through 55 and 76(e)(i) through (xx) above. Whenever such sample reveals one (1) or more non-compliant sales after by an individual Sales Representative, Family Energy shall review the ten (10) sales before and ten (10) sales after the non-compliant sale made by that Sales Representative. Family Energy shall penalize the individual Sales Representative and his or her employer, if a Marketing Contractor,

the amount of the sales commissions applicable to the non-compliant sales it identifies during this process.

82. In addition, within fifteen (15) days of the end of each month, Family Energy shall review a random sample of no less than 25% of all Third Party Verifications that are completed as the result of an In-Person Solicitation occurring after the Effective Date. The sample shall include TPVs for no fewer than three (3) sales for each In-Person Solicitor, unless fewer than three (3) sales were made during the month by said In-Person Solicitor, in which case all TPVs shall be reviewed. If the TPV reveals that an In-Person Solicitor violated or may have violated the provisions of this Assurance and/or the UBP (based on conduct after the Effective Date), then Family Energy shall undertake the investigation described in paragraphs 77 through 79 of this Assurance.

83. In the event that Family Energy determines pursuant to Paragraph 77 that a Sales Representative has violated any term of this Assurance or otherwise engaged in improper, deceptive, or unlawful sales practices (based on conduct after the Effective Date), Family Energy shall take additional prompt and appropriate remedial actions with respect to the Sales Representative, including at a minimum, but not limited to:

- a. For the first violation, provide additional training;
- b. For two (2) violations within a twelve-month period, suspend the Sales Representative for a period of now fewer than two (2) months; and
- c. For any violations in excess of two (2) within a twelve-month period, terminate permanently the Sales Representative from marketing Family Energy's services.

84. Family Energy shall offer a refund in an amount equal to the Financial Difference the consumer incurred to any consumer who has been subjected to any of the deceptive and

unlawful sales practices described in paragraph 76(e)(i) through (xx) provided that such violations occurred after the Effective Date and are brought to Family Energy's attention within twelve months thereafter.

85. In addition, any Telemarketing sale occurring after the Effective Date that is found to have violated the statutes listed in paragraphs 76(e)(xviii), 76(e)(xix), or 76(e)(xx) or their regulations or any amendments shall be deemed invalid, and no enrollment shall be processed and no commissions paid to the Sales Representative or Marketing Contractor, provided that such violations are brought to Family Energy's attention within six months thereafter. And any sale that is found to have been solicited after the Effective Date and in violation of local laws requiring registration or licensing to solicit consumers door-to-door shall be deemed invalid, no enrollment shall be processed and no commissions paid to the Sales Representative or the Marketing Contractor who made the In-Person Solicitation, provided such violations are brought to Family Energy's attention within six months thereafter.

86. Within sixty (60) days of the date of this Assurance, Family Energy shall designate one or more compliance officers, whose duties shall include, at a minimum, all of the following:

- a. Developing and implementing policies and procedures to ensure that Sales Representatives and Customer Service Representatives comply with the terms of this Assurance.
- b. Ensuring that Family Energy and any relevant agents working on Family Energy's behalf comply with paragraphs 56 through 69 and 73 of this Assurance.

- c. Reviewing and approving the training materials and training program for Sales Representatives and Customer Service Representatives referenced in paragraphs 70 and 72 above.
- d. Ensuring that all Sales Representatives and Customer Service Representatives receive the training described in paragraphs 72 above.
- e. Overseeing the investigation of all consumer reports or complaints of improper sales practices as required by paragraphs 76 through 82 above, and ensuring that remedial measures are implemented as set forth in paragraphs 81 through 85 above;
- f. Overseeing the review of sample recorded sales as required by paragraph 81 above, and preparing a written report summarizing the results of the reviews.
- g. Overseeing the review of sample TPVs as required by paragraph 82 above, and preparing a written report summarizing the results of the reviews.
- h. Ensuring that all Sales Representatives and Contractors engaged in Telemarketing comply with the “Do Not Call” New York and federal laws and regulations, including GBL § 399-z and the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), New York and federal laws and regulations governing Telemarketing, including GBL § 399-pp and the TSR, 16 C.F.R. § 310.1 *et seq.*, as well as the New York and federal laws and regulations governing the use of automated dialing equipment and prerecorded messages, including the TCPA, 47 U.S.C. § 227 *et seq.*, the TSR, 16 C.F.R. § 310.4(b)(1)(v), and GBL §§ 399-z, 399-p.
- i. Ensuring that all in-person completed sales comply with all local in-person solicitation laws requiring registration or licensing to solicit consumers door-to-door, which shall include obtaining written proof of such compliance from the employee or Contractor.

MONETARY RELIEF:

87. In consideration of the making and execution of this Assurance, Family Energy shall pay to the State of New York the sum of \$2,150,000.00 to be used by the NYAG for restitution to certain current and former residential and small commercial Family Energy consumers and the administrative costs of said restitution. Such amount shall be due within thirty (30) days after the date of this Assurance. Family Energy shall pay this amount by wire transfer, certified check, or bank check payable to the State of New York.

88. The payment shall be delivered to the State of New York Office of the Attorney General, Bureau of Consumer Frauds and Protection, Attention: AAG Kate Matuschak, Consumer Frauds and Protection Bureau, New York State Office of the Attorney General, 28 Liberty Street, 20th Floor, New York, NY 10005.

89. Within sixty (60) days of the date of this Assurance, Family Energy shall submit to the NYAG an electronic database that identifies the following information for each current or former residential and small commercial Family Energy consumer: name; last known address; telephone number; email address, if known; the period during which the consumer received Retail Electricity Service and/or Natural Gas Service from Family Energy; whether the consumer is still receiving service from Family Energy; the total amount paid by the consumer to Family Energy for Retail Electricity Service and/or Natural Gas Service; and the name of the local Distribution Utility.

90. Within thirty (30) days of the date of this Assurance, Family Energy shall submit to the NYAG an electronic database that identifies all residential and small commercial current and former customers, who enrolled on or after January 1, 2014, who contacted Family Energy, whether orally or in writing, to complain and/or to cancel their Family Energy Service.

91. Restitution shall be distributed by the NYAG in a manner determined by the NYAG to be appropriate. Any funds that remain after the restitution process is completed shall be retained by NYAG as penalties and costs.

92. Any payments and all correspondence related to this Assurance must reference Assurance No. 21-081.

REPORTING AND RECORD-KEEPING:

93. Beginning three months after the Effective Date of this Agreement and continuing for a period of three (3) years thereafter, Family Energy shall submit to NYAG, no later than fifteen (15) days after the conclusion of each three-month period, quarterly reports describing with specificity their compliance with the provisions of this Assurance during the prior quarter.

The reporting shall include:

- a. the compliance executive's report summarizing the results of his or her efforts to ensure compliance with this Assurance and his or her review of compliance checks and sample calls referenced in paragraph 86;
- b. a summary of each consumer complaint received during the quarter concerning the conduct of a Sales Representative, and a summary of all steps taken to investigate and resolve the complaint;
- c. a description of any disciplinary or remedial actions taken with respect to any Sales Representative;
- d. copies of all Advertising that relate to the sale of Retail Natural Gas or Electricity Services in New York State during the quarter, including revisions to Family Energy's website (for the first report, Family Energy must produce all Advertising, for subsequent reports it must produce any Advertising that has changed since prior reports);

- e. any revisions made during the quarter in Sales Representative training materials, disciplinary policies, and consumer contracts or notices;
- f. an accounting of sales commissions withheld from Marketing Contractors and Sales Representatives during the quarter due to non-compliant sales requiring forfeiture of commissions;
- g. documentation that all Contractors who engage in Telemarketing on behalf of Family Energy during the quarter provided proof to the compliance officer before conducting any Telemarketing that such marketing was conducted in accordance with the requirements of the Federal TSR, 16 C.F.R. § 310.1 *et seq.* (including, but not limited to, §§ 310.4(b)(1)(i), 310.4(b)(1)(iii)(B), and 310.4(b)(1)(v)), the TCPA, 27 U.S.C. § 227 *et seq.* and GBL §§ 399-p, 399-pp, and 399-z); and
- h. documentation that all Marketing Contractors and Sales Representatives who make In-Person Solicitations on behalf of Family Energy provided proof to the compliance officer before conducting any In-Person Solicitations that such marketing was conducted in accordance with the requirements of any applicable home solicitation licensing and registration requirements of municipalities where such solicitations took place.

94. Family Energy agrees to cooperate with the NYAG in monitoring and auditing compliance with this Assurance. Family Energy agrees to maintain and preserve the following documents for a minimum of twenty-four (24) months after their creation, and to provide or make these documents available to NYAG upon receiving written request within thirty (30) days of receiving such request copies of:

- a. all Advertising (including point-of-sale Advertisements and Internet Advertisements) issued, published or distributed by Family Energy or its agents or Contractors;

- b. all consumer agreements, consumer account billing records, and consumer communications records (electronic or written);
- c. all recordings made of consumer calls that result in a sale; and
- d. copies of all documents related to consumer complaints and the responses thereto. These records shall contain information identifying the consumer and account at issue, the date the consumer contacted Family Energy, a brief summary of the nature of the consumer's complaint, and the course of action taken by Family Energy to address the consumer's complaint.

MISCELLANEOUS

SUBSEQUENT PROCEEDINGS:

95. Family Energy expressly agrees and acknowledges that the NYAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 102, and agrees and acknowledges that in such event:

- a. Any statute of limitations or other time-related defenses are tolled from and after the Effective Date of this Assurance;
- b. The NYAG may use statements, documents, or other materials produced or provided by Family Energy prior to or after the Effective Date of this Assurance;
- c. Any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Family Energy irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue; and
- d. Evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

96. If a court of competent jurisdiction determines that Family Energy has violated the Assurance, Family Energy shall pay to the NYAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

EFFECTS OF ASSURANCE:

97. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Family Energy. Family Energy shall include in any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the NYAG.

98. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

99. Any failure by the NYAG to insist upon the strict performance by Family Energy of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the NYAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by Family Energy.

COMMUNICATIONS:

100. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 21-081, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic

mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to Family Energy to:

Family Energy, Inc.
Gerry Haggarty, President
Family Energy, Inc.
100 Milverton Drive - Suite 608
Mississauga, Ontario, L5R 4H1

or in his absence, to the person holding the title of Chief Executive Officer.

If to the NYAG, to:

New York State Office of the Attorney General
Bureau of Consumer Frauds and Protection
Attn: Kate Matuschak, Assistant Attorney General
28 Liberty Street
New York, NY 10005
Telephone: (212) 416-8320
Facsimile: (212) 416-6003

or in her absence to, to the person holding the title of Bureau Chief, Bureau of Consumer Frauds and Protection at the same mailing address.

101. Within ten days, Family Energy shall provide written notice to NYAG of any change in address.

REPRESENTATIONS AND WARRANTIES:

102. The NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to NYAG by Family Energy and its counsel and NYAG's own factual investigation as set forth in the NYAG's Findings, paragraphs 2 through 41 above. Family Energy represents and warrants that neither it nor its counsel has made any material representations to the NYAG that are inaccurate or misleading. If any material representations

by Family Energy or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the NYAG in its sole discretion.

103. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Family Energy in agreeing to this Assurance.

104. Family Energy represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Family Energy further represents and warrants that Family Energy, by Gerry Haggarty, President, as the signatory to this AOD, is a duly authorized officer acting at the direction of the Board of Directors of Family Energy.

GENERAL PRINCIPLES:

105. Unless a term limit for compliance is otherwise specified within this Assurance, Family Energy's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Family Energy of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

106. If the NYAG believes that Family Energy has violated a provision of this Assurance, prior to taking legal action to enforce this Assurance as a result of the alleged violation, the NYAG shall notify Family Energy, identifying the alleged violation and the provision of this Assurance in question. Family Energy shall have thirty (30) days (the "Cure Period") to cure the alleged violation and provide the NYAG with a detailed written explanation of the corrective actions taken. In the event a violation has not been cured within the Cure Period, Family Energy shall be in breach of this Assurance. Family Energy shall not, however, be entitled to notice and an opportunity to cure an alleged violation on more than two occasions

or if the NYAG determines in good faith that a threat to the health, safety or welfare of the public requires immediate action.

107. Family Energy agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis.

108. Nothing contained herein shall be construed to limit the remedies available to the NYAG in the event that Family Energy violates the Assurance after its Effective Date.

109. This Agreement shall in no way limit Family Energy's rights to take legal or factual positions in defense of litigation or other legal proceedings.

110. This Assurance may not be amended except by an instrument in writing signed on behalf of all the Parties to this Assurance.

111. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the NYAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

112. Family Energy acknowledges that Family Energy has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

113. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

114. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one

agreement to be valid as of the Effective Date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

115. The Effective Date of this Assurance shall be the date upon which it has been fully executed by all of the signatories hereto.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on the dates set forth below:

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: _____

Date: _____

Jane M. Azia
Bureau Chief, Bureau of Consumer Frauds & Protection

By: _____

Date: _____

Kate Matuschak
Assistant Attorney General, Bureau of Consumer Frauds & Protection

Family Energy, Inc.

By: *Gerry Haggarty* _____

Date: March 4, 2022 _____

Gerry Haggarty
President and Chief Executive Officer

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on the dates set forth below:

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: Jane M. Azia
Date: March 7, 2022

Jane M. Azia
Bureau Chief, Bureau of Consumer Frauds & Protection

By: /s/ Kate Matuschak
Date: March 8, 2022

Kate Matuschak
Assistant Attorney General, Bureau of Consumer Frauds & Protection

Family Energy, Inc.

By: _____
Date: _____

Gerry Haggarty
President and Chief Executive Officer