

**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 16-026**

**MAJOR ENERGY SERVICES, LLC,**

**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 Major Energy Services, LLC and Major Energy Electric Services, LLC (“Major Energy”) pursuant to Executive Law § 63(12), and Article 22-A of the General Business Law (“GBL”) §§ 349, 349-d and 350. This Assurance of Discontinuance (“Assurance”) contains the findings of the NYAG’s investigation and the relief agreed to by the NYAG and Major Energy.

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 or print media used to market Major 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 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 Major Energy, independent agent or contractor whose duties include answering telephone calls, emails or letters from customers making inquiries or complaints about their Major Energy service, or seeking to dispute their Major Energy charges or cancel their Major Energy service.

(g) “**Delivery Service Charges**” shall mean the charges by the local monopoly 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 gas delivered by the Distribution Utility and the Distribution Utility’s 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 G.B.L § 349-d, and specified in Section 10 of the UBP.

(l) “**Financial Difference**” shall mean the difference between Major Energy’s Commodity Services Charges paid by the consumer for a particular time period and the amount the consumer would have paid his/her Distribution Utility during the same time period.

(m) “**Fixed Rate**” shall mean a Commodity Service Charge that is unchanged by the ESCO for a specified period.

(n) “**Force Majeure**” shall mean a material, unavoidable occurrence beyond a party’s control, such as fire, act of god or public enemy, labor strike,

lockout, or other industrial disturbance, act of terrorism, government action, utility action, major weather event, hurricane, flood, explosion, shortage or unavailability of transmission facilities, cyber events, or other unavailability Electronic Data Interchange transactions, and other events that cannot be prevented or overcome by ordinary due diligence.

(o) **“Full Service Customer”** shall mean an electricity or natural gas consumer who purchases his/her energy from the local Distribution Utility.

(p) **“In-person Marketing”** or **“In-person Solicitation”** shall mean offering products or services to prospective customers by means of having a Sales Representative visit the prospective customer’s home or place of business.

(q) **“In-person Solicitor”** shall mean a Sales Representative of Major Energy or its Contractor who performs In-person Marketing or Solicitation.

(r) **“Marketing Contractor”** or **“Contractor”** shall mean an entity or individual retained by Major Energy to solicit consumers.

(s) **“Retail Electricity Service”** or **“Retail Natural Gas Service”** shall mean any Electricity and/or Natural Gas Service marketed or provided to end user customers in New York State.

(t) **“Sales Representative”** shall mean any employee of Major Energy or a Contractor engaged in offering Major Energy’s Retail Electricity and/or Natural Gas Service to consumers, including In-person Solicitors, Telemarketers, Customer Service Representatives and anyone offering Major Energy’s Retail Electricity and/or Natural Gas Service to consumers via the Internet.

(u) “**Telemarketing**” shall mean a sales program or campaign which is conducted to induce the purchase of services by the use of telephone, including inbound and outbound calls.

(v) “**Three-Day Rescission Notice**” shall mean a written notice delivered to a residential consumer informing him/her of the right to cancel any ESCO contract within three business days from when the Notice is received, as specified in Section 5 of the UBP.

(w) “**Uniform Business Practices**” or “**UBP**” shall mean the ESCO business practices and marketing rules adopted by the New York State Public Service Commission in Case 98-M-1343, as amended.

(x) “**Variable rate**” shall mean a Commodity Service Charge that is subject to adjustment by the Distribution Utility or ESCO. An ESCO’s Variable Rate may be greater or less than the Distribution Utility’s rate for the same time period.

(y) “**Third Party Verification**” or “**TPV**” shall mean the recorded telephone process described in Section 5, Attachment 1 of the Uniform Business Practice rules for ESCOs adopted by the New York State Public Service Commission.

## I. 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 provide consumers with a choice of providers and services, lower prices and promote competition.<sup>1</sup>

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 recent years in order to provide greater protections for energy consumers.<sup>2</sup>

4. Consumers can purchase electricity and/or natural gas from either an ESCO or their local Distribution Utility. However, electricity and gas is 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 utility's Delivery Service Charges and the ESCO's Commodity Service Charges.

5. The UBP requires that consumers solicited by an ESCO receive certain notices. During any In-person Solicitation, the UBP requires ESCOs or their Marketing Contractors to provide consumers with the ESCO Consumers' Bill of Rights Notice, Customer Disclosure Statement and the Three-Day Rescission Notice along with the

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

<sup>2</sup> PSC Case 98-M-1343, Opinion 99-3, *Opinion and Order Concerning Uniform Business Practices* (Feb. 16, 1999), available at [documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={8543A612-83DD-45E3-9262-EB1CBF591743}](https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={8543A612-83DD-45E3-9262-EB1CBF591743}); see, e.g., State of New York Public Service Commission Uniform Business Practices (Feb. 2016), available at [www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/8dd2b96e91d7447e85257687006f3922/\\$FILE/UBP%20Manual%20Feb%202016%20Final.pdf](http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/8dd2b96e91d7447e85257687006f3922/$FILE/UBP%20Manual%20Feb%202016%20Final.pdf).

contract terms and conditions prior to obtaining the consumer's acceptance of an ESCO offer. Following telephone enrollments, the UBP requires ESCOs to mail consumers these Notices.

6. In addition, the UBP requires ESCOs to verify certain aspects of telephone enrollments by a Third-Party Verification. The UBP also provides that when a consumer contracts with an ESCO, the ESCO notifies the Distribution Utility to switch providers. The UBP requires the Distribution Utility to mail, email, or facsimile the consumer a notice to confirm the ESCO enrollment was authorized, and the ESCO mails, emails or faxes the consumer a welcome package containing the Contract and Notices listed above, if not previously delivered.

7. Over the years, switching service to an ESCO had been a process that had taken 30 or more days.<sup>3</sup> Consumers often 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.

## **B. Major Energy**

8. Major Energy is a New York limited liability corporation with its principal offices located at 100 Dutch Hill Road, Suite 230, Orangeburg, NY 10962. Major Energy is also an ESCO authorized by the PSC to provide Retail Natural Gas and

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<sup>3</sup> Over the years, the PSC has implemented two changes to the UBP designed to accelerate the time in which account transfers occur. See Case 12-M-0476, *Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-Residential Retail Energy Markets in New York State*, Order Authorizing Accelerated Switching of Natural Gas Commodity Supplies and related Matters, Dec, 23, 2015, at pp. 2-3; available at <http://documents.dps.ny.gov/public/MatterManagement/MatterFilingItem.aspx?FilingSeq=151570&MatterSeq=41126>. Switching retail electricity service now takes up to five (5) business days and up to one billing cycle, plus five (5) business days, depending on the time of the customer's request and the date of the customer's reading. See *id.* at 3. Switching natural gas service now takes as few as ten (10) business days and up to two billing cycles.

Electricity Services to residential and commercial customers in New York State and provides retail gas and electricity in seven (7) other states.

9. Major Energy offered consumers a Fixed Rate contract for the supply of electric and/or gas services for a period of six (6), twelve (12) or twenty-four (24) months. After the fixed rate term of the contract expires, unless otherwise agreed to, the contract renews in certain contracts for the same term at a new fixed rate and in other contracts as a variable rate on a month-to-month basis. Since 2006, Major Energy also offered consumers a Variable Rate contract on a month-to-month basis that automatically renews unless a party directs otherwise. A variable rate permits Major Energy to adjust consumer prices at any time in response to a number of factors, including its costs and the wholesale energy market.

10. Because Major 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 gas supplied by Major Energy and that of its competitors. Major Energy competes with the Distribution Utilities and other ESCOs primarily on the basis of price. As complaints with the PSC indicate, for many consumers the primary reason to switch to an ESCO was to save money on their electricity costs. But the savings consumers give up by switching to Major Energy are typically not offset by the value of the other services Major Energy offers.

11. Major Energy solicits new customers through Telemarketing and In-person Solicitations, and through brochures, postcards, television, radio and online advertising and social media as well as through marketing agreements with organizations such as the New York Knicks, Rangers and Yankees. From 2011, Major Energy's



Marketing Contractors employed Sales Representatives to pitch Major Energy's services to consumers by telephone or at the consumers' homes, or at retail sales locations. Major Energy provided training materials for the Sales Representatives employed by its Contractors including sales and TPV scripts, background information, brochures and other marketing materials. Major Energy has marketed solely through Marketing Contractors.

12. From at least 2011 through at least 2016, these Marketing Contractors repeatedly engaged in deceptive business practices, described below, and the Attorney General's Office has reviewed more than 300 consumer complaints filed with the PSC regarding Major Energy's marketing practices.

**C. Major Energy's Deceptive Practices**

13. Major Energy made false and misleading savings and price claims in its advertising and through Marketing Contractors performing Telemarketing and In-person Solicitations. Yet the actual Commodity Service Charges paid by consumers who switched to Major Energy were on average higher than they would have been with their local Distribution Utility.

14. Major Energy also engaged in a variety of other deceptive practices, including high pressure sales tactics, and switching consumers to its service without their consent (commonly known as "slamming"). Consumers also encountered difficulties when they attempted to cancel their contracts.

**a. False and Misleading Door-to-Door Sales**

15. Major Energy's door-to-door sales scripts directed Sales Representatives to ask to review the consumer's utility bill purportedly to see if consumers qualified for

purported savings. After being shown a bill, Major Energy Sales Representatives were told to tell consumers that they qualified for the program and/or its purported savings.

16. For example, Major Energy’s door-to-door script for fixed rate contracts advised Sales Representatives to tell consumers “[w]e are in the area today to see your electric bill to see if we can give you a special fixed rate price protection plan on the supply portion of the bill.” After reviewing the bill, the Sales Representatives were instructed to say, “Great! You qualify for our price protection plan.”

17. Similarly, Major Energy’s door-to-door script for variable rate contracts directed Sales Representatives to tell consumers “[w]e’re just stopping by to review your energy bill/s.” Sales Representatives were also instructed to say– “with confidence” – “I need to see a copy of your ELECTRIC (and/or) GAS bill to see if your household is eligible for possibly getting better energy rates.” After being handed the bill from consumers, the Sales Representatives were instructed to “take a step back and review [the bill] carefully for five long seconds.” Invariably customers “qualif[ied] for the price protection plan.”<sup>4</sup> Door-to-door Sales Representatives were instructed to give the following pitch: “see BEFORE, there was NO COMPETITION (MONOPOLY COULD CHARGE WHATEVER THEY WANT) so you had no choice, AFTER DEREGULATION, WITH COMPETITION (THE UTILITY MONOPOLY IS BROKEN UP) so you MAY see better rates . . . (See Energy Supply Companies typically have lower costs THAN the BIG Utility, which means savings to consumers . . . .”

18. Major Energy advised its Sales Representatives to use a variety of deceptive and high pressure sales tactics in order to make a sale. For example, Major

Energy advised its Sales Representatives to tell consumers who were not interested in making a switch, “I know you probably think that I’m trying to sell you something . . .” when the purpose of the visit was to make a sale and not to simply provide information.

19. In response to consumers who requested more information before making a decision, Major Energy Sales Representatives were told to advise: “[a]ctually (local utility) has sent out lots of information . . . . Unfortunately many people never took the initiative to get savings that they may be MISSING, that’s why I’m here . . . . I don’t know how long this offer will last . . . . I’d hate to see you pay more, while your neighbors may be paying less for the SAME EXACT SERVICE!”

20. A script also told Sales Representatives to instruct consumers that they “only needed to say ‘yes’” to the questions asked in the TPV call. The purpose of the TPV call is to confirm that consumers understand that they are consenting to enroll with an ESCO, and that they understand the implications of that enrollment. By instructing these consumers to answer “yes” to each of the TPV call questions, Major Energy’s Sales Representatives made it impossible for the TPV to have its intended purpose – to ensure that consumers understand what they are agreeing to.

21. In-person Solicitors also engaged in other deceptive tactics to get consumers to switch their accounts. Examples of such tactics include the following: (1) Solicitors claiming that they worked for the Public Service Commission, the Utility or for the State; (2) utilizing English-speaking Solicitors in conversations with non-English speaking consumers for the purpose of enrolling them with Major Energy; (3) Solicitors getting approval to change service from persons not competent to give approval; (4) Solicitors getting approval to change service from consumers who were unable to read

the terms and conditions of the contract; (5) Solicitors impersonating the utility company; (6) Solicitors refusing to leave a household until a consumer had switched to Major Energy; and (7) Solicitors telling consumers that they had been overcharged because of new legislation to convince them to change service. Solicitors also provided false reasons to gain access to the consumer's utility bill and account number and then used them to switch the consumer to Major Energy without the consumer's approval, as described in paragraph 32.

**b. False and Misleading Telemarketing Practices**

22. Major Energy's telemarketing scripts told Sales Representatives to solicit consumers in a similar manner as the practices described above for door-to-door sales. The scripts failed to explain that the rate might, and routinely did, exceed the Distribution Utility's rate, and did not always lead to savings.

23. In telephone solicitations to prospective customers involving the promotion of variable rate contracts, Sales Representatives, in accordance with the script, repeatedly promised consumers potential savings that they may be missing. A variable rate script also promised that consumers "may get competitive variable rates with historical savings of up to 5 to 10% on the supply portion with Major Energy."

24. In some telephone solicitations to prospective customers involving the promotion of fixed rate contracts, Sales Representatives pitched "a competitive fixed rate"; they also described this as "a plan with a rate that WILL NOT increase and it's already lower than Con Ed's . . . . And this rate is guaranteed NOT to increase for a year."

25. In telemarketing sales calls, Major Energy sales representatives frequently asked consumers to provide their account information to determine whether they were entitled to a “savings” or to see if they “qualif[ied].” Some scripts instructed Sales Representatives to tell consumers, “if you would like to take advantage of the savings, you will need to locate a copy of your electric bill so I can quickly show you exactly where the savings can be applied.”

26. Some Major Energy’s telemarketing sales scripts did not require Sales Representatives to ask whether the person answering the sales call was the Customer of Record, was his/her spouse or, whether the person was 18 years old and authorized by the Customer of Record to consent to the switch. Instead, the scripts directed Sales Representatives to make affirmative statements such as “you are over 18, the account holder, spouse of the account holder, or authorized to make account decision” without confirming the person’s age or authorization to consent to a change.

27. Some Sales Representatives also failed to consistently ensure that the person consenting to a new provider was authorized to make that decision. Instead, many Sales Representatives pitched Major Energy’s electric and gas offer to household members who were without authority to make changes to the account on behalf of the Customer of Record, and used those individuals’ approval to effect the provider switch without verifying that the decision was authorized by the Customer of Record or another person with authority to make changes to the account.

28. At the conclusion of sales marketing calls, Sales Representatives sometimes coached consumers on how to answer the TPV questions in order to switch to

Major Energy instructing them to respond “yes” to all questions asked during the TPV portion of the call.

29. Telemarketing Sales Representatives also engaged in other deceptive techniques in order to convince consumers to switch their accounts to Major Energy. Sales Representatives also represented themselves as working for a utility in order to gain access to the consumer’s account information and then switching consumers without authorization.

**c. False and Misleading Advertising**

30. In print advertising distributed to consumers, Major Energy represented, without adequate substantiation, that it offered the “best available rates” for gas and electricity.

31. In print advertising distributed to consumers, Major Energy represented, that “[u]nlike any other ESCO” Major Energy will give consumers “tools to manage and monitor [their] energy consumption and control [their] costs.” However, such tools were not materially effective in monitoring and controlling energy consumption and costs.

**d. Slamming**

32. Major Energy repeatedly switched consumers to its own services without their consent using a variety of tactics, including obtaining account information under false pretenses, failing to confirm consent from a person authorized to switch services, and encouraging consumers to short-circuit the third-party verification process. These tactics each constitute a practice known as “slamming.”

33. Major Energy Sales Representatives at times impersonated consumers in

order to switch them over to Major Energy. Major Energy's own internal investigations of the conduct of its Sales Representatives reveal numerous examples of misconduct.

34. In telemarketing sales calls, Major Energy encouraged consumers to locate their bills and provide their account numbers in order to determine whether they were eligible for savings. Its Sales Representatives did not inform the consumers that the account numbers would be used to transfer the consumers' accounts to Major Energy.

**e. Failure to Comply with Customer Contact, Renewal and Cancellation Procedures**

35. Major Energy's cancellation policy provided that variable rate agreements can be terminated without a fee. However, the fee for terminating a fixed rate agreement obtained through door-to-door marketing was \$100 if the remaining term is less than 12 months and \$200 if the remaining term is 12 months or more. For fixed rate contracts not obtained through door-to-door marketing, the termination fee was the greater of \$500 or the projected amount of natural gas or electricity to be consumed by the customer for the remainder of the term, multiplied by 2 cents per KWh and/or 20 cents per therm. The termination fee for fixed rate contracts not obtained through door-to-door marketing is a direct violation of the UBP, which does not allow cancellation fees for these types of sales.

36. Major Energy's sales agreement provided that customers may contact its Customer Service Center, Monday through Friday 8:00 a.m. - 8:00 p.m. However, when consumers call Major Energy to cancel their contracts, they often were unable to reach anyone, and at times they were unable to leave a message because Major Energy's voicemail box was full.

37. By failing to answer consumers' calls, Major Energy delayed consumers' attempts to cancel Major Energy's service and Major Energy was able to bill consumers for additional months. Major Energy also charged early termination fees to consumers who were unable to terminate their contracts before the applicable deadline because of problems notifying Major Energy, as discussed above.

38. Major Energy renews fixed rate contracts for 6, 12 and 24 month renewal periods. After the fixed rate term of the contract expires, unless otherwise agreed to, the contract renews in certain contracts for the same term at a new fixed rate and in other contracts as a variable rate on a month-to-month basis.

39. Major Energy was acquired in 2016 and its management was replaced. Currently, Major Energy has no employees and does not employ the individuals who were involved in the conduct identified above.

40. The NYAG finds that Major Energy's practices as described in paragraphs 2-39 above constitute repeated violations of GBL Article 22-A, §§ 349, 349-d and 350; the UBP; and Executive Law § 63(12).

## **II. PROSPECTIVE RELIEF**

**WHEREAS**, Major Energy neither admits nor denies the NYAG's Findings in paragraphs 2-39;

**WHEREAS**, Major Energy enters into this Assurance solely for the purpose of avoiding costly and protracted litigation;

**WHEREAS**, the NYAG is willing to accept the terms of this Assurance pursuant to New York Executive Law § 63(15) and to discontinue its investigation;



**WHEREAS**, the parties hereto wish to fully and finally resolve all claims that are the subject of this Assurance; and

**WHEREAS**, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY AGREED by NYAG and Major Energy, its parents, principals, successors and assigns and on behalf of its agents, representatives, employees and by any corporation, subsidiary or division through which it acts or hereafter acts, as follows with respect to Major Energy's operations in New York State:

1. Major Energy shall comply with Article 22-A of the GBL §§ 349, 349-d, and 350; 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, regulations, and rules that may be adopted subsequent to the execution of this Assurance.

2. All Prospective Relief in Article II of this Assurance shall only apply to new residential and small business enrollments occurring more than thirty (30) days following the Effective Date of this Assurance.

3. Major Energy shall provide a copy of this AOD, or a copy of the injunctive terms contained in this AOD, to its Marketing Contractors and shall be responsible for ensuring that Sales Representatives employed by Marketing Contractors on behalf of Major Energy comply with Paragraph 1 above and adhere to the business practices enumerated in Paragraphs 4 through 6 below. Following the execution of this Assurance, Major Energy shall comply with the requirements set forth below: (A) Sales/Enrollment Practices; (B) Advertising; (C) Contract Terms; Renewal and

Cancellation Policies; (D) Training; and (E) Monitoring Sales Practices, as contained in Paragraphs 3 through 25.

**A. Sales Practices and Enrollment Process**

4. Sales Representatives and Major Energy employees if engaged in enrolling new customers shall not:

a. make any materially false or misleading representations, directly or by implication, to induce consumers to purchase Retail Electricity Service and/or Natural Gas Service;

b. make representations, directly or by implication, about savings that consumers may realize from switching to Major Energy that are not fully substantiated by a twelve consecutive months' rate comparison of Major Energy's pricing to the consumer's Distribution Utility pricing for comparable services during the same period within eighteen months of the representation;

c. make any written representation, directly or by implication, about savings that consumers may realize from switching to Major Energy's variable price offers unless Major Energy Clearly and Conspicuously discloses in close physical proximity to such representation that:

i. Major Energy's Commodity Service Charge varies from month-to-month; and

ii. a consumer's total monthly electricity and/or natural gas costs under Major Energy's pricing structure 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;

d. make any material oral representation, directly or by implication, about savings that consumers may realize from switching to Major Energy's variable price offers unless Major Energy discloses the information in 3(c)(i) and (ii) before the consumer accepts the offer;

e. other than in connection with a materially accurate description of Distribution Utility Services, represent, directly or by implication, that Major Energy is working on behalf of, in cooperation with, or "for" the consumer's local Distribution Utility, or is affiliated in any way with the local Distribution Utility; including, but not limited to wearing any apparel or insignia resembling any Distribution Utility uniform, except for commonly used safety gear such as a reflective vest;

f. represent, directly or by implication, that Major Energy is providing a service that is "authorized by" or "approved by" the consumer's local Distribution Utility;

g. represent, directly or by implication, that Major Energy is working on behalf of, in cooperation with, or "for" the New York State Public Service Commission ("PSC") or any other governmental regulatory agency, or is affiliated in any way with such entities;

h. enter into a sales agreement or change the commodity provider for any customer that is not personally accepted by the Customer of Record or his/her spouse or another person who in fact has or expressly states that they have authority to make changes to the account, and Sales Representatives shall have any person who grants consent to a service change on behalf of a Customer of Record make an appropriate and express representation that he or she is, in fact, so authorized;

i. offer or enter into a sales agreement, or present to a consumer the Required Disclosures, in any language that is different from the language used by the Sales Representative in soliciting the consumer; and

j. instruct consumers as to the manner in which to respond to questions, or participate in the Third Party Verification of any sale other than to address logistical requirements. For example, Major Energy shall not instruct consumers to answer “Yes” to all questions or to not ask questions during the Third Party Verification portion of the sales call.

5. Major Energy’s In-person Solicitors shall wear a cap, jacket, shirt, lanyard or other clothing branded with Major Energy logos that are visible to the consumer; display accurate photo identification; and affirmatively identify themselves as representatives of Major Energy when soliciting consumers. All Sales Representatives involved in the marketing of Major Energy’s products or services shall begin every communication with a potential customer by stating in substantially the following manner:

My name is [Sales Representative’s name]. I represent Major Energy . Major Energy can provide you with your electricity and/or natural gas. I do not work for or represent your utility.

All Sales Representatives involved in the marketing of Major Energy’s products or services shall include in every communication with a potential customer an explanation that if the customer receives services from Major Energy, his/her bill will reflect a Commodity Charge from Major Energy plus a Delivery Charge from the Distribution Utility for its delivery of the commodity. In the future, if Major Energy bills consumers directly, Major Energy’s bills shall substantially comply with the foregoing two

sentences. All Advertising shall Clearly and Conspicuously display Major Energy brand identification information and may not identify any Distribution Utility by name except to identify that a product is available in a specific Distribution Utility's service territory.

6. When enrolling new customers, Major Energy shall comply with the requirements set forth in Sections 5 and 10 and Attachments 1 through 4 to Section 5 of the UBP, as may be amended by the PSC, as applicable to each individual sale. In-person Solicitors shall provide consumers with the Required Disclosures and contract terms and conditions **before** presenting a contract for the consumer's signature and inform consumers that the document sets out their rights and obligations. When a consumer is enrolled via the telephone, Major Energy shall mail the consumer the Required Disclosures and the contract terms and conditions via regular mail, email, or facsimile within three (3) business days.

**B. Advertising**

7. In all Advertising to consumers, Major Energy shall not represent that they provide gas and electric at the best available rate.

8. In all Advertising to consumers, Major Energy shall not utilize charts comparing the energy rates that they offer as opposed to other utility rates without identifying the time period involved and the source for the alternative comparison.

9. In all Advertising to consumers, Major Energy shall not represent that it will give consumers "tools to manage and monitor [their] energy consumption and control [their] costs" unless these tools are capable of providing a substantiated benefit to a Major Energy customer.

**C. Contract Term, Renewal and Cancellation Policy**

10. All variable price retail contracts for Retail Electricity Service and/or Natural Gas Service executed after the date of the execution of this Assurance shall be for a period of one (1) month-to-month basis, to continue automatically at the end of each month unless either party notifies the other party orally or in writing that the contract is to be terminated. Major Energy shall disclose this term and cancellation policy Clearly and Conspicuously on the front side of its sales contracts within the Customer Disclosure Statement. This sales contract shall be provided to all customers who purchase variable pricing Retail Electricity Service and/or Natural Gas Service from Major Energy.

11. All fixed rate retail contracts for Retail Electricity Service and/or Natural Gas Service executed after the date of the execution of this Assurance shall disclose the initial term and renewal provisions Clearly and Conspicuously on the front side of its sales contracts within the Customer Disclosure Statement. Any early termination fee shall also be disclosed Clearly and Conspicuously on the front side of its sales contracts within the Customer Disclosure Statement, and for residential customers shall be consistent with the limitations set forth in GBL §349-d.

12. Automatic renewals of fixed rate contracts for residential customers shall comply with the provisions set forth in GBL § 349-d (6) by providing written notice “clearly informing the customer in writing, not less than thirty days nor more than sixty days prior to the renewal date, of the renewal terms and of his or her option not to accept the renewal offer”.

13. Whenever any consumer notifies Major Energy by telephone or in writing of his/her desire to terminate a service contract, Major Energy shall notify the appropriate local Distribution Utility within two (2) business days to switch the consumer

back to the Distribution Utility. Other than the provisions of the preceding paragraph pertaining to fixed rate contracts terminated prior to expiration of their initial term, no charge for returning such consumers to the Distribution Utility shall be imposed by Major Energy. Consumers will be responsible for payment of any Retail Electricity Service and/or Natural Gas Service provided by Major Energy until the consumer's service with the Distribution Utility begins, provided that Major Energy has given notice to the Distribution Utility within two (2) business days as provided above. If, for reasons other than a Force Majeure event, Major Energy delays giving the Distribution Utility notice of the consumer's cancellation beyond two (2) business days, Major Energy shall reimburse the consumer twice the Financial Difference incurred by the consumer for the period caused by such delayed notice. As long as Major Energy has notified the Distribution Utility of the customer's cancellation within two (2) days, it will not be held responsible under the terms of this AOD for any financial harm incurred as a result of any delay by the Distribution Utility's in returning the customer to the Distribution Utility.

14. Major Energy shall ensure that its toll free numbers are adequately staffed by properly trained employees and that its voice mail is operable so that messages left from customers are returned/acted upon.

15. Major Energy shall not charge customers early termination fees where such customers did not knowingly sign up for Major Energy services and later canceled such services. Major Energy shall not charge customers early termination fees where such customers attempted to cancel services within the applicable deadline but were unable to do so because of they could not speak with a Major Energy customer service representative or leave a voicemail canceling service.

**D. Training**

16. Major Energy shall prepare training materials and a training program for Sales Representatives and Customer Service Representatives that accurately and comprehensively cover:

- a. the requirements of this Assurance, GBL § 349-d and Chapters 5 and 10 of the UBP, including both prohibited practices and affirmative requirements;
- b. an express warning that deceptive sales practices will not be tolerated by Major Energy's management;
- c. an express warning that deceptive sales practices may carry legal consequences for Sales Representatives;
- 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.

Major Energy shall provide to NYAG a copy of all training materials, electronic or paper, prepared pursuant to this Assurance, at least 30 days prior to Major Energy's distribution of these materials to its Marketing Contractors, Sales Representatives and Customer Service Representatives. Once the NYAG has reviewed the materials, it will convey any concerns to Major Energy within ten (10) days of receipt of the materials, and Major Energy shall respond within ten (10) days. The NYAG agrees not to unreasonably withhold approval of any training materials. This approval process shall not limit Major



Energy's ability to make non-material adjustments to its training materials which do not alter the requirements of a-e.

17. Major Energy shall require Marketing Contractors to provide this training, along with Major Energy's training materials, to each Sales Representative employed by the Contractor as a condition of employment. Training for Sales Representatives and Customer Service Representatives who are Major Energy employees as of the date of this Assurance shall be conducted in-person or on-line within 180 days of the date of this Assurance, if not already completed, unless the NYAG authorizes an extension of the 180 day deadline. All Sales Representatives and Customer Service Representatives employed by Contractors and Major Energy employees hired after the date of this Assurance must complete this training prior to conducting any sales calls or door-to-door solicitations. Major Energy shall continue to 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 Practices**

18. Major Energy shall record all communications between consumers and its Customer Services Representatives. Major Energy shall also require that its Sales and Customer Service Representatives and Contractors record all marketing communications with consumers that result in a sale, including all communications required by the UBP, including but not limited to the disclosures required under Section 10. Major 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 for any enrollment

unless a recording of the entire sales presentation to that consumer is supplied to Major Energy within three days of the sale.

19. Major Energy shall conduct a prompt and good faith investigation of all oral, electronic and written consumer reports that are received by Major Energy that indicate Sales Representatives' misconduct, including, but not limited to, reports that the Sales Representative falsely promised bill savings, misrepresented that he/she worked on behalf of the Distribution Utility or a government agency, used high pressure sales tactics, failed to comply with the mandatory disclosures of paragraphs 4-6 above or violated other provisions of this Assurance or the UBP. With respect to each such complaint, Major Energy will:

- a. identify, wherever possible, the Sales Representative responsible for the alleged misconduct;
  - b. review the recording of the sale;
  - c. use its best efforts to 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 for any Financial Difference whenever the investigation concludes that any of the following deceptive sales practices occurred:
    - i. the customer of record or his/her spouse or authorized representative did not authorize the Major Energy enrollment;
    - ii. the consumer was promised savings or lower utility bills during the sale that were not fully substantiated by a twelve consecutive months' rate

comparison of Major Energy's pricing to the consumer's Distribution Utility pricing for comparable services during the same period within eighteen months of the representation;

iii. the Sales Representative failed to clearly disclose that he/she was offering services for Major Energy;

iv. the Sales Representative failed to clearly disclose that Major Energy is not affiliated in any way with the Local Distribution Utility;

v. the Sales Representative misrepresented that he/she was working for or at the direction of, or impersonated the Local Distribution Utility or any governmental agency;

vi. the Sales Representative failed to disclose that Major 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;

vii. the Sales Representative failed to provide the consumer a copy of the Required Disclosures prior to enrolling the consumer;

viii. the Sales Representative used high pressure sales tactics to intimidate the consumer into accepting Major Energy's offer;

ix. the Sales Representative knowingly solicited the consumer at his or her home or place of business in violation of local municipal home solicitation registration or licensing requirements.

Major Energy shall review each instance of alleged misconduct as required by Paragraphs 18 and 19 of this Assurance and maintain internal written records for a period of three (3) years regarding compliance or non-compliance with the provisions of Paragraph 19.

20. Any substantiated and material consumer complaint about a Sales Representative or any other substantiated information indicating that a Sales Representative has violated any term of this Assurance, or otherwise engaged in improper sales practices, shall trigger an investigation by Major Energy into whether any of the other Major Energy consumers enrolled by that Sales Representative were subjected to sales practices that violated the terms of this Assurance or were otherwise improper. Such investigations shall, at a minimum, include examination of consumer enrollment records and sales service call notes for the ten consumers enrolled by the Sales Representative immediately following and immediately preceding the enrollment that triggered the substantiated consumer complaint covering a maximum time span of six months. If Major Energy identifies additional substantiated and material non-compliant sales (as specified in paragraph 19 above), the Marketing Contractor or Sales Representative shall forfeit an amount equal to the total sales commissions applicable to the Marketing Contractor or Sales Representative's total sales commissions multiplied by the percentage of non-compliant sales found in the twenty-or-more-consumer review but only if the percentage of non-compliant sales is at least fifteen percent of the total number of sales in the twenty-or-more-consumer review. Commissions claimed by Marketing Contractors or Sales Representatives arising from sales involving any of the above-mentioned deceptive practices shall be subject to forfeiture for a period of six months following the sale.

21. Major Energy's Customer Service Representatives shall ask any consumer who cancels service the reason(s) for the cancellation and shall accurately record the reasons in Major Energy's internal consumer contact log. If the stated reasons

concern a Sales Representative's substantiated violations of any of the requirements listed in paragraph 19, Major Energy shall follow the procedure set forth in paragraph 19 above.

22. In addition, within fifteen (15) days of the end of each month, Major Energy shall review a random sample of the greater of 5% or 50 of the recordings of sales made by Sales Representatives of each Contractor 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 sales for each Sales Representative, unless fewer than three sales were made during the month by said Sales Representative, in which case all sales shall be reviewed. Major Energy shall review each sale by noting compliance or non-compliance as set forth in paragraphs 18-19 above. Whenever such sample reveals two or more substantiated non-compliant sales by an individual representative, Major Energy shall treat those sales in the manner set forth in paragraph 20.

23. In the event that Major Energy determines that a Sales Representative has violated any term of this Assurance or otherwise engaged in materially improper sales practices, Major 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 violations within a six-month period, suspend the Sales Representative for a period of no fewer than one month; and

c. For any violations in excess of two within a six-month period, disqualify permanently the Sales Representative from marketing Major Energy's services.

24. Major Energy shall offer a refund in an amount equal to the Financial Difference the consumer incurred to any consumer who has been subjected to sales practices that violate the terms of this Assurance in an amount described in Paragraph 19 to the extent such violations are brought to Major Energy's attention within six months or a reasonable time thereafter under the individual circumstances.

25. Major Energy shall continue to employ a compliance executive whose duties shall include, at a minimum:

a. Developing and implementing policies and procedures sufficient to ensure that Sales Representatives and Customer Service Representatives comply with the terms of this Assurance;

b. Reviewing and approving the training materials and training program for Sales Representatives and Customer Service Representatives referenced in paragraph 16 above;

c. Ensuring that all Sales Representatives and Customer Service Representatives receive the training described in paragraphs 16-17 above;

d. Overseeing the investigation of all consumer reports or complaints of improper sales practices as required by paragraphs 19 and 20 above, and ensuring that remedial measures are implemented as set forth in paragraphs 20, 23 and 24 above;

e. Overseeing the review of sample recorded sales as required by paragraph 22 above, and preparing an internal written report summarizing the results of the reviews;

### **III. MONETARY RELIEF**

26. In consideration of the making and execution of this Assurance, Major Energy will pay by certified or bank check payable to the State of New York the sum of One Million Five Hundred Thousand Dollars (\$1,500,000) to be used by the NYAG for restitution to certain current and former Major Energy consumers and the administrative costs of said restitution. Such amount shall be payable within thirty (30) days after the date of this Assurance. Restitution shall be distributed by the NYAG in a manner determined by the NYAG to be appropriate. The payment shall be delivered to the State of New York Office of the Attorney General, Bureau of Consumer Frauds and Protection, Attention: AAG Joseph P. Mueller, Consumer Frauds and Protection Bureau, New York State Office of the Attorney General, 120 Broadway, 3rd Floor, New York, NY 10271.

27. Within thirty (30) days of the date of this Assurance, Major Energy shall submit to the NYAG an electronic database that identifies the following information for each current or former Major 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 Major Energy; whether the consumer is still receiving service from Major Energy; the total amount paid by the consumer to Major Energy for Retail Electricity Service and/or Natural Gas Service; and the name of the local Distribution Utility. Within ten days of the execution of this Assurance, Major

Energy will provide NYAG with a consumer contact log database updated to include all call entries from March 27, 2015 through the execution date of this Assurance.

28. Major Energy shall pay this amount by wire transfer, certified or bank check payable to the State of New York and delivered to the State of New York Office of the Attorney General, Bureau of Consumer Frauds and Protection, Attention: AAG Benjamin J. Lee, 120 Broadway, 3<sup>rd</sup> Floor, New York, NY 10271. Any payments and all correspondence related to this Assurance must reference Assurance No. 16-026.

29. Any funds that remain after the restitution process is completed shall be retained by NYAG as additional penalties and costs.

30. Any payments and all correspondence related to this Assurance must reference Assurance No. 16-026.

#### **IV. REPORTING AND RECORD-KEEPING**

31. Beginning six months after the Effective Date of this Agreement and continuing for a period of three (3) years thereafter, Major Energy shall submit to NYAG, no later than fifteen 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 review of compliance checks and sample calls referenced in paragraph 22;
- b. a summary of each substantiated 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 substantiated 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 to the extent that such Advertising has changed since prior reports;
- e. any revisions made in Sales Representative training materials, disciplinary policies, and consumer contracts or notices;
- f. an accounting showing compliance with the provisions herein requiring penalizing Marketing Contractors;
- g. documentation that all telemarketing Contractors retained by Major Energy provided proof to the compliance officer before conducting any telephone solicitations that such marketing was conducted in accordance with the requirements of the federal Telephone Consumer Protection Act, 27 U.S.C. § 227 and G.B. L. §§ 399-p and 399-z;
- h. documentation that all In-person Solicitation Marketing Contractors and Sales Representatives retained by Major 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; and
- i. documentation of any price comparison data used by Major Energy in compliance with paragraph 3(b) above.

32. Major Energy agrees to cooperate with NYAG and any third party entity approved by NYAG to monitor and audit compliance with this Assurance. Major Energy agrees to maintain and preserve, following the Effective Date of this Assurance, the following documents for a minimum of twenty-four months, and to provide or make these documents available to NYAG upon receiving written request within fifteen (15) days of receiving such request copies of:

a. all Advertising (including point-of-sale Advertisements) issued, published or distributed by Major 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 solicitations that result in a sale; and

d. copies of all documents related to consumer complaints and consumer inquiries and the responses thereto. These records shall contain information identifying the consumer and account at issue, the date the consumer contacted Major Energy, a brief summary of the nature of the consumer's complaint or inquiry, and the course of action taken by Major Energy to address the consumer's complaint or inquiry. Major Energy may request additional time to make documents available pursuant to this paragraph and NYAG shall accommodate such request if reasonable.

## **VI. CONFLICTS**

34. Notwithstanding anything else in this Assurance, if compliance with any provision of this Assurance would render compliance with any provision of New York or federal laws or regulations relating to the same subject matter impossible, then compliance with such provision of state or federal law or regulation shall be deemed compliance with

the relevant provision of the Assurance. Major Energy shall provide written notice to the OAG within fifteen (15) days of its determination that compliance with a provision of this Assurance is rendered impossible by state or federal law or regulation.

#### **VII. NOTICE OF POTENTIAL NONCOMPLIANCE**

35. If the NYAG believes that Major 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 Major Energy, identifying the alleged violation and the provision of this Assurance in question. Major 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, Major Energy shall be in breach of this Assurance. Major 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.

#### **V. MISCELLANEOUS**

36. This Assurance resolves and releases all claims by the NYAG that are the subject of this Assurance, provided, however, that nothing in this Assurance shall be deemed to preclude the NYAG’s review of acts, practices or courses of conduct that occur after the Effective Date of this Assurance or any claims that may be brought by the NYAG to enforce Major Energy’s obligations arising from or relating to the provisions contained in the Assurance.

37. NYAG has agreed to the terms of this Assurance based on, among other

things, the representations made to NYAG by Major Energy and its counsel and NYAG's own factual investigation as set forth in Findings 2-40 above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the NYAG in its sole discretion.

38. If the Assurance is voided or breached, Major Energy agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is voided or breached, as determined by a Court of competent jurisdiction, Major Energy expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude NYAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against Major Energy or from using in any way any statements, documents or other materials produced or provided by Major Energy prior to or after the date of this Assurance.

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

40. Major Energy represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. Major Energy shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Major Energy's (i) testimonial obligations or (ii) right to take legal or factual positions in

defense of litigation or other legal proceedings to which NYAG is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of any wrongdoing, liability or fact by Major Energy.

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

42. If the PSC amends or supplements the UBP after the date of this Assurance and Major Energy believes that such amendments or supplements would render compliance with this Assurance impossible, Major Energy may provide written notification to NYAG and seek modification of the relevant requirements of this Assurance, which may not be unreasonably denied by NYAG.

43. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than NYAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of NYAG.

44. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held 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.

45. To the extent not already provided under this Assurance, Major Energy shall, upon request by NYAG, provide all documentation and information necessary for NYAG to verify compliance with this Assurance.

46. All notices, reports, requests, and other communications to any party

pursuant to this Assurance shall be in writing and shall be directed as follows:

If to Major Energy to:

Major Energy Services LLC & Major Energy Electric Services LLC  
12140 Wickchester Lane, Suite 100  
Houston, Texas 77079

If to the NYAG, to:

New York State Office of the Attorney General  
Bureau of Consumer Frauds and Protection  
Attn: Joseph P. Mueller, Assistant Attorney General  
28 Liberty Street  
New York, NY 10005  
Telephone: (212) 416-8844  
Facsimile: (212) 416-6003

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

47. Acceptance of this Assurance by NYAG shall not be deemed approval by NYAG of any of the practices or procedures referenced herein, and the Company shall make no representation to the contrary.

48. Pursuant to Executive Law § 63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any action or proceeding thereafter commenced by NYAG.

49. If a court of competent jurisdiction determines that the Company has breached this Assurance, the Company shall pay to NYAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

50. The NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The NYAG is willing to accept this Assurance

pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

51. This Assurance constitutes the entire agreement between the NYAG and Major Energy and superseded any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Assurance.

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

53. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

54. 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: Jane M. Azia  
Date: 12/12/22  
Jane M. Azia  
Bureau Chief  
Bureau of Consumer Frauds

By: Glenna Goldis  
Date: 12-12-2022  
Joseph P. Mueller / Glenna Goldis  
Assistant Attorney General

Major Energy Services, LLC  
Major Energy Electric Services, LLC

bl By: [Signature]  
Date: 11-30-2022  
Paul Konikowski  
Chief Operating Officer  
Via Renewables, Inc.

bl By: [Signature]  
Date: 11-30-2022  
Paul Konikowski  
Chief Operating Officer