

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

JOHN FRIEDBERG,)	
)	
Plaintiff,)	
)	Docket No. 15-0339
v.)	
)	
AMBIT ILLINOIS, LLC,)	
)	
Defendant.)	
)	

DECLARATION OF LEON ZELECHOWSKI

In opposition to defendant’s motion to dismiss, the undersigned Leon Zelechowski (“Affiant”), under penalties of perjury as provided in 735 ILCS 5/1-109, deposes and states as follows:

1. Affiant has personal knowledge of the matters set forth herein and if called upon to testify as to these matters, he could testify competently as to the same.

2. Affiant is an attorney licensed to practice by the Supreme Court of Illinois since 1975 and is the principal in the firm of Leon Zelechowski, Ltd. (“Firm”), which represents plaintiff John Friedberg in this proceeding.

3. On or about October 29, 2015, I was contacted by Mr. John Friedberg to assist him in this case. A few days thereafter, I accessed defendant Ambit Energy, Inc.’s public website to see whether the Terms of Service document called “Terms of Service (version 55ILF1109)” was actually a document that was available for examination and downloading.

4. I was able to access that document and I printed it. A true and correct copy of the downloaded document is attached hereto as Exhibit A.

5. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge.

Leon Zelechowski

Leon Zelechowski, Esq.
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EXHIBIT A

Ambit Energy, L.P.

Customer Select Program

Gas Supply Terms of Service Agreement

Welcome to Ambit Energy, L.P. d/b/a Ambit Energy ("Ambit Energy," "Company," "us," "our")! Ambit Energy, as your alternative gas supplier, is proud to offer you ("Customer") gas supply at a competitive rate while North Illinois Gas Company d/b/a Nicor Gas ("Nicor") continues to serve as Customer's Local Distribution Company ("LDC"). Customer agrees that they are 18 years of age and authorized to enter into this Ambit Energy Gas Supply Terms of Service Agreement ("Agreement"). You are not required to be an Ambit Energy consultant in order to receive equal pricing, offers, terms, conditions, and gas supply service from Ambit Energy as you would if you were an Ambit Energy consultant.

Term & Pricing: Under this Agreement, you are responsible for paying the price per therm multiplied by the number of therms used in each billing cycle plus applicable charges related to utility transportation and distribution and any other charges associated with the applicable incumbent utility's alternative gas supplier choice program, any and all pass through charges, and all applicable taxes.

Guaranteed Savings Plan – Natural Gas: By choosing the Guaranteed Savings Plan – Natural Gas, you are guaranteed an annual savings of one percent (1%) less than the incumbent utility's published supply rate for the same 12-month period that you received power from Ambit Energy under this Agreement. If you did not save at least 1% over the incumbent utility's published gas rate, we will send you a check for the difference. Each month Ambit Energy compiles the rate published by the applicable Incumbent utility for the same usage period that the Customer receives gas supply from Ambit Energy, and multiplies the incumbent utility's rate by 99%, resulting in a 1% discount. At the end of each 12-month period, Ambit Energy will compare the amount you would have paid if you remained a customer of your Incumbent utility with the amount Ambit Energy charged you. If the amount Ambit Energy charged you for the past 12 months is not less or equal to a 1% discount under your incumbent utility's rate, then Ambit Energy will issue you a refund or credit for the overage amount. Your price will be determined in accordance with Customer's billing cycle, as determined by your incumbent utility, and might not coincide with the calendar month. The 1% Discount Guarantee is exclusive of applicable taxes and charges your incumbent utility imposes on your account.

Winter Rate-Freeze Plan: By choosing the Winter Rate-Freeze Plan, you can protect against rising prices during the cold winter months by locking in a rate. The fixed term of this Agreement will begin the date you switch to Ambit Energy, but not before November 1, 2009, and expire on April 30, 2010, and will automatically continue on a month-to-month product after the expiration of the fixed term. The price each month you will pay through your April 2010 billing cycle will be \$0.55 per therm.

Billing: As an Ambit Energy gas supply customer, under Nicor's Customer Select Program, Customer will receive one convenient bill for both the LDC services and Ambit Energy commodity-supply services. Your bill will be issued by Nicor, and will contain commodity related charges, transportation and distribution charges, applicable taxes, and other applicable charges. You agree to continue to pay Nicor for the entire gas bill under the LDC's payment terms and conditions. If Customer elects to pay under the LDC's budget bill payment plan, Customer understands that this service will be controlled by the LDC, but only applies to the LDC's charges. In Ambit Energy's sole discretion, it may issue invoices or treatment notices directly to Customer and would require the customer to pay Ambit Energy directly such invoices or respond to such treatment notices directly to Ambit Energy. Such Ambit Energy-issued invoices would include the commodity price per therm, applicable charges, applicable taxes, and may also include LDC's transportation and distribution costs, applicable charges, and

applicable taxes. If Nicor fails to provide Ambit Energy with usage volume for any billing cycles during the winter months, Ambit Energy reserves right to estimate usage volumes based on historical usage data. You may be required to pay a deposit to initiate service with Ambit Energy. At all times, the total of all deposits on file with Ambit Energy, including both initial and additional deposits, shall not exceed 1/6 of Customer's annual consumption for residential customers and 1/6 of Customer's annual consumption for commercial customers. Ambit Energy reserves the right to require Customer to pay a deposit to continue receiving gas supply from Ambit Energy under Nicor's Customer Select Program if Customer is 45 days or more in arrears on any due and outstanding balance. If Customer is in arrears for 45 days or more, Ambit Energy may require Customer to pay a deposit. Upon the issuance of a deposit request, Customer must pay the deposit within 15 days from the deposit notice issuance date. The issuance date is the date stated on the notice or the postmark date on the envelope, whichever is later. If Customer fails to pay the required deposit within 15 days of the issuance date, Ambit Energy may terminate this Agreement without further notice. Such deposit shall not exceed \$100.00 and will only apply if Customer does not have a deposit on file with Ambit Energy at the time the Customer is in arrears. For any due and outstanding balances, Ambit Energy can use the deposit Customer posted to off-set unpaid past due balances. Customer agrees to pay all amounts owed to Ambit Energy for services rendered to Customer by Ambit Energy. If Customer fails to pay Customer's bill within the 21 days of the invoice date (the "Bill Due Date"), Ambit Energy reserves the right to charge a 1.5% monthly late fee of the amount past due, calculated from the Bill Due Date. If Customer fails to pay Nicor for the natural gas supply component as supplied to Customer by Ambit Energy, Customer will owe the unpaid amount to Ambit Energy. In Ambit Energy's sole discretion, it may elect to provide a budget billing option. If Customer's account is placed in collections due to non-payment or under-payment, Customer shall be responsible for any costs incurred by Ambit Energy related to the enforcement of this agreement, including Ambit Energy's legal fees and court costs.

Cancellation: Your LDC will send you a notice confirming that you have been switched to Ambit Energy. By law, if you are switching to Ambit Energy, you may rescind your Agreement with Ambit Energy without fee or penalty of any kind within ten business days after the LDC switch notice issuance date. To rescind your Agreement with Ambit Energy, you may call Nicor at 1-888-NICOR4U or Ambit Energy at 1-877-282-6248. There is no early termination fee regardless if you enroll for the Ambit Energy's Winter Rate-Freeze Plan or Ambit Energy's Guaranteed Savings Plan - Natural Gas. That means you are free to switch suppliers at any time free from penalty or charge. When the Customer voluntarily switches to another alternative gas supplier or voluntarily drops or is dropped by Ambit Energy back to Nicor, Ambit Energy will refund Customer's deposit within 30 days after Customer switches to another AGS or is dropped to Nicor. Ambit Energy will refund Customer's deposit plus interest at an interest rate set by the Commission which is the same as that required of gas utilities if the Customer has satisfied all of their outstanding financial obligations to Ambit Energy. Ambit Energy will provide refunds, in a timely fashion, of all undisputed overpayments upon the oral or written request of the Customer. In addition to, and notwithstanding anything to the contrary herein, Ambit Energy reserves the right to cancel this Agreement at any time if Customer is 45 or more days in arrears on any Ambit Energy invoice. Prior to cancellation, Ambit Energy will provide Customer with 15 days' advance notice to give Customer the opportunity to make payment for the entire amount past due. Such notice may be sent to Customer any time Customer's account is in arrears. Cancellation notices provided after Nicor's deadline may result in additional month(s) of service beyond the cancellation period, and Customer acknowledges and agrees to pay the applicable rate until such time as Nicor verifies Customer's cancellation and returns Customer to Nicor, as the effective date of all cancellations are subject to Nicor's guidelines of which Ambit Energy has no control. Customer understands that if Customer switches to another supplier or back to Nicor, a LDC switching fee may apply

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Ambit Energy, L.P. Customer Select Program Gas Supply Terms of Service Agreement

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under Nicor's tariff and Nicor may charge a price other than the purchased gas adjustment rate. Cancellation of this Agreement does not relieve Customer of their obligation to pay for all gas delivered by Ambit Energy to Customer and billed by Nicor. If you return to Nicor for any reason other than non-payment, you will have 45 days from the time of termination to select another AGS. If you do not select another AGS within 45 days, you will be ineligible to switch to another alternative gas supplier under Nicor's Customer Select Program for twelve (12) months starting from the date of such termination. If Ambit Energy terminates your service and returns your account to Nicor due to non-payment, you may be ineligible to select another AGS for a period of not less than twelve (12) months from the date of such termination. If you will be relocating to another premises, Customer must provide Ambit Energy twenty (20) days' notice prior to discontinuing service at your current premises.

Customer is not obligated to the terms of this Agreement if the customer moves outside of the State of Illinois, moves to a location without a transportation service program, or moves to a location where the customer will not require natural gas service, provided that nothing in this section shall preclude Ambit Energy from taking any action otherwise available to it to collect a debt that arises out of service provided to the customer before the customer moved.

Assignment: Ambit Energy may assign this contract to an alternative gas supplier certified by the ICC, subject to regulatory authorization. Prior to assigning this Agreement, Ambit Energy shall give Nicor and Customer no less than thirty days' prior written notice before an assignment. If Ambit Energy assigns Customer's contract, the assignee will honor the terms of this Agreement, and any material changes will allow Customer to opt out of the new provisions at no cost.

Force Majeure: Ambit Energy cannot guarantee continuous supply of natural gas, but will make a commercially reasonable effort to supply natural gas service. Certain causes and events out of Ambit Energy's control ("Force Majeure Events") may result in service interruptions and price changes. Ambit Energy is not liable for Force Majeure Events, including, but not limited to acts of God, severe weather events, acts of government, accidents, strikes, labor disputes, changes in laws, rules, or regulations, or any and all events beyond Ambit Energy's control.

Contact Information & Dispute Resolution Procedures: For any billing disputes regarding consumption volumes or metering issues, Customer should contact Nicor. IF YOU SMELL GAS, YOU SHOULD IMMEDIATELY CONTACT Nicor TOLL-FREE AT 1-888-642-6748 (1-888-Nicor4U) AND CALL 911. For questions regarding Customer's gas supply price, treatment notices you received from Ambit Energy, or paying the gas supply portion of your bill, Customer should contact Ambit Energy by phone at toll-free 1-877-282-6248 (877-28-AMBIT) weekdays from 8:00 a.m. to 5:00 p.m. CST, and Saturdays 10 a.m. to 5 p.m. CST, by fax at 1-214-969-5928, or by mail at 1801 N. Lamar St., Ste. 200, Dallas, Texas 75202. You can also access account related information and/or pay bills online by visiting our website at www.ambitenergy.com and logging into "My Energy Account." If Customer has a dispute with Ambit Energy and is unable to resolve Customer's dispute by contacting Ambit Energy, Customer may contact the Illinois Commerce Commission ("ICC") toll-free at 1-800-524-0795 or TTY at 1-800-858-9277, weekdays from 8:30 a.m. to 5:00 p.m. CST, or Customer can visit the ICC website at www.icc.illinois.gov.

LIMITATION OF LIABILITY: AMBIT ENERGY ASSUMES NO LIABILITY OR RESPONSIBILITY FOR LOSSES OR CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES ARISING FROM THIS AGREEMENT OR ANY

SERVICES PROVIDED BY NICOR. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER UNDER THIS AGREEMENT. THE NATURAL GAS DELIVERED UNDER THIS AGREEMENT MEETS ALL APPLICABLE QUALITY STANDARDS. AMBIT ENERGY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER AGREES TO INDEMNIFY AND HOLD HARMLESS NICOR FOR ANY OBLIGATIONS OF AMBIT ENERGY AND CLAIMS ARISING OUT OF CUSTOMER'S FAILURE TO COMPLY WITH THE TERMS OF THIS AGREEMENT.

Amendments: Ambit Energy reserves the right to amend or terminate this Agreement due to changes in regulatory rules and requirements, any and all applicable laws, or Nicor's Customer Select tariff. If Nicor materially changes its Customer Select Program, Ambit Energy reserves the right to terminate this contract, without recourse to either party. Ambit Energy reserves the right to amend this Agreement at a later date. If Ambit Energy materially changes the provisions of this Agreement to the disadvantage of the Customer, Ambit Energy will provide 45 days notice prior to the effective date of such material change and provide the customer with 45 days to opt out of the new provisions at no cost, beginning on the postmarked date of the material change notice sent by Ambit Energy to the Customer. If the Customer does not respond to the material change notice within the 45 days to notify Ambit Energy that it elects to opt out of this Agreement within the Customer opt out time period, this Agreement will continue in effect under the amended terms of service.

Miscellaneous: By entering this Agreement, Customer is appointing Ambit Energy as Customer's agent for purposes of procuring Customer's natural gas supply needs and grants Ambit Energy authorization to access Customer's account information, including account number(s), meter number(s), payment history and credit history. Customer authorizes Ambit Energy to perform a credit check on Customer to obtain your credit rating, and for commercial Customers, a Dun & Bradstreet report, if applicable. Ambit Energy will pay the charge to obtain customer credit information, and will not pass this charge onto the Customer. Additionally, Ambit Energy may require additional credit assurance from commercial customers, and such customers are required to provide this assurance within 20 days upon request. Ambit Energy reserves the right to withdraw any offers under this Agreement at any time without notice for any customer that has not yet enrolled in any a plan covered by this Agreement. Ambit Energy may choose to not accept this Agreement for any reason except that Ambit Energy will never discriminate or deny service based on race, income, or gender. Ambit Energy shall not deny service based on locality, nor establish any unreasonable difference as to prices, terms, conditions, services, products, or facilities between localities. This Agreement constitutes the entire Agreement between Ambit Energy and Customer, and any previous agreements or oral statements are null and void and you agree that you did not rely on any oral representations other than in accordance to what is stated in this Agreement. Any notice required under this Agreement is effective when mailed to the last known mailing address on file for the parties to this Agreement.

Travel Offers: Customer is automatically enrolled in our free Travel Rewards program. Customer will receive ten (10) Travel Rewards points for each therm of natural gas Customer uses, as denoted on the Customer's monthly bill. The Travel Rewards points accumulate each month after payment is received and can be used to redeem various travel packages. The total number of accumulated points is available for viewing at care.ambitenergy.com. Packages will be added and deleted from time to time at the sole discretion of Ambit Energy without prior written notice to the Customer. All details related to each travel package are available for review at www.ambittravel.com as well as the pamphlet Customer received with their Welcome Letter sent upon enrollment. The Travel Rewards point program is in addition to the three-day, two-night hotel travel vouchers Customer received upon enrollment. The terms of the hotel travel voucher are also available at www.ambittravel.com.

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