

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE**

TOWN OF BRIGHTON, ON ITS OWN BEHALF
AND ON BEHALF OF ELIGIBLE AND
PARTICIPATING CONSUMERS, AND JOULE
ASSETS INC.,

Index No.

Plaintiffs,

v.

ICON ENERGY LLC d/b/a SOURCE POWER
COMPANY,

Defendant.

COMPLAINT

Plaintiffs, TOWN OF BRIGHTON (the “Town”), on its own behalf and on behalf of Eligible and Participating Consumers (as defined below), and JOULE ASSETS, INC. (“Joule” and, together with the Town, “Plaintiffs”), by and through their attorneys, for their Complaint state as follows:

SUMMARY OF THE ACTION

1. Defendant Icon Energy LLC d/b/a Source Power Company (“Icon” or “Defendant”) agreed to provide renewable electricity supply at a fixed rate to consumers who participated in the Joule Community Choice Aggregation program from January 1, 2021 through December 31, 2022. However, in breach of its contractual obligations, Icon did not provide renewable electricity as it agreed, and, since June 15, 2022, Icon did not provide any renewable electricity to consumers at the agreed-upon fixed rate. Icon’s actions have caused significant economic damage to the Town, its consumers, and Joule, and Icon should be directed to make them whole.

THE PARTIES

2. The Town is a New York municipal corporation with principal offices at 2300 Elmwood Avenue in Monroe County. It brings this suit on its own behalf and, as expressly authorized pursuant to Section 2.2 of the Electricity Supply Agreement, dated October 7, 2020, by and among the Town, Joule, and Icon (the “ESA”)¹, on behalf of Eligible and Participating Consumers.

3. Eligible Consumer has the meaning ascribed in the ESA, but broadly means a consumer who receives electricity from Rochester Gas & Electric (“RG&E”) as of the effective date of the ESA at one or more locations within the geographic boundaries of the Town.

4. Participating Consumer has the meaning ascribed in the ESA, but broadly means an Eligible Consumer who is or was enrolled in the Joule Community Choice Program (as defined below).

5. Joule is a Delaware corporation with offices at One Pepsi Way, Katonah, New York. Joule serves as Community Choice Aggregation Administrator for the Town through the Joule Community Choice Aggregation Program.

6. Upon information and belief, Icon is a limited liability company, doing business as Source Power Company, with offices at 125 Michael Drive, Syosset, New York.

JURISDICTION AND VENUE

7. This Court has jurisdiction over Defendant pursuant to New York Civil Practice Law and Rules (“CPLR”) §301 and General Obligations Law § 5-1402. In addition, the parties

¹ The ESA is incorporated herein by reference, and all upper-case terms not defined herein shall have the meanings ascribed to such terms in the ESA.

consented to the exclusive jurisdiction of the Federal or State courts in New York for all disputes or litigation arising out of or relating to the ESA.

8. Venue is proper in this Court pursuant to CPLR § 503(a) and because in the ESA the parties consented to venue in the county in which the Town is located.

FACTUAL ALLEGATIONS

A. New York Creates the Community Choice Aggregation Program

9. New York created a state-wide program to support participating municipalities (cities, towns, and villages) in the procurement of renewable energy at a reduced cost for eligible residential and small commercial energy consumers in the municipality. Such a program is known as Community Choice Aggregation (“CCA”).

10. CCAs are an attractive option for municipalities that want more local control over electricity sources provided to their residents, more renewable power than is offered by the default utility, and/or fixed electricity rates. By aggregating demand, municipalities gain leverage to negotiate better rates with competitive suppliers and have the ability, as the Town did here, to choose greener power sources on behalf of their residents.

11. Unless they opt-out of the CCA, eligible residential and small commercial energy consumers in the municipality are to be provided electricity as negotiated with the supplier.

12. In a CCA, the energy supply is provided by an energy service company (“ESCO”), which is an entity eligible to sell electricity and/or natural gas supply to consumers using the transmission or distribution system of the local utility.

13. Upon information and belief, at the times relevant to this Complaint, Defendant is or was eligible to operate as an ESCO in the State of New York.

14. In order to provide “renewable” electricity (e.g., from solar, wind, or hydro sources) in accordance with New York rules and regulations, the ESCO must purchase not just the electricity, but also must purchase Renewable Energy Certificates (“RECs”) for each megawatt-hour (MWh) sold. Regardless of whether the electricity is generated from a renewable source (e.g., from solar, wind, or hydro sources) or is not generated from a renewable source (e.g., natural gas), the electricity is, and will only be, considered “renewable” if the supplier also purchases and properly retires the necessary RECs.

15. A REC serves as a mechanism to track and lay claim to the amount of renewable energy that is generated and sold, as well as the positive environmental attributes associated with that energy. For every megawatt-hour (MWh) of renewable electricity generated an associated REC is created. The REC generally includes information about the type of renewable resource and where it is located, a date stamp for when it was generated, an emissions profile of the generating source, and a unique identification number.

16. RECs also have vintage years; a REC’s vintage year means the date of REC creation (e.g. the date when the underlying electricity was generated). By way of example, a REC with a 2021 vintage year was created in 2021; a REC with a 2022 vintage year was created in 2022.

17. In the context of CCAs receiving renewable electricity, the REC vintage must align with the year that the CCA customers received the electricity and be for the amount of electricity received in that year. By way of example, a CCA receiving 13,000 MWhs of electricity in 2021 and 10,000 MWhs of electricity in 2022 may only be satisfied by 13,000 RECs with a 2021 vintage year and 10,000 RECs with a 2022 vintage year.

18. Because CCAs that supply renewable electricity are required to provide both fixed-rate electricity supply and RECs for an extended period, ESCOs typically enter into financial hedges, long-term power agreements, and/or other arrangements to ensure that they, individually or collectively, meet their obligations under electricity supply contracts.

19. Typically, the value of financial hedges increases as the price of energy increases. In such a case, the ESCO may liquidate a portion, or all, of the hedge to cover the delta between the increasing price of energy and the fixed-rate promised to consumers.

20. Upon information and belief, Icon entered into one or more hedging arrangements to cover its obligations under the CCA at issue in this proceeding.

B. Icon Responds to Joule's RFP

21. This proceeding concerns the Joule Community Choice Aggregation program, a CCA program serving multiple municipalities in New York's Monroe and Ontario counties ("Joule CCA"). The Joule CCA was organized by Joule, as CCA Administrator, Icon was the ESCO that agreed to make renewable electricity available to Eligible Consumers and supply the renewable electricity to Participating Consumers (also referred to as the "Competitive Supplier" in the ESA), and the Town was one of the communities in Monroe County whose Participating Consumers were to receive the renewable electricity.

22. On or about September 2020, Joule issued a Request for Proposal ("RFP") to select an ESCO to supply electricity and RECs to Participating Consumers in the municipalities, including the Town, in the Joule CCA. Joule's September 2020 RFP is attached hereto as Exhibit A.

23. The RFP stated,

Respondents must provide a price quote for 100% Renewable Electricity Product as defined in the Template ESAs (Attachments 1 and 2). Product must otherwise comply with all other requirements in the Template ESAs. RECs must be procured from hydropower, solar energy or wind energy generating facilities sited within (or physically delivered to) New York State and be properly retired in the New York Generation Assets Tracking System. Product must comply with the New York State Clean Energy Standard and is subject to the environmental attribute and delivery rules of the Public Service Commission Environmental Disclosure Program.

See Ex. A.

24. On or about October 1, 2020, Icon submitted a bid in response to the RFP. Icon's October 1, 2020 bid is attached hereto as Exhibit B.

25. As part of its bid, Icon agreed to provide a fixed rate for electricity and a 100% renewable product that was generated from new facilities, marketed with complete transparency and accuracy, and delivered to the consumers. *See Ex. B.*

C. Icon Agrees to the Terms of the RFP and ESA

26. After responding to the RFP, Icon was selected as the ESCO to make renewable electricity available to Eligible Consumers and provide renewable electricity to Participating Consumers in the Town as part of the Joule CCA.

27. On or about October 7, 2020, the Town, Joule, and Icon entered into the ESA. Attached hereto as Exhibit C is a copy of the executed ESA.

28. Pursuant to the ESA, Icon agreed to provide fixed-rate energy supply and RECs for Participating Consumers for a term of approximately two years, from January 1, 2021 through December 31, 2022.

29. Section 5.12 of the ESA states,

Competitive Supplier represents and warrants that Competitive Supplier's response to the Energy Procurement Request for Proposals is compliant with the terms and conditions set forth in the RFP.

See Ex. C.

30. Exhibit A to the ESA provides the prices and terms of the product offered to Participating Consumers. *See Ex. C.*

31. Exhibit A to the ESA sets forth the fixed price of \$0.04292/kWh for residential and small commercial Participating Consumers. *Id.*

32. Exhibit A to the ESA states, that the “Renewable Energy in System Supply: 100% of electricity supply shall be CCA Renewable Electricity Product as defined in the Agreement.”

Id.

33. Section 1.6 of the ESA defines Renewable Electricity Product as,

100% renewable energy supply product offered to Participating Consumers that consists of (a) 100% renewable energy supply that is composed of solar, hydro and/or wind power bundled with 100% voluntary Renewable Energy Certificates; and/or (b) energy supply that meets the minimum Clean Energy Standard sold together with 100% voluntary Renewable Energy Certificates from solar, hydro and/or wind energy generating facilities, as further described and defined in Exhibit A (Prices and Terms).

See Ex. C.

34. Section 1.39 of the ESA defines a Renewable Energy Certificate as “A renewable energy certificate registered in, and fully compliant with, the New York (State) Generation Attribute Tracking System (“NYGATS”), as may be amended from time to time.” *See Ex. C.*

35. NYGATS is an online certificate-tracking system that records information about electricity generated, imported, and consumed within New York State. Using unique serial numbers, it can issue, track, and manage RECs. It prevents double counting of RECs, provides public reports, and records a full audit trail of all transactions to support the integrity of the RECs issued and held in the system. NYGATS users can trade, retire, or verify and substantiate ownership of RECs to support compliance or voluntary claims.

36. In order for an ESCO or a consumer to claim that a megawatt hour of electricity sold or used is “renewable,” a REC for that amount of electricity (i.e., a certificate with environmental attributes allocable to that megawatt hour), must be properly retired in NYGATS on behalf of the purchaser. When a REC is retired, it means that the REC and the environmental attributes of the REC have been allocated and that the corresponding renewable energy has been consumed. Once retired, the REC is taken out of circulation and can no longer be sold.

37. Pursuant to NYGATS rules, NYGATS users have until June 30 to transfer or retire RECs from the previous year.

38. Accordingly, Icon had until June 30, 2022, to retire RECs with a vintage year of 2021 to satisfy its contractual obligations with respect to renewable electricity supplied to the Town during 2021. Icon has until June 30, 2023, to retire RECs with a vintage year 2022 to satisfy its contractual obligations with respect to renewable electricity supplied to the Town during 2022.

39. Section 1.3 of the ESA defines the Clean Energy Standard as the clean energy standard for electric power for load serving entities established by New York State (including without limitation those mandated by the 2015 New York State Energy Plan as amended, New York’s Climate Leadership and Community Protection Act (CLCPA), and the Order of the New York State Public Service Commission Adopting a Clean Energy Standard (Case 15-E-0302)(Issued August 1, 2016)). *See* Ex. C.

40. Section 9 of the ESA states, in relevant part,

Competitive Supplier agrees that it, and its Associated Entities directly or indirectly involved in providing services or meeting the Competitive Supplier’s obligations under the ESA, will comply with the applicable provisions of the [New York Public Service Commission Order authorizing Joule to act as CCA Administrator] and any regulations, orders or policies adopted pursuant thereto.

In addition, Competitive Supplier specifically represents, warrants and agrees that it has reviewed and has fully complied and will fully comply with, all relevant regulations, requirements, and orders of the [Federal Energy Regulatory Commission], [the New York Independent System Operator], and [the Public Service Commission]. Competitive Supplier shall comply with all requirements of the Request for Proposal issued in relation to this ESA.

See Ex. C.

41. Section 10.1 of the ESA states, in relevant part,

Competitive Supplier agrees to comply with any current and/or future rules and regulations related to Environmental Disclosure Program in the State of New York including without limitation all rules and regulations concerning labelling.

See Ex. C.

42. Section 10.1 of the ESA requires compliance with the Uniform Business Practices. *See Ex. C.* Section 1.43 of the ESA defines the Uniform Business Practices as the regulations governing the business practices of utilities and Energy Services Companies with regards to service, billing, marketing, data, and customer rights, issued by the New York State Public Service Commission (Case 98-M-1343). *See Ex. C.*

43. The New York General Business Law (“GBL”) § 349 is one of many laws and regulations governing the business practice of utilities companies and ESCOs.

44. In reliance upon the representations and covenants made by Icon in the ESA, the Joule CCA proceeded with Icon as its ESCO starting in January 2021.

D. Icon Did Not Provide Renewable Energy at a Fixed Rate

45. Based upon the amount of electricity consumed by the CCA in 2021, Icon had until June 30, 2022 to retire approximately 90,000 ESA-compliant 2021 RECs in order to satisfy its obligations under the ESA. The June 30, 2022 deadline passed and the required amount of ESA-compliant RECs were not retired in connection with the Joule CCA.

46. Upon information and belief, as of the filing of this Complaint, Icon has retired only a de minimus number of RECs (approximately 300). Icon failed to retire more than 89,000 ESA-compliant RECs as required by the ESA for 2021.

47. Accordingly, Icon has failed to provide the renewable electricity that it agreed to supply for 2021.

48. In addition, on June 15, 2022, Icon ceased providing any electricity whatsoever to the Participating Consumers and, as a result, the Participating Consumers were transferred to RG&E such that Participating Consumers were no longer paying the agree-upon fixed rate for renewable electricity. Instead, Participating Consumers paid and continued to pay a variable rate offered by RG&E for non-renewable electricity at a price that was, and has been, higher, and sometimes significantly higher, than the fixed rate for renewable electricity that Icon had agreed to provide under the terms of the ESA.

49. Joule objected to the transfer in accordance with the ESA, sending a written notice of dispute as required by ESA Section 13.2.

50. Icon has until June 30, 2023, to retire 2022 RECs that comply with the ESA. Because these Participating Consumers are no longer being serviced by Icon, Icon will fail to retire 2022 RECs by the June 30 2023 deadline and, accordingly, fail to provide renewable energy for 2022 in breach of the ESA.

51. During the period before Icon ceased to provide electricity at the agreed-upon fixed rate, electricity prices had begun to rise significantly, and they continue to be significantly higher than they were when the parties entered into the ESA.

52. Upon information and belief, as a result of the significant increases in prices, any hedges entered into by Icon in connection with the Joule CCA have significantly risen in value.

Accordingly, any termination of the ESA would leave Icon in possession of highly valuable hedges.

53. Upon information and belief, Icon has sold or transferred the hedges or is planning to sell or transfer the hedges for its own financial benefit. This constitutes a windfall for Icon at the expense of the Town, Joule and the Participating and Eligible Consumers.

54. Upon information and belief, Icon never had any intention of making renewable energy available or providing it to Eligible and Participating Consumers at the agreed upon fixed rate, pursuant to the ESA. Indeed, upon information and belief, Icon never actually purchased the 2021 or 2022 RECs that it agreed to supply. Rather, from the outset, Icon intended to breach its contractual obligations to the Plaintiffs in favor of Icon's own financial benefit in the event that the price of electricity rose driving a commensurate increase in the value of the hedges held by Icon.

AS AND FOR A FIRST CAUSE OF ACTION
By Plaintiffs – Breach of Contract
(Specific Performance with Respect to the 2021 and 2022 RECs)

55. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs with the same force and effect as if fully set forth herein.

56. The Town and Joule are parties to the ESA with Icon. The ESA is a binding and enforceable agreement.

57. The requirements of the RFP and responses thereto are also incorporated by reference into the ESA.

58. The ESA requires Icon to make renewable electricity available to Eligible Consumers and provide renewable electricity to all Participating Consumers from January 1, 2021 through December 31, 2022.

59. Icon breached the ESA by failing to make renewable electricity available to Eligible Consumers and/or by failing to provide renewable electricity to Participating Consumers.

60. Icon's breaches have damaged and will continue to damage Plaintiffs.

61. Plaintiffs are entitled to an order of specific performance directing Icon to retire 2021 and 2022 ESA-compliant RECs in accordance with its contractual obligations.

AS AND FOR A SECOND CAUSE OF ACTION
By Plaintiffs – Breach of Contract
(Monetary Damages with Respect to the 2021 and 2022 RECs)

62. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs with the same force and effect as if fully set forth herein.

63. The Town and Joule are parties to the ESAs with Icon. The ESA is a binding and enforceable agreement.

64. The requirements of the RFP and responses thereto are also incorporated by reference into the ESA.

65. The ESA requires Icon to provide renewable electricity to all Participating Consumers and make available renewable electricity to all Eligible Consumers, from January 1, 2021 through December 31, 2022.

66. Icon breached the ESA by failing to provide renewable electricity to Participating Consumers and make available renewable electricity to all Eligible Consumers.

67. Icon's breaches have damaged and will continue to damage Plaintiffs.

68. Plaintiffs are entitled to a judgment in an amount to be determined at trial.

AS AND FOR A THIRD CAUSE OF ACTION

By the Plaintiffs – Breach of Contract

(Monetary Damages Regarding the Fixed Rate of Energy Since June 15, 2022)

69. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs with the same force and effect as if fully set forth herein.

70. The Town and Joule are parties to the ESA with Icon. The ESA is a binding and enforceable agreement.

71. The requirements of the RFP and responses thereto are also incorporated by reference into the ESA.

72. The ESA requires Icon to provide renewable electricity at a fixed rate to all Participating Consumers and make available renewable electricity at a fixed rate to all Eligible Consumers from January 1, 2021 through December 31, 2022.

73. From June 15, 2022 through the filing of this Complaint, Icon has failed and will continue to fail to provide or make available renewable electricity at the agreed-upon fixed rate of \$ 0.04292/kWh.

74. Icon breached the ESA by failing to provide or make available renewable electricity at the agreed-upon fixed rate to Participating and Eligible Consumers from June 15, 2022 through the filing of this Complaint.

75. Icon's breaches have damaged and will continue to damage Plaintiffs.

76. Plaintiffs are entitled to a judgment in an amount to be determined at trial.

AS AND FOR AN FOURTH CAUSE OF ACTION

By Joule – For Breach of Contract

77. Plaintiffs repeat and re-allege the allegations contained in all of the preceding paragraphs with the same force and effect as if fully set forth herein.

78. Under ESA Section 7.2, Icon is required to pay Joule, as the Joule CCA program administrator, a fee for each kWh delivered, to be invoiced and paid for by Participating Consumers during the term of the ESA. *See* Ex. C.

79. Under ESA Section 7.3, the fee was to be paid to Joule by the last business day of the month based on revenue collected by Icon with respect to each Participating Consumer during the calendar month two months prior. *See* Ex. C.

80. Many of the fees have not been paid to Joule by Icon.

81. In addition, Icon agreed to create an account of funds to protect against a default by Icon. In the event that Icon defaulted on its obligations, Icon agreed that those funds were to be paid to Joule to allow Joule to purchase compliant RECs. Icon has defaulted on its contractual obligations by failing to provide ESA compliant RECs, yet it has not paid Joule the monies it agreed to pay to Joule such that Joule can purchase ESA compliant RECs.

82. Icon has breached the ESA by failing to pay the Program Administrator Fees and breached the RFP by failing to pay Joule the funds Icon agreed to pay in the event of Icon's breach of the ESA.

83. Joule is entitled to a judgment in an amount to be determined at trial.

AS AND FOR A FIFTH CAUSE OF ACTION

By the Plaintiffs – Fraud

84. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs with the same force and effect as if fully set forth herein.

85. Icon intentionally misled Plaintiffs by knowingly misrepresenting that they would supply Plaintiffs with renewable electricity and RECs at a fixed rate for two years, when Icon had no intention of doing so.

86. Plaintiffs justifiably relied on Defendant’s misrepresentations.

87. Through its fraudulent and deceptive conduct, Defendant deprived Plaintiffs of value, while it realized substantial value in the form of hedges.

88. Plaintiffs were harmed by Defendant’s fraudulent and deceptive practices.

89. Defendant’s conduct was reckless, willful, and wanton, and it evinces such a high degree of moral turpitude as to entitle Plaintiffs to recover punitive damages, treble damages, and attorneys’ fees.

90. Based on the foregoing, Plaintiffs demand judgment in an amount to be determined at trial.

91. The Plaintiffs are entitled to all expenses, costs, and disbursements incident to the prosecution of this action, including reasonable attorneys’ fees.

AS AND FOR A SIXTH CAUSE OF ACTION

By the Plaintiffs - GBL § 349 – Deceptive Acts and Business Practices

92. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs with the same force and effect as if fully set forth herein.

93. New York General Business Law (“GBL”) § 349(h) confers a private right of action upon those who have been harmed by a defendant’s fraudulent and deceptive business acts and practices.

94. Defendant is an ESCO that markets, makes available, and supplies electricity to Eligible and Participating Consumers throughout New York State.

95. Defendant successfully responded to a RFP to provide utility services to Eligible and Participating Consumers.

96. Defendant misled Eligible and Participating Consumers by entering into the ESA and agreeing to make renewable energy available to them and/or supply them with renewable energy and RECs at a fixed rate for two years and subsequently breaching that agreement.

97. Such acts constitute fraudulent and deceptive business acts and practices under GBL § 349.

98. Eligible and Participating Consumers were harmed by Defendant’s fraudulent and deceptive business acts and practices.

99. Defendant’s conduct was reckless, willful, and wanton, and it evinces such a high degree of moral turpitude as to entitle the Eligible and Participating Consumers to recover punitive damages, treble damages, and attorneys’ fees.

100. Based on the foregoing, the Eligible and Participating Consumers demand judgment in an amount to be determined at trial.

101. The Eligible and Participating Consumers are entitled to all expenses, costs, and disbursements incident to the prosecution of this action, including reasonable attorneys’ fees.

AS AND FOR A SEVENTH CAUSE OF ACTION
By the Plaintiffs - GBL § 349-d –
Energy Services Company Consumers Bill of Rights

102. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs with the same force and effect as if fully set forth herein.

103. GBL § 349-d(10) confers a private right of action upon those who have been harmed by an ESCO’s fraudulent and deceptive business acts and practices in the marketing of energy services.

104. Defendant is an ESCO within the meaning of GBL § 349-d(b), which defines an ESCO as “an entity eligible to sell energy services to end-use Consumers using the transmission or distribution system of a utility.”

105. Defendant misled Plaintiffs by entering into an ESA and agreeing to supply Plaintiffs with renewable electricity (i.e., RECs) at a fixed rate for two years and subsequently breaching that agreement.

106. Such acts constitute fraudulent and deceptive business acts and practices under GBL § 349-d.

107. Plaintiffs were harmed by Defendant’s fraudulent and deceptive business acts and practices.

108. Defendant’s conduct was reckless, willful, and wanton, and it evinces such a high degree of moral turpitude as to entitle Plaintiffs to recover punitive damages, treble damages, and attorneys’ fees.

109. Based on the foregoing, Plaintiffs demand judgment in an amount to be determined at trial.

110. The Plaintiffs are entitled to all expenses, costs, and disbursements incident to the prosecution of this action, including reasonable attorneys’ fees.

AS AND FOR AN EIGHTH CAUSE OF ACTION
By the Plaintiffs – Unjust Enrichment

111. Plaintiffs repeat and re-allege the allegations contained in all of the preceding paragraphs with the same force and effect as if fully set forth herein.

112. Defendant promised to make available and provide to the Eligible and Participating Consumers renewable electricity at a fixed rate.

113. The Eligible and Participating Consumers have not executed individual agreements with Icon.

114. When Icon transferred the Participating Consumers to RG&E and ceased to make available or provide the agreed upon fixed rate for renewable electricity, the Participating and Eligible Consumers were financially harmed.

115. When Icon transferred the Consumers back to RG&E and ceased to provide the agreed upon fixed rate for renewable electricity to the Participating and Eligible Consumers, Icon was enriched by the early release of its obligations to the Participating and Eligible Consumers and/by the sale or other transfer of the hedges, at the expense of the Eligible and Participating Consumers.

116. It is against equity and good conscience to permit Icon to benefit from premature abandonment of its CCA or retain the increase in value of the hedges.

117. Plaintiffs demand judgment in an amount to be determined at trial.

118. Plaintiffs are entitled to all expenses, costs, and disbursements incident to the prosecution of this action, including reasonable attorneys' fees.

AS AND FOR A NINTH CAUSE OF ACTION

By the Plaintiffs –

Demand for Reimbursement and/or Indemnification of All Costs and Expenses, Including Attorneys' Fees, Pursuant to the ESA

119. Plaintiffs repeat and re-allege the allegations contained in all of the preceding paragraphs with the same force and effect as if fully set forth herein.

120. ESA Section 14.1 requires Icon, as the Competitive Supplier, to indemnify, defend and hold harmless the Town and Joule,

from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees), causes of action, suits or judgments, incurred by, on behalf of or involving one of the foregoing parties to the extent

arising directly from or in connection with (i) any material breach by Competitive Supplier or its Associated Entities of its obligations, covenants, representations or warranties contained in this ESA and not resulting from the actions (or omissions where there is a duty to act) of the NYISO, Distribution Utility, the Town, the Program Administrator or any of their elected officials, officers, owners, directors, employees, representatives, independent contractors or agents, if any or (ii) any action or omission taken or made by the Competitive Supplier or its Associated Entities in connection with Competitive Supplier's performance of this ESA.

121. Icon and its associated entities are in material breach of its obligations, covenants, representations or warranties contained in this ESA.

122. Icon's material breaches are not the result of actions of any of the listed parties in Section 14.1.

123. The Town and Joule have incurred costs and expenses (including attorneys' fees), which are ongoing, as a result of Icon's material breaches.

124. Icon is required to indemnify and hold harmless the Town and Joule for their costs and expenses (including attorneys' fees), which are ongoing.

125. The Town and Joule are entitled to reimbursement for and indemnification of their costs and expenses (including attorneys' fees) in an amount to be determined at trial.

WHEREFORE, Plaintiffs seek judgment:

1. on their first cause of action finding Icon has breached, and has engaged in an anticipatory breach of, the ESA, entitling Plaintiffs to an order of specific performance directing Icon to provide 2021 and 2022 RECs in compliance with its contractual obligations;
2. on their second and third causes of action finding Icon has breached, and has engaged in an anticipatory breach of, the ESA, entitling Plaintiffs to an amount of damages to be determined at trial;
3. on their fourth cause of action, finding Icon has breached its contract with Joule, entitling Joule to an amount of damages to be determined at trial;
4. on their fifth cause of action, finding that Icon committed fraud, entitling Plaintiffs to actual, punitive, and treble damages, and attorneys' fees in an amount to be determined at trial;
5. on their sixth and seventh causes of action, findings that Icon has violated N.Y. General Business Law §§ 349 and 349-d, entitling the Eligible and Participating Consumers actual, punitive, and treble damages, and attorneys' fees in an amount to be determined at trial;
6. on their eighth cause of action, finding that Icon has been unjustly enriched by its conduct, entitling the Plaintiffs to a judgment in an amount to be determined at trial; and all expenses, costs, and disbursements incident to the prosecution of this action, including reasonable attorneys' fees;

7. on their ninth cause of action, reimbursement for and indemnification of their costs and expenses (including attorneys' fees) in an amount to be determined at trial; and
8. such other relief as the court deems just and proper.

DATED: December 19, 2022
New York, New York

MCGRAIL & BENSINGER LLP

/s/Katherine McGrail

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*Town of Brighton, on its own behalf and on behalf
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Assets, Inc.*