

DOCKET NO. HHD-CV14-6055537-S

HOLLY CHANDLER AND  
DEVON ANN CONOVER

VS.

DISCOUNT POWER, INC.

SUPERIOR COURT

J.D. OF HARTFORD

AT HARTFORD

JANUARY 20, 2015

**ANSWER**

1. No answer is required.

**INTRODUCTION:**

2. This is not a pleading of fact. To the extent it is, the allegations of Paragraph 2 are denied.

3. Discount Power, Inc.'s ("DPI") documents speak for themselves. DPI otherwise denies the allegations of Paragraph 3.

4. The allegations of Paragraph 4 are denied.

5. The allegations of Paragraph 5 are denied.

6. The allegations of Paragraph 6 are denied.

**PARTIES:**

7. DPI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 and therefore leaves Plaintiffs to their proof.

8. DPI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 and therefore leaves Plaintiffs to their proof.

9. The allegations of Paragraph 9 are admitted.

**JURISDICTION AND VENUE:**

10. The allegations of Paragraph 10 are admitted in part and denied in part. DPI admits to the Court having jurisdiction, but denies the remaining allegations of Paragraph 10.

11. DPI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 and therefore leaves Plaintiffs to their proof.

**FACTUAL BACKGROUND AND GENERAL ALLEGATIONS:**

12. The allegations of Paragraph 12 are admitted except the date of deregulation was 1998.

13. The allegations of Paragraph 13 are admitted.

14. The allegations of the first three sentences of Paragraph 14 are admitted. DPI lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 14 and therefore leaves Plaintiffs to their proof.

15. The allegations of the first three sentences of Paragraph 15 are admitted. The allegations of the fourth sentence are denied.

16. The allegations of Paragraph 16 are denied as written.
17. The allegations of Paragraph 17 are admitted.
18. The allegations of the first sentence of Paragraph 18 are denied as written. The allegations of the second sentence of Paragraph 18 are admitted.
19. The allegations of the first sentence of Paragraph 19 are admitted. The referenced statute speaks for itself.
20. The allegations in Paragraph 20 are admitted in part and denied in part. DPI admits to offering various Fixed and Variable rate plans, but denies the remaining allegations of Paragraph 20.
21. DPI's documents speak for themselves. DPI otherwise denies the allegations of Paragraph 21.
22. DPI's documents speak for themselves. DPI otherwise denies the allegations of Paragraph 22.
23. The allegations of Paragraph 23 are denied.
24. The allegations of Paragraph 24 are denied.
25. DPI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 25 and therefore leaves Plaintiffs to their proof.

26. DPI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 26 and therefore leaves Plaintiffs to their proof.

27. The allegations of Paragraph 27 are denied.

28. The allegations of Paragraph 28 are denied.

29. The allegations of Paragraph 29 are denied.

30. The allegations of Paragraph 30 are admitted as to Plaintiff Chandler only.

The remaining allegations of Paragraph 30 are denied.

31. The allegations of Paragraph 31 are denied.

32. The allegations of Paragraph 32 are denied.

33. The allegations of Paragraph 33 are denied.

34. The allegations of Paragraph 34 are denied.

**CLASS ACTION ALLEGATIONS:**

35. This is not a pleading of fact. To the extent it is, the allegations of Paragraph 35 are denied.

36. This is not a pleading of fact. To the extent it is, the allegations of Paragraph 36 are denied.

37. This is not a pleading of fact. To the extent it is, the allegations of Paragraph 37 are denied.

38. The allegations of Paragraph 38 are denied.

39. The allegations of Paragraph 39 are denied.

40. The allegations of Paragraph 40 are denied.

41. The allegations of Paragraph 41 are denied.

42. The allegations of Paragraph 42 are denied.

43. The allegations of Paragraph 43 are denied.

44. DPI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 44 and therefore leaves Plaintiffs to their proof.

**CLAIMS FOR RELIEF (COUNT I):**

1. – 45. Defendant hereby repeats and incorporates its responses to Paragraphs 1 through 45 as if fully set forth herein.

46. This is not a pleading of fact. To the extent it is, the allegations of Paragraph 46 are denied.

47. The allegations of Paragraph 47 are admitted.

48. The allegations of Paragraph 48 are denied.

49. The allegations of Paragraph 49 are denied.

50. The allegations of Paragraph 50 are denied.

51. The allegations of Paragraph 51 are denied.

**COUNT II**

1.– 52. Defendant hereby repeats and incorporates its responses to Paragraphs 1 through 52 as if fully set forth herein.

53. This is not a pleading of fact. To the extent it is, the allegations of Paragraph 53 are denied.

54. DPI's documents speak for themselves. DPI otherwise denies the allegations of Paragraph 54.

55. The allegations of Paragraph 55 are denied.

56. The allegations of Paragraph 56 are denied.

57. The allegations of Paragraph 57 are denied.

58. The allegations of Paragraph 58 are denied.

59. The allegations of Paragraph 59 are denied.

**COUNT III**

1.– 60. Defendant hereby repeats and incorporates its responses to Paragraphs 1 through 60 as if fully set forth herein.

61. The allegations of Paragraph 61 are denied.

62. The allegations of Paragraph 61 are denied.

63. The allegations of Paragraph 63 are denied.

64. The allegations of Paragraph 64 are denied.
65. The allegations of Paragraph 65 are denied.
66. The allegations of Paragraph 66 are denied.

## **SPECIAL DEFENSES**

### **FIRST SPECIAL DEFENSE – TO ALL COUNTS**

The Complaint fails to state a claim upon which relief can be granted.

### **SECOND SPECIAL DEFENSE – TO ALL COUNTS**

This action is barred, in whole or in part, because Plaintiffs lack standing to assert the claims alleged in this action because they were not customers during the entire class period.

### **THIRD SPECIAL DEFENSE - TO ALL COUNTS**

Each Count of the Complaint is barred by the doctrine of waiver, insofar as Plaintiffs agreed to the variable rate structure, did not convert to a different rate structure, and failed to timely report any complaints upon receipt of their account statements.

### **FOURTH SPECIAL DEFENSE - TO ALL COUNTS**

Each Count of the Complaint is barred by the doctrine of estoppel, insofar as Plaintiffs agreed to the variable rate structure, did not convert to a different rate structure, and failed to timely report any complaints upon receipt of their account statements.

### **FIFTH SPECIAL DEFENSE - TO ALL COUNTS**



Each Count of the Complaint is barred under the doctrine of exhaustion of administrative remedies because an adequate administrative remedy for Plaintiffs' allegations exists at the Public Utility Regulation Authority and Plaintiffs have not exhausted this administrative remedy.

**SIXTH SPECIAL DEFENSE - TO ALL COUNTS**

Each Count of the Complaint is barred under the primary jurisdiction doctrine because Defendant's communications concerning its rate structure falls within the exclusive jurisdiction of the Public Utility Regulation Authority.

**SEVENTH SPECIAL DEFENSE - TO ALL COUNTS**

Plaintiffs do not adequately represent the purported class, based in part on 1) the applicability of these Special Defenses to Plaintiffs; 2) the manner in which they established their accounts including, without limitation, the fact that they knew they chose a variable rate pricing structure and opted not to convert to a different rate structure which they could have done at any time; 3) they were not customers during the entire class period; and, 4) they fail to meet the requirements of Practice Book Section 9.7 in that a) Plaintiffs claims are not typical of the claims of other members of the class described in the Amended Complaint; b) common issues of law and fact do not predominate over individual issues; c) the putative class described in the Complaint

is not manageable or ascertainable; d) Plaintiffs have a conflict of interest with others in the putative class who benefitted from the variable rate structure Plaintiffs' complain of by incurring reduced rates; and/or, e) a class action is not superior to the other available methods for the fair and efficient adjudication of the purported claims for relief alleged in the Complaint.

#### **EIGHTH SPECIAL DEFENSE - TO ALL COUNTS**

Plaintiff's damages, if any, are limited by the terms of the relevant account agreements which preclude incidental, consequential, punitive, exempt or indirect damages.

#### **NINTH SPECIAL DEFENSE – TO ALL COUNTS**

Plaintiffs and any putative class member are barred from challenging Defendant's interpretation, application and implementation of the terms and provisions of the variable rate structure (including whether Defendant's interpretation, application, and implementation, were in accordance with any obligation of good faith and fair dealing) because 1) Plaintiffs and any putative class member acquiesced and/or ratified in Defendant's interpretation, application and implementation of the contractual terms and provisions as a course of dealing, and 2) Plaintiffs benefitted from Defendant's interpretation, application and implementation of the contractual terms and provisions in

a number of ways, including, without limitation, by availing themselves of the use of rates that were initially lower than fixed rates.

**TENTH SPECIAL DEFENSE – TO ALL COUNTS**

To the extent that Plaintiffs or any putative class member have outstanding obligations to Defendant, their claims are barred or reduced.

**ELEVENTH SPECIAL DEFENSE – TO ALL COUNTS**

Plaintiffs failed to mitigate their damages.

Defendant hereby gives notice that it intends to rely upon such other and further defenses as may become available or apparent during pretrial proceedings in this action and hereby reserves its rights to amend this Answer and assert all such defenses.

THE DEFENDANT,  
DISCOUNT POWER, INC.

By: /s/ James T. Shearin

James T. (Tim) Shearin

Johanna S. Katz

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Its Attorneys

**CERTIFICATION**

Pursuant to Practice Book § 10-14, I hereby certify that a copy of the above was mailed or electronically delivered on January 20, 2015 to all counsel and pro se parties of record.

Robert Izard, Esq.  
IZARD NOBEL LLP  
29 South Main Street, Suite 305  
West Hartford, CT 06107

*/s/ James T. Shearin*  
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James T. (Tim) Shearin