

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

OPOWER, INC.)	
)	
Plaintiff,)	
)	Civil Action No. _____
v.)	
)	
EFFICIENCY 2.0, LLC)	
)	
Defendant.)	
)	
)	
)	

**DECLARATION OF DANIEL YATES IN SUPPORT OF
OPOWER, INC.’S MOTION FOR PRELIMINARY INJUNCTION**

I, Daniel Yates, declare and state as follows:

1. I submit this Declaration in support of Opower, Inc.’s Motion for Preliminary Injunction. Except where otherwise indicated, I submit this declaration to the best of my personal knowledge, and based on my conversations with other Opower employees and my review of Opower’s business records.
2. I am the Chief Executive Officer & co-Founder of Opower, Inc.
3. Opower, Inc. was originally called Positive Energy, Inc. (hereinafter “Opower”).
4. Opower was founded in 2007 with the goal of finding a practical method to engage residential energy users in a way that would cause them to reduce their home energy consumption on a large scale. Opower recognized and believed that mailing out standard monthly utility bills would never change energy consumption behavior because the average utility customer could not understand the raw data as presented in the bill.

5. Working with the guidance of Opower's Chief Scientist, social psychologist Dr. Robert Cialdini of Arizona State University, Opower determined that energy users would benefit from two specific innovations. First, access to analogous data reflecting usage by their neighbors in order to understand their consumption in context—and not just any neighbors, but specifically those with like homes (i.e., square footage, heat type, etc.). Second, users needed a more accessible, intuitive and expressive report which would permit them to readily digest their own energy use, and effortlessly perform the just-mentioned comparison.

6. Opower also recognized that utilities, which were in many cases operating in regulatory environments mandating reductions in consumption, were equally desirous of a way to better engage their customers.

7. After months of drafting, Opower completed the first model of its report in October 2007. A true and correct copy of this first draft is attached as Exhibit 6 to the Appendix of Exhibits. Opower prepared the report for use by the Sacramento Municipal Utility District ("SMUD"), its first utility customer. Although that draft design contained in substance all of the neighbor information that Opower had selected for comparison, its arrangement did not yet allow the consumer to process the data in a quick, orderly way. Accordingly, Opower continued to refine the way in which it presented its selection of information to users.

8. By November 2007, with the help of a professional outside design firm called Smart Design, Opower redesigned the SMUD report to provide more open space and allow for easier digestion of key data. A true and correct copy of this second draft of the SMUD report is attached as Exhibit 7 to the Appendix of Exhibits. Opower, for instance, raised the prominence of the easy-read efficiency rating box ("Good," "Great," etc.), increased the size and importance of the eye-catching Neighborhood Comparison bar graph, moved the user-friendly "12 Month

Comparison” line graph up to the first page, and dropped less immediate metrics to page two. A user would immediately be told how she was doing relative to her neighbors, without being overwhelmed by details.

9. Opower continued to revise the design of its report over the next three months until finally, in January 2008, it settled upon a final report. A true and correct copy of this final report, as registered with the Copyright Office, is attached as Exhibit 2 to the Appendix of Exhibits.

10. Opower’s customers are generally utilities, such as National Grid and NSTAR in Massachusetts. It contracts with the utilities to send out reports directly to the utilities’ customers, using data provided by the utilities in addition to data it collects on its own. Opower customizes its Home Energy Report for each utility with which it contracts. For example, its reports for National Grid and Connecticut Light & Power (“CLP”) show the respective color schemes and trademarks of those utilities. Opower contractually retains all copyrights in the reports. Opower registered two of these later derivative reports with the Copyright Office, as well as screen shot of its current web page displaying a model Home Energy Report.

11. A true and correct copy of Opower’s National Grid and CLP reports, as registered with the Copyright Office, are attached as Exhibits 3 and 4 to the Appendix of Exhibits.

12. Opower spends approximately \$600,000 per year advertising and promoting its reports in the United States, through channels such as online and print advertisements, conference sponsorships, webinars, its website, and direct mail campaigns. Opower continues to develop and seek improvements for its reports, and currently has a team of twelve full-time employees dedicated to just that task.

13. Opower demonstrably improved energy efficiency among participants receiving its Home Energy Reports. Almost three years into a study of the Opower/SMUD pilot program, Navigant Consulting has found that the average high consumption households achieve 2.89 % savings, with low consumption households saving 1.70 %. A true and correct copy of excerpts from the Navigant Consulting report, entitled *Evaluation Report: Opower Smud Pilot Year 2*, is attached as Exhibit 8 of the Appendix of Exhibits.

14. Opower calculates that as of the filing of this brief it has saved about 500,000,000 kilowatt hours of energy, abated close to 740,000,000 lbs of carbon dioxide, and saved consumers close to \$60 million on their energy bills.

15. Opower sends out Home Energy Reports on behalf of 60 utility companies across the country, including eight of the ten largest, reaching about 2.9 million households. Close to half a million customers in Massachusetts alone receive the reports. It has printed and sent out over 19 million reports to date nationwide, without any confidentiality restrictions on them.

16. Opower's success has been recognized by mainstream media, environmental groups, and even the nation's political leaders. President Obama, for example, personally visited and held a press conference at Opower's offices in March 2010 to acknowledge the company's success. In his speech he stated: "The work you do here . . . is making homes more energy efficient, it's saving people money, it's generating jobs and it's putting America on the path to a clean energy future...And so this is a model of what we want to be seeing all across the country."

17. In January, 2009, the New York Times carried a front page, above-the-fold, article spotlighting Opower (then called Positive Energy) and the success of its Home Energy Reports. The article ran alongside a large image showing a detail of an Opower Home Energy Report, including the Last Month Neighbor Comparison graph. A true and correct copy the electronic version of the article is attached as Exhibit 10 to the Appendix of Exhibits.

18. Opower's reports are easy to find. A version of Opower's Home Energy Report has appeared on Opower's website at least since October 1, 2009. In June 2010, the same time period that Mr. Scaramellino was monitoring Opower's press releases, Opower released a new version of its website, www.opower.com, which included a particularly high resolution version of Opower's Home Energy Report.

19. On May 4, 2010, Opower sent out a press release promoting the launch of Opower 3.0, its new web portal. Tom Scaramellino, founder of Efficiency 2.0, LLC, sent me an email about that launch later that same day. A true and correct copy of a redacted version of his email is attached as Exhibit 19 to the Appendix of Exhibits.

20. E2.0 and Opower directly compete with each other to attain energy reporting business from utility companies.

21. CLP is one of Opower's customers. I understand it to be a subsidiary of Northeast Utilities, which I further understand to be the parent company to Western Massachusetts Electric Company.

22. Many state regulators or the utilities themselves mandate verifiable proof of lowered consumption in order to meet key efficiency benchmarks. This is a major selling point for energy reporting companies such as Opower. Verified results are essential to securing utility

accounts and developing goodwill in the energy reporting field. The misleading use of infringing reports to verify results is potentially very harmful to Opower.

23. To the best of my knowledge, no one at Opower had any knowledge that the Accused Reports existed, or were being printed or sent out, prior to September 29, 2011.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Arlington, VA, on November 13, 2011.

/s/ Daniel Yates
Daniel Yates

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CERTIFICATE OF SERVICE

I hereby certify that the above document is being filed contemporaneously with Complaint in this action, and a true and correct copy of the above document will be served by hand upon Efficiency 2.0 along with service of the Complaint on November 15, 2011.

/s/ Peter J. Karol/
Peter J. Karol