

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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May 1, 2015

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Commonwealth of Pennsylvania, by Attorney General
KATHLEEN G. KANE, Through the Bureau of Consumer
Protection,
And
TANYA J. McCLOSKEY, Acting Consumer Advocate,
Complainants

v.

HIKO Energy, LLC,

Respondent

Docket No. C-2014-2427652

Secretary Chiavetta:

Enclosed please find the Joint Petition for Approval of Settlement with accompanying Exhibits and Statements in Support, in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Candis A. Tunilo".

Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. #89891

Enclosures

cc: Honorable Elizabeth Barnes, ALJ
Honorable Joel Cheskis, ALJ
Certificate of Service

*185197

CERTIFICATE OF SERVICE

Commonwealth of Pennsylvania, by :
Attorney General KATHLEEN G. KANE, :
Through the Bureau of Consumer Protection, :
 :
And :
 :
TANYA J. McCLOSKEY, Acting Consumer :
Advocate, :
Complainants :
 : Docket No. C-2014-2427652
v. :
 :
HIKO ENERGY, LLC, :
Respondent :

I hereby certify that I have this day served a true copy of the foregoing document, the Joint Petition for Approval of Settlement with accompanying Exhibits and Statements in Support, in the manner and upon the persons listed below:

Dated this 1st day of May 2015.

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185178

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Commonwealth of Pennsylvania, by Attorney	:	
General KATHLEEN G. KANE, Through the	:	
Bureau of Consumer Protection,	:	
	:	
And	:	Docket No. C-2014-2427652
	:	
TANYA J. McCLOSKEY, Acting Consumer	:	
Advocate,	:	
Complainants	:	
	:	
v.	:	
	:	
HIKO ENERGY, LLC,	:	
Respondent	:	

JOINT PETITION FOR APPROVAL OF SETTLEMENT

The Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection (BCP or OAG) and Tanya J. McCloskey, Acting Consumer Advocate (OCA), (together, Joint Complainants), the Office of Small Business Advocate (OSBA), and HIKO Energy, LLC (HIKO or the Company) (collectively, Joint Petitioners)¹ hereby join in this Joint Petition For Approval of Settlement (Settlement), which resolves all issues among the Joint Petitioners.

The Joint Petitioners respectfully request that Administrative Law Judges Elizabeth Barnes and Joel H. Cheskis (ALJs) recommend and the Pennsylvania Public Utility Commission (Commission) approve all terms and conditions of the Settlement without modification on an expedited basis. The Settlement provides for refunds and injunctive relief in full satisfaction of

¹ The Bureau of Investigation and Enforcement (I&E) does not join in this Settlement but does not oppose the Settlement.

the Joint Complaint filed with the Commission by Joint Complainants against HIKO on June 20, 2014.

In support of this Settlement, the Joint Petitioners state the following:

I. BACKGROUND

1. The Attorney General is the chief law officer of the Commonwealth of Pennsylvania pursuant to Article IV § 4.1 of the Pennsylvania Constitution and is authorized to initiate and maintain this action pursuant to the Commonwealth Attorneys Act, 71 P.S. § 732-204.

2. Tanya J. McCloskey is the Acting Consumer Advocate. The OCA is authorized by law to represent the interests of utility consumers before the Commission, as provided in 71 P.S. § 309-1 *et seq.*

3. HIKO is a New York limited liability company licensed to supply retail electricity to residential, small commercial (25 kw and under demand), large commercial (over 25 kw demand), industrial and governmental customers throughout the Commonwealth. The Commission approved Respondent's license application with conditions by Final Order entered July 2, 2012 at Docket No. A-2012-2289944.

4. On June 20, 2014, Joint Complainants filed a Joint Complaint with the Commission pursuant to the Public Utility Code, 66 Pa. C.S. Ch. 28, the Commission's regulations, 52 Pa. Code Ch. 54, 56 and 111, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (Consumer Protection Law), and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* (TRA). The Joint Complaint includes eight separate counts as follows: (1) misleading and deceptive promises of savings; (2) slamming; (3) lack of good faith handling of complaints; (4) failing to provide rate information; (5) failing to provide accurate

pricing information; (6) prices nonconforming to disclosure statement; (7) failing to follow POR program parameters; and (8) failure to comply with the Telemarketer Registration Act. With respect to relief, Joint Complainants requested that the Commission find that HIKO violated the Public Utility Code, the Consumer Protection Law, the TRA, and the Commission's regulations and Orders; provide restitution to HIKO's customers; impose a civil penalty; order HIKO to make various modifications to its practices and procedures; and revoke or suspend HIKO's EGS license, if warranted.

5. On July 10, 2014, the OSBA filed a Notice of Appearance, Notice of Intervention and Public Statement in this proceeding.

6. On July 30, 2014, I&E filed a Notice of Intervention in this proceeding.

7. On July 30, 2014, HIKO filed an Answer with New Matter to the Joint Complaint. In its Answer, HIKO generally denied the various averments of violations of Pennsylvania law and Commission regulations and order made by the Joint Complainants in the Joint Complaint. In its New Matter, HIKO averred various affirmative defenses and requested that judgment be entered in favor of the Company.

8. On August 19, 2014, Joint Complainants filed their Reply to New Matter specifically denying the viability of each of HIKO's affirmative defenses.

9. On September 19, 2014, HIKO filed an unopposed Motion for Protective Order. The Motion was granted by Order dated September 25, 2014.

10. An Initial Prehearing Conference was convened on September 29, 2014. Following the Initial Prehearing Conference, Scheduling Order dated October 3, 2014 was issued establishing, *inter alia*, that the Joint Complainants would serve written direct testimony of consumer witnesses by Friday, December 5, 2014; that evidentiary hearings for purposes of

admitting the written direct testimony of the consumer witnesses subject to cross examination and timely objections would be held January 15-16 and 21-23, 2015; and a further prehearing conference was scheduled for February 3, 2015.²

11. On December 5, 2014, Joint Complainants served the direct testimony of 98 consumer witnesses, comprising two volumes and 464 pages.

12. On December 19, 2014, HIKO filed an unopposed Motion for Continuance Evidentiary Hearings scheduled for January 15-16 and 21-23, 2015.

13. By Order Granting Motion for Continuance dated December 22, 2014, the ALJs granted HIKO's Motion for Continuance and scheduled hearings for the cross examination of consumer witnesses for March 23-27, 2015. The ALJs also directed HIKO to (1) identify which consumers it intended to cross by February 24, 2015; (2) submit any motions to strike consumer testimony by March 13, 2015; and (3) serve the Company's cross exhibits on the ALJs, parties and consumer witnesses by March 13, 2015. The ALJs also rescheduled the further prehearing conference for April 8, 2015.

14. On February 24, 2015, HIKO notified the ALJs and parties that the Company intended to cross examine all of the Joint Complainants' consumer witnesses at hearings on March 23-27, 2015.

15. On March 3, 2015, Joint Complainants filed a Memorandum of Law Regarding the Admission of Pattern of Practice Evidence.

16. On March 13, 2015, HIKO filed a Motion to Strike Pre-Served Consumer Direct Testimony. Additionally, HIKO served its cross examination exhibits intended for use at the

² Later, in Scheduling Order #3 entered December 5, 2014, the ALJs also directed HIKO to: (1) identify which consumer witnesses it intended to cross-examine by December 22, 2014; (2) file any motions to strike consumer witness direct testimony by January 5, 2015; and (3) provide its cross-examination exhibits to the ALJs, parties and witnesses by January 9, 2015.

evidentiary hearings scheduled for March 23-27, 2015 on the ALJs, parties and consumer witnesses.

17. Also on March 13, 2015, HIKO filed a Reply Memorandum of Law Regarding the Admission of “Pattern and Practice” Evidence.

18. On March 17, 2015, Joint Complainants filed an Answer to HIKO’s Motion to Strike Consumer Direct Testimony.

19. By Order entered March 18, 2015, the ALJs granted in part and denied in part HIKO’s Motion to Strike Consumer Direct Testimony.

20. Via tele-conference call on March 20, 2015, Joint Petitioners advised the ALJs that they had reached a settlement in principle and requested that the ALJs suspend the litigation schedule until such final approval could be obtained. The ALJs granted the request and cancelled the evidentiary hearings scheduled for March 23-27, 2015, and directed that the parties convene on April 8, 2015 to move consumer testimony into the record and set a deadline for submission of settlement documents.

21. On April 8, 2015, the ALJs convened a status conference with the parties, wherein the redacted³ consumer testimony sponsored by Joint Complainants was moved into the record and a deadline of May 1, 2015 was set for submission of a Joint Petition for Settlement and Statements in Support. The parties stipulated that by admitting the consumer testimony into the record, HIKO was not admitting to any wrongdoing. The consumer testimony was introduced solely for the purpose of providing substantial evidence in the record that would support the approval of settlement, and that if the parties had not reached a Settlement in Principle, Joint Complainants would have relied on the consumer statements to prove the allegations in their

³ The names, street addresses and verification signatures were redacted from each piece of consumer direct testimony. Also redacted to the extent the information appeared in testimonies were account/meter numbers, telephone numbers and BCP file numbers.

Joint Complaint, and HIKO would have challenged the accuracy of the allegations made by the Customer Witnesses through cross-examination, cross-examination exhibits, and rebuttal testimony.

Thereafter, the ALJs issued an Order dated April 8, 2015 suspending the procedural schedule and directing that the Joint Petition for Settlement, along with factual stipulations and statements in support be filed by May 1, 2015.

II. SETTLEMENT TERMS AND CONDITIONS

22. The Settlement shall become effective 15 days after a final non-appealable order has been entered (Effective Date).

A. Refunds.

23. Refund Pool – HIKO agrees to pay the sum of \$2,025,383.85 (Refund Pool), which reflects the total refund amount minus \$159,320.15 in refunds provided by the Company to date and shall be allocated as follows:

a. Regarding the group of customers enrolled in HIKO's guaranteed 1%-7% savings program, all customers will receive a refund reflecting 3.5% savings as compared to the applicable Price to Compare for January, February and March 2014 after taking into account any refunds a customer may have already received from HIKO. This amount totals \$1,672,523.10 of the Refund Pool, and reflects \$1,789,704.00 of refunds minus \$117,180.90 in refunds provided by the Company to date.

b. The amount of \$352,860.75 from the Refund Pool shall be allocated as refunds for HIKO's customers not enrolled in HIKO's 1%-7% guaranteed savings program, which reflects \$395,000.00 of refunds minus \$42,139.25 in refunds provided by the Company to

date to this group of customers. Refunds shall be provided to all HIKO customers in this group that were on variable rate plans in January, February or March 2014. The OAG and OCA will determine the refund amount to offer eligible HIKO customers based on the individual customer's usage, price charged and refund amounts already received directly from HIKO. The refund determinations will be designed so as to fully utilize the Refund Pool after accounting for any administration fees not otherwise paid by HIKO pursuant to this Settlement.

c. HIKO shall honor all commitments to customers enrolled in HIKO's one-free month program who meet the eligibility requirements to receive one free month of service whether or not the customer has received a refund.

B. Administration of Refund Pool.

24. OAG and OCA shall retain a third-party Administrator of the Refund Pool. HIKO shall be responsible for all costs and expenses relating to the third-party Administrator, up to a maximum of \$50,000.

25. HIKO shall deposit one-half (1/2) of the full amount of the Refund Pool identified above with the Administrator within 15 days after OAG and OCA identify to HIKO the Administrator retained (or 15 days after the Effective Date, whichever is later), and HIKO will deposit the remaining one-half (1/2) within 60 days thereafter.

26. HIKO shall fully and timely cooperate with OAG, OCA and the Administrator by providing all customer information necessary to calculate each customer's refund amount. Such information shall include, but not be limited to, customer billing rates, usage and addresses. The Settlement Administrator shall use best efforts to distribute funds from the Refund Pool within one hundred and eighty (180) days of receiving the Refund Pool funds from HIKO. The Settlement Administrator shall provide monthly reports to OCA, OAG, HIKO and designated

Commission staff of funds distributed that include at a minimum, the customer's name and other available identifying information, the amount of funds dispersed to each customer and the period for which the funds were dispersed.

27. If any funds remain in the Refund Pool after issuance of the calculated refunds, they shall be provided to EDCs' hardship funds and allocated by the ratio of HIKO customers in the EDC's territory to the total amount of HIKO customers in Pennsylvania as of January 1, 2014.

28. Any unclaimed funds for refunds issued that remain in the Refund Pool shall be forwarded to the Pennsylvania Department of the Treasury pursuant to unclaimed property requirements for the customer(s) entitled to the refund.

C. Contributions to Hardship Funds.

29. Within 15 days of the Effective Date, HIKO shall make a contribution payment of \$25,000 to the EDCs' hardship funds. The contribution shall be allocated by the ratio of HIKO customers in the EDC's territory to the total amount of HIKO customers in Pennsylvania as of January 1, 2014.

D. Injunctive Relief.

30. Modifications to Business Practices: In addition to complying with all Commission regulations, Orders and policies, HIKO shall implement the following modifications to its business practices:

a. Product Offering:

1. HIKO agrees that it will not accept any new Pennsylvania customers starting April 1, 2015 and lasting until June 30, 2016; provided, however, that if

HIKO finds that it is able to offer a fixed rate product before June 1, 2016, it will be able to do so pursuant to the provisions set forth in Exhibit A hereto.

2. Regarding HIKO's current customers, HIKO shall comply with the procedures set forth in 52 Pa. Code § 54.10 relating to changes at the end of any fixed price contract terms. HIKO acknowledges that as part of these procedures, Section 54.10 permits, *inter alia*, the movement of a customer to a month-to-month plan with no cancellation fees if the customer does not respond to the options notice, and Section 54.10(2)(ii)(A)(I) requires 30 days' advanced notification to the customer moved to a month-to-month plan of any price change before being charged the new price. Further, if HIKO offers fixed rate products after the time period set forth in Paragraph 30(a)(1) above, HIKO shall comply with the procedures set forth in 52 Pa. Code § 54.10.

3. If HIKO offers variable rate products to consumers in the Commonwealth after the time period set forth in Paragraph 30(a)(1) above, HIKO agrees that, in addition to the other requirements in this Settlement, it will not charge Pennsylvania customers cancellation or termination fees for the Company's variable rate products.

b. Marketing: If HIKO offers electric generation supply to Pennsylvania consumers after the time period set forth in Paragraph 30(a)(1) above:

1. HIKO shall comply with all Pennsylvania laws, including the Public Utility Code, 66 Pa. C.S. § 101 *et seq.*, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (Consumer Protection Law) and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* (TRA), and other applicable laws, as well as Commission regulations, Orders and policies.

2. HIKO commits that the Company, its agents, employees and representatives shall not make misrepresentations to consumers.

3. HIKO, its agents, employees and representatives shall not make representations, either directly or by implication, about savings that consumers may realize by switching to HIKO except when referencing an explicit, affirmative guaranteed savings program; provided, however, that as long as HIKO does not violate this or any other provision of this Settlement, nothing herein shall preclude HIKO from including data comparing actual historical HIKO rates with actual rates of the local EDC in any statements made to, or materials provided, any consumers.

4. HIKO, its agents, employees and representatives shall refrain from using terms in their variable rate marketing campaigns, such as “risk free,” “competitive,” “guaranteed,” or any other terminology that represents, explicitly or by implication, that HIKO guarantees that the price offered will be lower than the EDC’s Price to Compare.

5. If HIKO offers variable rate products to consumers in the Commonwealth, after the time period set forth in Paragraph 30(a)(1) above, HIKO its agents, employees and representatives shall refrain from using terms in their variable rate marketing campaigns, such as “trial period” or “introductory rate,” without a clear and conspicuous disclosure of the material terms and conditions thereof, including and without limitation to, a full description of the price that will be charged after the expiration of that introductory or trial period, the circumstances under which the consumer can cancel, and the consequences of cancellation.

6. HIKO specifically commits to complying with 52 Pa. Code § 57.175 and shall not enter into a sales agreement or change the commodity provider for any

consumer that is not personally accepted by the EDC Customer of Record. HIKO salespeople shall confirm that any person who grants consent to a service change is the EDC Customer of Record or has been authorized by the Customer of Record to grant such consent. Otherwise, HIKO shall not proceed with the switch.

7. Every communication by a HIKO representative with a potential customer shall begin with the sales representative identifying his or her name, and stating (i) that he or she is calling on behalf of HIKO Energy, LLC; (ii) that HIKO can provide the customer with electricity; and (iii) that the sales representative does not work for or represent the customer's electric utility company.

8. In addition to the requirements of Paragraph 30(b)(7) above, the HIKO salesperson shall explain that if the consumer switches to HIKO, his or her electric bill will contain HIKO's charges for generation as well as delivery charges from his or her electric utility.

9. If HIKO offers variable rate products to consumers in the Commonwealth after the time period set forth in Paragraph 30(a)(1) above that are not capped or otherwise limited, the HIKO salesperson must include the following statement during any variable rate sales contacts:

After ___ month(s) [if Introductory Price period is applicable], the price you pay under this variable rate contract can change every month. This is not a fixed rate contract. Variable means the price can go up or down. There is no limit on how high the price can go.

10. During a variable rate sales contact or on any variable rate advertising, if HIKO makes a representation to the consumer that they may cancel their contract at any time, HIKO must also state that cancellations will be handled promptly, but it could take several days to switch suppliers.

11. If HIKO offers a guaranteed rate for a certain time period, HIKO is prohibited from stating that it has no term plans.

12. Regarding all in-person sales solicitations, the HIKO salesperson shall provide the Disclosure Statement before presenting a contract to the consumer for his or her signature and inform the consumer that the document sets out his or her rights and obligations.

13. HIKO, its agents, employees and representatives shall deposit with the United States Postal Service (or such other mail delivery service the Company may employ) its Disclosure Statement and Welcome documents within three (3) business days after the account is enrolled.

14. A Disclosure Statement shall contain the following information:

- i. The terms of the product.
- ii. A detailed description of the product, which shall match the oral description given in the telemarketing solicitation. This description may be satisfied with appropriate use of the Schumer box.

15. HIKO shall retain records in accordance with the Commission's requirements, including but not limited to, confirmations of mailing, which shall include the date that the Disclosure Statement and Welcome documents were deposited with U.S.P.S. (or other delivery service) and the customer name and address stated on the envelope containing the documents.

16. Regarding online enrollments, HIKO shall revise its Website so that it displays all required disclosures and terms and conditions, as one or multiple unavoidable separate screen page(s) during the enrollment process. HIKO shall require new customers to

acknowledge that they have reviewed the Terms and Conditions, which the Consumer shall be able to print, before proceeding to complete enrollment.

17. In all advertising to consumers, HIKO shall include a clear and conspicuous display of HIKO's brand identification information and clear and conspicuous notice that HIKO is independent of the consumer's electric utility, but not formally name the electric utility. Further, HIKO shall include clear and conspicuous language that the consumer is not required to switch to an alternate generation supplier, but if the consumer chooses to switch, he or she will continue to receive one bill from his or her electric utility and the bill will reflect HIKO's generation charges.

18. If the Company offers variable rate products after the time period specified in Paragraph 30(a)(1) above, the Company's variable rate product marketing materials that offer terms of service for acceptance by consumers and Welcome documents to consumers that have enrolled in variable rate products with HIKO, the Company shall provide a statement of the average price per kwh, as required by 52 Pa. Code § 54.7(b)(2); the Company shall also provide a statement of the total impact of the Company's 24-month average price under the program for the levels of monthly usage of 500 kWh, 1,000 kWh and 2,000 kWh. The information would be organized as follows:

Monthly usage	500 kWh	1,000 kWh	2,000 kWh
HIKO Average price	\$xxx	\$xxx	\$xxx

This information shall also be conveyed to the consumer during the sales contact. If HIKO begins offering variable rates, it will provide at least an average variable price, in fulfillment of the requirements of 52 Pa. Code § 54.7(b)(2).

c. Third Party Verifications: If HIKO offers electric generation supply to Pennsylvania consumers after the time period set forth in Paragraph 30(a)(1) above:

1. For live Third Party Verifications (“TPVs”), the Company representative shall provide the following explanation, in a slow and audible manner, to consumers prior to beginning the TPV process:

You are going to hear a series of questions to confirm your understanding of the agreement. If the representative speaks too quickly, please interrupt and tell the representative to speak more slowly. If you do not understand a question, please interrupt and say that you do not understand the question. If you have a question of your own, please interrupt and ask your question.

2. HIKO shall add the following questions to all TPVs, whether via live agent or an Interactive Voice Response system (“IVR”):

- What is your name? (for live agent only)
- What is your address? (for live agent only)
- Do you understand that HIKO is not your electric utility?
- Do you understand that you are not required to switch to HIKO in order to continue receiving electric service?
- Does your name appear on the electric bill?
- If not, do you know whether the person whose name appears on the electric bill has sent written notice to your electric utility authorizing you to switch providers?

If the consumer answers that his or her name does not appear on the electric bill, the HIKO representative may request that the consumer produce the person whose name appears on the electric bill to verify authorization to switch. If the customer of record (or other properly authorized person) is not available, the sales solicitation and TPV must immediately end.

If the consumer answers that he or she is the customer of record (or is a properly authorized person) and the sales solicitation is for a variable rate product, HIKO shall also add the following questions to the TPV:

- Do you understand that you are agreeing to a variable rate that changes on a month-to-month basis?
- Do you understand that a variable rate can go up as well as go down?
- Do you understand that there is no limit on the price? (If offering an uncapped or otherwise unlimited variable rate.)
- Do you understand that your variable rate could be higher or lower than the rate you would pay your local utility?

3. HIKO agrees that all TPVs will be performed outside the presence of the HIKO sales representative in accordance with the Commission's regulations. Further, the HIKO in-person sales representative shall leave the premises during the TPV in accordance with the Commission's regulations.

4. HIKO sales representatives shall not prompt consumers' responses to TPV questions, instruct the consumers as to the manner in which to respond to TPV questions, or otherwise participate in the TPV of any sale.

d. Disclosure Statement: Within 10 days of the Effective Date, HIKO shall provide to OAG and OCA its current Disclosure Statement and Schumer Box, drafted pursuant to the Commission's Final-Omitted Rulemaking at Docket No. L-2014-2409385.

1. Further, HIKO shall provide to the OCA and the Commission any subsequently amended Disclosure Statements for use in the Commonwealth for the period of five years after the Effective Date.

2. In addition to adhering to the Commission's regulations, Orders and policies regarding the requirements for disclosure statements, term and conditions, and marketing materials, if the Company offers variable rate products after the time period specified in Paragraph 30(a)(1) above, HIKO shall:

i. Include the following language in at least 12-point bold font in the "Price Structure" section of the Company's Disclosure Statement and the Schumer Box, if possible, for all variable rate products:

After ___ month(s) [if Introductory Price period is applicable], the price you pay under this variable rate contract can change every month. This is not a fixed rate contract. Variable means the price can go up or down. There is no limit to how high the price can go.

ii. Under the heading "Cancellation/Early Termination Fees" of the Disclosure Statement, HIKO shall state the following in at least 12 point font:

You may cancel this contract at any time without an early termination fee. All cancellations will be handled promptly, but it could take several days to switch suppliers.

3. If the Company offers variable rate products after the time period specified in Paragraph 30(a)(1) above, HIKO shall not state or represent to customers in the Company's variable rate programs that the price HIKO will charge will be market-based unless

HIKO provides a specific means or formula, readily understandable for the customers, the Commission, OAG and OCA to monitor and confirm that the price charged is market-based.

4. HIKO shall remove from its Disclosure Statement the language that authorizes HIKO to obtain and review information regarding the customer's credit history (i.e. Disclosure Statement ¶ 5).

5. HIKO shall comply with the EDCs' Purchase of Receivables program parameters and tariff provisions.

6. The parties agree that the Disclosure Statement language stated in Paragraphs 30(d)(2) and 30(d)(4) above, are not a change in contract terms pursuant to 52 Pa. Code § 54.10. HIKO, however, shall notify all of its current Pennsylvania customers enrolled in variable rate programs as of the date of execution of this Settlement of the updated Disclosure Statement, as provided in Paragraphs 30(d)(2) and 30(d)(4) above.

e. Training: Prior to offering electric generation supply to Pennsylvania consumers after the time period set forth in Paragraph 30(a)(1) above, HIKO shall implement a new training program specifically tailored to the requirements of the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.

1. Within 180 days of the expiration of the time period set forth in Paragraph 30(a)(1) above, HIKO shall provide to the Commission, OAG and OCA a detailed description of the training HIKO will implement.

2. After a 30-day review period, the Company will meet with OAG, OCA and designated Commission staff to review and discuss the training HIKO plans to implement.

3. HIKO's training materials for its sales representatives and customer service representatives will accurately and comprehensively cover the following:

- i. The requirements of the Public Utility Code and the Commission's regulations, Orders and policies regarding marketing and billing practices for EGSs;
- ii. The requirements of the Consumer Protection Law and TRA, including both prohibited practices and affirmative requirements;
- iii. Local laws regarding door-to-door sales;
- iv. An express warning that deceptive sales practices will not be tolerated by HIKO's management;
- v. An express warning and material description of the remedial steps that will be taken against any sales representatives and customer service representatives that violate any term of this Settlement or otherwise engages in improper sales practices; and
- vi. A description of the quality assurance, monitoring, auditing and reporting practices HIKO maintains to identify and prevent improper sales practices.

4. The training, at a minimum, shall include the following:

- i. Initial training to be completed prior to offering electric generation supply to Pennsylvania consumers pursuant to Paragraph 30(a)(1) above and subsequent refresher training

at least every six months for all HIKO employees, agents and third-party contractors in the modifications listed in this Settlement and the implementation thereof;

- ii. Initial training to be completed prior to offering electric generation supply to Pennsylvania consumers pursuant to Paragraph 30(a)(1) above and subsequent refresher training at least every six months for all HIKO employees, agents and third-party contractors in Pennsylvania laws applicable to Respondent, including but not limited to the Public Utility Code, the Consumer Protection Law and the TRA; and
- iii. Initial training to be completed prior to offering electric generation supply to Pennsylvania consumers pursuant to Paragraph 30(a)(1) above and subsequent refresher training at least every six months for all HIKO employees, agents and third-party contractors in current Commission regulations, policies and Orders.

5. HIKO, itself, shall implement and conduct the training and ensure that its sales agents comply with the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.

6. Individual marketers retained by HIKO shall be required to successfully complete HIKO's training program before marketing to and enrolling customers on

behalf of HIKO. Each trainee shall be required to sign a form acknowledging that he or she has received and understands the information provided in HIKO's training materials.

f. Compliance Monitoring: Prior to offering electric generation supply to Pennsylvania consumers after the time period set forth in Paragraph 30(a)(1) above, HIKO shall increase internal quality control efforts to include at least the following:

1. HIKO shall record all telephonic communications between customers and HIKO's customer service representatives. For its current customers in Pennsylvania, however, HIKO shall record all telephonic communications between customers and HIKO's customer service representatives upon the Effective Date.

2. HIKO shall require its telemarketers to record all telephonic communications with consumers that result in a sale.

3. HIKO shall maintain such recordings in accordance with the Commission's requirements.

4. HIKO shall implement a provision in its contracts with telemarketers that no commissions shall be paid for any enrollment unless a recording of the entire sales presentation to that consumer is supplied to HIKO within three days of the sale.

5. HIKO shall, at least every seven (7) business days, randomly select no less than fifteen (15) recordings of telephone solicitations of Pennsylvania customers that resulted in a successful enrollment and review them in order to evaluate the sales practices employed and ensure that the sales practices comply with this Settlement, the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.

i. Whenever such sample reveals one or more non-compliant sales calls by an agent, third-party contractor or sales representative, HIKO shall investigate whether any of the consumers enrolled by the agent, third-party contractor or sales representative were subjected to sales practices that violated this Settlement, the Public Utility Code, the Consumer Protection Law, the TRA, or Commission regulations, Orders and policies.

ii. Such investigation, at a minimum, shall include a review of the sales calls and call notes for the ten Pennsylvania consumers enrolled before the call in question and the ten Pennsylvania consumers enrolled after the call in question.

iii. If HIKO identifies additional non-compliant sales calls, HIKO shall implement remedial steps as described in Paragraph 30(f)(7).

iv. Additionally, HIKO shall offer to any consumer subjected to the non-compliant sales practice a refund equal to the difference between the price charged by HIKO and the consumer's applicable Price to Compare for the period in which the consumer was a customer as a result of the non-compliant sales practice. Such refund shall be paid to the consumer within ten days of the date upon which the determination is made that the consumer was subjected to a non-compliant sales practice.

6. Any substantiated consumer complaint about a HIKO sales representative or other information indicating that a HIKO sales representative has violated any term of this Settlement or otherwise engaged in improper sales practices shall trigger an investigation by HIKO into whether any of the other HIKO customers enrolled by that sales representative were subjected to sales practices that violated the terms of this Settlement or were otherwise improper.

i. Such investigation shall, at a minimum, include examination of customer enrollment records, sales service call notes for the ten Pennsylvania consumers enrolled by the sales representative immediate prior to and subsequent to the enrollment that triggered the investigation.

7. In the event HIKO determines that a sales representative has violated any terms of this Settlement, the Public Utility Code, the Consumer Protection Law, the TRA, or Commission regulations, Orders and policies or otherwise engaged in improper sales practices, HIKO shall take prompt remedial actions, which at a minimum shall include:

- i. For the first violation, provide additional training and re-training;
- ii. For two violations in a twelve-month period, suspend the sales representative for a period of no fewer than 30 days; and
- iii. For any violations in excess of two within a twelve-month period, permanently disqualify the sales representative from marketing HIKO's services to Pennsylvania consumers.
- iv. The HIKO marketing contractor which employs the sales representative shall forfeit an amount equal to twice the total marketing contractor's sales commissions applicable to the non-compliant sales. All sales commissions claimed by the marketing contractor shall be subject to forfeiture for

a period of six months in the event violations are found by HIKO.

g. Reporting: Within 30 days of implementation of the training and compliance monitoring described above and quarterly thereafter for a period of three years, HIKO shall provide to the Commission and OCA:

1. An explanation of all internal audits and investigations performed during the reporting period, including a description of the audit(s) or investigation(s) performed as well as the results thereof and

2. A report of all customer complaints and disputes received by HIKO during the reporting period.

h. Customer Service:

1. HIKO shall employ regulatory personnel whose duties include, at a minimum:

i. Compliance with the Chapter 56 of the Commission's regulations, including but not limited to, prompt investigation of all customer complaints, providing the customer with information necessary to make an informed judgment and issue a report to the customer within 30 days;

ii. Resolution of customer complaints fairly and expeditiously; and

iii. Training customer service representatives in accurately recording the reason for a customer's call in a customer

contact log and ensuring compliance with the training described in this Settlement.

2. HIKO shall at all times maintain a staff of customer service representatives necessary to at least:

- i. Provide consumers with immediate access, within normal business hours, to a “live” customer service representative, whether the consumer seeks such access via telephone and/or e-mail;
- ii. Provide a timely response to any voice mail messages left on the Company’s customer service toll-free number outside of normal business hours, but in no event, later than 24-hours after the message was left;
- iii. Provide for the check of its voice mail message system at the beginning of each day’s normal business hours;
- iv. Prevent its voice mail customer service message system from becoming “full” such that consumers cannot leave a voice mail message; and
- v. Respond to all inquiries made by letter within 24 hours of receipt of said letter.

3. HIKO shall develop and implement an action plan for handling periods of high call volumes. Such action plan will, at a minimum:

- i. Provide for the answering of overflow calls to HIKO's system by additional customer service staff or temporary services;
- ii. Provide a detailed description for use by all such staff or temporary services answering calls regarding inputting of the nature of customer calls;
- iii. Provide clear and consistent information to all such staff or temporary services answering calls to convey to customers with the same or similar issues; and
- iv. Provide clear and consistent information to all such staff or temporary services answering calls regarding relief that will be provided by HIKO to convey to customers.

4. If HIKO experiences a period of high call volumes in which it could not and did not comply with the provisions of this Settlement, HIKO shall within 60 days provide to the Commission, OAG and OCA a report of the occurrence, an explanation of underlying reasons for the occurrence and a description of all remedial measures implemented by HIKO.

31. Release: In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Settlement, in order to fully and finally resolve the Joint Complaint of Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection and the Acting Consumer Advocate Tanya J. McCloskey filed with the Pennsylvania Public Utility Commission on June 20, 2014, and conditioned upon HIKO providing refunds and making the payments and implementing the consumer protection procedures in the manner set

forth herein, Joint Complainants hereby agree to release HIKO from any and all civil claims, including all administrative or regulatory claims within the jurisdiction of the Pennsylvania Public Utility Commission, to the extent permitted by the laws of the Commonwealth of Pennsylvania, which Joint Complainants brought or which Joint Complainants could have brought against HIKO arising from or related to the conduct alleged in the Joint Complaint.

III. THIS SETTLEMENT IS IN THE PUBLIC INTEREST

32. This Settlement was achieved by the Joint Petitioners after extensive investigation into HIKO's marketing and billing practices, including formal and informal discovery and the direct testimony of 98 consumers admitted into the record by Joint Complainants.

33. The agreed-upon provisions regarding refunds and comprehensive injunctive relief in the Settlement will provide reasonable relief for HIKO's current and former customers affected by the Company's conduct as alleged in the Joint Complaint and found in the investigation by Joint Complainants into HIKO's marketing and billing practices described in Paragraph 32 above.

34. Attached to this Settlement are the respective Statements in Support of the Joint Petitioners setting forth the basis upon which each considers the Settlement to be in the public interest. The Joint Petitioners' respective Statements in Support are attached hereto as Appendices "A" through "C."

IV. ADDITIONAL TERMS AND CONDITIONS

35. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission modifies the Settlement, then any Joint Petitioner may elect to withdraw from this Settlement and may proceed with litigation and, in such event, this entire Settlement shall be void and of no effect. Such election

to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties and the ALJs within five business days after the entry of an Order modifying the Settlement.

36. This Settlement is proposed by the Joint Petitioners to settle all issues among them in the instant proceeding. If the Commission does not approve the Settlement, the Joint Petitioners reserve their respective rights to conduct further hearings, including cross-examine consumers on their direct testimony, submit additional direct, rebuttal and surrebuttal testimony, as contemplated by the litigation schedules adopted in this proceeding, and briefing regarding contested issues. This Settlement is made without any admission against, or prejudice to, any position which any Joint Petitioner may adopt in the event of any subsequent litigation of this proceeding or in any other proceeding.

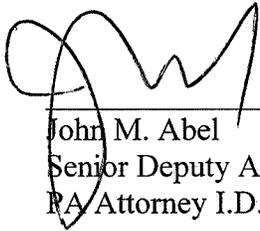
37. This Settlement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. The Settlement shall not be deemed an admission by HIKO as to any of the allegations in the Joint Complaint. The Settlement is presented without prejudice to any position which any of the parties may have advanced and without prejudice to the position any of the parties may advance in the future on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of the Settlement. This Settlement does not preclude the parties from taking other positions in other proceedings involving the marketing and billing practices of Electric Generation Suppliers or Natural Gas Suppliers or other aspects of the competitive market.

38. If the ALJs adopt this Settlement without modification in their Initial Decision, the Joint Petitioners waive their rights to file exceptions to the issues addressed by the Settlement.

WHEREFORE, the Joint Petitioners, by their respective counsel, respectfully request:

1. That the ALJs recommend that the Commission approve this Settlement, including all the terms and conditions thereof, without modification on an expedited basis;
2. That the Commission approve the Settlement without modification on an expedited basis; and
3. That the Joint Complaint of BCP and OCA be marked satisfied.

Respectfully submitted,



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PA Attorney I.D. 47313

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Exhibit A

Fixed Rate Product Offering

If HIKO decides to offer a fixed rate product for all residential and small business customers before June 1, 2016, it will be able to do so, after providing ninety (90) days written notice to the Office of Attorney General and the Office of Consumer Advocate, pursuant to the provisions set forth below, in addition to complying with all Commission regulations, Orders and policies.

A. Product Offering:

1. Regardless of the date when HIKO begins to offer fixed rate products for all residential and small business customers, HIKO will offer fixed rate products that run for three-months or longer up and until September 1, 2016.
2. HIKO agrees that it will not charge Pennsylvania customers cancellation or termination fees for the Company's fixed rate products when such products are offered in accordance with Exhibit A – Paragraph A.1.

All other injunctive terms and conditions set forth in the Joint Petition for Settlement remain in effect regardless, of whether HIKO begins to offer a fixed rate product.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, by Attorney
General KATHLEEN G. KANE, Through the
Bureau of Consumer Protection,

And

TANYA J. McCLOSKEY, Acting Consumer
Advocate,

Complainants

v.

HIKO ENERGY, LLC,

Respondent

Docket No. C-2014-2427652

STIPULATION OF FACTS IN SUPPORT OF SETTLEMENT

At the Further Prehearing Conference on April 8, 2015, Administrative Law Judges Elizabeth Barnes and Joel H. Cheskis (ALJs) requested the parties to provide a Factual Stipulation for the purpose of categorizing the testimony of record. Pursuant to the direction of the ALJs and 52 Pa. Code § 5.232(a), the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer Advocate, (together, the Joint Complainants) and HIKO Energy, LLC (HIKO or the Company) by their undersigned attorneys, agree and stipulate to the following facts for the sole purpose of supporting the approval of the parties' proposed settlement of the above-captioned matter by the Pennsylvania Public Utility Commission (Commission):

PROCEDURAL HISTORY¹

1. On June 20, 2014, the Joint Complainants filed with the Commission a Formal Complaint against HIKO at Docket Number C-2014-2427652 (Joint Complaint).

2. The Joint Complainants averred that the Company offers variable rate electric generation service to customers in Pennsylvania and that the Company uses a variety of marketing and advertising mediums to solicit customers for its variable rate plans, including telephonic, internet, mass mail, and print solicitations.

3. The Joint Complainants further averred that in early 2014, they received numerous contacts and complaints from consumers related to variable rates charged by HIKO and that the OCA had reviewed approximately 8 Formal Complaints filed by consumers at the Commission.

4. The Joint Complainants included eight separate counts in the Joint Complaint against HIKO:

- A. Count I - Misleading and Deceptive Promises of Savings;
- B. Count II - Slamming;
- C. Count III – Lack of Good Faith Handling of Complaints;
- D. Count IV – Failing to Provide Rate Information;
- E. Count V - Failing to Provide Accurate Pricing Information;

¹ A full outline of the procedural history in this matter can be found in Section I of the Joint Petition for Approval of Settlement. A brief procedural history is provided herein.

- F. Count VI - Prices Nonconforming to Disclosure Statement;
 - G. Count VII- Failing to Follow Purchase of Receivables Program Parameters, and
 - G. Count VIII - Failure to Comply with the Telemarketer Registration Act.
5. The Joint Complainants made several requests for relief, including providing restitution to customers, prohibiting deceptive practices in the future, and revocation of HIKO's Electric Generation Supplier (EGS) license, if warranted.
6. On July 30, 2014, HIKO filed an Answer with New Matter and admitted or denied the various averments made by the Joint Complainants and specifically denied the violations of law and other wrongdoing as alleged in the Joint Complaint.
7. On August 19, 2014, the Joint Complainants filed a Reply to New Matter in which they denied the averments contained in the New Matter filed by HIKO.
8. An Initial Prehearing Conference was convened on September 29, 2014. Pursuant to the litigation schedule adopted at the Initial Prehearing Conference, the Joint Complainants pre-served the written Consumer Testimony of 98 customers, comprising 464 pages of written statements and exhibits.
9. On April 8, 2015, Joint Complainants and HIKO notified the Administrative Law Judges (ALJs) that they and the Office of Small Business Advocate had reached a Settlement on all issues in this case.²

² The Commission's Bureau of Investigation and Enforcement does not join the Settlement but does not oppose it.

10. Joint Complainants moved redacted versions of the Consumer Testimony into the record on April 8, 2015 for the purpose of providing substantial evidence in the record that would support the approval of the Settlement.

STIPULATION OF FACTS BASED UPON CUSTOMER TESTIMONY

11. Although redacted, the Consumer Testimony included the witnesses' signed verifications that the facts set forth in their statements were true and correct to the best of their knowledge, information and belief. The statements were verified subject to the penalties of Section 4904 of the Crimes Code, 18 Pa. C.S. §4904, relating to unsworn falsification to authorities. The signatures were redacted by agreement of the parties for admission into the record.

12. Most of the Consumer Testimony statements contain complaints about HIKO's charges for electric generation service provided during the period January – March 2014.

13. Approximately 83 consumer witnesses averred that the HIKO sales representatives had guaranteed savings, and they did not receive those savings.

14. Approximately 6 consumer witnesses averred that they were misled by HIKO's Disclosure Statement.

15. Approximately 3 consumer witnesses averred that they were misled by HIKO's Welcome Letter.

16. Approximately 4 consumer witnesses averred that they believed that the HIKO sales representative was affiliated with an Electric Distribution Company.

17. Approximately 9 consumer witnesses averred that their electric generation service was switched to HIKO without their authorization.

18. Approximately 54 consumer witnesses averred that that they experienced difficulties when they attempted to contact HIKO to complain about their charges or their complaints were mishandled by HIKO.

19. Approximately 8 consumer witnesses averred that HIKO failed to notify them of a rate change.

20. Approximately 23 consumer witnesses averred that HIKO's sales representative failed to disclose whether the rate was fixed or variable.

21. Approximately 50 consumer witnesses averred that they never received a Disclosure Statement.

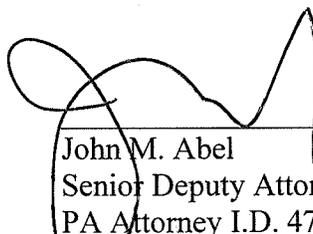
22. Approximately 17 consumer witnesses averred that they suffered financial difficulties after receiving HIKO's charges.

CONCLUSION

23. A Settlement in Principle was reached by the parties before the dates scheduled for cross-examination of consumer witnesses or proffer of rebuttal testimony. Therefore, the parties agreed to waive cross-examination of Consumer Testimony statements 1 through 98 and to stipulate their statements and accompanying exhibits into the record. The parties stipulate that by admitting the Consumer Testimony into the record, HIKO is not admitting any wrongdoing. The Consumer Testimony is being introduced solely for

the purpose of providing substantial evidence in the record that would support the approval of the Settlement. The parties stipulate that if a Settlement had not been reached, Joint Complainants would have relied on the Consumer Testimony, along with the testimony of their experts and other witnesses, to prove the allegations in their Joint Complaint, and HIKO would have challenged the accuracy of the allegations made by the consumer witnesses through cross-examination, cross-examination exhibits, and rebuttal testimony.

Respectfully submitted,



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Senior Deputy Attorney General
PA Attorney I.D. 47313

Nicole R. (Beck) DiTomo
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Commonwealth of Pennsylvania, by Attorney	:	
General KATHLEEN G. KANE, Through the	:	
Bureau of Consumer Protection,	:	
	:	
And	:	Docket No. C-2014-2427652
	:	
TANYA J. McCLOSKEY, Acting Consumer	:	
Advocate,	:	
	:	
Complainants	:	
	:	
v.	:	
	:	
HIKO ENERGY, LLC,	:	
	:	
Respondent	:	
	:	

**STATEMENT IN SUPPORT OF JOINT PETITION FOR APPROVAL OF
SETTLEMENT OF JOINT COMPLAINANTS COMMONWEALTH OF
PENNSYLVANIA, BUREAU OF CONSUMER PROTECTION AND OFFICE OF
CONSUMER ADVOCATE**

The Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection (BCP or OAG) and Tanya J. McCloskey, Acting Consumer Advocate (OCA), (together, Joint Complainants), both signatory parties to the Joint Petition for Approval of Settlement (Joint Petition or Settlement) in the above-captioned matter, submit that the terms and conditions of the Settlement are reasonable and in the public interest for the following reasons:

I. BACKGROUND

On June 20, 2014, the Commonwealth of Pennsylvania and the Office of Consumer Advocate filed a Joint Complaint asserting eight separate counts and alleging that HIKO Energy,

LLC (HIKO, Respondent or the Company) violated Pennsylvania law and the Pennsylvania Public Utility Commission (Commission) orders and regulations. The eight separate counts in the Joint Complaint are as follows: I) misleading and deceptive promises of savings; II) slamming; III) lack of good faith handling of complaints; IV) failing to provide rate information; V) failing to provide accurate pricing information; VI) prices nonconforming to disclosure statement; VII) failing to follow Purchase of Receivables program parameters; and VIII) failure to comply with the Telemarketer Registration Act. With respect to relief, the Joint Complainants request that the Commission find that Respondent violated the Public Utility Code, the Consumer Protection Law, the Telemarketer Registration Act, and the Commission's regulations and orders; provide restitution to Respondent's customers; impose a civil penalty; and order Respondent to make various modifications to its practices and procedures; and revoke or suspend Respondent's Electric Generation Supplier (EGS) license, if warranted. The Bureau of Investigation and Enforcement and the Office of Small Business Advocate intervened in the proceeding.¹

Pursuant to the litigation schedule adopted at the September 29, 2014 Initial Prehearing Conference in this matter, Joint Complainants timely served Administrative Law Judges Elizabeth Barnes and Joel H. Cheskis (ALJs) and the parties on December 5, 2014 with consumer direct testimony, consisting of testimony in question-and-answer form and exhibits of 98 consumer witnesses and encompassing 2 volumes, totaling 464 pages. The testimony relates to each consumer's firsthand experience with HIKO's marketing, billing and customer service

¹ On July 11, 2014, I&E also filed a Formal Complaint against HIKO Energy, LLC at docket C-2014-2431410. In the Complaint, I&E alleges that HIKO violated the Commission's regulations at 52 Pa. Code § 54.4(a) for failing to charge prices to customers that matched the prices marketed and agreed upon. By way of relief, I&E seeks that the Commission order a civil penalty in the amount of \$14,780,000, refunds to customers of the difference between the promised price and the price HIKO charged, and revocation of HIKO's license. The OCA and the OAG intervened in this proceeding on August 8, 2014 and August 18, 2014, respectively. The I&E proceeding has not been consolidated with the proceeding initiated by Joint Complainants.

practices. Hearings for the cross-examination of the consumer witnesses were scheduled for March 23 through 27, 2015. A Further Prehearing Conference to determine the remainder of the litigation schedule for the submission of the testimony of expert and other non-consumer witnesses was scheduled for April 8, 2015.

Joint Petitioners reached a settlement on all issues prior to the commencement of hearings for the cross-examination of Joint Complainants' consumer witnesses or proffer of rebuttal testimony. During the Further Prehearing Conference on April 8, 2015, redacted versions of the consumer testimonies were admitted into the record (Consumer Testimonies 1-98). The parties agreed to waive cross-examination of Consumer Testimonies 1 through 98 and to stipulate their statements and accompanying exhibits into the record. The parties stipulated that by admitting Consumer Testimonies 1-98 into the record, HIKO is not admitting any wrongdoing. Consumer Testimonies 1-98 were introduced solely for the purpose of providing substantial evidence in the record that would support the approval of the Settlement. The parties stipulated that if a Settlement had not been reached, Joint Complainants would have relied on the Consumer Testimonies 1-98, along with the testimony of their experts and other witnesses, to prove the allegations in their Joint Complaint, and HIKO would have challenged the accuracy of the allegations made by the consumer witnesses through cross-examination, cross-examination exhibits, and rebuttal testimony.

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the parties held a series of settlement discussions. These discussions resulted in the Joint Petition, which addresses the numerous complex issues raised in this case and applies to residential and small business customers. The Joint Complainants submit that the terms and conditions of the Joint Petition satisfactorily address the broad range of issues raised in

the Joint Complaint. Joint Complainants submit that the provisions of the Joint Petition, taken as a whole, constitute a reasonable compromise of the complex issues presented in the Joint Complaint. In this Statement in Support, Joint Complainants address those areas of the Settlement that specifically relate to most salient issues and submit that the Joint Petition is in the public interest and in the interests of past and present HIKO customers and in the interests of future HIKO customers should HIKO obtain new customers pursuant to the terms of the Joint Petition. Additionally, the Settlement supports the continued development of the retail choice market in Pennsylvania. Joint Complainants request that Commission approve the Joint Petition on an expedited basis without modification.

II. SETTLEMENT TERMS

A. Introduction.

Joint Complainants submit that this Joint Petition results from compromises of the factual allegations in the Joint Complaint, which the Joint Complainants intended to prove and which the Company has disputed. Although the Joint Complainants and the Company may disagree with respect to the allegations regarding the conduct of the Company's employees and agents, all acknowledge the importance of the matters at issue to Pennsylvania consumers and to the retail market. Full and accurate information and disclosures to consumers, as well as fair and transparent marketing and billing practices, are of paramount importance both to consumer protections and the continued development of a retail choice market. The Joint Complainants recognize that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of continued litigation. Joint Complainants submit that the Settlement is comprehensive, appropriate and reasonable under the circumstances and in the public interest.

As such, Joint Complainants respectfully request that the Commission approve the Settlement on an expedited basis and without modification.

B. Refunds and Contribution to Electric Distribution Companies' (EDCs) Hardship Funds. (Joint Petition at ¶¶ 23-29)

As alleged in the Joint Complaint, on or about February 10, 2014, the OCA began receiving a high volume of calls and written correspondence from residential consumers on variable rate plans with EGSs regarding the level of electric generation charges on the consumers' electric bills. Joint Complaint at ¶ 15. As of May 5, 2014, the OCA had collected information from approximately 2,434 of its consumer contacts, and approximately 109 or 4.5% were from customers of HIKO. Joint Complaint at ¶¶ 16-17. Further, from February 27, 2014 to June 4, 2014, OAG received approximately 39,607 telephone calls and 7,503 consumer complaints related to variable rates charged by EGSs, and of the 7,503 consumer complaints received by BCP, 254 or approximately 3.4% were against HIKO. Joint Complaint at ¶ 18.

In Count I of the Joint Complaint, Joint Complainants alleged that HIKO's salespeople provided misleading and deceptive promises of savings to consumers in order to gain their business. See Joint Complaint at Count I. Specifically, Joint Complainants alleged that HIKO's salespeople promised guaranteed savings over the Price to Compare (PTC) as inducement for complainants to switch to HIKO. Joint Complaint at ¶¶ 22-23. Joint Complainants alleged that HIKO then charged customers prices that were at least two or three times the PTC and some as high as \$0.40 per kWh for electricity. Joint Complaint at ¶¶ 22-23, 62. Also as alleged in the Joint Complaint, HIKO is responsible for any fraudulent, deceptive or other unlawful marketing acts by its employees, agents and representatives pursuant to 52 Pa. Code § 54.43(f). See Joint Complaint at ¶ 24. Joint Complainants further alleged that HIKO's salespeople engaged in activities that are fraudulent and deceptive by promising savings that may not, and for many

consumers did not, materialize in violation of the Commission's regulations at 52 Pa. Code §§ 54.43(f) and 111.12(d)(1). See Joint Complaint at ¶¶ 25-27. Also, Joint Complainants alleged that HIKO failed to adequately train and monitor its agents, as required by the Commission's regulations in violation of 52 Pa. Code §§ 111.4 and 111.5. See Joint Complaint at ¶ 28.

In Count IV of the Joint Complaint, Joint Complainants alleged that the Company failed to provide accurate price information to customers and deceived customers about the rate they would be charged by HIKO in violation of 52 Pa. Code §§ 54.4(a), 54.5(c)(2), and 54.7(a). See Joint Complaint at ¶¶ 44-46, 48.

Regarding variable rate pricing, HIKO's Disclosure Statement states:

Pricing and Billing. The price will [sic] the Initial Term is the price stated at sign-up and confirmed in your written Welcome Letter from HIKO. Unless otherwise agreed to in writing, the price for all electricity sold under this Agreement in the Renewal Term shall be a variable price which each month shall reflect transportation to the Delivery Point, and other market-related factors, plus all applicable taxes, fees, charges or other assessments and HIKO's costs, expenses and margins. The variable price includes estimated Gross Receipts Tax but excludes Pennsylvania sales tax, if applicable. If you are tax exempt you must provide HIKO with a copy of your exemption certificate. You may call HIKO or visit www.hikoenergy.com for pricing information.

Joint Complaint at ¶ 51 and App. A.

As alleged in Count V of the Joint Complaint, upon information and belief, HIKO failed to provide pricing information in plain language and using common terms that consumers understand, in violation of 52 Pa. Code §§ 54.5(c), 54.43(1). See Joint Complaint at ¶¶ 52-54, 58-60. Additionally, Joint Complainants alleged that HIKO's prices charged to consumers in early 2014 were not reflective of the cost to serve residential customers, as HIKO charged some of its variable rate customers prices at least as high as \$0.40 per kWh for electricity. Joint Complaint at ¶¶ 62-63 and App. B. Joint Complainants would have proven these allegations through the testimony and accompanying exhibits of customer witnesses and expert witnesses.

By way of relief, Joint Complainants requested, *inter alia*, that the Commission impose a civil penalty and direct HIKO to provide appropriate restitution. Joint Complaint at ¶¶ C, D.

Pursuant to the partial litigation schedule adopted in this proceeding at the Prehearing Conference, Joint Complainants served the direct testimony of 98 consumer witnesses. Most of the consumer witnesses challenged HIKO's charges for January, February or March 2014. See Consumer Testimonies 1-98; See also Joint Petition at Exh. B, ¶ 12. Of the 98 customer witnesses, approximately 83 customer witnesses averred that HIKO's sales representatives had promised them savings; approximately 23 customer witnesses averred that the HIKO's salesperson failed to disclose whether the rate was fixed or variable; approximately 50 customer witnesses averred that they never received a Disclosure Statement; and approximately 6 customer witnesses averred that they were misled by HIKO's Disclosure Statement. See Consumer Testimonies 1-98; See also Joint Petition at Exh. B, ¶¶ 13-14, 20-21. Further, Joint Complainants intended to submit expert testimony regarding HIKO's misleading and deceptive promises of savings and charges to customers in early 2014 that did not conform to the Company's variable pricing provision in its Disclosure Statement.

In the Settlement, HIKO has agreed to provide refunds of at least \$2,025,383.85 (Refund Pool). Joint Petition at ¶ 23. Of the total sum, HIKO has already voluntarily provided \$159,320.15 in cash refunds directly to customers. Id. In the Settlement, there are two groups of HIKO's customers that will be considered for refunds. See Id. The first group of customers are those that were enrolled in HIKO's guaranteed 1% - 7% savings program. See Id. The customers in this group will all receive a refund reflecting 3.5% savings as compared to the applicable PTC for January, February, and March 2014 after taking into account any refunds a customer may have already received from HIKO. Id. This amount totals \$1,789,704.00 of

refunds minus \$117,180.90 in refunds already provided by the Company to date, resulting in a net amount of \$1,672,523.10. See Id. The second group of customers are those that were not enrolled in HIKO's guaranteed 1% - 7% savings program. See Id. The amount of \$352,860.75 from the Refund Pool is allocated as refunds for HIKO's customers in this group, which reflects \$395,000.00 of refunds minus \$42,139.25 in refunds already provided by the Company to date to this group of customers, resulting in a net amount of \$352,860.75. See Id. As Joint Complainants alleged in the Joint Complaint, HIKO did not provide the savings or benefits promised to customers by its salespeople; HIKO failed to provide rate information; HIKO failed to provide pricing information in plain language in its Disclosure Statement; and HIKO's prices charged in early 2014 did not conform to its variable rate pricing provision in its Disclosure Statement. See Joint Complaint at Counts I, IV, V, VI. As such, refunds will be provided to all customers in these groups that were on variable rate plans in January, February or March 2014. Joint Petition at ¶ 23.

The OAG and OCA will determine the refund amount to offer eligible HIKO customers based on the individual customer's usage, price charged, refund amounts already received directly from HIKO and whether the customer was in the guaranteed savings group. Id. The refund determinations will be designed so as to fully utilize the Refund Pool after accounting for any administration fees not otherwise paid by HIKO pursuant to this Settlement. Id. Additionally, the Joint Petition provides that HIKO will honor all commitments to customers enrolled in HIKO's one-free month program who meet the eligibility requirements to receive one free month of service whether or not the customer has received a refund. Id.

The Company will deposit one-half (1/2) of the full amount of the Refund Pool with a third-party Administrator within 15 days of Joint Complainants identifying to HIKO the

Administrator retained (or 15 days after the Effective Date, whichever is later), and HIKO will deposit the remaining one-half (1/2) within 60 days thereafter. Joint Petition at ¶ 25. HIKO will fully and timely cooperate with Joint Complainants and the Settlement Administrator by providing all customer information necessary to calculate each customer's refund amount. Joint Petition at ¶ 26. The Settlement Administrator will use best efforts to distribute funds from the Refund Pool within 180 days of receiving the Refund Pool funds from HIKO and will provide monthly reports of funds distributed to Joint Complainants, HIKO and designated Commission staff. Id.

Additionally, the Joint Petition provides that HIKO will make a total contribution of \$25,000 to the EDCs' hardship funds in proportion to the number of HIKO customers in the EDC's territory to the total amount of HIKO customers in Pennsylvania as of January 1, 2014. See Joint Petition at ¶ 29. For the reasons discussed below, Joint Complainants submit that the refund and contribution amounts are appropriate, especially in light of the other terms and conditions outlined in the Joint Petition.

The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten factors (Rossi Factors) that the Commission will consider in evaluating litigated and settled proceedings and determining whether a fine for violating a Commission order, regulation or statute is appropriate, as well as whether a proposed settlement for violations is reasonable and approval of the settlement agreement is in the public interest. When applied in settled cases, the factors will not be applied in as strict a fashion as in a litigated proceeding. 52 Pa. Code § 69.1201(b). The parties in settled cases will be afforded flexibility in reaching amicable resolutions so long as the settlement is in the public interest. Id. The factors and standards that will be considered by the Commission include the following:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

See 52 Pa. Code § 69.1201(b).

With regard to the first Rossi Factor, Joint Complainants submit that the allegations, *inter alia*, that HIKO did not provide the savings or benefits promised to customers by its salespeople,

failed to provide rate information, failed to provide pricing information in plain language in its Disclosure Statement, and charged prices in early 2014 that did not conform to its Disclosure Statement are of a serious nature. See 52 Pa. Code § 69.1201(c)(1). This Commission has made it clear that it will not tolerate unlawful activity that threatens to harm Pennsylvania's consumers and thereby the burgeoning retail electricity market in Pennsylvania. See Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff v. MXenergy Electric Inc., Docket No. M-2012-2201861, Order at 5 (May 3, 2012). "When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty." See 52 Pa. Code § 69.1201(c)(1).

With regard to the second Rossi Factor, Joint Complainants submit that the resulting consequences of HIKO's alleged conduct in early 2014 resulted in harm to Pennsylvania's consumers and the retail electricity market in Pennsylvania. See 52 Pa. Code § 69.1201(c)(2). Joint Complainants' investigation into this matter revealed that numerous affected HIKO customers received shut-off notices from their EDCs or experienced other financial difficulties resulting from HIKO's charges. See e.g., Consumer Testimonies 1-2, 5; See also Joint Petition at Exh. B, ¶ 22. Several consumer witnesses detailed their hardships in the consumer testimony. Id. For example, Consumer 1 testified, "[I am] 87 years old[.] I was in over my head ... Only threw [sic] my neighbor [sic] ... [was I] informed I was eligible [sic] to get help threw [sic] cap programs [sic] that they stoped [sic] the nightmare exsperince [sic] I was going threw [sic] with Hico [sic] Energy LLC." Id. at 5. Additionally, Consumer 2 testified as follows regarding his or her financial hardships: "I made it clear that I was not satisfied with ... [HIKO's refund] offer, but because of my financial situation and a need to clear my accounts with PPL, I accepted ... I

made payment arrangements to clear this debt. [S]ince I am on a fixed income, this has caused financial hardship for me.” Id. at 9. Consumer 5 also testified as to his or her financial hardships. See Id. at 21. Consumer 5 stated, “On May 27[, I] received [a] 10 day shut-off notice[,] even though I was on a budget plan ... I am on oxygen and can not [sic] be with out [sic] power[.] I need it to live.” Id.

Given the serious nature of the alleged violations and the resulting consequences, Joint Complainants submit that refunds to customers and a contribution to the EDCs’ hardship funds are appropriate, reasonable and in the public interest. Joint Complainants submit that the disbursement of the Refund Pool to HIKO’s eligible customers will assist these affected customers in restoring some portion of their financial losses incurred as a result of HIKO’s alleged conduct. The \$25,000 contribution that will be allocated to the EDCs’ hardship funds based on the number of HIKO customers in each EDC territory as of January 1, 2014, will assist consumers who have experienced difficulties as a result of high electric bills. As further discussed in the analysis of the other Rossi factors below, Joint Complainants submit that this amount is appropriate in light of the other comprehensive relief provided in the Joint Petition.

The fourth Rossi Factor² is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Prior to the Settlement, HIKO voluntarily provided \$159,320.15 in cash refunds directly to customers. The Settlement provides for additional refunds to HIKO’s customers that were allegedly affected by the violations asserted in the Joint Complaint. Thus, Joint Complainants submit that the refunds and contributions to EDCs’ hardship funds are reasonable, appropriate, and in the public interest. Additionally, as detailed

²² Joint Complainants submit that the third Rossi Factor pertains only to the evaluation of litigated cases, and therefore, it does not apply to this Settlement. See 69 Pa. Code § 1201(c)(3).

infra, HIKO has also agreed to injunctive relief that will result in modifications to its business practices, and Joint Complainants submit that these modifications will help to prevent the conduct alleged in the Joint Complaint from occurring in the future.

The fifth Rossi Factor is the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). Joint Complainants alleged that as of May 5, 2014, the OCA had received approximately 109 contacts from HIKO customers regarding variable rates, and as of June 4, 2014, BCP had received approximately 254 contacts from HIKO customers regarding variable rates. See Joint Complaint at ¶¶ 17-18. Further, of the approximately 203 Formal Complaints against EGSs that were filed by consumers with the Commission that OCA had reviewed by May 5, 2014, approximately 8 or 4% were filed against HIKO. See Joint Complaint at ¶ 19. This Commission has recognized that where there is one complaint made to the Commission, there are likely substantially more of the same nature that have not been formally made. See e.g. Arthur Rand v. GTE North, 1999 Pa. PUC LEXIS 55, *9-10 (March 19, 1999). Hence, Joint Complainants submit that the majority, if not all, of HIKO's customers on variable rate plans in early 2014 were affected by HIKO's alleged actions. Joint Complainants submit that the number of customers who were impacted by the Company's conduct as alleged in the Joint Complaint is significant. Accordingly, Joint Complainants submit that the refunds and the \$25,000 contribution to the EDCs' hardship funds are reasonable and in the public interest when considered along with the injunctive relief outlined in the Joint Petition.

The sixth Rossi Factor is the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). "An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty." Id. Joint Complainants submit that the Company's compliance history poses no barrier to approval

of the proposed Settlement. Additionally, as discussed in Section C, *infra*, Joint Complainants submit that the injunctive terms of the Settlement will help to ensure compliance with regulatory standards.

The seventh Rossi Factor is whether the regulated entity cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). Joint Complainants submit that HIKO cooperated in the investigation in this matter, including cooperating in formal and informal discovery and settlement negotiations. The ability of the parties to comprehensively resolve this matter prior to extensive litigation demonstrates the level of cooperation.

The eighth Rossi Factor is the amount of the civil penalty necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). Joint Complainants submit that the Settlement comprehensively addresses their allegations in the Joint Complaint. The contributions to the EDCs' hardship funds, the refunds to customers, and the injunctive relief, which includes an agreement that HIKO will refrain from accepting any new Pennsylvania customers from April 1, 2015 until June 30, 2016, are sufficient to deter similar future conduct.

The ninth Rossi Factor is past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). Joint Complainants submit that the scope of the conduct complained of in this proceeding is unique and unlike other complaint proceedings against EGSs that this Commission has decided. This Commission, however, has approved settlements involving EGSs that involve refunds, civil penalties and injunctive relief. See e.g. Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Energy Services Provider, Inc. d/b/a Pennsylvania Gas & Electric And U.S. Gas & Electric, Inc. d/b/a Pennsylvania Gas & Electric, Docket No. M-2013-2325122, Order (Oct. 2, 2014) (The Commission approved a Settlement that required PaG&E to pay a civil penalty, refunds to its customers affected by the conduct complained of,

and implement revisions to its operating procedures); See also Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. IDT Energy, Inc., Docket No. 2013-2314312, Opinion and Order (entered October 17, 2013) (The Commission approved a Settlement that required IDT to make modifications to its practices relating to its training and supervision of its sales agents and handling of customer complaints). Joint Complainants submit that the Settlement is comprehensive *vis a vis* the allegations in the Joint Complaint and is therefore, reasonable and in the public interest.

The tenth Rossi Factor to consider is other “relevant factors.” 52 Pa. Code § 69.1201(c)(10). Joint Complainants submit that it has been over a year since HIKO’s alleged actions and omissions bringing rise to the Joint Complaint. Given the fact that a Further Prehearing Conference was scheduled for April 8, 2014 to determine the remainder of the litigation schedule for the submission of testimony of expert and other non-consumer witnesses, it is unlikely that a Commission decision could have been entered until at least the end of 2015 had this action been fully litigated. Additionally, there is inherent uncertainty in the outcomes of fully litigated proceedings. The Settlement will ensure that HIKO’s customers will receive refunds, and the customers will receive them much sooner. Additionally, the Settlement saves costs and resources of the parties and Commission.

Joint Complainants submit that based on the foregoing Rossi Factor analysis, the refund and contribution to EDCs’ hardship funds provisions in the Settlement are reasonable and in the public interest. The refunds that HKO provided directly to customers combined with the Refund Pool will help restore the financial losses incurred by HIKO’s consumers that were alleged to have been charged extraordinarily high prices in early 2014. The Settlement will provide refunds to customers and do so sooner than a fully litigated proceeding. The contribution to

EDCs' hardship funds will assist customers in need with payment of their electric bills. Further, Joint Complainants submit that the robust injunctive relief in the Settlement, discussed *infra*, will help protect HIKO's current and possible future customers and will better inform customers of the products and services provided by HIKO.

C. Injunctive Relief/Modifications to Business Practices. (Joint Petition at ¶¶ 30(a)-(h))

As stated above, the Joint Complaint includes eight separate counts, as follows: I) misleading and deceptive promises of savings; II) slamming; III) lack of good faith handling of complaints; IV) failing to provide rate information; V) failing to provide accurate pricing information; VI) prices nonconforming to disclosure statement; VII) failing to follow Purchase of Receivables program parameters; and VIII) failure to comply with the Telemarketer Registration Act.

In support of the allegations in the Joint Complaint, Joint Complainants filed the written, direct testimony of 98 customer witnesses. Of the 98 customer witnesses, approximately 83 customer witnesses averred that HIKO's sales representatives had promised them savings, approximately 23 customer witnesses averred that HIKO's salesperson failed to disclose whether the rate was fixed or variable, and approximately 50 customer witnesses averred that they never received a Disclosure Statement. See Customer Testimonies 1-98; See also Joint Petition at Exh. B, ¶¶ 13, 20-21. Additionally, approximately 9 customer witnesses averred that HIKO switched their electric generation service without their consent. See Customer Testimonies 1-98; See also Joint Petition at Exh. B, ¶ 17. Further, approximately 54 customers averred that they experienced difficulties when they attempted to contact HIKO to complain about their charges or their complaints were mishandled by HIKO. See Customer Testimonies 1-98; See also Joint Petition at Exh. B, ¶ 18.

The Settlement includes comprehensive injunctive relief that requires HIKO to implement various modifications to its business practices to address the allegations in the Joint Complaint. See Joint Petition at ¶ 30. Specifically, the required modifications to business practices are as follows:

- Product offering: HIKO agrees that it will not accept any new Pennsylvania customers from April 1, 2015 until June 30, 2016; provided, however, that if HIKO finds that it is able to offer a fixed rate product before June 1, 2016, it will be able to do so pursuant to the provisions of the Settlement. See Joint Petition at ¶ 30(a); See also Joint Petition at Exh. A.
- Marketing: If HIKO offers variable rate products to consumers after June 30, 2016, HIKO specifically commits to complying with all Pennsylvania laws and Commission regulations, Orders and policies. See Joint Petition at ¶ 30(b)(1). Further, HIKO commits that the Company and its agents, employees and representatives shall not make misrepresentations to consumers. See Joint Petition at ¶ 30(b)(2). To that end, the Settlement provides specific restrictions regarding representations to consumers about savings that the consumer may realize by switching to HIKO and use of the terms “risk free,” “competitive,” “guaranteed,” “trial period,” and “introductory rate.” See Joint Petition at ¶¶ 47(b)(3)-(5). Additionally, HIKO specifically commits to complying with 52 Pa. Code § 57.175 and not enter into a sales agreement that is not personally accepted by the EDC’s Customer of Record. See Joint Petition at ¶ 47(b)(6). The Settlement also imposes requirements regarding HIKO’s salespeople’s communications with consumers, including a specific statement that the

salesperson does not work for or represent the consumer's electric utility; that if the consumer switches to HIKO, his or her electric bill will contain HIKO's charges for generation as well as delivery charges from his or her EDC; and for variable rates, when permitted under the Settlement, a statement that there is no limit on how high the price can go and that the consumer may cancel at any time, which cancellation will be handled promptly, but it may take several days to switch suppliers. See Joint Petition at ¶¶ 47(b)(7)-(10). For all in-person sales solicitations, HIKO's salesperson must provide the consumer with the Disclosure Statement prior to presenting the consumer with a contract to obtain his or her signature. Joint Petition at ¶ 12. The Settlement also contains requirements for the contents of HIKO's Disclosure Statement; the prompt provision thereof to customers, and maintenance of adequate records regarding the provision of documents to customers. See Joint Petition at ¶¶ 30(b)(13)-(15). Finally, the Settlement contains specific requirements regarding HIKO's online enrollments and advertising to consumers. See Joint Petition at ¶¶ 47(b)(16)-(18).

- Third party verifications (TPVs): The Settlement contains specific requirements for HIKO's TPVs, including specific language to be used prior to beginning the TPV process and specific questions that must be asked during TPVs. See Joint Petition at ¶¶ 30(c)(1)-(2). Further, the Settlement requires that all TPVs be performed outside the presence of the HIKO salesperson, and the in-person salesperson must leave a consumer's premises during a TPV in accordance with the Commission's regulations. See Joint Petition at ¶ 30(c)(3). Finally, the Settlement prohibits HIKO salespeople from prompting consumers' responses to

TPV questions or instructing consumers in the manner in which to answer TPV questions. See Joint Petition at ¶ 30(c)(4).

- Disclosure statement: Specifically with regard to HIKO's Disclosure Statement, the Settlement requires that within ten days of the Commission's final order, the Company provide to BCP and OCA its current Disclosure Statement and Schumer Box drafted pursuant to the Commission's Final-Omitted Rulemaking and provide any subsequently amended Disclosure Statements to the OCA and the Commission for a period of five years. See Joint Petition at ¶¶ 30(d), (d)(1). Further, the Company will include specific language in its Disclosure Statement and if possible, Schumer Box regarding HIKO's variable rate products and cancellation/early termination fees. See Joint Petition at ¶ 30(d)(2). The Settlement also provides for specific restrictions if HIKO represents to consumers in the Company's variable rate programs that the price HIKO will charge will be "market-based." See Joint Petition at ¶ 30(d)(3). Additionally, under the terms of the Settlement, HIKO specifically agrees to comply with the EDCs' Purchase of Receivables program parameters and tariff provisions and agrees to remove from its Disclosure Statement the language that authorizes it to obtain and review information regarding the customer's credit history. See Joint Petition at ¶¶ 30(d)(4)-(5).
- Training: The Settlement requires that HIKO implement a new training program prior to offering electric generation supply to Pennsylvania customers and provide a description of the new training plan to BCP, OCA and the Commission within 180 days of the expiration provided in Paragraph 30(a)(1) of the Settlement and

then meet with BCP, OCA and designated Commission staff to review and discuss the training. See Joint Petition at ¶¶ 47(e)(1)-(2). The Settlement requires HIKO's new training program to accurately and comprehensively cover the applicable requirements of the Public Utility Code, Consumer Protection Law, TRA and the Commission's regulations, Orders and policies and specifically cover requirements related to door-to-door sales. See Joint Petition at ¶ 30(e)(3)(i)-(iii). The new training program must include a warning that deceptive sales practices will not be tolerated by HIKO's management and describe the remedial steps that will be taken if the representatives violate any terms of the Settlement or otherwise engage in improper sales practices. See Joint Petition at ¶ 30(e)(3)(iv)-(v). The Settlement requires that HIKO provide initial training and subsequent refresher training at least every six months. See Joint Petition at ¶ 30(e)(4). The Settlement requires that HIKO, itself, shall conduct the training. See Joint Petition at ¶30(e)(5).

- Compliance monitoring: The Settlement contains requirements regarding the recording and reviewing of communications with customers. See Joint Petition at ¶¶ 30(f)(1)-(5). The Settlement also contains requirements regarding HIKO's investigation into non-complaint sales calls, substantiated consumer complaints about HIKO sales representatives, violations of the Settlement, Pennsylvania laws or Commission regulations, Orders or policies, and remedial steps for identified non-compliant sales calls. See Joint Petition at ¶¶ 30(f)(5)-(7).
- Reporting: The Settlement requires that within 30 days of implementation of the training and compliance monitoring required in the Settlement and quarterly

thereafter for three years, HIKO provide to the OCA and Commission an explanation of all internal audits and investigations performed and the results thereof and reports of all customer complaints and disputes received by the Company. See Joint Petition at ¶ 30(g).

- Customer service: The Settlement requires that HIKO employ regulatory personnel who will help to ensure compliance with Chapter 56 of the Commission's regulations, fair and timely resolutions of customer complaints, and the proper training of customer service representatives. See Joint Petition at ¶ 30(h)(1). HIKO is also required to maintain a staff of customer service representatives, who will provide reasonable access to a "live" customer service representative and provide timely responses to any voicemail messages or inquiries made by letter. Joint Petition at ¶ 30(h)(2). Additionally, the Settlement requires HIKO to develop and implement an action plan for handling periods of high call volumes and lays out specific factors that must be included in the plan. See Joint Petition at ¶ 30(h)(3). If HIKO experiences a period of high call volumes in which it does not comply with the provisions of the Joint Petition, HIKO will provide a report to the Commission and the Joint Complainants. Joint Petition at ¶ 30(h)(4).

Joint Complainants submit that HIKO's agreement to refrain from accepting any new Pennsylvania customers from April 1, 2015 until June 30, 2016 is appropriate, reasonable, and in the public interest. This provision of the Settlement will help to deter similar conduct in the future. Additionally, this moratorium will give HIKO the opportunity to implement the

necessary modifications to its business practices as well as the training, as outlined in the Settlement, prior to enrolling any new customers in Pennsylvania.

Additionally, Joint Complainants submit that the modifications to HIKO's disclosure statement and advertising practices are designed to provide accurate information to customers in a clear, direct and understandable manner. For instance, should HIKO begin accepting new customers pursuant to the terms of the Settlement, modifications to HIKO's marketing and Disclosure Statement are intended to reduce confusion for customers by, *inter alia*, specifically restricting the use of certain terms and representations by HIKO's agents, employees and representatives and in the Company's Disclosure Statement.

Joint Complainants also submit that the modifications to HIKO's TPV process will help to further assure the customers' understanding and agreement to the product offered by requiring specific statements to be made to all customers during the TPV and specific questions to be asked to confirm the understanding of the agreement with the product offered.

Further, the Settlement provides for initial and ongoing training for HIKO's sales and customer service representatives that comprehensively covers the applicable requirements of Pennsylvania law and Commission regulations, Orders and policies. Joint Complainants submit that such training will increase the likelihood of compliance with these requirements and lead to clearer communications with customers about the products that HIKO offers, which will lead to a better understanding by customers of the products that HIKO offers.

The compliance monitoring requirements of the Settlement are designed to ensure that HIKO comprehensively monitors its Pennsylvania sales agents and that HIKO takes timely remedial steps if non-compliance is found. The reporting provisions in the Settlement are designed to provide OCA, OAG and the Commission with ongoing information regarding

HIKO's compliance with the Settlement, Pennsylvania law and Commission regulations, Orders and policies.

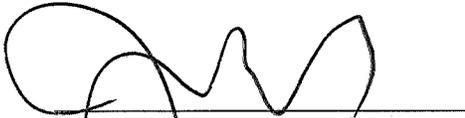
The customer service requirements in the Settlement are designed to ensure that HIKO's customers receive prompt access to HIKO's customer service representatives and prompt and accurate replies to inquiries. Further, the customer service requirements in the Settlement are designed to ensure HIKO's compliance with Chapter 56 of the Commission's regulations.

Joint Complainants submit that these modifications address many of the concerns raised by consumers to the Joint Complainants and in the consumer testimony as well as the allegations in the Joint Complaint. By agreeing to these specific modifications, HIKO will be providing more accurate, full and clear information in its sales process, from the initial sales contact through final enrollment and verification. These modified practices should lead to more fully informed consumers and correspondingly, a better functioning retail choice market. As such, the injunctive relief set out in the Settlement is appropriate, reasonable and in the public interest. Joint Complainants respectfully request that the Commission approve the Settlement on an expedited basis without modification.

III. CONCLUSION

For all of the foregoing reasons, Joint Petitioners respectfully request that the Public Utility Commission approve the Joint Petition for Approval of Settlement on an expedited basis without modification.

Respectfully submitted,



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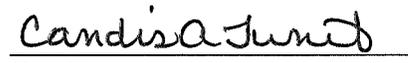
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COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Commonwealth of Pennsylvania, by
Attorney General KATHLEEN G. KANE,
Through the Bureau of Consumer
Protection,

And

TANYA J. McCLOSKEY, Acting
Consumer Advocate,
Complainants

Docket No. C-2014-2427652

v.

HIKO ENERGY, LLC.
Respondent.

**HIKO ENERGY, LLC'S STATEMENT IN SUPPORT OF
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201 and to the April 8, 2015 Order Suspending Procedural Schedule, Respondent HIKO Energy, LLC (“HIKO” or the “Company”), by its undersigned attorneys, submit this statement in support of the Settlement Agreement among the parties in the above-captioned matter (the “Settlement”). The Settlement is in the public interest and thus should be approved by the Commission without delay and on an expedited basis for the following reasons.

I. INTRODUCTION

This Settlement reflects HIKO’s commitment to work with the Office of Attorney General (“OAG”) and the Office of Consumer Advocate (“OCA”) (collectively, “Joint

Complainants”) to provide substantial relief to customers affected by the extraordinary spikes in electric prices during the 2014 Polar Vortex and to improve its business operations and marketing practices to make them more protective of Pennsylvania consumers. Upon approval and implementation of the Settlement without modification, HIKO shall have paid full refunds to all customers enrolled in the Company’s guaranteed 1% to 7% savings program, as requested in the Joint Complaint. These refunds will provide affected customers with cash payments that go beyond the actual terms of the promised guarantee. Although HIKO’s price offer was that the customer would save at least 1% from the given local utility’s price, also known as the “price to compare,” the Settlement assumes that these customers would have received a discount averaging 3.5% (mid-way between 1% and 7%) of the price to compare. This refund amount totals \$1,672, 523.10 of the Refund Pool, and reflects \$1,789,704.00 of refunds minus \$117,180.90 in refunds voluntarily provided by HIKO to these affected customers to date.

HIKO will also make substantial refunds to customers that were enrolled in the Company’s variable rate plan in January, February, and March 2014. Notably, HIKO’s variable rate plan did not contain any ceiling on the amount of the variable price and, during the relevant time period (January through March 2014), it is well recognized that the costs of wholesale energy in the spot markets tripled and even quadrupled in response to the unforeseen market conditions and sustained frigid weather during the Polar Vortex. *See Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134 (Order entered Mar. 4, 2014) (Variable Rate Order) at 1-2. HIKO has learned from the Polar Vortex crisis of 2014 and is committed to providing substantial relief to affected customers and improving its business practices. Accordingly, the Settlement provides for \$352, 860.75 from the Refund Pool to be allocated to customers enrolled in HIKO’s variable

rate plan, which reflects \$395,000.000 of refunds minus \$42,139.25 in refunds voluntarily provided by HIKO to these affected customers to date.

In addition, HIKO has agreed to pay up to \$50,000 of the costs and expenses related to administering refunds and to make a \$25,000 contribution to the EDCs' hardship fund. The Settlement also provides for significant injunctive relief in the form of requirements governing HIKO's marketing practices, third-party verification procedures, disclosure statements, sales representative training, compliance monitoring reporting, and customer service. In addition, HIKO has agreed to extend through June 30, 2016 what had been a voluntary "time out" from selling its variable rate products to Pennsylvania consumers in early 2014.¹

As discussed in the following section, the Settlement meets the criteria for approval of settlements involving allegations of violations of the Public Utility Code and the Commission's regulations set forth in the Commission's Policy Statement at 52 Pa. Code § 69.1201. Upon approval and implementation of the Settlement without modification, this Settlement shall provide immediate, concrete benefits to the public that would otherwise be unavailable in the near term given the delays and uncertainties in administrative and appellate litigation.

Additionally, HIKO's prompt and complete cooperation with Joint Complainants, the Office of Small Business Advocate ("OSBA"), and the Commission's Bureau of Investigation and Enforcement ("I&E") demonstrates its commitment to redressing the unfortunate experiences of affected customers and to strengthening its own policies and procedures.

II. THE SETTLEMENT SHOULD BE APPROVED AS IN THE PUBLIC INTEREST

HIKO submits that the Settlement is in the public interest and serves to maintain the integrity of the retail electric market in Pennsylvania. Specifically, this Settlement is a complete

¹ HIKO has the ability prior to June 30, 2016 to sell fixed rate service products subject to prior review by Joint Complainants.

and final resolution of all issues related to the Joint Complaint, avoids the time and expense of litigation and possible appeals, and provides substantial restitution to HIKO's current and former customers and implementation of marketing and business practices that would otherwise be unavailable in the near term.

HIKO further submits that approval of the Settlement is consistent with the factors and standards for evaluating litigated and settled proceedings, as articulated in *Rosi v. Bell Atlantic – Pennsylvania, Inc.*, 94 Pa. P.U.C. 103 (2000) and codified in the Commission's Policy Statement at 52 Pa. Code § 69.1201. Under this Policy Statement, while the same factors and standards may still be considered in both litigated and settled cases, the Commission specifically recognized that in settled cases parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa. Code § 69.1201(b).

The ten factors of the Policy Statement, as applied in this case, are addressed below.

1. The first factor to be considered under the Policy Statement is whether the alleged actions were of a serious nature, such as willful fraud or misrepresentation, or were merely administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). Many of the violations alleged here were of a serious nature in that they involved, among other things, alleged misrepresentations by sales representatives, alleged changing of customers' electricity generation supplier without authorization, and HIKO's alleged failure to abide by the terms of its price guarantee.

2. The second factor to be considered under the Policy Statement is whether the resulting consequences of the actions were of a serious nature. 52 Pa. Code § 69.1201(c)(2). There is no contention that the alleged violations resulted in personal injuries or property

damage. While HIKO acknowledges that the alleged violations, if true, could have caused customers financial harm, prior to entering into the Settlement, HIKO voluntarily provided \$159,320.15 in refunds to customers. Pursuant to the Settlement, HIKO will pay an additional \$2,025,383.85 into a Refund Pool, which shall be distributed under the auspices of an administrator chosen by Joint Complainants, to remedy any alleged financial harm to customers that remain uncompensated. Furthermore, the Settlement provides that any remaining funds in the Refund Pool shall be transferred to the EDCs' hardship fund and allocated by ratio of HIKO customers in the EDCs' territory to the total amount of HIKO customers in Pennsylvania as of January 2014. HIKO will also honor its commitment to offer additional savings to eligible customers through the One Month Free Program, which allows the customer to receive one free month of service whether or not the customer received a refund. Thus, any financial harm to customers during the Polar Vortex will have been remedied by HIKO's actions, both prior to and pursuant to the Settlement.

3. The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This factor may only be considered in evaluating litigated cases." *Id.* Since this matter is being resolved by settlement of the parties, this factor is not relevant here.

4. The fourth factor to be considered under the Policy Statement is whether HIKO made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). HIKO has agreed to substantial changes in its product offering, marketing practices, disclosure statements, third-party verification procedures, sales representative training, compliance protocols, and other internal operations in order to address the alleged conduct and to avoid similar incidents in the future. In addition, HIKO has agreed

not to offer variable rate plans starting April 1, 2015 and lasting until June 30, 2016, a measure that comes at substantial cost to the Company. Notably, HIKO voluntarily chose not to continue marketing to Pennsylvania consumers in early 2014 when it realized the impact of the Polar Vortex.

5. The fifth factor to be considered under the Policy Statement relates to the number of customers affected by the Company's actions and the duration of its violations. 52 Pa. Code § 69.1201(c)(5). Given the nature of the allegations of the Joint Complaint, all of HIKO's current and former customers enrolled in the guaranteed savings plan and variable rate plan may have been affected in different ways by the conduct alleged. All of the allegations relate to the Polar Vortex period during the winter of 2014, which was a period of extreme and unforeseen cold weather and accompanying aberrational price volatility in the wholesale electric markets. Although HIKO was not able to offer a price lower than the utility price to compare during the Polar Vortex, for many months before that period the Company regularly offered better rates than the local utility and is committed to restoring customer goodwill by providing lower prices to current and future customers in the future.

6. The sixth factor to be considered under the Policy Statement relates to HIKO's compliance history. 52 Pa. Code § 69.1201(c)(6). "An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty." *Id.* As noted above, all of the alleged violations occurred during the Polar Vortex period. HIKO has a satisfactory compliance history with the Public Utility Code and the Commission's regulations. Moreover, Joint Complainants, OSBA, or I&E have not raised any issues with HIKO's compliance history during the course of this Complaint Proceeding or settlement discussions. Therefore, the allegations of the Joint Complaint and the

informal and formal complaints referenced therein are the first infractions on HIKO's otherwise clean compliance history.

7. The seventh factor to be considered under the Policy Statement relates to whether HIKO cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). HIKO fully cooperated with OAG, OCA, OSBA, and I&E in providing information both formally and informally during the litigation and settlement discussions. Moreover, HIKO voluntarily ceased marketing in Pennsylvania as soon as it became apparent that due to the Polar Vortex it would not be able to keep the price guarantees and long before the Complaint was filed or any settlement discussions and it will continue to work with these Pennsylvania advocates to improve its operations.

8. The eighth factor to be considered under the Policy Statement is the appropriate settlement amount. 52 Pa. Code § 69.1201(c)(8). As stated above, HIKO voluntarily provided \$159,320.15 in cash refunds to customers prior to the Settlement. Pursuant to the Settlement, HIKO has agreed to pay an additional \$2,025,383.85, which comprises a net Refund Pool amount of \$2,184,704.00, up to \$50,000 of the costs and expenses related to administering the Refund Pool, and a \$25,000 contribution to the EDCs' hardship fund. In addition, the Settlement provides that any remaining funds in the Refund Pool shall be contributed to the EDCs' hardship fund and that eligible customers will receive one free month of service under the One Free Month Program whether or not they received a refund. HIKO submits that the combination of:

- (i) the Company's prior provision of refunds in the amount of \$159,320.15 to affected customers;
- (ii) HIKO's current provision of refunds in the additional amount of \$2,025,383.85 to affected customers; and
- (iii) the ability for customers to receive immediate relief from HIKO upon

approval of this Settlement constitutes a substantial and sufficient amount to resolve this proceeding and deter HIKO from committing future violations.

9. The ninth factor to be considered under the Policy Statement relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). The Joint Complainants have filed similar complaints against other EGS providers, all of which are in various stages of litigation or settlement. To date, there are no past Commission decisions related to the settlement in any of the complaints against these other EGS providers; however, the presiding Administrative Law Judges are considering a similar petition for approval of settlement between Joint Complainants and Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric (“PaG&E”). *See Pennsylvania et al. v. Energy Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric*, Docket No. C-2014-2427656, Joint Petition for Approval of Settlement (March 24, 2015). Like the instant Settlement, the proposed settlement with PaG&E requires the EGS provider to fund a Refund Pool for cash payments to affected customers, cover costs and expenses of administering the Refund Pool, and contribute to the EDCs’ hardship fund. The PaG&E proposed settlement with Joint Complainants also includes similar injunctive relief, including a time out period from the market and significant modifications to the Company’s marketing practices, disclosure statements, third-party verification procedures, sales representative training, compliance monitoring reporting, and other internal business practices. Like the PaG&E proposed settlement, the HIKO Settlement reflects a good faith, cooperative effort to correct alleged violations of the Commission’s regulations and maintain the integrity of the retail electric market in Pennsylvania.

Furthermore, in looking at the relevant factors that are comparable to other incidents, such as the allegations at issue here — namely, alleged misleading and deceptive sales practices

and unauthorized switching — and comparing the allegations to the relief provided in the Settlement, this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome. *See Pa. PUC, Bureau of Investigation & Enforcement v. Power Public, LLC*, No. M-2012-2257858, 2013 WL 6835126 (Pa. P.U.C. Dec. 19, 2013) (approving \$64,500 settlement in case involving “fraudulent, deceptive acts “ by a third party vendor representing Public Power resulting in slamming 263 customers with 2,937 customer accounts whose slams were rescinded before billing).

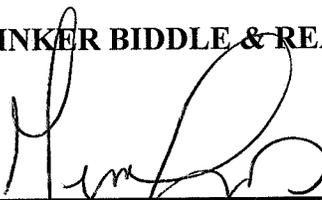
10. The tenth factor to be considered under the Policy Statement is “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). HIKO submits that an additional factor — whether the case was settled or litigated — is of pivotal importance to this Settlement. This Settlement reflects that this matter was resolved amicably and without any adjudication of the issues. By foregoing administrative and appellate litigation, the parties were able to negotiate reasonable terms that represent economic and programmatic compromise, mitigate business uncertainty, and permit HIKO to timely implement corrective measures and customer restitution. Even if the Commission were to order similar payments by HIKO and injunctive relief, the uncertainty and delay inherent in litigation would prevent the public from receiving immediate, concrete benefits — including very substantial refunds — and distract the parties’ focus on implementing the necessary remedial actions. Hence, this carefully balanced compromise between the parties is in the public interest and therefore should be approved.

III. CONCLUSION

For all the foregoing reasons, HIKO respectfully requests that the Public Utility Commission approve the Joint Petition for Approval of Settlement on an expedited basis without modification.

Respectfully Submitted,

DRINKER BIDDLE & REATH, LLP



Dated: May 1, 2015

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Counsel for HIKO Energy, LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, by Attorney	:	
General Kathleen G. Kane, Through the Bureau	:	
Of Consumer Protection	:	
And	:	
Tanya J. McCloskey, Acting Consumer	:	
Advocate	:	Docket No. C-2014-2427652
Complainants	:	
v.	:	
HIKO Energy, LLC	:	
Respondent	:	

**STATEMENT OF
THE OFFICE OF SMALL BUSINESS ADVOCATE
IN SUPPORT OF THE
JOINT PETITION FOR SETTLEMENT**

Introduction

The Small Business Advocate is authorized and directed to represent the interests of the small business consumers of utility services in the Commonwealth of Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50. Pursuant to that statutory authority, the Office of Small Business Advocate (“OSBA”) filed a notice of intervention in the above-captioned proceeding which was initiated by the June 20, 2014, filing of a Joint Complaint by the Office of Consumer Advocate and the Office of Attorney General through the Bureau of Consumer Protection against HIKO Energy, LLC (“HIKO” or the “Company”) alleging multiple violations of Pennsylvania law and Pennsylvania Public Utility Commission (“Commission”) orders and regulations.

The OSBA participated in the negotiations that led to the proposed Joint Petition for Settlement and is a signatory to the Joint Petition for Settlement (“*Settlement*”). The OSBA submits this statement in support of the *Settlement*.

The Settlement

The *Settlement* sets forth a comprehensive list of issues that were resolved through the negotiation process. The following issues was of particular significance to the OSBA when it concluded that the *Settlement* was in the best interests of HIKO's small business customers. On April 8, 2015 at a hearing with the Administrative Law Judges, the redacted¹ consumer testimony and accompanying exhibits of 98 consumers sponsored by the Joint Complainant's was moved into the record. While HIKO has not admitted to any wrongdoing with the admission of the consumer testimony, the introduction of the testimony is critical for the purpose of providing substantial evidence in the record.

The facts that are not in dispute, which are set forth more fully in the in **Stipulation of Facts in Support of the Settlement**, reflect that HIKO customers, including small business customers, averred that they had been guaranteed savings which did not materialize, were misled by written communications with HIKO such as the Disclosure Statement and Welcome Letter, were switched without authorization, and were not informed about whether they would be paying fixed or variable rates. Further, customers averred that they experienced difficulties when they attempted the contact HIKO to complain about their charges, that their complaints were mishandled by HIKO, and that they suffered financial difficulties after receiving HIKO's charges.²

1. Refunds

As part of the Settlement, HIKO has agreed to pay the sum of \$2,025,283.85 which will be designated as a Refund Pool. The Office of Attorney General ("OAG") and Office of Consumer Advocate ("OCA") will determine the amount of the refund for all eligible HIKO

¹ For the protection of the consumers, identifying information such as names, street addresses, account numbers and telephone numbers were redacted from each piece of consumer testimony submitted.

² Joint Petition for Settlement, Exhibit B pages 4-5.

customers, including small business customers who were on variable rate plans in January, February or March of 2014, based on the customer's usage, price charged, and offset by any refund amounts already received directly from HIKO.

A third-party Administrator to be retained by OAG and OCA oversee the Refund Pool but HIKO will bear the burden of the costs and expenses relating to the Refund Pool up to \$50,000. Any funds remaining in the Refund Pool after the issuance of the calculated refunds will be provided to the EDC's hardship funds as allocated by the ratio of HIKO's customers within the EDC's service territory. Further, any unclaimed refunds remaining in the Refund Pool will be forwarded to the Pennsylvania Treasury Department Unclaimed Property Division and thereby preserved for those customers entitled to a refund.

2. Injunctive Relief

Limited Product Offerings from March 31, 2015-June 30, 2016

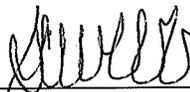
As part of the Settlement, HIKO has agreed not to accept any new Pennsylvania customers after March 31, 2015 until June 30, 2016 except for fixed products in limited circumstances. Any fixed products offered by HIKO to new customers until September 1, 2016 will be no less than 3 month fixed rate products and will not include cancellation or termination fees.³

³ Joint Petition for Settlement, Exhibit A.

Conclusion

For the reasons set forth in the *Settlement*, as well as the additional factors that are enumerated in this statement, the OSBA supports the proposed *Settlement* and respectfully requests that the ALJs and the Commission approve the *Settlement* in its entirety.

Respectfully submitted,



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Assistant Small Business Advocate
Attorney ID No. 73995

Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101

Dated: May 1, 2015