

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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June 20, 2014

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-_____

Secretary Chiavetta:

Enclosed please find the Joint Complaint of the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer Advocate and the Public Statement of the Office of Consumer Advocate in the above-referenced proceeding.

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

Respectfully Submitted,

Handwritten signature of Candis A. Tunilo in cursive.

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

Enclosures

cc: Office of Administrative Law Judge
Office of Special Assistants
Certificate of Service

*185197

**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-
v.	:	
	:	
HIKO ENERGY, LLC,	:	
Respondent	:	

JOINT COMPLAINT

AND NOW, comes the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (Attorney General) and the Acting Consumer Advocate Tanya J. McCloskey (OCA) (collectively referred to as Joint Complainants), who bring this action pursuant to the Public Utility Code, 66 Pa. C.S. Ch. 28, the Pennsylvania Public Utility 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.*

PRELIMINARY STATEMENT

1. This Joint Complaint is brought in the public’s interest to address multiple violations of Pennsylvania law and Pennsylvania Public Utility Commission (Commission)

orders and regulations, whereby consumers were misled and deceived as to the price they would pay for their electricity, all to their harm and detriment.

PARTIES

2. Tanya J. McCloskey is the Acting Consumer Advocate. The Office of Consumer Advocate is the agency authorized by law to represent the interests of utility consumers before the Commission as provided in 71 P.S. § 309-1, *et seq.* The names and address of the OCA's attorneys are as follows:

Candis A. Tunilo
Assistant Consumer Advocate
Hobart J. Webster
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, Pennsylvania 17101

3. The Attorney General is authorized by the Consumer Protection Law to bring an action in the name of the Commonwealth of Pennsylvania to restrain by temporary or permanent injunction unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as provided in 73 P.S. § 201-4.

4. The Consumer Protection Law further authorizes the Attorney General to take such action when she has reason to believe that any person is using or is about to use a method, act, or practice unlawful under the Consumer Protection Law and when she determines that proceedings would be in the public interest as provided in 73 P.S. § 201-4.

5. The Attorney General, as the chief law officer of the Commonwealth of Pennsylvania pursuant to Article IV § 4.1 of the Pennsylvania Constitution, is further authorized to initiate and maintain this action, and does so, pursuant to the Commonwealth Attorneys Act, 71 Pa. Stat. § 732-204. The names and address of the Attorney General attorneys are as follows:

John M. Abel, Senior Deputy Attorney General
Nicole R. Beck, Deputy Attorney General
Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

6. Hiko Energy, LLC, (Respondent) 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.

7. The Commission is responsible for regulating the service of electric generation suppliers, as it relates to their activities in the marketing and sale of electricity and electric services. See 66 Pa. C.S. § 2809(e).

8. Respondent provides electric generation supplier (EGS) services to residential customers, and as such, it must comply with applicable residential service regulations in Chapters 54 and 56 of the Commission's regulations. See 52 Pa. Code Ch. 54 and 56. See also License Application of Hiko Energy LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier of Retail Electric Power, Docket No. A-2012-2289944, Tentative Order at 2-3 (June 7, 2012) (Tentative Order), as adopted by Final Order at 1 (July 2, 2012) (Final Order).

9. Respondent must also comply with Chapter 111 of the Commission's regulations. See 52 Pa. Code § 111.1.

10. Additionally, Respondent must abide by all applicable federal and state laws and Commission regulations, procedures and orders and ensure that its employees, representatives,

agents and independent contractors do so as well. See Tentative Order at 3, as adopted by Final Order at 1.

11. Respondent offers variable rate electric generation service to residential customers in the service territories designated in the Final Order.

12. Upon information and belief, Respondent uses a variety of marketing and advertising mediums to solicit residential customers for its variable rate plan including door-to-door, telephonic, internet, mass mail and print solicitations.

13. Respondent, by advertising, marketing, and selling variable rate electric generation service is engaged in trade or commerce within the Commonwealth.

14. Among the consumers charged high variable prices by Respondent's actions are over a hundred citizens over the age of 60.

15. 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. The OCA has received approximately 3,000 contacts from consumers regarding variable rates.

16. As of May 5, 2014, the OCA had collected information from approximately 2,434 of its consumer contacts.

17. Of the referenced 2,434 contacts, 109 or approximately 4.5% were from customers of Respondent. Of the referenced 109 total contacts, the OCA collected written information from approximately 9 customers.

18. From February 27, 2014 to June 4, 2014, the Attorney General received approximately 39,607 telephone calls and 7,503 consumer complaints related to variable rates

charged by EGSs. Of the 7,503 consumer complaints, 254 or approximately 3.4% were against Respondent.

19. Upon information and belief, from January 1, 2014 to April 21, 2014, approximately 500 Formal Complaints were filed at the Commission by customers regarding variable rates charged by EGSs. Additionally, upon information and belief, approximately 6,500 informal complaints and nearly 10,000 inquiries were made by consumers to the Commission regarding variable rates charged by EGSs. Of the approximately 203 Formal Complaints reviewed by the OCA to date, approximately 8 or 4% were filed against Respondent.

COUNT I – MISLEADING AND DECEPTIVE PROMISES OF SAVINGS

20. The foregoing paragraphs are incorporated herein.

21. Of the referenced 254 consumer complaints against Respondent received by the Attorney General, 73 or nearly 29% of the complainants indicated that Respondent's salespeople promised guaranteed savings over the Price to Compare (PTC) as inducement for complainants to switch to Respondent. These complainants then received bills from Respondent that were at least two or three times more than the PTC.

22. Of the referenced 9 customers that provided written correspondence and information to the OCA, 3 or approximately 33% stated that Respondent's salespeople promised guaranteed savings over the PTC as inducement for complainants to switch to Respondent. These complainants then received bills from Respondent that were at least two or three times more than the PTC.

23. Of the referenced 8 Formal Complaints filed at the Commission against Respondent and reviewed by the OCA to date, at least 4 or 50% of the complainants averred that Respondent's salespeople promised guaranteed savings over the PTC as inducement for

complainants to switch to Respondent. These complainants then received bills from Respondent that were at least two or three times more than the PTC.

24. The Commission's regulations state that a licensed EGS is responsible for any fraudulent, deceptive or other unlawful marketing acts by its employees, agents and representatives. See 52 Pa. Code § 54.43(f).

25. The Commission's regulations require compliance with the Unfair Trade Practices and Consumer Protection Law (Consumer Protection Law). See 52 Pa. Code §§ 54.43(f) and 111.12(d)(1).

26. The Consumer Protection Law defines "unfair or deceptive acts or practices" as, *inter alia*:

- Advertising goods or services with the intent not to sell them as advertised;
- Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; and
- Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

See 73 P.S. § 201-2(4)(ix), (xi) and (xxi).

27. It is averred, upon information and belief, that Respondent's employees, agents and/or representatives have engaged in and continue to engage in activities that are fraudulent, deceptive and/or in violation of the Commission's regulations and orders and the Consumer Protection Law by promising savings that may not, and for many customers did not, materialize.

28. Additionally, as averred above, upon information and belief, Respondent has failed to adequately train and monitor its agents, as required by the Commission's regulations. See 52 Pa. Code §§ 111.4 and 111.5.

COUNT II – SLAMMING

29. The foregoing paragraphs are incorporated herein.

30. Of the referenced 254 consumer complaints against Respondent received by the Attorney General, 18 or approximately 7% of the complainants indicated that they did not consent to switch to Respondent.

31. The Public Utility Code and the Commission's regulations prohibit switching a customer's generation supplier without the customer's consent (*i.e.* slamming). See 66 Pa. C.S. § 2807(d)(1); 52 Pa. Code § 54.42(a)(9).

32. It is averred, upon information and belief, that Respondent has violated and continues to violate the Commission's regulations and orders by switching customers to Respondent without the customers' consent.

COUNT III – LACK OF GOOD FAITH HANDLING OF COMPLAINTS

33. The foregoing paragraphs are incorporated herein.

34. Of the referenced 8 Formal Complaints filed at the Commission against Respondent reviewed by the OCA to date, at least 4 or 50% of the complainants averred that when they attempted to contact Respondent about the variable rate charges on their bills, they could not get through to the Respondent on the telephone and/or their emails to the Respondent went unanswered.

35. Of the referenced 254 consumer complaints against Respondent received by the Attorney General, at least 90 or approximately 35% of the complainants indicated that when they

attempted to contact Respondent about the variable rate charges on their bills, they could not get through to the Respondent on the telephone and/or their emails to the Respondent went unanswered.

36. The Commission's regulations require EGSs to utilize good faith, honesty and fair dealing with residential customers. See 52 Pa. Code § 56.1(a). See also Tentative Order at 2-3, as adopted by Final Order at 1.

37. The Commission's regulations set forth the procedure for EGSs to use when they receive notice of a dispute, including a billing dispute, from a residential customer. Upon notice of such dispute, EGSs are required to investigate the matter, provide the customer with information necessary to make an informed judgment and issue a report to the customer within 30 days. See 52 Pa. Code §§ 56.141(a), 56.151 and 56.152.

38. It is averred, upon information and belief, that Respondent has violated and continues to violate the Commission's regulations and orders by failing to adequately staff its call center, failing to provide reasonable access to Respondent representatives for purposes of submitting complaints, failing to properly investigate customer disputes, failing to properly notify customers of the results of the Respondent's investigation into a dispute when such investigation was conducted, and failing to utilize good faith, honesty and fair dealing in its dealings with customers.

COUNT IV – FAILING TO PROVIDE RATE INFORMATION

39. The foregoing paragraphs are incorporated herein.

40. Of the referenced 254 consumer complaints against Respondent received by the Attorney General, at least 26 or approximately 10% of the complainants indicated that they were not told that their rate was a variable rate.

41. Of the referenced 9 customers that provided written correspondence and information to the OCA, 2 provided their sign-up documents from Respondent. The documents provided to these customers failed to provide a price for the first month of service.

42. The Commission's regulations require that an EGS shall provide the customer with a copy of its disclosure statement. See 52 Pa. Code §§ 54.5(b) and 111.11.

43. Section 111.12 requires suppliers to provide accurate and timely information to customers about their services and products, including their rates. See 52 Pa. Code § 111.12(d)(4).

44. The Commission's regulations require that EGS prices billed reflect the marketed prices and the agreed-upon prices in the disclosure statement. See 52 Pa. Code § 54.4(a).

45. If an EGS offers a variable price plan, its disclosure statement must include the conditions of variability and the limits on price variability. See 52 Pa. Code § 54.5(c)(2).

46. Additionally, the EGS's advertised prices must reflect the prices in its disclosure statements and billed prices. See 52 Pa. Code § 54.7(a).

47. Pennsylvania's Consumer Protection Law defines "unfair or deceptive acts or practices" as, *inter alia*, engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding. See 73 P.S. § 201-2(xxi).

48. It is averred, upon information and belief, that Respondent has violated and continues to violate the Consumer Protection Law and the Commission's regulations and orders by failing to provide adequate price disclosures to customers and deceiving customers about the rate they would be charged by Respondent.

49. Additionally, as averred above, upon information and belief, Respondent has failed to adequately train and monitor its agents, as required by the Commission's regulations. See 52 Pa. Code §§ 111.4 and 111.5.

COUNT V – FAILING TO PROVIDE ACCURATE PRICING INFORMATION

50. The foregoing paragraphs are incorporated herein.

51. Respondent's Disclosure Statement regarding variable pricing 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.

The Disclosure Statement is attached hereto as Appendix A.

52. The Commission's regulations require that variable pricing terms include the conditions of variability and the limits on price variability. See 52 Pa. Code § 54.5(c).

53. The variable pricing terms of Respondent fail to adequately state the conditions of variability and the limits on price variability in violation of the Commission's regulation. Id.

54. The Commission's regulations require that EGSs "provide accurate information about their electric generation services using plain language and common terms in communications with consumers." See 52 Pa. Code § 54.43(1).

55. Additionally, EGSs must provide information to consumers "in a format that enables customers to compare the various electric generation services offered and the prices charged for each type of service." Id.

56. The Commission's regulations require compliance with the Consumer Protection Law. See 52 Pa. Code § 54.43(f) and 111.12(d)(1).

57. The Consumer Protection Law prohibits fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding. See 73 P.S. § 201-2(4)(xxi).

58. It is believed and therefore, averred that the Respondent has violated and continues to violate the Respondent's regulations by failing to provide pricing information in plain language and using common terms that consumers understand.

59. Further, it is believed and therefore, averred that consumers could not determine from the Disclosure Statement the price that they would or could be charged by the Respondent or how the price would be calculated by Respondent.

60. It is believed and therefore, averred that Respondent violated and continues to violate the Commission's regulations by failing to provide information to its customers in a manner that would allow them to compare offers.

COUNT VI - PRICES NONCONFORMING TO DISCLOSURE STATEMENT

61. The foregoing paragraphs are incorporated herein.

62. Upon information and belief, Respondent charged its variable rate customers prices that were at least as high as \$0.40 per kWh for electricity.

63. It is averred, upon information and belief, that Respondent's prices charged to customers in early 2014 were not reflective of the cost to serve residential customers.

64. By way of example, the cost to serve the average residential heating customer in January 2014 should not have exceeded approximately \$0.23 per kWh. See Affidavit of Dr. Steven L. Estomin, attached hereto as Appendix B.

65. It is averred, upon information and belief, that the aforementioned prices do not conform to the variable rate pricing provision of the Respondent's Disclosure Statement.

COUNT VII – FAILING TO FOLLOW POR PROGRAM PARAMETERS

66. The foregoing paragraphs are incorporated herein.

67. Respondent's Disclosure Statement states: "Customer authorized HIKO to obtain and review information regarding Customer's credit history from credit reporting agencies" See Hiko Energy Disclosure Statement at ¶ 5, which is attached hereto as Appendix A.

68. It is believed and therefore, averred that Respondent participates in the Purchase of Receivables (POR) programs of EDCs throughout the Commonwealth, including but not limited to: PECO, PPL Electric Utilities Corporation (PPL), Metropolitan Edison Company (Met Ed), and Pennsylvania Electric Company (Penelec).

69. The terms of EDCs' POR programs, as approved by the Commission, prohibit the denial of service to residential customers by EGSs for credit-related reasons. See e.g. Petition of PECO Energy for Approval of its Revised Electric Purchase of Receivables Program, Docket No. P-2009-2143607, Order at 8, 49 (June 18, 2010); PPL Tariff Electric Pa. P.U.C. No. 1s at § 12.9.1, as approved by Pa. PUC v. PPL Electric Utilities Corp., Docket No. R-2010-2161694, Order (Dec. 21, 2010); Met Ed Tariff Electric Pa. P.U.C. No. S-1 at Original Page No. 38, § 12.9; and Penelec Tariff Electric Pa. P.U.C. No. S-1 at Original Page No. 38, § 12.9.

70. It is believed and therefore, averred that Respondent is reviewing potential customers' creditworthiness prior to deciding whether to accept as them as customers. As such, Respondent has violated and continues to violate EDCs' POR program requirements, as approved by the Commission.

**COUNT VIII - FAILURE TO COMPLY WITH THE TELEMARKETER
REGISTRATION ACT**

71. The foregoing paragraphs are incorporated herein.

72. Of the 254 consumer complaints against Respondent received by the Attorney General, at least 58 or approximately 23% of the complainants received a telemarketing call from the Respondent, which initiated the complainants' switch to Respondent.

73. The Commission's regulations require EGSs to comply with the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* See 52 Pa. Code § 111.10(a)(1).

74. When Respondent sells its goods or services through the use of a telemarketing call, the Telemarketer Registration Act requires the Respondent to reduce any sale of goods or services made during such call to a written contract and obtain the consumer's signature on the written contract. See 73 P.S. § 2245(a)(7).

75. Additionally, the Telemarketer Registration Act requires the Respondent to provide consumers with a contract that contains, *inter alia*, the following:

- A detailed description of the consumer goods and services purchased which shall match the oral description given in the telemarketing solicitation;
- Any oral or written representations made during the telemarketing solicitation; and
- A statement that reads: "You are not obligated to pay any money unless you sign this contract and return it to the seller."

See 73 P.S. § 2245(c).

76. Respondent failed to provide consumers with a contract that contained all of the required information set forth in Sections 2245(a)(7) and 2245(c) of the Telemarketer Registration Act, 73 P.S. § 2245(a)(7) and (c), and has therefore, violated and continues to violate the Commission's regulations and orders and the Telemarketer Registration Act.

77. Under the Telemarketer Registration Act, any violation of 73 P.S. § 2241, *et seq.* is also a violation of the Consumer Protection Law. See 73 P.S. §2246(a).

78. The Commission's regulations require that EGSs comply with the Telemarketer Registration Act and the Consumer Protection Law. See 52 Pa. Code § 54.43(f) and 111.10(a).

79. The Consumer Protection Law prohibits fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding. See 73 P.S. § 201-2(4)(xxi).

80. By failing to provide a contract that complies with the Telemarketer Registration Act, Respondent has also violated and continues to violate the Consumer Protection Law.

RELIEF

81. The foregoing paragraphs are incorporated herein.

82. Pursuant to Section 54.42 of the Commission's regulations, 52 Pa. Code § 54.42, the Commission may suspend or revoke an EGS's license and impose civil penalties for the following EGS conduct:

- Failure to follow the principles in 52 Pa. Code § 54.43;
- Violation of applicable provisions of the Public Utility Code, Commission regulations and Commission orders;
- Violation of the consumer protection law; and
- The transfer of a customer without the customer's consent.

83. Under the Consumer Protection Law, it is appropriate to impose a permanent injunction to restrain and prevent violations of the Consumer Protection Law and restore to any person in interest any moneys or property that may have been acquired by means of any violation of the Consumer Protection Law. See 73 P.S. § 201-4.1.

84. As outlined above, Respondent violated and continues to violate the Public Utility Code, the Commission's regulations and orders, the Consumer Protection Law, the Telemarketer Registration Act, and the Final Order.

WHEREFORE, Joint Complainants Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer Advocate, respectfully request that the Commission take the following actions:

A. Consolidate all similar pending formal complaints against Respondent with this Joint Complaint;

B. Find that Respondent violated the Telemarketer Registration Act, the Consumer Protection Law, the Public Utility Code, and the Commission's regulations and orders, as specified in the foregoing Joint Complaint, and revoke or suspend the Respondent's EGS license;

C. Find that Respondent violated the Telemarketer Registration Act, the Consumer Protection Law, the Public Utility Code, and the Commission's regulations and orders, as specified in the foregoing Joint Complaint, and impose a civil penalty;

D. Order Respondent to provide appropriate restitution, including without limitation, refunding all charges to its consumers that were over and above the Price To Compare in the customers' respective service territories from January 1, 2014 through the date of resolution of this matter, as well as any late, cancellation and/or termination fees and/or other such penalties

charged to customers as a result of Respondent's charges and customers leaving Respondent to obtain generation service elsewhere;

E. Order Respondent to prohibit its salespeople from making price guarantees to consumers that are deceiving and inaccurate;

F. Order Respondent to cease and desist switching consumers to its generation supply without their explicit consent;

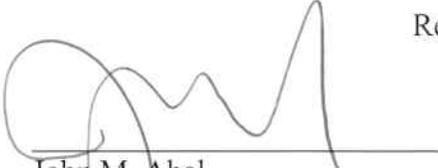
G. Order Respondent to implement proper customer dispute procedures and adequately staff, train and monitor all employees and agents in such procedures;

H. Order Respondent to discontinue all other marketing practices that violate the Consumer Protection Law, the Public Utility Code, and the Commission's regulations or orders;

I. Order Respondent to comply with EDCs' Purchase of Receivables program requirements; and

J. Impose any other such relief that the Commission deems appropriate in this matter.

Respectfully submitted,



John M. Abel
Senior Deputy Attorney General
PA Attorney I.D. 47313

Nicole R. Beck
Deputy Attorney General
PA Attorney I.D. 315325

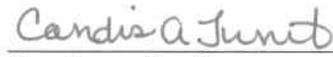
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Counsel for:

Kathleen G. Kane, Attorney General
Bureau of Consumer Protection

DATE:

6-20-14



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Hobart J. Webster
PA Attorney I.D. 314639
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Counsel for:

Tanya J. McCloskey
Acting Consumer Advocate

APPENDIX A

PENNSYLVANIA TERMS AND CONDITIONS: ELECTRIC

CUSTOMER DISCLOSURE STATEMENT

Background: We at HIKO Energy ("HIKO") are licensed by the Pennsylvania Public Utility Commission ("PUC") to offer and supply electric generation services ("EGS") in Pennsylvania. Our PUC EGS license number is A-2012-2289944. A residential or small business customer may cancel this Agreement at any time before midnight of the third business day after receiving this disclosure.

Electric: We set the generation prices and charges that you pay. The PUC regulates distribution prices and services. The Federal Energy Regulatory Commission regulates transmission prices and services.

Electric Definitions:

- Generation charge-** charge for the production of electricity.
- Transmission charge-** charge for moving high voltage electricity from a generation facility to the distribution lines of an Electric Distribution Company ("EDC").
- Distribution charge-** charge for delivering electricity over a distribution system to the home or business from the transmission system.

Terms of Service

1. Agreement to Sell and Purchase Energy. This is an agreement between HIKO the customer ("Customer" or "you" or "your") under which Customer shall initiate electricity service and begin enrollment with HIKO (the "Agreement").

Subject to the terms and conditions of this Agreement, HIKO agrees to sell and deliver, and Customer agrees to purchase and accept the quantity of electricity, as estimated by HIKO, necessary to meet Customer's requirements based upon consumption data obtained by HIKO or the delivery schedule of your EDC.

HIKO is not affiliated with and does not represent the EDC. The amount of electricity supplied under this Agreement is subject to change based upon data reflecting Customer's consumption obtained by HIKO or the EDC's delivery schedule. The EDC will continue to deliver the electricity supplied by HIKO.

2. Term and Cancellation. This Agreement shall commence as of the date Customer's notice regarding the change of Customer's provider to HIKO is deemed effective by the EDC, and shall continue for one month thereafter (the "Initial Term"). Unless otherwise agreed to, upon completion of the Initial Term, this Agreement will renew on a month-to-month basis with a monthly variable rate methodology with no change to the remaining terms (the "Renewal Term").

While receiving service on a month-to-month basis in the Renewal Term, either party may cancel this Agreement by providing 30 days' advance written notice of cancellation to the other party. You may cancel your service under this Agreement by providing a 30 day written notice to HIKO. HIKO reserves the right to cancel this Agreement for any reason upon (30) days advance written notice to you. Some reasons why this Agreement may be canceled by HIKO include: (i) non-payment: if your service is terminated by your EDC, then this Agreement is cancelled on the date that your service is terminated. (ii) company-initiated cancellation: if HIKO cancels this agreement for any reason other than customer non-payment, we will follow applicable rules in providing notice to you.

Customer is liable for all HIKO charges until Customer returns to the EDC or goes to another supplier. A final bill will be rendered within twenty (20) days after the final scheduled meter reading or if access is unavailable, an estimate of consumption will be used in the final bill, which will be tried up subsequent to the final meter reading.

3. Pricing and Billing. The price will 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.

HIKO will invoice Customer monthly for electricity supplied under this Agreement, as measured by the EDC, and Customer will pay each invoice in full within 20 days of the invoice date or be subject to a late payment charge of 1.5% per month. Customer may receive a single bill for both commodity and delivery costs from either HIKO or the EDC, or each of the EDC and HIKO may invoice Customer separately. Customer payments remitted in response to a consolidated bill shall be pro-rated (when so required) in accordance with procedures adopted by the PUC. HIKO may assign and sell Customer accounts receivable to the EDC. In the event of failure to remit payment when due by a residential customer, HIKO may cancel commodity service under this Agreement. A \$30 fee will be charged for all returned payments made to HIKO by the Customer.

4. Assignment. Customer may not assign its interests in and delegate its obligations under this Agreement without the express written consent of HIKO. HIKO may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof, in connection with any financing agreement or receivables purchase program, and may assign this Agreement to another energy supplier, energy services company or other entity as authorized by the PUC.

5. Information Release Authorization. Customer authorizes HIKO to obtain and review information regarding Customer's credit history from credit reporting agencies and the following information from the EDC: consumption history; billing determinants; account number; credit information; public assistance status; existence of medical emergencies; status as to whether Customer has a medical emergency; is human needs, elderly, blind or disabled and data applicable to cold weather periods; and tax status and eligibility for economic development or other incentives. This information may be used by HIKO to determine whether it will commence and/or continue to provide energy supply service to Customer and will not be disclosed to a third party unless required by law. Customer's execution of this Agreement shall constitute authorization for the release of this information to HIKO. This authorization will remain in effect during the Initial Term and any Renewal Term. Customer may rescind this authorization at any time by providing written notice thereof to HIKO or by calling HIKO at 1.888.264.4908. HIKO reserves the right to cancel this Agreement in the event Customer rescinds the authorization.

6. Consumer Protections. The services provided by HIKO Energy are protected by the terms and conditions of this Agreement and the PUC. The complete text of the PUC Customer Protection Rules referenced herein can be found in the Chapters 54 and 56 of Title 52 of the Pennsylvania Code.

7. Right of Recession. A residential or small business Customer may rescind this Agreement within 3 business days after receipt of this Agreement, whichever comes first, by contacting HIKO at 1.888.264.4908 or in writing.

8. Agency-Electric: Customer hereby designates HIKO as agent to: (a) arrange and administer contracts and service agreements between Customer and HIKO and those entities including the PJM Interconnection engaged in the generation, transmission and delivery of Customer electricity supplies; and (b) nominate and schedule with the appropriate entities including the EDC for the delivery of electricity to the Sales Point and the Customer's end-use premises. HIKO as agent for the Customer will schedule the delivery of adequate supplies of electricity that meet the Customer's requirements as established by the EDC, and in response to information provided by the EDC. The Sales Points for the electricity will be a point at the PJM Interconnection HIKO load bus (located outside of the municipality where Customer resides). These services are provided on an anti-length basis and market-based compensation is included in the price noted above.

9. Title. Customer and HIKO agree that title to, control of, and risk of loss to the electricity supplied by HIKO under this Agreement will transfer from HIKO to Customer at the Sales Point(s).

10. Warranty. This Agreement, including the Welcome Letter, any enrollment form and applicable attachments, as written makes up the entire Agreement between Customer and HIKO. HIKO makes no representations or warranties other than those expressly set forth in this Agreement, and HIKO expressly disclaims all other warranties, express or implied, including merchantability and fitness for a particular use.

11. Force Majeure. HIKO will make commercially reasonable efforts to provide electricity hereunder but HIKO does not guarantee a continuous supply of electricity to Customer. Certain causes and events out of the control of HIKO ("Force Majeure Events") may result in interruptions in service. HIKO will not be liable for any such interruptions caused by a Force Majeure Event, and HIKO is not and shall not be liable for damages caused by Force Majeure Events. Force Majeure Events shall include acts of God, fire, flood, storm, terrorism, war, civil disturbance, acts of any governmental authority, accidents, strikes, labor disputes or problems, required maintenance work, inability to access the local distribution system, non-performance by the EDC (including, but not limited to, a facility outage on its distribution lines or electric facilities), changes in laws, rules, or regulations of any governmental authority or any other cause beyond HIKO's control.

12. Liability. The remedy in any claim or suit by Customer against HIKO will be solely limited to direct actual damages (which will not exceed the amount of Customer's single largest monthly invoice amount in the immediately preceding 12 months). All other remedies at law or in equity are hereby waived. In no event will either HIKO or Customer be liable for consequential, incidental, indirect, special or punitive damages. These limitations apply without regard to the cause of any liability or damages. There are no third-party beneficiaries to this Agreement.

13. HIKO Contact Information. Customer may contact HIKO's Customer Service Center at 1.888.264.4908, Monday through Friday 8:00 a.m. - 8:00 p.m. EST (contact center hours subject to change). Customer may write to HIKO at: HIKO, 12 College Road, Suite 100, Monsey, N.Y. 10952.

14. Dispute Resolution. In the event of a billing dispute or a disagreement involving HIKO's service hereunder, the parties will use their best efforts to resolve the dispute. Customer should contact HIKO by telephone or in writing as provided above. The dispute or complaint relating to a residential customer may be submitted by either party at any time to the PUC pursuant to its Complaint Handling Procedures ("Procedures") or calling the PUC at 1.800.692.7380 or by writing to the PUC at the following address: Public Utility Commission, PO Box 3265, Harrisburg, Pennsylvania 17120. Customer must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute, and such payment shall be refunded if warranted by the decision of PUC.

15. Choice of Laws. Venue for any lawsuit brought to enforce any term or condition of this Agreement or to construe the terms hereof shall lie exclusively in the State of Pennsylvania. This Agreement shall be construed under and shall be governed by the laws of the State of Pennsylvania without regard to the application of its conflicts of law principles.

16. Taxes and Laws. Except as otherwise provided in the Agreement or provided by law, all taxes of whatsoever kind, nature and description due and payable with respect to service provided under this Agreement, other than taxes based on HIKO's net income, shall be paid by Customer, and Customer agrees to indemnify HIKO and hold HIKO harmless from and against any and all such taxes.

17. Regulatory Changes. This Agreement is subject to present and future legislation, orders, rules, regulations or decisions of a duly constituted governmental authority having jurisdiction over this Agreement or

APPENDIX B

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AFFIDAVIT
OF
STEVEN L. ESTOMIN, Ph.D.

JUNE 19, 2014

EXETER

ASSOCIATES, INC.
10480 Little Patuxent Parkway
Suite 300
Columbia, Maryland 21044

AFFIDAVIT

1. My name is Steven L. Estomin. I am a Senior Economist and Principal with Exeter Associates, Inc., an economics consulting firm. My business address is 10480 Little Patuxent Parkway, Suite 300, Columbia, Maryland 21044.
2. At the request of the Pennsylvania Office of Consumer Advocate (OCA), I performed an analysis addressing residential variable rate pricing in Pennsylvania during the winter of 2014. Specifically, I conducted an analysis regarding day-ahead and real-time market prices for electric energy during the winter of 2014.
3. Separate analyses were conducted for electric space heating and non-electric space heating residential customers.
4. Separate analyses were conducted for the residential customers in the following Electric Distribution Company (EDC) service territories:
 - Allegheny Power System (APS)
 - Duquesne Light Company (DLC)
 - Metropolitan Edison Company (Met-Ed)
 - PECO
 - Penelec
 - PPL Utilities (PPL)
5. The categories of generation costs included in the analyses are:
 - Energy cost (the cost of energy delivered to the relevant EDC zone) – both day-ahead and real-time prices were relied upon
 - Cost of Alternative Energy Portfolio Standard compliance

- Capacity cost
 - Cost of ancillary services, margin (i.e., profit) and risk.
6. Prices were calculated for four separate 4-week billing cycles:
- January 1 through January 30
 - January 8 through February 6
 - January 15 through February 13
 - January 22 through February 20
7. The APS and Duquesne zones exhibit the lowest total all-in, per-MWh generation costs, varying from approximately \$70 per MWh (based on real-time energy prices for the Duquesne zone over the January 8 through February 6 billing cycle) to approximately \$135 per MWh (based on day-ahead energy prices for the APS zone over the January 15 through February 13 billing cycle).
8. Costs for the remaining four zones are similar to each other and range from a total cost of approximately \$129 per MWh (based on real-time energy prices for the Penelec zone for non-space heat customers over the January 8 through February 6 billing cycle) to approximately \$228 per MWh (based on day-ahead energy prices for the PECO zone for space heating customers over the January 1 through February 30 billing cycle).
9. The results obtained from this analysis suggest that the cost to serve residential consumers covering any of the four billing cycles examined would be not more than \$0.23 per kWh in any of the six EDC zones examined, even under the assumption that all supply were procured on the PJM spot markets.

AFFIDAVIT

Steven L. Estomin, being first duly sworn, deposes and says that this affidavit was prepared by him; that he is familiar with the contents thereof; and that the facts set forth therein are true and correct to the best of his knowledge, information and belief.


Steven L. Estomin

Subscribed and sworn to before me on this 19 day of June 2014


Notary Public

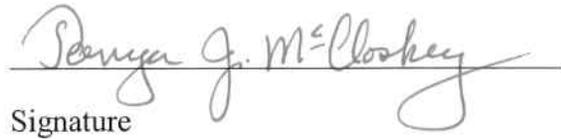
My Commission Expires: 2/2015

**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-
v.	:	
	:	
HIKO ENERGY, LLC,	:	
Respondent	:	

VERIFICATION

I, Tanya J. McCloskey, Acting Consumer Advocate, hereby state that the facts set forth above in this Joint Complaint are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).


Signature

6/20/14
Date

VERIFICATION

I, Heather M. Weaver, Consumer Protection Agent for the Office of Attorney General, Bureau of Consumer Protection, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that the Pennsylvania Office of Attorney General's Bureau of Consumer Protection expects to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 6-20-14



Heather M. Weaver
Consumer Protection Agent
Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

**PUBLIC STATEMENT OF THE OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. § 309-4(e)**

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161 and for the following reasons, Acting Consumer Advocate Tanya J. McCloskey has determined to file a Joint Complaint with the Commonwealth of Pennsylvania by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (OAG) and participate in proceedings before the Commission involving Hiko Energy, LLC (Hiko Energy). The Joint Complaint alleges violations of the Public Utility Code, Commission regulations and orders, the Unfair Trade Practices and Consumer Protection Law and the Telemarketer Registration Act.

Hiko Energy is licensed by the Commission to supply electric generation to residential and commercial customers throughout Pennsylvania. Early in 2014, the OAG and the OCA received thousands of consumer complaints and contacts about supplier variable rate charges on their electric bills. The OCA joined in the filing of this Complaint to address multiple identified violations of the Commission's regulations and Pennsylvania law and to seek protections for consumers. The OCA will represent the interests of consumers before the Commission and ensure that Hiko Energy follows the requirements of the law and Commission regulations and orders when it engages in marketing and sales of its electric supply in Pennsylvania.

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-
v.	:	
	:	
HIKO ENERGY, LLC,	:	
Respondent	:	

I hereby certify that I have this day served a true copy of the foregoing Joint Complaint of the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer Advocate and the Public Statement of the Office of Consumer Advocate, in the manner and upon the persons listed below:

Dated this 20th day of June 2014.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

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Michael Swindler, Esq.
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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300 North Second Street
Harrisburg, PA 17101

Candis A Tunilo

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