

*Law Offices*

One Logan Square, Ste. 2000  
Philadelphia, PA  
19103-6996

July 31, 2014

(215) 988-2700 phone  
(215) 988-2757 fax  
www.drinkerbiddle.com

**VIA E-FILING AND FIRST CLASS MAIL**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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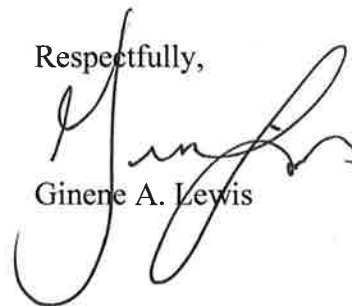
**Re: Pennsylvania Public Utility Commission, Bureau of Investigation and  
Enforcement v. HIKO Energy, LLC, Docket No. C-2014-2431410**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission are Preliminary Objections of HIKO Energy, LLC to the Complaint filed in the above-captioned matter. Copies of this document have been served in accordance with the attached Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Respectfully,



Ginene A. Lewis

GAL

Enclosures

cc: Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION, BUREAU OF  
INVESTIGATION AND  
ENFORCEMENT,

Complainant

v.

HIKO ENERGY, LLC,

Respondent.

**Docket No. C-2014-2431410**

**NOTICE TO PLEAD**

**TO:** Wayne T. Scott  
Michael L. Swindler  
Stephanie M. Wimer  
Pa. Public Utility Commission  
Bureau of Investigation and Enforcement  
P.O. Box 3265  
Harrisburg, PA 17105  
[wascott@pa.gov](mailto:wascott@pa.gov)  
[mwindler@pa.gov](mailto:mwindler@pa.gov)  
[stwimer@pa.gov](mailto:stwimer@pa.gov)

Pursuant to 52 Pa. Code §§5.101 et seq., you are hereby notified that HIKO Energy, LLC has filed Preliminary Objections to which you may answer within ten (10) days unless otherwise provided in Chapter 5 of Title 52 of the Pennsylvania Code. Your failure to answer will allow the presiding officer to rule on the Preliminary Objections without a response from you, thereby requiring no other proof. All Pleadings such as a reply to these Preliminary Objections must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for HIKO Energy, LLC.

**Dated: July 31, 2014**

**Attorneys for HIKO Energy, LLC**

By: \_\_\_\_\_

Ginene A. Lewis, Esq.

DRINKER BIDDLE & REATH LLP

One Logan Square, Suite 2000

Philadelphia, PA 19103-6996

215.988.2707

215.988.2757 (FAX)

[Ginene.Lewis@dbr.com](mailto:Ginene.Lewis@dbr.com)

William Marsillo, Esq.

*Admitted in New York*

Motty Shulman, Esq.

*Admitted in New York*

Andrew Dressel, Esq.

*Admitted in New York*

*(pro hac vice applications pending)*

BOIES, SCHILLER & FLEXNER LLP

333 Main Street, Armonk, NY 10504

914.749.8200

Fax: 914.749.8300

[wmarsillo@BSFLLP.com](mailto:wmarsillo@BSFLLP.com)

[mshulman@BSFLLP.com](mailto:mshulman@BSFLLP.com)

[adressel@BSFLLP.com](mailto:adressel@BSFLLP.com)

**BEFORE THE  
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**Docket No. C-2014-2431410**

**RESPONDENT HIKO ENERGY, LLC'S PRELIMINARY OBJECTIONS**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

HIKO Energy, LLC ("HIKO"), by and through its undersigned counsel, files these Preliminary Objections seeking dismissal of the Complaint with prejudice, or in the alternative, a stay of the action, pursuant to Section 5.101(a) of the Pennsylvania Public Utility Commission's ("Commission" or "PUC") regulations, 52 Pa. Code § 5.101(a)(1), (4), (6). In support thereof, HIKO avers as follows:

**I. PRELIMINARY STATEMENT**

This proceeding should be dismissed because it is duplicative of, and subsumed by, a prior pending proceeding brought jointly by the Attorney General and Acting Consumer Advocate. (See Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer

Advocate v. HIKO Energy, LLC, Docket No. C-2014-2427652 (the “OAG/OCA Proceeding”). The OAG/OCA Proceeding involves the same parties, alleges the same wrongdoing, and seeks the same relief as alleged here. Allowing both actions to continue will waste resources of the Commission and all parties involved, require needless duplication of effort, and only serve to harass HIKO by forcing it to defend multiple lawsuits on the same cause of action at the same time. HIKO repeatedly sought consent from the Bureau of Investigation and Enforcement (“I&E”) to, at a minimum, consolidate this proceeding with the earlier-filed OAG/OCA Proceeding, but I&E — after delaying responding to HIKO’s request until yesterday — refused. Remarkably, at the same time that I&E stated that it would oppose consolidation of the two overlapping and duplicative actions, it filed a motion to intervene in the OAG/OCA Proceeding, which only further supports HIKO’s motion to dismiss the instant proceeding with prejudice.

Even if this Court finds that this proceeding should not be dismissed in light of the pending OAG/OCA Proceeding, HIKO’s objections nonetheless should be sustained and this action should be dismissed because I&E seeks relief in the form of restitution, which the Commission has no jurisdiction to award.

## II. BACKGROUND

1. HIKO is an electric generation supplier (“EGS”), licensed by the Commission since July 2, 2012, see Docket No. A-2012-2289944, to supply electricity or electric generation services in service territories throughout Pennsylvania. Compl. ¶4.<sup>1</sup>

2. HIKO was granted Commission approval to serve as an alternative retail electric supplier in the electric distribution company (“EDC”) service territories of Duquesne Light

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<sup>1</sup> For purposes of these Preliminary Objections, HIKO accepts the allegations in the instant complaint and the joint complaint filed in the OAG/OCA Proceeding as true. See e.g., Cermak v. W. Penn Power Co., No. C-2014-2413754, 2014 WL 2528243, at \*2 (Pa. P.U.C. May 19, 2014).

Company, Metropolitan Edison Company, PECO Energy Company, PPL Electric Utilities, Pennsylvania Electric Company, and West Penn Power. Compl. ¶10.

3. HIKO offers variable rate EGS electric service to customers in Pennsylvania. Compl. ¶13.

4. The Commission noted that during January 2014 wholesale prices for energy supply, particularly in the real time markets HIKO purchases its energy in, increased exponentially. This sustained increase in energy prices was a response to a period of sustained cold weather popularly known as the “polar vortex,” which resulted in new records being set for winter electricity use in Pennsylvania and throughout the service area of PJM Interconnection LLC (“PJM”). During this period, PJM recorded eight of the top ten highest hourly usage periods ever observed. Commission Order at Docket No. M-2014-2406134, dated February 22, 2014, p. 1.

5. The Commission has been investigating the causes of the underlying wholesale cost spike and is pursuing regulatory changes necessary to improve the efficiency of wholesale PJM markets. Id. p. 2.

6. As a result of the anomalous market conditions and the resulting spike in energy prices, the Commission received a record number of inquiries and informal complaints from consumers relating to high energy bills in the winter of 2013-2014, with many complaints coming from consumers with variable rate contracts. Id.

7. The Commission has also noted that variable rate plans, such as those offered by HIKO, may offer substantial savings when wholesale market prices are low but warned customers that periods of market volatility, such as occurred during the winter of 2013-2014, may cause sharp increases in variable rates. Id. p.3

8. The Commission also issued several press releases to consumers during the winter of 2014 explaining that “the extreme cold has significantly increased the demand for electricity” and “remind[ing] consumers that the frosty temperatures and increased use of heating systems will translate into higher energy bills in the coming months.” PUC, Press Release, PUC Urges Consumers To Conserve Energy During Frigid Temps, January 27, 2014, available at [www.puc.pa.gov/about\\_puc/press\\_releases.aspx?ShowPR=3297](http://www.puc.pa.gov/about_puc/press_releases.aspx?ShowPR=3297). See also PUC, Press Release, PUC Urges Shopping Consumers To Review Contracts, Cold Temps Could Mean Higher Prices For Those On Variable Rates, January 31, 2013, available at [http://www.puc.state.pa.us/about\\_puc/press\\_releases.aspx?ShowPR=3298](http://www.puc.state.pa.us/about_puc/press_releases.aspx?ShowPR=3298).

9. Due to the anomalous market conditions and the escalation in energy costs, HIKO voluntarily suspended its marketing in Pennsylvania in January 2014. Answer ¶19.

10. During the winter of 2013-2014, thousands of consumers contacted the Commission, the Office of Consumer Affairs (“OCA”), the Attorney General’s Office (“OAG”) and other regulatory agencies, flooding their switchboards and email systems. See Joint Complaint in Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer Advocate v. HIKO Energy, LLC, Docket No. C-2014-2427652, ¶¶15-19 (“Joint Complaint”) (attached hereto as Exhibit 1).

11. The OCA, OAG and the Commission commenced investigations into the causes of the extraordinary spike in energy prices and, on June 20, 2014, the Attorney General of the Commonwealth of Pennsylvania, through the Bureau of Consumer Protection, and the Acting Consumer Advocate filed a Joint Complaint against HIKO (and joint complaints against four other EGS companies) asserting violations of the Public Utility Code, the Commission’s

Regulations, and the Unfair Trade Practices and Consumer Protection Law and Telemarketer Registration Act. See Joint Compl.; see also joint complaints against Blue Pilot Energy, LLC, Docket No. C-2014-2427655; IDT Energy, Inc., Docket No. C-2014-2427659; Energy Services Providers, Inc. d/b/a PA Gas & Electric, Docket No. C-2014-2427656; Respond Power, LLC, Docket No. C-2014-2427659.

12. The Office of Consumer Advocate contends that it is the agency authorized by law to represent the interest of utility consumers before the Commission as provided in 71 P.S. § 309-1, et seq. Joint Compl. ¶2.

13. The Attorney General contends that it is authorized to bring an action in the name of the Commonwealth of Pennsylvania to restrain or permanently enjoin unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce under 73 P.S. § 201-4. Id. ¶¶3-5.

14. The Joint Complaint against HIKO asserts, inter alia, that HIKO engaged in fraudulent deceptive or other unlawful marketing acts, including promising “guaranteed savings over the Price to Compare (PTC) as an inducement for consumers to switch” to HIKO for their electric generation service. Id. ¶21-23.

15. The Joint Complaint alleges violations of Commission regulations in claiming that HIKO “promis[ed] savings that may not, and for many customers did not, materialize.” Id. ¶27.

16. The Joint Complaint alleges violations of HIKO’s price guarantee to customers from January 2014 onward. Id. p. 15.

17. The Joint Complaint alleges violations of “the Commission’s regulations [that] 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).*” *Id.* ¶44 (emphasis added).

18. I&E initiated the present action on July 11, 2014.

19. The Complaint alleges the very same violation of 52 Pa. Code §54.4(a) as the Joint Complaint, to wit: “the applicable Commission regulation, 52 Pa. Code § 54.4(a), reads: ‘(a) EGS prices billed must reflect the marketed prices and the agreed upon prices in the disclosure statement.’” Compl. ¶23.

20. The Complaint seeks relief based on purported violations of HIKO’s price guarantee to customers between January 2014 and April 2014. *Id.* ¶¶24-128.

21. In addition to Section 54.4(a), which is alleged as a regulatory violation in both the Joint Complaint and the instant Complaint, the Joint Complaint alleges other violations of 52 Pa. Code § 54, including that the disclosure statement for a variable priced plan must include the conditions of variability and the limit on price variability (52 Pa. Code § 54.5(c)(2)); that an EGS’s advertised prices must reflect the prices in its disclosure statements and billed prices (52 Pa. Code § 54.7(a)); that a licensed EGS is responsible for any fraudulent, deceptive or other unlawful marketing acts by its employees, agents and representatives (52 Pa. Code § 54.43(f)); and that the Commission’s regulations prohibit switching a customer’s generation supply without the customer’s consent (i.e., slamming) (66 Pa. C.S. § 2807(d)(1); 52 Pa. Code § 54.42(a)(9)). Joint Compl. ¶¶24, 31, 42, 44-46, 52-56.

22. The Joint Complaint also alleges violations of other Commission regulations regarding disclosure of variable pricing terms, including that HIKO has failed to properly disclose the “conditions of variability and the limits on price variability” (52 Pa. Code § 54.5(c));

that HIKO has failed to “provide accurate information about [its] electric generation services using plain language and common terms in communications with customers” (52 Pa. Code § 54.43(1)); and that HIKO is required to 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 services.” Id. ¶¶52-55.

23. The Joint Complaint seeks expansive relief against HIKO, including:

- (a) civil penalties for its violation of Commission regulations;
- (b) suspension or revocation of HIKO’s license;
- (c) appropriate restitution, including, a “refund of all charges to HIKO

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 [the] matter”;

(d) a permanent injunction restraining and preventing violations of the Commission’s regulations and orders, including an order prohibiting HIKO from engaging in “all other marketing practices that violate the Consumer Protection Law, the Public Utility Code and the Commission’s regulations or orders”; and

(e) an order “imposing any other such relief that the Commission deems appropriate in this matter.”

Id. ¶¶82-84 and Prayer for Relief.

24. The instant Complaint seeks relief that is identical to the relief sought by the Joint Complaint, including

(a) civil penalties for violations of HIKO’s guarantees to each consumer who was subject to a price guarantee in his contract;

- (b) “resci[nding] of Hiko’s authority to do business as an EGS in Pennsylvania”;
- (c) “a refund to each consumer consisting of the difference between the amounts each customer was billed and the guaranteed discounted rate the customer is entitled to receive”; and
- (d) “such other remedy as the Commission may deem to be appropriate.”

Compl. ¶¶129-131 and Prayer for Relief.

25. On July 30, I&E filed a notice of intervention in the action brought by the Attorney General and Consumer Advocate, making itself a party to the OAG/OCA action. In justifying its intervention, I&E stated that it “will seek to determine whether HIKO violated provisions of the Public Utility Code, Commission regulations and orders set forth in the OAG and OCA Joint Complaint that were not alleged in I&E’s Complaint against HIKO.” See Notice of Intervention filed by Bureau of Investigation and Enforcement on July 30, 2014, § 11 (“I&E Notice of Intervention”).

26. Accordingly, the instant Complaint must be dismissed or in the alternative, stayed, because it involves the same parties and seeks relief identical in kind and scope to the relief sought in the Joint Complaint previously filed by the Attorney General and the Consumer Advocate. In addition, the request for restitution for HIKO customers should be dismissed because that relief is beyond the jurisdiction of the Commission. See infra Part III. B.

### III. PRELIMINARY OBJECTION STANDARD

27. Under the Commission’s Rules of Administrative Practice and Procedure, a respondent may file a preliminary objection in response to a regulatory complaint. 52 Pa. Code § 5.101(a). A complaint may be dismissed on, among other grounds, the Commission’s lack of

jurisdiction, the legal insufficiency of the complaint, or based on the pendency of a prior filed proceeding. Id. at § 5.101(a)(1), (4), (6).

28. The preliminary objection standard under the Commission's rules is similar to that which governs preliminary objections under the Pennsylvania Rules of Civil Procedure. Cermak v. W. Penn Power Co., No. C-2014-2413754, 2014 WL 2528243, at \*2 (Pa. P.U.C. May 19, 2014).

29. In ruling on a preliminary objection, the Commission generally accepts as true all well-pled, material facts of the non-movant, as well as all reasonable inferences that may be deduced from those facts. Id. at \*3. The factual allegations in the Complaint must be considered in the light most favorable to the Complainant. Id. But, the Commission is not required to accept as true legal conclusions, unwarranted factual inferences, argument, or opinion. Armstrong Cty. Mem. Hosp. v. Dep't of Pub. Welfare, 67 A.3d 160, 170 (Pa. Commw. Ct. 2013).

30. Dismissal is appropriate when it appears that the Complainant "would not be entitled to relief under any circumstances as a matter of law." Cermak, 2014 WL 2528243, at \*3; see also Ricks v. PECO Energy Co., No. C-2012-2325257, 2012 WL 6763612 (preliminary objections will be granted where the law is "certain[] . . . that no recovery of relief is possible") (quoting P.J.S. v. Pa. State Ethics Comm'n, 669 A.2d 1105 (Pa. Commw. Ct. 1996)).

#### IV. ARGUMENT

##### A. **The Doctrine of *Lis Pendens* Mandates the Dismissal of the Instant Complaint or, in the Alternative, the Stay or Consolidation of the Instant Action.**

31. Under 52 Pa. Code § 5.101(a)(6), a party may file a preliminary objection based on the pendency of a prior proceeding, also known as the doctrine of *lis pendens*.

32. In order to plead successfully the defense of *lis pendens*, *i.e.*, the pendency of a prior action, it must be shown that the prior case is the same, the parties are the same, and the relief requested is the same. Crutchfield v. Eaton Corp., 2002 Pa. Super. 286, 806 A.2d 1259, 1262 (2002); Penox Technologies, Inc. v. Foster Medical Corp., 546 A.2d 114, 115 (Pa. Super. 1988).

33. The purpose of the *lis pendens* defense is to protect a defendant from harassment by having to defend multiple suits on the same cause of action at the same time. Joint Application of Earthlink, Inc., 2011 WL 3647033, Docket Nos. A-2011-2218761 et al. (Pa. P.U.C. April 20, 2011); Penox, 546 A.2d at 115.

34. The doctrine of *lis pendens* requires that the prior action be pending. Norristown Auto Co. v. Hand, 386 Pa. Super. 269, 562 A.2d 902, 904 (1989). Under Pennsylvania law, the question of a pending prior action “is purely a question of law determinable from an inspection of the pleadings.” Davis Cookie Co. v. Wasley, 389 Pa. Super. 112, 566 A.2d 870, 874 (1989). There is no question that the Joint Complaint constitutes a prior pending action.

35. Once the *lis pendens* defense is raised, a court may dismiss or stay the subsequent proceedings. Penox, 546 A.2d at 115. The three-pronged identity test — *i.e.*, same case, same parties, same relief — must be applied strictly when a party is seeking dismissal under the doctrine of prior pending action. Id.

36. Alternatively, if the three-pronged identity test is not strictly met but the action involves a set of circumstances where the litigation of two suits would create an unnecessary duplication of effort on the part of the parties, waste judicial resources and “create the unseemly spectacle of a race to judgment,” the trial court should stay the later-filed action. Crutchfield, 806 A.2d at 1262.

37. The very same issue that is the focus of the later filed Complaint (the alleged violation of 52 Pa. Code § 54.4(a), which provides that “EGS prices billed must reflect the marketed prices and the agreed upon prices in the disclosure statement,” see Compl. ¶23) is specifically raised in the Joint Complaint (“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).”), Joint Compl. ¶44.

38. The relief sought by the instant Complaint is identical to the relief sought in the prior filed Joint Complaint. Compare Compl. ¶¶129-131 and Prayer for Relief with Joint Compl. ¶¶ 82-84 and Prayer for Relief.

39. The Bureau of Investigation and Enforcement is a regulatory arm of the Commission that is charged with prosecuting violations of the Commission’s rules and regulations, a role that is identical to the role being served by the Attorney General and the Consumer Advocate in the Joint Complaint. See Callaghan v. Workmen’s Comp. App. Bd. (City of Phila.), 750 A.2d 408, 412 (Pa. Commw. Ct. 2000) (noting that privity exists between state agencies when there is “a showing that the policies and goals underlying the matter at issue are the same in both proceedings”) (quotations omitted).

40. Moreover, I&E has sought to intervene as a party in the OAG/OCA Proceeding. Thus, both proceedings plainly involve the same parties. See I&E Notice of Intervention filed by Bureau of Investigation and Enforcement on July 30, 2014, § 11 (“Notice of Intervention”) (attached hereto as Exhibit 2).

41. In view of the identity of the issues, parties and relief in both cases, the requirements of *lis pendens* have been satisfied and permitting both matters to proceed

simultaneously would certainly create a duplication of effort by the Parties and would waste resources. See Crutchfield, 806 A.2d at 1259.

42. Accordingly, the Commission should dismiss the instant Complaint with prejudice, pursuant to the doctrine of *lis pendens* or, in the alternative, stay the instant Complaint pending a resolution of the Joint Complaint. Id.

43. In the event the Commission elects not to dismiss the instant Complaint with prejudice, pursuant to the doctrine of *lis pendens*, or to stay the instant Complaint, this action should be consolidated with the Joint Complaint, pursuant to 52 Pa. Code § 5.81(a) (“The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.”) See also AT&T Communications of Pennsylvania, LLC et al v. Armstrong Tel. Co. – Pennsylvania, et al., C-2009-2098380, et al., 2009 WL 2475086 (Pa. P.U.C. July 29, 2009) (consolidating matters where there was “considerable overlap in the issues being considered in both cases [and] permitting both matters to proceed simultaneously would certainly create a duplication of effort by the Parties and would waste the resources of this Commission”).

44. As noted above, consolidation is especially appropriate here because I&E has filed a notice of intervention in the action brought by the Attorney General and Consumer Advocate, making itself a party to the OAG/OCA Proceeding. In justifying its intervention, I&E stated that it “will seek to determine whether HIKO violated provisions of the Public Utility Code, Commission regulations and orders set forth in the OAG and OCA Joint Complaint that were not alleged in I&E’s Complaint against HIKO.” See Notice of Intervention §11

**B. The Complaint's Request for Restitution Should Be Dismissed Pursuant to Pa. Code § 5.101(a)(4) (Legal Insufficiency)**

45. Paragraph 130 of the Complaint asks the Commission to “order HIKO a refund to each of the 14,780 customer accounts to which a refund has not already been provided, consisting of the difference between the amount each customer was billed and the minimum guaranteed discounted rate the customer was entitled to receive.” Compl. ¶130.

46. The Commission has no authority to order EGSs to provide restitution to customers. Yaglidereliler Corp. v. Blue Pilot Energy, LLC, Docket No. C-2014-2413732, 2014 WL 3011778 (Pa. PUC, June 18, 2014).

47. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. Shedlosky v. Pennsylvania Electric Co., Docket No. C-20066937 (Order entered May 28, 2008); Feingold v. Bell Tel. Co. of Pa., 477 Pa. 1, 383 A.2d 791 (Pa. 1977).

48. It is a long-standing principle that the Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pa. Pub. Util. Comm'n, 157 Pa. Super. 595, 43 A.2d 348 (1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 582 Pa. 338, 235 A.2d 602 (Pa. 1967).

49. HIKO, as an EGS, is not a public utility subject to Commission regulation of utilities, except in limited circumstances. Delmara Power & Light Co. v. Pa. Pub. Util. Comm'n, 870 A.2d 901 (Pa. 2005).

50. While the Electricity Generation Customer Choice and Competition Act provides the Commission with authority to regulate EGSs for licensing and similar purposes, it clearly mandates that the Commission has no authority to regulate electricity generation prices offered by EGSs. See 66 Pa.C.S. § 2806(a).

51. The Commission has recognized that “This is as clear a mandate from the General Assembly as any government agency could hope to receive. There is no equivocation – all Pennsylvania electric customers shall have the ability to choose their generation supplier, and the Commission does not have any authority over the generation of electricity, which necessarily includes the specific price charged to end-user customers.” See Joint Statement of Chairman Robert F. Powelson and Commissioner Pamela A. Witmer Petition of PECO Energy Company for Approval of its Default Service Plan, Docket No. P-2012-2283641 (Order entered March 6, 2014).

52. Because HIKO is not a public utility except for the limited purposes of 66 Pa.C.S. §§ 2809 and 2810, and because the Commission does not have the authority to regulate EGS rates, the Commission may not regulate the prices that HIKO charges for electric generation service. Id.

53. The Commission has recognized “electric generation suppliers must be able to accurately price their products to be able to cover the costs of generation supply as well as other additional costs incurred in offering service. Electric Distribution Companies (‘EDCs’) . . . have no such need. . . . Therefore, the fluctuations in [the] PTC [Price to Compare] often bear no rational relationship to changes in wholesale market prices. . . .” Id.

54. In Yaglidereliler Corp. v. Blue Pilot Energy, LLC, 2014 WL 3011778 (Pa. P.U.C. June 18, 2014), the Administrative Law Judge (“ALJ”) held that [the Commission] lacked jurisdiction over a complaint contending that the Respondent has charged “an unreasonable, unjust or illegal rate for energy generation service.” 2014 WL 3011778, at \*5.

55. Construing the complainant’s requested relief as seeking a refund (*i.e.*, restitution) or credit, the ALJ held that the Commission “*lacks the authority to order Respondent to provide*

*either a refund or credit to the Complainant.” Id. at \*5 (emphasis added). See also Tustin v. Respond Power LLC, No. C-2014-2417552, at 4 (Pa. P.U.C. June 26, 2014) (“Regarding the issue of a refund, Respondent is correct that that *the Commission lacks authority to order a refund to Complainant.* The Commission may not regulate the rates that the Respondent charged the Complainant for electric generation service . . . Therefore, the Commission has no jurisdiction over the issue of whether Respondent charged Complainant an unreasonable, unjust or illegal rate for electric generation services.”) (emphasis added). Cf. McCall v. Pennsylvania Elec. Co., No. C-2009-210-5240, 2010 WL 2911727 (Pa. P.U.C. June 7, 2010) (“*The Complainant seeks a remedy in the nature of restitution, but this Commission lacks authority to impose such a remedy on an unwilling public utility.*”) (emphasis added).*

56. Accordingly, the Complaint’s request for an order requiring HIKO to make restitution must be dismissed pursuant to 52 Pa. Code § 5.101(a)(4) for legal insufficiency.

## V. CONCLUSION

57. For the foregoing reasons, HIKO respectfully requests that the commission grant its Preliminary Objections and (1) dismiss or, in the alternative, stay or consolidate the Complaint with the pending Joint complaint filed by the Attorney General and Consumer Advocate, and (2) dismiss with prejudice the claims seeking restitution or refunds to HIKO customers as beyond the Commission’s jurisdiction.

**Dated: July 31, 2014**

**Attorneys for HIKO Energy, LLC**

By: 

Ginene A. Lewis, Esq.  
DRINKER BIDDLE & REATH LLP  
One Logan Square, Suite 2000  
Philadelphia, PA 19103-6996  
215.988.2707  
215.988.2757 (FAX)  
[Ginene.Lewis@dbr.com](mailto:Ginene.Lewis@dbr.com)

William Marsillo, Esq.  
*Admitted in New York*  
Motty Shulman, Esq.  
*Admitted in New York*  
Andrew Dressel, Esq.  
*Admitted in New York*  
*(pro hac vice applications pending)*  
BOIES, SCHILLER & FLEXNER LLP  
333 Main Street, Armonk, NY 10504  
914.749.8200  
Fax: 914.749.8300  
[wmarsillo@BSFLLP.com](mailto:wmarsillo@BSFLLP.com)  
[mshulman@BSFLLP.com](mailto:mshulman@BSFLLP.com)  
[adressel@BSFLLP.com](mailto:adressel@BSFLLP.com)

**COMMONWEALTH OF PENNSYLVANIA**  
**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION, BUREAU OF  
INVESTIGATION AND  
ENFORCEMENT,

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HIKO ENERGY, LLC,

Respondent.

**Docket No. C-2014-2431410**


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**VERIFICATION**

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I, Shevy Simins, holding the title of Regulatory Supervisor with HIKO Energy, LLC, verify that the factual allegations contained in the foregoing Preliminary Objections are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.

Dated: 7/31/2014

  
\_\_\_\_\_  
Shevy Simins  
Regulatory Supervisor  
HIKO Energy, LLC

**COMMONWEALTH OF PENNSYLVANIA**

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement,

Complainant

v.

HIKO ENERGY, LLC,

Respondent

**Docket No. C-2014-2431410**

**CERTIFICATE OF SERVICE**

I, Ginene A. Lewis, hereby certify that on this day I caused a true and correct copy of the foregoing Preliminary Objections to be served upon the parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant).


**VIA FIRST CLASS MAIL AND E-MAIL**

Hon. Elizabeth J. Barnes  
Hon. Joel Cheskis  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105  
[ebarnes@pa.gov](mailto:ebarnes@pa.gov)  
[jcheskis@pa.gov](mailto:jcheskis@pa.gov)

Wayne T. Scott  
Michael L. Swindler  
Stephanie M. Wimer  
Pa. Public Utility Commission  
Bureau of Investigation and Enforcement  
P.O. Box 3265  
Harrisburg, PA 17105  
[wascott@pa.gov](mailto:wascott@pa.gov)  
[mwindler@pa.gov](mailto:mwindler@pa.gov)  
[stwimer@pa.gov](mailto:stwimer@pa.gov)

Sharon E. Webb  
Office of Small Business Advocate  
300 North Second Street, Suite 1102  
Harrisburg, PA 17101  
[swebb@pa.gov](mailto:swebb@pa.gov).

Dated: July 31, 2014



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Ginene A. Lewis

# **EXHIBIT 1**

**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  
5<sup>th</sup> 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  
15<sup>th</sup> 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 EGSSs 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](http://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;

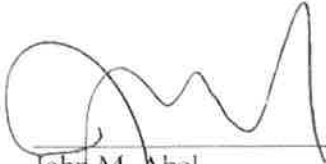
G. Order Respondent to implement proper customer dispute procedures and adequately staff, train and monitor all employees and agents in such procedures;

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


Nicole R. Beck  
Deputy Attorney General  
PA Attorney

Bureau of Consumer Protection  
Office of Attorney General  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120  
T: (717) 787-9707  
F: (717) 787-1190

Counsel for:

Kathleen G. Kane, Attorney General  
Bureau of Consumer Protection

DATE: 6.20.14



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Candis A. Tunilo  
PA Attorney

Hobart J. Webster  
PA Attorney  
Assistant Consumer Advocates

Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
T: (717) 783-5048  
F: (717) 783-7152

Counsel for:

Tanya J. McCloskey  
Acting Consumer Advocate

# **EXHIBIT 2**



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

July 30, 2014

**Via E-Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer Advocate v. HIKO Energy, LLC  
Docket No. C-2014- 2427652  
**Notice of Intervention**

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Notice of Intervention of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement in the above-captioned matter.

Copies have been served on the parties of record in accordance with the attached Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Wimer".

Stephanie M. Wimer  
Prosecutor  
PA Attorney I.D. No. 207522

Enclosure

cc: Honorable Joel H. Cheskis  
Honorable Elizabeth H. Barnes  
As per Certificate of Service

**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 :

v. :

Docket No. C-2014-2427652

HIKO Energy, LLC :

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**NOTICE OF INTERVENTION OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

---

Pursuant to 52 Pa. Code §§ 5.71-76, the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission) hereby gives Notice of Intervention in the above-captioned proceeding. In support thereof, I&E states as follows:

**INTRODUCTION:**

1. Act 129 of 2008, 66 Pa.C.S. § 308.2, authorizes the Commission to establish bureaus, offices and positions to, *inter alia*, take appropriate enforcement actions that are necessary to insure compliance with the Public Utility Code and Commission regulations and orders. 66 Pa.C.S. § 308.2(a)(11).

2. In accordance with Act 129, the Commission established I&E to serve as the prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Public Utility Code, 66 Pa.C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1

*et seq.* See Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011).

3. I&E, through its prosecutors, has standing and authority to participate in all Commission proceedings and to initiate enforcement actions and prosecutions in the public interest. *Id.* at 5.

4. The names and contact information for I&E's prosecutors are as follows:

Michael L. Swindler  
PA Attorney ID No. 43319  
[mwindler@pa.gov](mailto:mwindler@pa.gov)

Stephanie M. Wimer  
PA Attorney ID No. 207522  
[stwimer@pa.gov](mailto:stwimer@pa.gov)

Wayne T. Scott  
PA Attorney ID No. 29133  
[wascott@pa.gov](mailto:wascott@pa.gov)

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-5000

**BACKGROUND:**

5. On June 20, 2014, the Office of Attorney General (OAG), through its Bureau of Consumer Protection, and the Office of Consumer Advocate (OCA) filed a Joint Complaint against HIKO Energy, LLC (HIKO or Company) alleging multiple violations of Pennsylvania law and Commission regulations and orders.

6. The OAG and OCA alleged, *inter alia*, that HIKO engaged in

misleading and deceptive acts or practices, switched customers to receive its electric generation supply service without their authorization, failed to handle customer complaints in good faith, failed to provide rate information, failed to provide accurate pricing information, charged prices that did not conform to the Company's disclosure statement, failed to follow Purchase of Receivables program parameters and failed to comply with the Telemarketer Registration Act.

7. HIKO sought and received an extension of time to answer the Joint Complaint. The Company's Answer is due by July 30, 2014.

8. At the time that the OAG and OCA filed a Joint Complaint against HIKO, I&E was actively investigating HIKO as a result of customer complaints received by the Commission's Bureau of Consumer Services related to allegations that the Company billed rates that were higher than the rates promised by the Company.

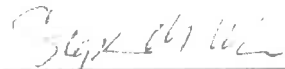
9. On July 11, 2014, I&E filed a Formal Complaint against HIKO alleging that the Company billed a large number of customers in several Electric Distribution Company service territories a rate for electricity supply that exceeded the discounted introductory rate that was guaranteed at the time of each customer's enrollment as a HIKO supply customer. I&E alleged that HIKO violated 52 Pa. Code § 54.4(a) by overbilling customer accounts on 14,780 occasions. I&E is seeking a civil penalty in the amount of \$14,780,000, rescission of HIKO's license authorizing it to do business as an Electric Generation Supplier in Pennsylvania and an order directing HIKO to provide refunds to customers.

10. HIKO's Answer to I&E's Complaint is due by July 31, 2014.

**INTERVENTION:**

11. As the bureau within the Commission that is responsible for ensuring compliance with the Public Utility Code and Commission regulations and orders, I&E is intervening in this proceeding to protect the public interest. I&E will seek to determine whether HIKO violated provisions of the Public Utility Code, Commission regulations and orders set forth in the OAG and OCA Joint Complaint that were not alleged in I&E's Complaint against HIKO. Further, if HIKO violated the Public Utility Code and Commission regulations and orders, I&E will seek to determine the civil penalty and other relief that should be imposed upon the Company.

Respectfully submitted,



---

Stephanie M. Wimer  
Prosecutor  
PA Attorney ID No. 207522

Michael L. Swindler  
Prosecutor  
PA Attorney ID No. 43319

Wayne T. Scott  
First Deputy Chief Prosecutor  
PA Attorney ID No. 29133

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-5000  
Date: July 30, 2014