



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

IN REPLY PLEASE
REFER TO OUR FILE

September 23, 2014

Via E-Filing

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. HIKO Energy, LLC
Docket No. C-2014-2431410
Prehearing Conference Memorandum of I&E

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Prehearing Conference Memorandum 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 that reads "L. Swindler".

Michael L. Swindler
Prosecutor
PA Attorney ID No. 43319

Enclosure

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,:
Bureau of Investigation and Enforcement:

v.

HIKO Energy, LLC

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Docket No. C-2014-2431410

**PREHEARING CONFERENCE MEMORANDUM
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO ADMINISTRATIVE LAW JUDGES JOEL H. CHESKIS AND ELIZABETH H. BARNES:

The Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission) respectfully submits the following Prehearing Conference Memorandum in the above-captioned proceeding pursuant to the Prehearing Conference Order of the presiding Administrative Law Judges dated August 25, 2014.

I. BACKGROUND

On March 31, 2014, I&E initiated an informal investigation of HIKO as a result of customer complaints received by the Bureau of Consumer Services related to allegations that HIKO billed rates that were higher than the rates promised by the Company. I&E's investigation determined that HIKO failed to bill prices to reflect the marketed prices and the agreed upon prices in the Disclosure Statement. Specifically, HIKO guaranteed in its

Disclosure Statement and Welcome Letter to customers enrolled in its 1-7% discount rate plan that the customer would experience a guaranteed rate for “the first six monthly billing cycles” that would be “1-7% less” than the local EDC’s price to compare, but instead charged its residential customers a rate per kilowatt hour (kWh) that far exceeded the guaranteed discounted rate.

On July 11, 2014, I&E filed a Complaint against Respondent at the above docket, alleging that Respondent violated the Commission’s regulation at 52 Pa. Code § 54.4(a), which reads:

- (a) EGS prices billed must reflect the marketed prices and the agreed upon prices in the disclosure statement.

I&E alleges that Respondent violated 52 Pa. Code § 54.4(a) by overbilling 14,780 customer accounts between January 2014 and April 2014. I&E requests a civil penalty of \$1,000 for each of the violations set forth in the Complaint, for a total of \$14,780,000. I&E also requests that the Commission direct HIKO to refund each of the 14,780 customer accounts, to which a refund has not already been provided, the difference between the amount each account was billed and the minimum guaranteed discounted rate the customer was entitled to receive. Further, I&E seeks revocation of Respondent’s EGS license in Pennsylvania.

On July 31, 2014, HIKO filed an Answer with New Matter to the Complaint and Preliminary Objections. On August 11, 2014, I&E filed an Answer to HIKO’s Preliminary Objections. On August 18, 2014, I&E replied to HIKO’s New Matter.

On September 2, 2014, the presiding Administrative Law Judges (ALJs) issued an Interim Order denying HIKO's Preliminary Objections.

A Prehearing Conference has been scheduled for September 29, 2014.

II. PREHEARING CONFERENCE MEMORANDUM

A. Entry on Service List

The I&E Prosecutors in this proceeding are Michael L. Swindler, Stephanie M. Wimer and Wayne T. Scott. Contact information is as follows:

Michael L. Swindler
Prosecutor
mwindler@pa.gov

Stephanie M. Wimer
Prosecutor
stwimer@pa.gov

Wayne T. Scott
First Deputy Chief Prosecutor
wascott@pa.gov

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
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(717) 787-5000
(717) 783-3458 (fax)

If each party is limited to one entry on the service list, Michael L. Swindler is the I&E Prosecutor who should be served with hard copies of any and all documents in this proceeding.

B. Consolidation with *Commonwealth of Pennsylvania, et al. v. HIKO Energy, LLC*, Docket No. C-2014-2427652

For the reasons set forth below, it is the position of I&E that its formal complaint proceeding at Docket No. C-2014-2431410 should be litigated separately from the OAG and OCA Joint Complaint proceeding at Docket No. C-2013-2427652. However, should an amicable universal settlement be reached among all parties regarding both proceedings prior to holding evidentiary hearings, I&E would support consolidation of the two dockets for the purpose of ruling on the proposed settlement.

The focus of I&E's Complaint is much narrower than the OAG and OCA Joint Complaint in that it involves thousands of specific counts of a single regulatory violation, 52 Pa. Code § 54.4(a). The requested relief in I&E's Complaint is also very specific and directly corresponds to each count that was alleged. Further, I&E's evidence at hearing will differ from the evidence that the OAG and OCA may proffer in their case in that I&E will not rely on consumer testimony and will focus solely on violations of 52 Pa. Code § 54.4(a). Due to the vast differences between the specific violations alleged in I&E's Complaint and the broad scope of the OAG and OCA Joint Complaint, I&E posits that consolidation of these matters for purposes of litigation would not be administratively efficient or judicially prudent.

C. Discovery

The parties are already engaged in discovery. No modifications to the applicable rules of discovery are deemed necessary at this time.

D. Proposed Schedule for Litigation

Since I&E's Complaint is not reliant upon specific customer complaints, I&E does not foresee a need to hold public input hearings in order to gather customer testimony. To allow sufficient time for the parties to further engage in settlement negotiations, I&E believes that direct testimony can be filed in January 2015 with evidentiary hearings scheduled in March 2015.

E. I&E Witnesses

I&E expects to call the following expert witness:

Daniel J. Mumford
Consumer Services Policy Analyst Supervisor
Pennsylvania Public Utility Commission
Bureau of Consumer Services
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-1957
dmumford@pa.gov

I&E reserves the right to call additional witnesses and will advise the parties accordingly.

F. Issues

I&E intends to address whether HIKO billed prices between January 2014 and April 2014 to customer accounts enrolled in its 1-7% discount rate plan that reflect its marketed prices and the prices established in its Welcome Letter and Disclosure Statement. I&E reserves the right to address other issues as it deems appropriate.

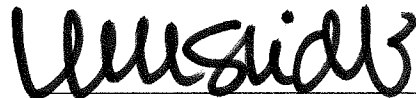
G. Statement Regarding Possible Settlement Of Case

The parties initially met over the summer to discuss the possibility of a settlement and have scheduled a second settlement conference that will take place prior to the Prehearing Conference. I&E is hopeful that both the I&E Complaint and the OAG and OCA Joint Complaint can be resolved by a global settlement agreement. In the event that a global settlement agreement cannot be reached, I&E is fully prepared to litigate both matters.

III. CONCLUSION

I&E is willing to make a good faith effort to successfully resolve this matter through a global settlement, which would include I&E's Complaint proceeding and the OAG and OCA Joint Complaint proceeding. In the event that settlement discussions fail to result in a full and complete resolution of both matters, I&E is prepared to fully litigate this proceeding.

Respectfully submitted,



Michael L. Swindler
Prosecutor
PA Attorney ID No. 43319

Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

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: September 23, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Michael L. Swindler
Prosecutor
PA Attorney ID No. 43319

Date: September 23, 2014