



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: 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

**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**

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

---

**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 22, 2014.

**I. BACKGROUND**

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, Company or Respondent) alleging multiple violations of Pennsylvania law and Commission regulations and orders. HIKO

is an electric generation supplier (EGS) that became licensed by the Commission to operate as an EGS in Pennsylvania on or about July 2, 2012 at A-2012-228994. In the Joint Complaint, the OAG and OCA allege, *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 (POR) program parameters and failed to comply with the Telemarketer Registration Act, 73 P.S. § 2241 *et seq.*

After receiving an extension of time to respond to the Joint Complaint, HIKO filed an Answer and New Matter on July 30, 2014. Also on July 30, 2014, I&E filed a Notice of Intervention. On August 19, 2014, the OAG and OCA jointly replied to HIKO's New Matter.

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](mailto:mwindler@pa.gov)

Stephanie M. Wimer  
Prosecutor  
[stwimer@pa.gov](mailto:stwimer@pa.gov)  
Wayne T. Scott  
First Deputy Chief Prosecutor  
[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  
(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 Pa. P.U.C., Bureau of Investigation and Enforcement v. HIKO Energy, LLC, Docket No. C-2014-2431410

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 Docket No. C-2014-2431410, 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.

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

I&E will defer to the Joint Complainants and the Company to arrive at a litigation schedule in the OAG and OCA Joint Complaint proceeding that is mutually convenient for all parties.

E. I&E Witnesses

I&E does not expect to call any witnesses in the Joint Complaint matter. However, I&E reserves the right to call witnesses if necessary to protect its interest and the public interest.

F. Issues

The following is a list of issues and subissues that I&E intends to ensure are addressed in the Joint Complaint proceeding. I&E reserves the right to address other

issues, as it deems appropriate, if any such relevant issues arise. Currently, I&E does not maintain a position with respect to each of the issues and sub-issues listed.

1. Respondent's Disclosure Statement
  - a. Whether Respondent provided accurate information about its electric generation services using plain language and common terms in communications with consumers; and
  - b. Whether Respondent explained the conditions of its variable pricing terms.
2. Whether Respondent's agents engaged in any fraudulent, deceptive or other unlawful marketing or billing acts.
3. Whether Respondent adequately trained and monitored its agents.
4. Whether Respondent switched customers to receive its electric generation supply service without their consent.
5. Whether Respondent complied with POR program parameters.
6. The relief that the Commission should impose upon Respondent if Respondent is found to be in violation of the Public Utility Code and Commission regulations and orders, including but not limited to customer refunds, the amount of a civil penalty, suspension or revocation of Respondent's EGS license and other remedial measures.

I&E will address in its Complaint proceeding allegations pertaining to Respondent billing prices to customers that failed to conform to the marketed prices and the prices in Respondent's disclosure statements.

G. Statement Regarding Possible Settlement Of Case

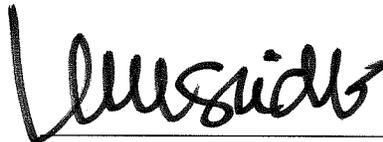
The parties initially met over the summer to discuss the possibility of a settlement and have scheduled a second settlement conference that will take place prior to the Prehearing Conference. I&E is hopeful that both the I&E Complaint and the OAG and

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 also 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).

### Service by First Class Mail and Email:

Ginene A. Lewis, Esq.  
Drinker, Biddle & Reath, LLP  
One Logan Square  
Suite 2000  
Philadelphia, PA 19103  
[ginene.lewis@dbr.com](mailto:ginene.lewis@dbr.com)

Vincent E. Gentile, Esq.  
105 College Road East  
P.O. Box 627  
Princeton, NJ 08542-0627  
[vincent.gentile@dbr.com](mailto:vincent.gentile@dbr.com)

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

Motty Schulman, Esq.  
William Marsillo, Esq.  
Andrew Dressel, Esq.  
Boies, Schiller & Flexner LLP  
333 Main Street  
Armonk, NY 10504  
[mshulman@bsflp.com](mailto:mshulman@bsflp.com)  
[wmarsillo@bsflp.com](mailto:wmarsillo@bsflp.com)  
[adressel@bsflp.com](mailto:adressel@bsflp.com)

Candis A. Tunilo, Esq.  
Hobart J. Webster, Esq.  
Kristine E. Robinson, Esq.  
555 Walnut Street, 5<sup>th</sup> Floor Forum Place  
Harrisburg, PA 17101-1923  
[ctunilo@paoca.org](mailto:ctunilo@paoca.org)  
[krobinson@paoca.org](mailto:krobinson@paoca.org)

John M. Abel, Esq.  
Nicole R. Beck, Esq.  
Office of Attorney General  
Bureau of Consumer Protection  
Strawberry Square, 15<sup>th</sup> Floor  
Harrisburg, PA 17120  
[jabel@attorneygeneral.gov](mailto:jabel@attorneygeneral.gov)  
[nbeck@attorneygeneral.gov](mailto:nbeck@attorneygeneral.gov)



---

Michael L. Swindler  
Prosecutor  
PA Attorney ID No. 43319

Date: September 23, 2014