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September 23, 2014

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VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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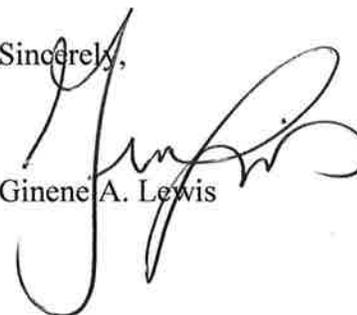
**Re: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. HIKO Energy, LLC, Docket No. C-2014-2431410**

Dear Secretary Chiavetta:

On behalf of HIKO Energy, LLC, I have enclosed for electronic filing the Prehearing Conference Memorandum of HIKO Energy, LLC in the above-captioned matter. Copies have been served on all parties as indicated in the attached certificate of service.

Please feel free to contact me if you have any questions or concerns.

Sincerely,



Ginene A. Lewis

GAL

Enclosures

cc: Certificate of Service
Administrative Law Judge Elizabeth Barnes (via email and First Class U.S. Mail)
Administrative Law Judge Joel Cheskis (via email and First Class U.S. Mail)

**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

PREHEARING CONFERENCE MEMORANDUM OF HIKO ENERGY, LLC

In accordance with 52 Pa. Code § 5.222 and the August 25, 2014 Prehearing Conference Order issued by Administrative Law Judges Joel Cheskis and Elizabeth Barnes, Respondent HIKO Energy, LLC (“HIKO”), respectfully submits its Prehearing Conference Memorandum in the above-captioned matter.

I. BACKGROUND AND OVERVIEW OF ISSUES FOR RESOLUTION

HIKO is an electric generation supplier (“EGS”) that began serving Pennsylvania customers in January 2013. HIKO, like all other EGSs, provides an alternative to the monopoly in energy supply otherwise held by regulated utility companies.

On July 11, 2014, the Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a complaint against HIKO (“I&E Complaint”) alleging that HIKO had failed to satisfy certain price guarantees purportedly found in HIKO’s disclosure statement. The I&E Complaint seeks a substantial civil penalty, the revocation of HIKO’s license and restitution payments that

would bring HIKO's rates for certain customers to below the rates charged by public utilities. HIKO answered the I&E Complaint on July 31, 2014. The allegations in the I&E Complaint are included among the allegations already made by the Office of the Consumer Advocate and the Pennsylvania Attorney General in their first-filed Joint Complaint against HIKO (Docket No. C-2014- 2427652).

During this past winter, extreme climate conditions and insufficient regional natural gas transportation infrastructure created unprecedented price spikes in the short-term energy markets. While HIKO's practice of purchasing energy on the spot market had generated consistent savings for Pennsylvania customers for months, the anomalous prices seen this past winter did not allow HIKO to continue to pass on its traditional low rates. Unsurprisingly, dissatisfied customers complained. This turn of events, which seems to have affected the entire EGS industry, was not the result of a scheme hatched by HIKO to deceive customers, but was instead the result of a unique set of circumstances outside HIKO's control. Indeed, when HIKO became aware that it would be experiencing sustained high prices on the spot energy markets it ceased all marketing in Pennsylvania, as it knew it could not meet its usual low rates in the short term. Moreover, HIKO has continued to refund its customers for these unprecedented market events. In addition, HIKO customers who have been enrolled with HIKO for a full year also have the opportunity to receive one free month of service. Customers who take advantage of this offer would receive complete reimbursement for their highest monthly bill.

HIKO now seeks a resolution to the I&E Complaint that will allow it to continue to do business in Pennsylvania and to continue its historical practice of passing on savings to Pennsylvania customers.

II. REPRESENTATION AND SERVICE LIST

HIKO is represented in this matter by Vincent E. Gentile of Drinker Biddle & Reath LLP. Boies, Schiller & Flexner LLP also is counsel to HIKO and is assisting in this matter.

Copies of all documents should be served on HIKO as follows:

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III. SPECIFIC ISSUES FOR RESOLUTION AND HIKO'S POSITIONS ON EACH

A. Whether the I&E is Barred from Re-litigating Consumer Complaints Filed Against HIKO that Have Already Been Resolved and/or Satisfied

HIKO's Position: The I&E Complaint makes reference to a number of customer complaints filed against HIKO with the Commission and the OAG's office, and relies on allegations from those complaints for the Complaint's factual foundation. A review of the documents reveals that HIKO had, prior to the filing of the I&E Complaint, resolved a significant number of these complaints. To the extent that HIKO demonstrates that a customer complaint filed in any forum has been satisfied or resolved I&E should be precluded from alleging violations based on such customers' accounts in the present Complaint. Furthermore, I&E should be precluded from seeking restitution on behalf of any customer to whom HIKO has already provided a refund.

B. What Evidence Will Be Required at the Hearing

HIKO's Position: The gravamen of the I&E Complaint is that HIKO failed to live up to a guarantee to charge a rate to customers that would be 1-7% below the public utility's Price to Compare during the customer's first six months with HIKO. 52 Pa. Code § 54.4(a) states that "EGS prices billed must reflect the marketed prices and the agreed upon prices in the disclosure statement." The 1-7% guarantee is not found within HIKO's disclosure statement as such, nor is there any allegation that the guarantee was made to customers prior to their enrollment. To the extent I&E's allegations or proof are based upon what customers may have been told by a marketer prior to enrollment, I&E

would need to establish the contents of those representations for each of the customers for which it is asserting a violation.

C. Whether the Requested Penalties Are Appropriate

HIKO's Position: HIKO believes that in the event that it is determined that HIKO committed some of the alleged regulatory violations set forth in the I&E Complaint, there are several mitigating factors that should substantially reduce whatever penalty HIKO may face. As an initial matter, it is clear from HIKO's history of saving Pennsylvania consumers money, both before and after the anomalous circumstances of the polar vortex, that the rate increases experienced this past winter were not part of a scheme on HIKO's part to deceive and defraud its customers. The polar vortex and its ramifications were circumstances that were unforeseen and beyond HIKO's control. HIKO's voluntary decision to cease marketing in January when it became clear that it would have difficulty charging its traditional low rates further demonstrates that HIKO was careful not to enroll new customers until energy rates had returned to historic norms. Since January—well before the regulators became involved—HIKO also has been in the process of making refunds to customers whose rates were affected by the polar vortex. HIKO has issued over \$150,000 in customer refunds to more than 450 customers this year, and the process is not over.

Despite those circumstances, I&E seeks a mind-boggling \$15 million in penalties (in addition to any refunds issued to customers) and the rescission of HIKO's license to do business in Pennsylvania. The proposed penalties are grossly excessive, given that HIKO did not intend to mislead customers, HIKO stopped marketing when the cost of electricity suddenly spiked, HIKO has issued substantial refunds, and HIKO has cooperated with I&E, OCA, and OAG in their investigation.

D. Whether the I&E Complaint Should Be Consolidated with the OCA/OAG Complaint

HIKO's Position: HIKO believes that the I&E Complaint should be consolidated with the complaint brought by OCA and OAG on June 20, 2014, as all parties are now (as a result of intervention) parties to both actions and the claims that I&E has made regarding HIKO's 1-7% guarantee are also brought in the OCA/OAG Complaint. Consolidating both actions would lead to greater efficiencies, allow for a single coordinated schedule, and reduce unnecessary costs on the part of all parties. Moreover, the factors considered in determining any penalty would be the same in both actions. Finally, deciding the claims on a consolidated basis would be more conducive to achieving a global resolution to the allegations in both Complaints.

IV. WITNESSES

The witnesses that HIKO will call will largely depend on the issues that remain to be litigated after any ruling on HIKO's anticipated motion for summary judgment. HIKO reserves

its right to supplement the list below, including based on discovery, motion practice, and further development of the case. At this time HIKO anticipates providing testimony from the following witness: Harvey Klein.

V. PROPOSED LITIGATION SCHEDULE

HIKO proposes that all witnesses submit written testimony followed by in-person cross-examination at the evidentiary hearing in Harrisburg. I&E has indicated it intends to rely on a single witness, Daniel Mumford, an employee of the Bureau of Consumer Services, to establish HIKO's liability and the appropriate penalties and/or other relief. It is not clear whether any aspect of Mr. Mumford's testimony would require further discovery or be deemed expert testimony that would require responsive expert testimony from HIKO. HIKO also proposes that sufficient time be allotted between rounds of testimony to allow for discovery to be served and responded to between each round.

Public input hearings are not warranted for this matter. To the extent the Commission will not rule immediately on the issue of consolidating the OCA/OAG Complaint with the I&E Complaint, and that further input from the parties would be helpful, the schedule should be modified to accommodate briefing on the consolidation issue. Accordingly, HIKO proposes the following litigation schedule (subject to change after further discussions with the parties or the Commission):

September 29, 2014	Prehearing Conference
February 12, 2015	I&E/Intervenor Direct Testimony Served
March 24, 2015	HIKO Rebuttal Testimony Served
April 27, 2015	I&E/Intervenor Surrebuttal Testimony Served
June 9-11, 2015	Evidentiary Hearings in Harrisburg

July 15, 2015 (approx.)	Main Briefs
August 18, 2015 (approx.)	Reply Briefs

VI. DISCOVERY

HIKO has provided I&E with documents pursuant to investigative demands prior to the filing of the Complaint. HIKO has served discovery on I&E to which I&E has not objected. I&E has filed an initial response to this discovery and has promised to explore whether additional responsive information may exist. HIKO does not propose any modifications to the Commission's discovery regulations, but is amenable to considering any reasonable modifications proposed by other parties.

VII. SETTLEMENT

The parties have initiated a dialogue aimed at exploring resolution of both the OCA/OAG Complaint and the I&E Complaint and eliminating the need for protracted litigation. Counsel for the parties will be meeting on the morning of the prehearing conference to further discuss the possibility of reaching a just and reasonable settlement in these matters.

Respectfully Submitted,

DRINKER BIDDLE & REATH, LLP



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Counsel for HIKO Energy, LLC

Dated: September 23, 2014

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 hereby certify that a true and correct copy of the foregoing documents have been 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

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Dated: September 23, 2014

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