

Law Offices

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

November 12, 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

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

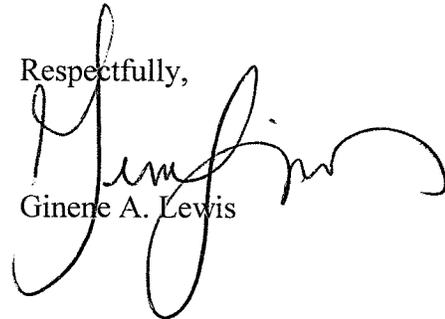
CALIFORNIA
DELAWARE
ILLINOIS
NEW JERSEY
NEW YORK
PENNSYLVANIA
WASHINGTON D.C.
WISCONSIN

Dear Secretary Chiavetta:

Enclosed please find HIKO Energy, LLC's ("HIKO") Motion to Compel Further Responses by Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement, to HIKO's First Set of Interrogatories and Request for Production of Documents.

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

Docket No. C-2014-2431410

v.

HIKO ENERGY, LLC,
Respondent.

**MOTION OF RESPONDENT HIKO ENERGY, LLC TO COMPEL FURTHER
RESPONSES BY PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF
INVESTIGATION AND ENFORCEMENT, TO INTERROGATORIES AND
DOCUMENT REQUESTS, SET I**

Pursuant to 52 Pa. Code § 5.103, Respondent HIKO Energy, LLC (“HIKO”) hereby files this motion to compel the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (“Complainant” or “I&E”) to provide responsive answers to twenty (20) interrogatories and two (2) document requests set forth in HIKO’s First Set of Interrogatories and Requests for Production of Documents (“Discovery”). Having never filed objections to HIKO’s Discovery, Complainant then filed answers with self-imposed limits on the information and documents it provided. Despite a “meet and confer” session to attempt to resolve this dispute and Complainant’s agreement to serve supplemental answers, Complainant has not cured the deficiencies in its answers. Accordingly, Complainant must now be compelled to provide fully responsive answers to HIKO’s Discovery.

I. INTRODUCTION

In this action the Commission seeks draconian civil penalties of \$14,780,000 and the revocation of HIKO's license as an electric generation supplier ("EGS") in Pennsylvania. The Complaint threatens HIKO's existence as a viable business in Pennsylvania. The staggering amount of the requested penalty far exceeds any previous civil penalty obtained by I&E. Furthermore, I&E has seldom, if ever, sought (and never before obtained) the sanction of license revocation against an EGS company. The stakes for HIKO, therefore, could not possibly be higher. The Complaint is premised upon a single category of regulatory violation — the claim that, during the polar vortex in the winter of 2014, HIKO breached a purported price guarantee by failing to deliver rates below the given local utility's price (the "Price to Compare"). HIKO voluntarily ceased all marketing in Pennsylvania in January 2014, and has made over \$150,000 in refunds in response to customer complaints. Facing nearly \$15,000,000 in civil penalties and the real possibility of license revocation, HIKO propounded discovery on the Complainant to develop potential arguments that could be used to rebut I&E's claims and mitigate the potentially dire penalties.

Yet, while it is pursuing potentially devastating sanctions and penalties, Complainant has at the same time sought to hobble HIKO's ability to defend itself. *Although it never served objections to HIKO's Discovery*, I&E has unilaterally limited its answers by asserting the position that it will only provide HIKO with information and documents within its own knowledge or within its own possession, and will not provide information or documents that are in the possession of the Commission but not under I & E's immediate control. I&E is unilaterally withholding this information, *even though Complainant's own discovery responses rely on that information*. Inasmuch as the Complaint is brought in the name of the Commission by I&E there is no basis to restrict discovery. Moreover, because I&E itself has limited

knowledge and few documents, that constricted position deprives HIKO of crucial information needed for its defense. Accordingly, the presiding officer should direct Complainant to provide fully responsive answers to HIKO's Discovery. Each of the deficiencies in Complainant's responses is addressed below.

II. I&E, ACTING ON BEHALF OF THE COMMISSION, MUST ANSWER HIKO'S DISCOVERY

A. Complainant Must Answer HIKO's Discovery Regarding Information On Other EGS Companies' Rates During The Polar Vortex.

Among other things, HIKO sought information on the conduct of other EGS companies, specifically, information that identifies the rates that other EGS companies imposed on their customers during the polar vortex. HIKO believes that other EGS companies with variable rate service agreements also were affected by the polar vortex and likely charged rates similar to or higher than HIKO's rates.¹ Such information could demonstrate that HIKO's rates were in the range of market prices.. Even if such information did not provide HIKO a full defense to liability in this action, it could afford a basis for HIKO to argue for mitigation of the grossly excessive penalties and sanctions sought in this action. In its Discovery, HIKO was careful not to seek information on the identities of any such EGS companies, but merely sought information on whether EGS rates were comparable to or above HIKO's rates within a particular service area, and how many EGS companies had charged those rates within that service area. Thus,

¹ Indeed, the Commission has before it four enforcement actions against other EGS companies alleging, *inter alia*, that they imposed excessive variable rates on their customers during the same period. I&E has intervened in each of those actions. See Pennsylvania, et al. v. Blue Pilot Energy, LLC, Docket No. C-2014-2427655, Petition to Intervene (July 31, 2014); Pennsylvania, et al. v. Energy Serv. Providers, Inc., Docket No. C-2014-2427656, Petition to Intervene (July 31, 2014); Pennsylvania et al v. IDT Energy, Inc., Docket No. C-2014-2427657, Petition to Intervene (July 31, 2014); Pennsylvania, et al. v. Respond Power LLC, Docket No. C-2014-2427659, Petition to Intervene (Aug. 6, 2014).

HIKO's Interrogatory No. 6 was designed to provide context for the assumptions underlying paragraphs 25 and 26 of the Complaint,² and provided:

6. State whether you are aware of any other EGS companies that charged Duquesne customers during January 2014:
 - a. between \$0.1090 and \$.1690 per kWh; and
 - b. more than \$.1690 per kWh

and, if any, for each response in subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Duquesne customers during January 2014.

See HIKO's Discovery, attached hereto as Exhibit A, Interrogatory No. 6 at 6.

An identical interrogatory was posed for each of the months and each of the service areas alleged in the Complaint. See HIKO's Discovery, Interrogatory Nos. 7-26 at 7-12. I&E gave the identical response to each of these interrogatories:

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to Duquesne customers during January, 2014.

See I&E's Answers to HIKO's Discovery ("Answers"), attached hereto as Exhibit B, at 16-36.

HIKO's discovery requests were served on August 15, 2014. I&E chose not to file objections. As a result, it lost any right to object to HIKO's Discovery and was required to provide answers without challenging the scope or nature of the Discovery. See 52 Pa. Code § 5.342 (requiring any objections to be made within 10 days after service of interrogatories). Having lost the right to object, Complainant may not now raise objections to HIKO's requests. See 52 Pa. Code § 5.371(a), (d) (providing that sanctions may be imposed on a party that fails to file sufficient answers or file objections, and that the party's failure "may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has filed an appropriate objection or has applied for a protective order."); see also Application of Pickups

² Paragraph 25 and 26 of the Complaint allege that many HIKO customers in the Duquesne service area were charged prices ranging from \$0.1090 to \$0.1690 during January 2014.

Moving Company, LLC, Docket No. A-2013-2372121, 2014 WL 606350, at *6 (Pa. P.U.C. Jan. 28, 2014) (concluding that the refusal of a party to answer reasonable and relevant discovery questions to which it did not object is “prejudicial to other parties’ due process rights and is appropriately sanctioned”); cf. Pa. Public Util. Comm’n, Office of Consumer Advocate v. City of Lancaster – Sewer Fund, Docket Nos. R-00049862 & R-00049862C0001, Recommended Decision at 70 (June 23, 2005) (noting that “[m]otions to compel and/or for sanctions are available to parties as necessary when an opposing party is uncooperative or evasive with respect to discovery.”).

During a meet and confer telephone call on September 9, 2014, HIKO pointed out that its Discovery contained a definition of “Complainant” that included both I&E and the Commission, that I&E had not objected to this definition, and thus I&E’s attempts to limit its responses to only whatever was in I&E’s knowledge or possession was improper. Definition No. 10 in HIKO’s Discovery stated:

10. “You”, “Your”, or “Complainant” means the Pennsylvania Public Utility Commission or the Bureau of Investigation and Enforcement, including any attorneys, agents, employees, contractors, or other representatives of either the Commission or the Bureau, or anyone acting on behalf or at the direction of the Commission or the Bureau.

HIKO’s Discovery at 5.

The Discovery also provided in the Instructions that:

2. *If, after exercising due diligence to secure the information requested by any one of the following interrogatories or document requests, the Complainant cannot answer or provide the information requested in any specific requests, so state and answer to the extent possible those specific requests, specifying the Complainant’s inability to answer the remainder of the request, providing whatever information or knowledge the Complainant has concerning the unanswered portion of the request, and detailing what attempts the Complainant made to secure the unknown information.*

Id. at 2 (emphasis added). Disregarding this Instruction, I&E's answers did not detail any steps it took to try to find the requested information.

Instruction No. 5 of the Discovery imposed an obligation to “[d]ivulge all information that is within the knowledge, possession, control, or custody of the Complainant or may be reasonably ascertained thereby and to the extent the Complainant has the right or ability (whether as a practical matter or as a matter of law) to compel the action requested herein.” Id. Instruction No. 8 provided: “[i]f the Complainant claims any information requested herein is protected pursuant to 52 Pa. Code § 5.323 or pursuant to any other rule of discovery, provide a general description of the information sought to be protected and the exact nature of the protection claimed.” Id. at 3. None of I&E's responses identified any such protection.

After the meet and confer call, I&E's counsel agreed to make further inquiries about the existence of such information elsewhere at the Commission and provide supplemental answers. See Affidavit of Vincent E. Gentile (“Gentile Affidavit”), attached hereto as Exhibit C, ¶ 3.³ However, the supplemental answers, served on September 19, 2014, simply contained a longer chorus of the same refrain. Thus, in response to HIKO Interrogatory No. 6, Complainant stated:

SUPPLEMENTAL ANSWER: After reasonable investigation, *I&E, as an independent prosecutory arm of the Commission, is not aware* of other EGS companies that charged customers in this EDC service territory the above-mentioned rates during the time period in question. *I&E believes* that the Commission does not regulate the rates charged by EGSs and, therefore, neither imposes reporting requirements on EGSs to provide data pertaining to rates or prices, nor has any reason to maintain such information. While current EGS pricing can be found at the Commission's website, www.papowerswitch.com/, *I&E believes* that EGSs are responsible for directly entering their pricing information onto the website. *I&E is not aware* that the Commission maintains any current or archived data on prices entered by EGSs.

See I&E's Supplemental Answers to HIKO's Discovery Request (“Supplemental Answers”),

³ Indeed, as a result of more thorough searching, at least one additional document was produced. See Supplemental Answers at 26 (“Upon further investigation, I&E's files contained a confidential memo from the Bureau of Competition Services to I&E dated March 20, 2014 entitled “HIKO Energy Pricing and Marketing.”).

attached hereto as Exhibit D, at 2 (emphasis added).

Not only did Complainant continue to hedge its answer with the qualifier that “I&E . . . is not aware” or “I&E believes” but it did not disclose anything about what efforts had been made to find out whether that information existed elsewhere at the Commission. The Supplemental Answers gave the identical response to each one of HIKO’s Interrogatories 7 through 26. See I&E’s Supplemental Answers at 3-22.

On behalf of the Commission, I&E has commenced at least one other action against an EGS company for alleged misleading and deceptive promises of savings and charging customers “anywhere from two to four times (or more) that of the PTC.”⁴ Moreover, I&E has intervened in four other actions brought by the Pennsylvania Attorney General and the Office of the Consumer Advocate that allege, *inter alia*, that an EGS company did not disclose its actual prices and/or was charging prices in excess of the reasonable cost of electric supply during the polar vortex.⁵ Gentile Aff. ¶ 5. Thus, it is highly likely that Complainant (and, specifically, I&E) has at least *some* pricing information as a result of investigation and discovery in these other pending cases (or has the right to obtain that information, within the meaning of Instruction No. 5). As noted above, HIKO’s Interrogatories do not seek the identities of any other EGS companies or their specific prices charged during the polar vortex of January through March, 2014. Hence, the disclosure of that general information would not reveal confidential matter (even if Complainant had objected on that ground, which it did not).

Moreover, the Commission’s extensive involvement in investigating and monitoring variable prices charged by EGS companies during the 2014 polar vortex makes it highly likely that EGS pricing information during that period exists in other bureaus or offices within the

⁴ See Pa. Public Util. Comm’n, Bureau of Investigation and Enforcement v. Respond Power, LLC, Docket No. C-2014-2438640, Compl. ¶ 31 (Aug. 21, 2014). A copy of the complaint is attached hereto as Exhibit E.

⁵ See supra note 1.

Commission, including the Bureau of Consumer Services (“BCS”), the location of Daniel J. Mumford, Complainant’s lone identified witness in this action. See I&E’s Answers at 41. Certainly, even if the term “Complainant” were, contrary to the unobjected definition found in the Interrogatories and Document Requests, narrowly construed to apply to only I&E, I&E would have “the right or ability (whether as a practical matter or as a matter of law) to compel” Mr. Mumford or others at the Commission to furnish this information within the meaning of Instruction No. 5 of HIKO’s Discovery. And, Mr. Mumford, as Complainant’s sole trial witness, qualifies within the meaning of “You, Your, or Complaint” as a “representative” of I&E who may possess responsive information and documents. See HIKO’s Discovery, Definition No. 10 at 5. Indeed, I&E has already produced other information in the possession of Mr. Mumford. See I&E’s Answers at 5-14 (providing identified informal complaints to BCS, in response to HIKO’s Interrogatory No. 4).

Accordingly, Complainant must answer HIKO Interrogatories 6 through 26.

B. Complainant Must Answer HIKO’s Interrogatory No. 27 Concerning the Causes of the Increase in the Price of Electricity During the Polar Vortex.

HIKO believes that the Commission itself has determined that causes well beyond HIKO’s control contributed to the spike in electric supply prices during the polar vortex. Such evidence could have the potential to mitigate substantially the draconian sanction and penalties sought in the Complaint. Yet, I&E’s Answers and Supplemental Answers to HIKO’s Discovery continue to block this avenue of defense. HIKO’s Interrogatory No. 27 asked the Complainant to:

27. State all of the factors You believe contributed to the increase in electricity supply prices in Pennsylvania during the period from November 1, 2013 through April 30, 2014 and describe how each factor contributed to the increased price and identify all studies, reports or analyses that support Your response.

HIKO's Discovery, Interrogatory No. 27 at 12. Incredibly, I&E stated that it cannot provide any information on that score.

ANSWER: ***I&E does not have a position regarding the factors that contributed to the increase in electricity supply prices in Pennsylvania during the [polar vortex].*** I&E's Formal Complaint is based upon HIKO billing customers a rate that far exceeded the agreed upon prices in the Disclosure Statement and the guaranteed discount rate, no matter how the rate was calculated. Further, on August 18, 2014, the Commission provided counsel for HIKO with documents concerning the causes of price increases for the supply of electricity to residential customers during the winter of 2014.

I&E's Answers at 37 (emphasis added). I&E's supplemental answer to the question was no better:

SUPPLEMENTAL ANSWER: *Upon reasonable investigation, I&E, as an independent prosecutory arm of the Commission, does not know whether the Commission has a position regarding the factors that contributed to the increase in electricity supply prices in Pennsylvania during the [polar vortex].*

I&E's Supplemental Answers at p. 23(emphasis added). This response did not answer the question, which did not ask for I&E's knowledge of the Commission's position, but for a list of factors that the Commission had identified as contributing to the price increases. The Supplemental Answer went on to provide the additional, non-responsive information that "[i]t is I&E's belief that the Commission does not regulate the rates that EGSs charge" and that "the Commission's focus, as I&E understands it, was to minimize the impact of the increased prices of electricity supply realized by Pennsylvania retail customers during the winter of 2014." Id. (emphasis added). Neither of those statements is an adequate answer to Interrogatory No. 27.

If the Commission itself has identified causal factors beyond HIKO's foreseeability and control, that information is relevant to HIKO's defense. At the very least, that evidence would be highly relevant to the determination of the amount of any appropriate penalty and whether the sanction of revocation was warranted. It is remarkably unfair for Complainant to seek

unprecedented sanctions and penalties but yet deprive HIKO of information — *in the possession of the very entity that has brought the lawsuit* — needed to defend against those claims. And it is particularly unfair when Complainant has done so without raising its objections to that discovery in accordance with the Commission’s rules of procedure, thereby depriving HIKO of an opportunity to address these objections in a procedurally proper manner. See 52 Pa. Code § 5.342(e) (requiring objections to interrogatories to be filed within 10 days after service); 52 Pa. Code § 5.371(d) (providing that a failure to “file sufficient answers [or] file objections” “may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has filed an appropriate objection or has applied for a protective order.”).

Accordingly, Complainants must answer HIKO Interrogatory No. 27 as written.

C. Complainant Must Respond to HIKO’s Document Requests, Which Seek Documents Relevant to HIKO’s Potential Defenses and Potentially Mitigating Factors.

I&E took many of the same unwarranted positions in obstructing HIKO’s ability to obtain potential support for matters crucial to its defense. To reiterate, Complainant never objected to any of HIKO’s Discovery. Rather than moving as required under 52 Pa. Code § 5.342(e), Complainant has instead unilaterally imposed its own limitations on the scope of that Discovery.

HIKO should be given a full and fair opportunity to show that its conduct does not merit the unprecedented sanctions sought in this action, including by comparing its rates and the number and gravity of its customer complaints to those of other EGS companies in Pennsylvania. Accordingly, HIKO asked in Document Request No. 5 for:

5. All documents relating to any analysis, summary, compilation, or review of any complaints made during the period December 2013 through April 2014

against any EGS operating within Pennsylvania.

HIKO's Discovery, Document Request No. 5 at 13. I&E's initial answer stated only that "*I&E is not in possession* of any [such] document . . ." I&E's Answers at 47(emphasis added). In its supplemental answer, I&E identified such documents but then refused to provide them:

SUPPLEMENTAL ANSWER: It is I&E's understanding that in early 2014, a confidential internal weekly report was issued to the Commissioners and certain Commission staff members (but not to I&E) by the Bureau of Consumer Services. The report purportedly provided information pertaining to informal complaint activity that the Commission received from EGS customers in a given week. I&E, as an independent prosecutory arm of the Commission, does not have custody or control of the referenced report. The Commission's procedure for seeking access to such documents can be found at 52 Pa. Code § 5.421.

Supplemental Answers at 25. I&E gave the identical response to HIKO's Document Request No. 7, which sought "[a]ll documents relating to any analysis, summary, compilation, or review that shows how the nature, gravity or frequency of complaints against HIKO compares to the nature, gravity or frequency of complaints against any other EGS operating in Pennsylvania." HIKO's Discovery, Document Request No. 7 at 13. HIKO submits that Complainant's responses to these two requests are improper.

Notably, I&E has identified as its sole witness, Mr. Mumford, Manager of BCS's Informal Compliance and Competition Unit, who "will present testimony regarding HIKO's disregard of the Company's obligation to honor a supply rate discount as guaranteed to enrolled customers . . ." I&E's Answers at 41. On information and belief, Mr. Mumford will support Complainant's civil penalty and revocation demands. Further, Mr. Mumford was likely involved in the preparation or review of the BCS weekly report identified in I&E's supplemental answer to HIKO's Document Request No. 5. I&E would certainly have "the ability . . . as a practical matter . . . to compel" Mr. Mumford to share that report with it. See HIKO's Discovery, Instruction No. 5 at 2.

Moreover, Complainant has not disclosed any basis for believing this report is privileged or protected from discovery or, even if it was, why it could not be produced to HIKO in suitably redacted form. In fact, Complainant has not identified any privilege that would protect this report from disclosure, as required in the Instructions to HIKO's Discovery. Complainant has not filed any objections on the basis of privilege to HIKO's Discovery or contended that the Discovery "would cause unreasonable annoyance, embarrassment, oppression, burden or expense." See 52 Pa. Code § 5.361(a). Indeed, I&E produced another "confidential memo from [BCS]," except for the final page, which it withheld on grounds of attorney-client privilege. See I&E's Supplemental Answers at 26. Thus, the weekly report(s) identified in I&E's supplemental answer to HIKO's Document Request No. 5 must be produced.

Complainant's attempt to require HIKO to issue a subpoena for the relevant documents is simply another attempt to avoid producing responsive material in this action. Simply put, whatever rules may govern the rights of a non-party to information in possession of the Commission, those rules should not apply when the Commission itself is a party to a lawsuit and has been served with (and not objected to) discovery. The Commission's rules do not require a party defending itself against an enforcement action by the Commission to serve a subpoena in order to obtain relevant documents and information, especially when those documents and information are likely in the possession of (or at the very least accessible to) the sole trial witness for the prosecution. Thus, the exemption from document discovery afforded under the rules for the Commission's official files or materials within the control of its advisory staff or adjudicatory staff, expressly does not apply to "*materials within the control of staff as may be participating in the action as a party.*" 52 Pa. Code § 5.349(e) (emphasis added).

Those materials are subject to the ordinary document production obligations that apply to any party litigant. See 52 Pa. Code § 5.349 (a)-(d). Because I&E has designated Mr. Mumford as its sole witness to support its claims, he (and by extension, the BCS, where he is employed) is “participating in the action as a party.” See also 52 Pa. Code § 1.8 (defining “party” as “[a] person who appears in a proceeding before the Commission”). Mr. Mumford, a supervisory official within BCS, has control over the requested documents and information, and they must be produced in response to HIKO’s Discovery.⁶ There is no reason HIKO should be required to go through a subpoena process for the requested documents.

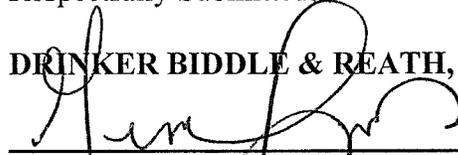
CONCLUSION

For all of the foregoing reasons, Complainant should be compelled to fully answer HIKO’s Interrogatories 6 through 27 and produce all documents responsive to HIKO’s Document Requests 5 and 7.

⁶ In an excess of caution, HIKO has filed a petition under 52 Pa. Code §5.421 for issuance of a subpoena upon the Commission for the information it seeks to compel in this motion. Because the issues are likely to overlap, HIKO submits that the petition should be considered at the same time as this motion.

Respectfully Submitted,

DRINKER BIDDLE & REATH, LLP



Vincent E. Gentile (admitted *pro hac vice*)

Ginene A. Lewis (Bar No. 314467)

One Logan Square, Suite 2000

Philadelphia, Pennsylvania

Telephone: 215.988.2700

Fax: 215.988.2757

Motty Shulman (admitted *pro hac vice*)

William Marsillo (admitted *pro hac vice*)

Andrew Dressel (admitted *pro hac vice*)

BOIES, SCHILLER & FLEXNER, LLP

333 Main Street

Armonk, NY 10504

Counsel for HIKO Energy, LLC

Dated: November 12, 2014

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 document 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 ELECTRONIC AND FIRST CLASS MAIL

Hon. Elizabeth H. Barnes
Hon. Joel Cheskis
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
ebarnes@pa.gov
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
mwindler@pa.gov
stwimer@pa.gov

Candis A. Tunilo
Kristine E. Robinson
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
ctunilo@paoca.org
krobinson@paoca.org

John M. Abel
Nicole R. Beck
Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
jabel@attorneygeneral.gov
nbeck@attorneygeneral.gov

Sharon E. Webb
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101
swebb@pa.gov

Dated: November 12, 2014



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

EXHIBIT A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY
COMMISSION, BUREAU OF
INVESTIGATION AND
ENFORCEMENT,

Complainant

Docket No. C-2014-2431410

v.

HIKO ENERGY, LLC,

Respondent.

**DEFENDANT HIKO ENERGY, LLC'S FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS ON
COMPLAINANT PENNSYLVANIA PUBLIC UTILITY COMMISSION,
BUREAU OF INVESTIGATION AND ENFORCEMENT**

INSTRUCTIONS

1. These interrogatories and document requests shall be construed as continuing. The Complainant is obliged to change, supplement and correct all answers to conform to available information; including such information as first becomes available to the Complainant after the answers hereto are filed.
2. If, after exercising due diligence to secure the information requested by any one of the following interrogatories or document requests, the Complainant cannot answer or provide the information requested in any specific requests, so state and answer to the extent possible those specific requests, specifying the Complainant's inability to answer the remainder of the request, providing whatever information or knowledge the Complainant has concerning the unanswered portion of the request, and detailing what attempts the Complainant made to secure the unknown information.
3. Restate the interrogatory and document request immediately preceding each response.
4. Identify the name, title, and business address of each person(s) providing each response.
5. Divulge all information that is within the knowledge, possession, control, or custody of the Complainant or may be reasonably ascertained thereby and to the extent the Complainant has the right or ability (whether as a practical matter or as a matter of law) to compel the action requested herein.
6. Provide verification by the responsible witness or witnesses that all facts contained in the response are true and correct to the best of the witness' knowledge, information and belief.
7. As used herein, but only to the extent not protected by 52 Pa. Code § 5.323, the word "document" or "workpaper" includes, but is not limited to, the original and all copies in

whatever form, stored or contained in or on whatever media or medium including computerized memory, magnetic, electronic, or optical media, regardless of origin, and may consist of:

- a) notations of any sort concerning conversations, telephone calls, meetings or other communications;
- b) bulletins, transcripts, diaries, analyses, summaries, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys;
- c) worksheets, and all drafts, preliminary versions, alterations, modifications, revisions, changes, amendments and written comments concerning the foregoing.

8. If the Complainant claims any information requested herein is protected pursuant to 52 Pa. Code § 5.323 or pursuant to any other rule of discovery, provide a general description of the information sought to be protected and the exact nature of the protection claimed.

9. The singular of any word used herein shall be deemed to include the plural of such word, and the plural shall include the singular.

DEFINITIONS

1. In answering these data requests, assume that all words used have their ordinary meanings in normal English usage, except as provided below or where context requires other interpretation.

2. “Commission” or “PUC” means the Pennsylvania Public Utility Commission.

3. “I&E” means the Bureau of Investigation and Enforcement.

4. “Communication” means any transmission or exchange of information or meaning between two or more persons in any form.

5. “Complaint” means the complaint filed in this action on July 11, 2014.

6. “Document” or “documents” means all writings of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, summaries, pamphlets, books, inter-office and intra-office communication, notation of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, fax, work sheets, all drafts, alterations, modifications, changes and amendments of any of the foregoing, graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotapes, records) and any electronic, mechanical or electric records or representations of any kind (including, without limitation, tapes, cassettes, discs, records, and computer memories) now in the possession, custody or control of the Complainant, its agents, employees, attorneys and all other persons acting on its behalf.

7. “Identify” or “identity” when used in reference to any individual means to state his/her full name, age, present or last known home address, his/her present or last known employment position, including responsibilities, business affiliation and location, and his/her position, responsibilities, business affiliation and location at the time in question.

8. “Identify” or “identity” when used in reference to a document means to state the name, title, or caption of the document, the date of its making or execution, the identity of the person or persons who authored or executed it, the type of document, number of papers, a brief description of its contents and subject matter (or if the above information is not available, some other means of identifying it), and its present location and custodian. If any such document was, but is no longer, in your possession or subject to your control, state whether it (1) is missing or lost; (2)

has been destroyed; (3) has been transferred, voluntarily or involuntarily, to others; or (4) has been disposed of otherwise. In each instance, explain the circumstances surrounding the authorization for such disposition and state the date or approximate date thereof. When used in respect to a communication, the terms “identify” or “identity” mean to state the parties to the communication, the means of communication, the location of the communication, and the date and time thereof.

9. “Person” means any individual, government or regulatory agency, organization, association, partnership, corporation, trust, foundation, or any other entity, however styled.

10. “You”, “Your”, or “Complainant” means the Pennsylvania Public Utility Commission or the Bureau of Investigation and Enforcement, including any attorneys, agents, employees, contractors, or other representatives of either the Commission or I&E, or anyone acting on behalf or at the direction of the Commission or I&E.

INTERROGATORIES

1. Identify all I&E employees, agents, representatives, or anyone acting on I&E’s behalf who (a) communicated with any consumer in Pennsylvania about HIKO during the period from January 1, 2014 to the present; (b) analyzed or reviewed any consumer complaints (whether formal or informal and in whatever format) during the period from January 1, 2014 through the present; or (c) conducted any investigation, inquiry, or review (whether formal or informal) relating to HIKO during the period from January 1, 2014 through the present.

2. Identify any oral or written statement submitted or stated by, or obtained from, any person, including any HIKO customer, electric generation supplier (“EGS”) or electric distribution company (“EDC”) regarding HIKO.

3. Identify all consumers who submitted or stated any complaint (whether formal or informal and in whatever format) concerning HIKO.
4. With respect to each consumer complaint You received or of which You are aware concerning HIKO, please provide the following to the extent known or available:
 - a. the date the complaint was received by anyone;
 - b. the manner in which the complaint was made (telephone, writing, e-mail, or any other form);
 - c. the identity of the person who submitted or stated the complaint;
 - d. the identity of any person who communicated with the person who made the complaint;
 - e. identify any documents submitted or provided by the complainant or that were received or collected in connection with the complaint; and
 - f. if the complaint was oral, state whether the complaint was recorded and, if so, provide a copy of the recording.
5. State the number of communications You have had with any HIKO customers
 - a. by telephone;
 - b. by mail;
 - c. by electronic mail; and
 - d. by any other means.
6. State whether you are aware of any other EGS companies that charged Duquesne customers during January 2014:
 - a. between \$0.1090 and \$0.1690 per kWh; and
 - b. more than \$0.1690 per kWh

and, if any, for each response in subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Duquesne customers during January 2014.

7. State whether you are aware of any other EGS companies that charged Duquesne customers during February 2014:

- a. between \$0.1690 and \$0.2990 per kWh; and
- b. more than \$0.2990 per kWh

and, if any, for each response in subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Duquesne customers during February 2014.

8. State whether you are aware of any other EGS companies that charged Duquesne customers \$0.2990 per kWh or more during March 2014, and, if so, state how many EGS companies and indicate the highest price per kWh any such company charged Duquesne customers during March 2014.

9. State whether you are aware of any other EGS companies that charged Duquesne customers during April 2014:

- a. between \$0.1090 and \$0.2990 per kWh; and
- b. more than \$0.2990 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Duquesne customers during April 2014.

10. State whether you are aware of any other EGS companies that charged Met-Ed customers during January 2014:

- a. between \$0.0990 and \$0.1290 per kWh; and

- b. more than \$0.1290 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Met-Ed customers during January 2014.

11. State whether you are aware of any other EGS companies that charged Met-Ed customers during February 2014:

- a. between \$0.1290 and \$0.2890 per kWh; and
- b. more than \$0.2890 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Met-Ed customers during February 2014.

12. State whether you are aware of any other EGS companies that charged Met-Ed customers during March 2014:

- a. between \$0.1290 and \$0.2890 per kWh; and
- b. more than \$0.2890 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Met-Ed customers during March 2014.

13. State whether you are aware of any other EGS companies that charged PECO customers during January 2014:

- a. between \$0.1090 and \$0.1390 per kWh; and
- b. more than \$0.1390 per kWh

and, if any, for each subsection (a) and (b), state how many EGS companies and indicate the highest price per kWh any such company charged PECO customers during January 2014.

14. State whether you are aware of any other EGS companies that charged PECO customers during February 2014:

- a. between \$0.1090 and \$0.2890 per kWh; and
- b. more than \$0.2890 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged PECO customers during February 2014.

15. State whether you are aware of any other EGS companies that charged Penelec customers during January 2014:

- a. between \$0.0797 and \$0.1190 per kWh; and
- b. more than \$0.1190 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Penelec customers during January 2014.

16. State whether you are aware of any other EGS companies that charged Penelec customers during February 2014:

- a. between \$0.1190 and \$0.2840 per kWh; and
- b. more than \$0.2840 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Penelec customers during February 2014.

17. State whether you are aware of any other EGS companies that charged Penelec customers during March 2014:

- a. between \$0.0890 and \$0.2840 per kWh; and
- b. more than \$0.2840 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Penelec customers during March 2014.

18. State whether you are aware of any other EGS companies that charged Penelec

customers during April 2014:

- a. between \$0.1190 and \$0.2840 per kWh; and
- b. more than \$0.2840 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Penelec customers during April 2014.

19. State whether you are aware of any other EGS companies that charged PPL customers during January 2014:

- a. between \$0.0990 and \$0.1190 per kWh; and
- b. more than \$0.1190 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged PPL customers during January 2014.

20. State whether you are aware of any other EGS companies that charged PPL customers during February 2014:

- a. between \$0.1190 and \$0.2990 per kWh
- b. more than \$0.2990 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged PPL customers during February 2014.

21. State whether you are aware of any other EGS companies that charged PPL customers during March 2014:

- a. between \$0.1190 and \$0.2990 per kWh; and
- b. more than \$0.2990 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged PPL customers during March 2014.

22. State whether you are aware of any other EGS companies that charged PPL customers during April 2014:

- a. between \$0.1290 and \$0.1790 per kWh; and
- b. more than \$0.1790 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company PPL customers during April 2014.

23. State whether you are aware of any other EGS companies that charged West Penn customers during January 2014:

- a. between \$0.0599 and \$0.0990 per kWh; and
- b. more than \$0.0990 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged West Penn customers during January 2014.

24. State whether you are aware of any other EGS companies that charged West Penn customers during February 2014:

- a. between \$0.0990 and \$0.1990 per kWh; and
- b. more than \$0.1990 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged West Penn customers during February 2014.

25. State whether you are aware of any other EGS companies that charged West Penn customers during March 2014:

- a. between \$0.1350 and \$0.1990 per kWh; and
- b. more than \$0.1990 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the

highest price per kWh any such company charged West Penn customers during March 2014.

26. State whether you are aware of any other EGS companies that charged West Penn customers during April 2014:

- a. between \$0.0790 and \$0.1350 per kWh; and
- b. more than \$0.1350 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged West Penn customers during April 2014.

27. State all of the factors You believe contributed to the increase in electricity supply prices in Pennsylvania during the period from November 1, 2013 through April 30, 2014 and describe how each factor contributed to the increased price and identify all studies, reports or analyses that support Your response.

28. State all facts and circumstances I&E contends justify a penalty of “\$1,000 for each instance where a customer was overbilled in violation of 53 Pa. Code 54.4(a)” as alleged throughout the Complaint, including but not limited to the facts and circumstances that relate to any of the factors and standards in 52 Pa. Code §69.1201.

29. Provide the following customer information for each of the 14,780 violations referred to in Paragraph 129 of the Complaint: (a) name, (b) address, (c) telephone number, and (d) account number.

30. State the five (5) largest total civil penalty amounts I&E has sought in any complaint over the past five (5) years and identify the matters in which those penalties were sought.

31. Identify any expert or consultant acting on behalf of, retained by, or employed by You concerning this case, whether full-time or part-time and however compensated; and state (a) the subject matter about which any such expert or consultant will be testifying or consulting; and

(b) the substance of any such expert's or consultant's opinion.

32. Identify all witnesses I&E intends to call at trial and state the subject matter of their testimony.

REQUESTS FOR PRODUCTION

1. All documents reviewed, considered, or relied upon in responding to HIKO's First Set of Interrogatories.
2. All documents concerning any communications with Pennsylvania consumers regarding HIKO, including all documents relating to the "customer complaints" referred to in Paragraph 11 of the Complaint and any other allegations in the Complaint.
3. All documents concerning any communications with any other EGS or any EDC concerning HIKO.
4. All documents collected or received by I&E relating to HIKO customers or any consumer complaint against HIKO, regardless of the agency, commission, government or regulatory office in which the complaint was filed or submitted, and in whatever format.
5. All documents relating to any analysis, summary, compilation, or review of any complaints made during the period December 2013 through April 2014 against any EGS operating within Pennsylvania.
6. All documents relating to any analysis, summary, compilation, or review of any information or complaints against HIKO.
7. All documents relating to any analysis, summary, compilation, or review that shows how the nature, gravity or frequency of complaints against HIKO compares to the nature, gravity or frequency of complaints against any other EGS operating in Pennsylvania.
8. All reports, analyses, memoranda, communications, articles, or studies of the causes of

increased electric supply prices in Pennsylvania during 2014.

9. Any report, analysis or study relating to the need for other, additional, or modified legislation, regulations, rules, or guidance regarding variable rate pricing (including, but not limited to, the disclosure thereof in consumer contracts) relating to residential electric supply in Pennsylvania.
10. All documents or information provided to any expert or consultant that I&E has retained, engaged, or employed or that is in any way assisting I&E in connection with any claims against HIKO, or anyone acting on behalf or at the direction of any such expert or consultant.
11. All documents prepared or generated by any expert or consultant that I&E has retained, engaged, or employed or that is in any way assisting I&E in connection with any claims against HIKO, or anyone acting on behalf or at the direction of any such expert or consultant.
12. All documents or information consulted, considered, or relied upon by any expert or consultant that I&E has retained, engaged, or employed or that is in any way assisting I&E in connection with any claims against HIKO, or anyone acting on behalf or at the direction of any such expert or consultant.
13. A current curriculum vitae for any expert or consultant that I&E has retained, engaged, or employed or that is in any way assisting I&E in connection with any claims against HIKO, including all prior matters in which that expert or consultant has testified, issued an expert report, provided an affidavit, or issued expert testimony of any kind.
14. Any documents sufficient to show any compensation paid by I&E to any expert or consultant engaged, retained, or employed by I&E in connection with any claims against HIKO.
15. All documents supporting the amount of the civil penalties sought in this matter, including any documents that relate to any of the factors and standards in 52 Pa. Code §69.1201.

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 HIKO Energy, LLC's First Set of Interrogatories and Requests for Production of Documents 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

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
mwindler@pa.gov
stwimer@pa.gov

Sharon E. Webb
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101
swebb@pa.gov.

Candis A. Tunilo
Kristine E. Robinson
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
ctunilo@paoca.org
krobinson@paoca.org

Dated: August 15, 2014



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

EXHIBIT B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant,	:	
	:	
v.	:	C-2014-2431410
	:	
HIKO Energy, LLC,	:	
Respondent	:	

**ANSWERS OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT TO
HIKO ENERGY, LLC's FIRST SET OF INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS**

Pursuant to 52 Pa. Code § 5.342, the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission), by and through its prosecuting attorneys, files Answers to HIKO Energy, LLC's (HIKO or Company) First Set of Interrogatories and Requests for Production of Documents.

I&E's responses are based upon our current information and belief as a result of reasonable inspections, searches and inquiries. If new information becomes available, I&E will amend or supplement these responses, as necessary.

INTERROGATORIES – SET I

1. Identify all I&E employees, agents, representatives, or anyone acting on I&E's behalf who (a) communicated with any consumer in Pennsylvania about HIKO during the period from January 1, 2014 to the present; (b) analyzed or reviewed any consumer complaints (whether formal or informal and in whatever format) during the period from January 1, 2014 through the present; or (c) conducted any investigation, inquiry, or review (whether formal or informal) relating to HIKO during the period from January 1, 2014 through the present.

ANSWER: (a) No I&E employees, agents, representatives, or anyone acting on I&E's behalf communicated with any consumer in Pennsylvania about HIKO during the period from January 1, 2014 to the present. (b) Daniel Mumford of the Commission's Bureau of Consumer Services (BCS) reviewed consumer complaints submitted against HIKO during the above-referenced time period. (c) I&E Prosecutors Michael Swindler and Stephanie Wimer conducted an informal investigation and initiated a Formal Complaint.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

2. Identify any oral or written statement submitted or stated by, or obtained from, any person, including any HIKO customer, electric generation supplier ("EGS") or electric distribution company ("EDC") regarding HIKO.

ANSWER: The majority of written material submitted to I&E were HIKO's data request responses Sets I, II and III received from HIKO counsel Andrew Dressel. I&E received three (3) emails from the PPL legal department in response to an I&E inquiry during the course of the I&E investigation. I&E also obtained from BCS nineteen (19) complaints submitted by, or on behalf of, HIKO customers. These consumer complaints are identified in response to HIKO Interrogatory No. 4.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

3. Identify all consumers who submitted or stated any complaint (whether formal or informal and in whatever format) concerning HIKO.

ANSWER: No consumer submitted or stated any complaint to I&E. I&E obtained from BCS nineteen (19) complaints submitted by, or on behalf of, HIKO customers. These consumer complaints are identified in response to HIKO Interrogatory No. 4.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

4. With respect to each consumer complaint You received or of which You are aware concerning HIKO, please provide the following to the extent known or available:

- a. the date the complaint was received by anyone;
- b. the manner in which the complaint was made (telephone, writing, e-mail, or any other form);
- c. the identity of the person who submitted or stated the complaint;
- d. the identity of any person who communicated with the person who made the complaint;
- e. identify any documents submitted or provided by the complainant or that were received or collected in connection with the complaint; and
- f. if the complaint was oral, state whether the complaint was recorded and, if so, provide a copy of the recording.

ANSWER: No consumer complaints were submitted to I&E. I&E is not aware to what extent customer complaints were received by other bureaus of the Commission, except that I&E is aware of the following BCS informal complaints which precipitated I&E's informal investigation resulting in the filing of a Formal Complaint:

BCS Informal Complaint No. 1

- a. Complaint received by BCS on March 7, 2014

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

- b. Complaint made by telephone to BCS
- c. Ilene Guldin
- d. BCS Investigator: Thomas Brandon.
- e. Complainant provided a copy of the Welcome Letter from HIKO, the HIKO Disclosure Statement and her March 2014 PPL Electric bill.
- f. I&E is uncertain as to whether the complaint was recorded. No recording is available.

BCS Informal Complaint No. 2

- a. Complaint received by BCS on February 27, 2014
- b. Complaint made by e-mail to BCS
- c. Jason Morgan
- d. BCS Investigator: Pete Frederick.
- e. Company letter response dated April 4, 2014 is attached to BCS complaint. BCS also received complainant's billing data from Met Ed from March 2012 to February 2014.
- f. The complaint was not recorded.

BCS Informal Complaint No. 3

- a. March 10, 2014
- b. Complaint referred by the Legislature
- c. David Souder

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

- d. BCS Investigator: Amy Veylupek
- e. Company e-mail responses dated April 23, 2014 and May 1, 2014 are attached to the BCS complaint.
- f. The complaint was not recorded.

BCS Informal Complaint No. 4

- a. March 20, 2014
- b. Complaint referred by the Legislature
- c. Tina Matzus
- d. BCS Investigator: Amy Veylupek
- e. Company e-mail response dated June 2, 2014 is attached to the BCS complaint. BCS also received a report from West Penn Power concerning the switching of customer to HIKO.
- f. The complaint was not recorded.

BCS Informal Complaint No. 5

- a. February 18, 2014
- b. Telephone
- c. William Waldorf
- d. BCS Investigator: Timothy Platt
- e. Complainant provided a copy of the Welcome Letter from HIKO. Company letter response dated February 27, 2014 is also attached

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

to complaint. BCS received complainant's billing data from
Penelec for the period between November 2013 and May 2014.

- f. I&E is uncertain as to whether the complaint was recorded. No recording is available.

BCS Informal Complaint No. 6

- a. Complaint received by BCS on April 9, 2014
- b. Complaint made by telephone to BCS
- c. Frances Vansolkema
- d. BCS Investigator: Amy Veylupek
- e. Company letter response dated April 30, 2014 is attached to BCS complaint.
- f. I&E is uncertain as to whether complaint was recorded. No recording is available.

BCS Informal Complaint No. 7

- a. Complaint received by BCS on March 1, 2014
- b. Complaint made online to BCS
- c. Paul Noll
- d. BCS Investigator: Kathryn Liddell
- e. Company letter response dated April 4, 2014 is attached to BCS complaint.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

- f. I&E is uncertain as to whether complaint was recorded. No recording is available.

BCS Informal Complaint No. 8

- a. Complaint received by BCS on February 24,, 2014
- b. Complaint made by telephone to BCS
- c. Shannon Robb
- d. BCS Investigator: Timothy Platt
- e. Company letter response dated March 21, 2014 is attached to BCS complaint.
- f. I&E is uncertain as to whether complaint was recorded. No recording is available.

BCS Informal Complaint No. 9

- a. Complaint received by BCS on February 14, 2014
- b. Complaint made by telephone to BCS
- c. Daniel Vance
- d. BCS Investigator: Dennis Scatton
- e. Company letter response dated February 24, 2014 is attached to BCS complaint.
- f. I&E is uncertain whether complaint was recorded. No recording is available.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

BCS Informal Complaint No. 10

- a. Complaint received by BCS on March 26, 2014
- b. Complaint made by telephone to BCS
- c. Marjorie Shoemaker
- d. BCS Investigator: Bobbi Anderson
- e. None
- f. I&E is uncertain whether complaint was recorded. No recording is available.

BCS Informal Complaint No. 11

- a. Complaint received by BCS on March 24, 2014
- b. Complaint made by telephone to BCS
- c. Jill Maypole
- d. BCS Investigator: Julie Carlin
- e. Company email correspondence with customer is attached to BCS complaint.
- f. I&E is uncertain as to whether complaint was recorded. No recording is available.

BCS Informal Complaint No. 12

- a. Complaint received by BCS on March 6, 2014
- b. Complaint made by email to BCS
- c. Jere Zitsch

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

- d. BCS Investigator: Pete Frederick
- e. Company letter response dated April 11, 2014 is attached to BCS complaint.
- f. I&E is uncertain as to whether complaint was recorded. No recording is available.

BCS Informal Complaint No. 13

- a. Complaint received by BCS on April 24, 2014
- b. Complaint made by email to BCS
- c. David Richmond
- d. BCS Investigator: Timothy Platt
- e. Company letter response dated May 12, 2014 is attached to BCS complaint.
- f. I&E is uncertain as to whether complaint was recorded. No recording is available.

BCS Informal Complaint No. 14

- a. Complaint received by BCS on March 13, 2014
- b. Complaint made by telephone to BCS
- c. Kathleen Walter Hutchinson Stevenson
- d. BCS Investigator: Bobbi Anderson
- e. Company letter response dated May 12, 2014 is attached to BCS complaint.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

- f. I&E is uncertain as to whether complaint was recorded. No recording is available.

BCS Informal Complaint No. 15

- a. Complaint received by BCS on May 9, 2014
- b. Complaint made by telephone to BCS
- c. Katherine Meter
- d. BCS Investigator: Eric Tuttle
- e. Company letter response dated May 12, 2014 is attached to BCS complaint.
- f. I&E is uncertain as to whether complaint was recorded. No recording is available.

BCS Informal Complaint No. 16

- a. Complaint received by BCS on April 9, 2014
- b. Complaint made by telephone to BCS
- c. George Baldwin
- d. BCS Investigator: Timothy Platt
- e. Company letter response dated February 27, 2014 and Customer Disclosure Statement are attached to BCS complaint.
- f. I&E is uncertain as to whether complaint was recorded. No recording is available.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

BCS Informal Complaint No. 17

- a. Complaint received by BCS on February 18, 2014
- b. Complaint made by telephone to BCS
- c. Ronald Mikolayczak
- d. BCS Investigator: Timothy Platt
- e. Company letter response dated February 27, 2014 is attached to BCS complaint.
- f. I&E is uncertain as to whether complaint was recorded. No recording is available.

BCS Informal Complaint No. 18

- a. Complaint received by BCS on February 12, 2014
- b. Complaint made by telephone to BCS
- c. Joseph Roberto
- d. BCS Investigator: Brandon Thomas
- e. Company letter response dated February 21, 2014 is attached to BCS complaint.
- f. I&E is uncertain as to whether complaint was recorded. No recording is available.

BCS Informal Complaint No. 19

- a. Complaint received by BCS on February 11, 2014
- b. Complaint made by telephone to BCS

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

- c. Anthony Reinoso
- d. BCS Investigator: Brandon Thomas
- e. Company letter response dated February 21, 2014 and Customer Disclosure Statement are attached to BCS complaint.
- f. I&E is uncertain as to whether complaint was recorded. No recording is available.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

5. State the number of communications You have had with any HIKO customers
- a. by telephone;
 - b. by mail;
 - c. by electronic mail; and
 - d. by any other means.

ANSWER: I&E has had no communications with HIKO customers. I&E is not aware of the number of communications other bureaus of the Commission may have had with any HIKO customers. I&E's Formal Complaint and the alleged violations set forth therein are primarily a result of the review of data request responses received directly from HIKO's own counsel in reply to I&E data requests.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

6. State whether you are aware of any other EGS companies that charged Duquesne customers during January 2014:

- a. between \$0.1090 and \$0.1690 per kWh; and
- b. more than \$0.1690 per kWh

and, if any, for each response in subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Duquesne customers during January 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to Duquesne customers during January, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

7. State whether you are aware of any other EGS companies that charged Duquesne customers during February 2014:

- a. between \$0.1690 and \$0.2990 per kWh; and
- b. more than \$0.2990 per kWh

and, if any, for each response in subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Duquesne customers during February 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to Duquesne customers during February, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

8. State whether you are aware of any other EGS companies that charged Duquesne customers \$0.2990 per kWh or more during March 2014, and, if so, state how many EGS companies and indicate the highest price per kWh any such company charged Duquesne customers during March 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to Duquesne customers during March, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

9. State whether you are aware of any other EGS companies that charged Duquesne customers during April 2014:
- a. between \$0.1090 and \$0.2990 per kWh; and
 - b. more than \$0.2990 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Duquesne customers during April 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to Duquesne customers during April, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

10. State whether you are aware of any other EGS companies that charged Met-Ed customers during January 2014:

- a. between \$0.0990 and \$0.1290 per kWh; and
- b. more than \$0.1290 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Met-Ed customers during January 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to Met Ed customers during January, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

11. State whether you are aware of any other EGS companies that charged Met-Ed customers during February 2014:

- a. between \$0.1290 and \$0.2890 per kWh; and
- b. more than \$0.2890 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Met-Ed customers during February 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to Met Ed customers during February, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

12. State whether you are aware of any other EGS companies that charged Met-Ed customers during March 2014:

- a. between \$0.1290 and \$0.2890 per kWh; and
- b. more than \$0.2890 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Met-Ed customers during March 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to Met Ed customers during March, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

13. State whether you are aware of any other EGS companies that charged PECO customers during January 2014:

- a. between \$0.1090 and \$0.1390 per kWh; and
- b. more than \$0.1390 per kWh

and, if any, for each subsection (a) and (b), state how many EGS companies and indicate the highest price per kWh any such company charged PECO customers during January 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to PECO customers during January, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

14. State whether you are aware of any other EGS companies that charged PECO customers during February 2014:

- a. between \$0.1090 and \$0.2890 per kWh; and
- b. more than \$0.2890 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged PECO customers during February 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to PECO customers during February, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

15. State whether you are aware of any other EGS companies that charged Penelec customers during January 2014:

- a. between \$0.0797 and \$0.1190 per kWh; and
- b. more than \$0.1190 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Penelec customers during January 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to Penelec customers during January, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

16. State whether you are aware of any other EGS companies that charged Penelec customers during February 2014:

- a. between \$0.1190 and \$0.2840 per kWh; and
- b. more than \$0.2840 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Penelec customers during February 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to Penelec customers during February, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

17. State whether you are aware of any other EGS companies that charged Penelec customers during March 2014:

- a. between \$0.0890 and \$0.2840 per kWh; and
- b. more than \$0.2840 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Penelec customers during March 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to Penelec customers during March, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

18. State whether you are aware of any other EGS companies that charged Penelec customers during April 2014:

- a. between \$0.1190 and \$0.2840 per kWh; and
- b. more than \$0.2840 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Penelec customers during April 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to Penelec customers during April, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

19. State whether you are aware of any other EGS companies that charged PPL customers during January 2014:

- a. between \$0.0990 and \$0.1190 per kWh; and
- b. more than \$0.1190 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged PPL customers during January 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to PPL customers during January, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

20. State whether you are aware of any other EGS companies that charged PPL customers during February 2014:

- a. between \$0.1190 and \$0.2990 per kWh
- b. more than \$0.2990 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged PPL customers during February 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to PPL customers during February, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

21. State whether you are aware of any other EGS companies that charged PPL customers during March 2014:

- a. between \$0.1190 and \$0.2990 per kWh; and
- b. more than \$0.2990 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged PPL customers during March 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to PPL customers during March, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

22. State whether you are aware of any other EGS companies that charged PPL customers during April 2014:

- a. between \$0.1290 and \$0.1790 per kWh; and
- b. more than \$0.1790 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company [sic] PPL customers during April 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to PPL customers during April, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

23. State whether you are aware of any other EGS companies that charged West Penn customers during January 2014:

- a. between \$0.0599 and \$0.0990 per kWh; and
- b. more than \$0.0990 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged West Penn customers during January 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to West Penn customers during January, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

24. State whether you are aware of any other EGS companies that charged West Penn customers during February 2014:

- a. between \$0.0990 and \$0.1990 per kWh; and
- b. more than \$0.1990 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged West Penn customers during February 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to West Penn customers during February, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

25. State whether you are aware of any other EGS companies that charged West Penn customers during March 2014:

- a. between \$0.1350 and \$0.1990 per kWh; and
- b. more than \$0.1990 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged West Penn customers during March 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to West Penn customers during March, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

26. State whether you are aware of any other EGS companies that charged West Penn customers during April 2014:

- a. between \$0.0790 and \$0.1350 per kWh; and
- b. more than \$0.1350 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged West Penn customers during April 2014.

ANSWER: At this time, I&E is not aware of the rates charged by other EGS companies to West Penn customers during April, 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

27. State all of the factors You believe contributed to the increase in electricity supply prices in Pennsylvania during the period from November 1, 2013 through April 30, 2014 and describe how each factor contributed to the increased price and identify all studies, reports or analyses that support Your response.

ANSWER: I&E does not have a position regarding the factors that contributed to the increase in electricity supply prices in Pennsylvania during the period from November 1, 2013 through April 30, 2014. I&E's Formal Complaint is based upon HIKO billing customers a rate that far exceeded the agreed upon prices in the Disclosure Statement and the guaranteed discount rate, no matter how that rate was calculated. Further, on August 18, 2014, the Commission provided counsel for HIKO with documents concerning the causes of price increases for the supply of electricity to residential customers during the winter of 2014.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

28. State all facts and circumstances I&E contends justify a penalty of "\$1,000 for each instance where a customer was overbilled in violation of 53 [sic] Pa. Code 54.4(a)" as alleged throughout the Complaint, including but not limited to the facts and circumstances that relate to any of the factors and standards in 52 Pa. Code §69.1201.

ANSWER: I&E contends that a serious, intentional and flagrant disregard of the Company's obligation to honor a supply rate discount as guaranteed to enrolled customers pursuant to the Company's Welcome Letter and Disclosure Statement combined with the Commission's "zero tolerance" for slamming and related unauthorized business practices justifies a penalty of \$1,000 for each instance where a customer was overbilled in violation of 52 Pa. Code § 54.4(a), as permitted under 66 Pa.C.S. § 3301(a).

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

29. Provide the following customer information for each of the 14,780 violations referred to in Paragraph 129 of the Complaint: (a) name, (b) address, (c) telephone number, and (d) account number.

ANSWER: The total of 14,780 violations was calculated from a review of the responses provided by the Company's counsel to I&E data requests Sets I, II and III. HIKO's responses to I&E's data requests provide the name and account number of the customer. I&E does not have the address or telephone number of each customer.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

30. State the five (5) largest total civil penalty amounts I&E has sought in any complaint over the past five (5) years and identify the matters in which those penalties were sought.

ANSWER: I&E did not exist until 2011 when the Commission created the Bureau. *See Implementation of Act 129 of 2008, Organization of Bureaus and Offices*, Docket No. M-2008-2071852, pp. 3-5 (Order entered August 11, 2011). Moreover, none of the cases listed below were comparable to the present case for the reasons stated in Answer to HIKO Set I, No. 27.

I&E sought or obtained the following civil penalties in enforcement actions since August 11, 2011: (1) *Pa. PUC, Bureau of Investigation and Enforcement v. HIKO Energy, LLC*, Docket No. C-2014-2431410- \$14,780,000; (2) *Pa. PUC, Bureau of Investigation and Enforcement v. Burgly Gas & Oil*, Docket No. C-2014-2411284- \$2,000,000; (3) *Pa. PUC, Bureau of Investigation and Enforcement v. West Penn Power Company*, Docket No. C-2014-2417325- \$1,300,000; (4) *Pa. PUC, Bureau of Investigation and Enforcement v. UGI Penn Natural Gas, Inc.*, Docket No. M-2013-2338981- \$1,000,000; and (5) *Pa. PUC, Bureau of Investigation and Enforcement v. Respond Power LLC*, Docket No. C-2014-2438640- \$639,000.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

31. Identify any expert or consultant acting on behalf of, retained by, or employed by You concerning this case, whether full-time or part-time and however compensated; and state (a) the subject matter about which any such expert or consultant will be testifying or consulting; and (b) the substance of any such expert's or consultant's opinion.

ANSWER: Daniel Mumford, Manager – Informal Compliance and Competition Unit – Bureau of Consumer Services. Mr. Mumford will present testimony regarding HIKO's disregard of the Company's obligation to honor a supply rate discount as guaranteed to enrolled customers pursuant to the Company's Welcome Letter and Disclosure Statement.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

32. Identify all witnesses I&E intends to call at trial and state the subject matter of their testimony.

ANSWER: See I&E Answer to HIKO Set I, No. 31.

REQUESTS FOR PRODUCTION – SET I

1. All documents reviewed, considered, or relied upon in responding to HIKO's First Set of Interrogatories.

ANSWER: I&E's Formal Complaint and the alleged violations set forth therein are primarily a result of the review of data request responses received directly from HIKO counsel in reply to I&E data requests and which are already in the possession of HIKO or HIKO's counsel.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

2. All documents concerning any communications with Pennsylvania consumers regarding HIKO, including all documents relating to the "customer complaints" referred to in Paragraph 11 of the Complaint and any other allegations in the Complaint.

ANSWER: I&E did not directly communicate with Pennsylvania consumers regarding HIKO. I&E is not in possession of any documents consisting of communications with Pennsylvania consumers regarding HIKO except for the consumer complaints received by BCS. See Attachment A, which consists of documents pertaining to consumer complaints that are identified in response to HIKO Set I, No. 4.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

3. All documents concerning any communications with any other EGS or any EDC concerning HIKO.

ANSWER: See Attachment B, which consists of three (3) PPL e-mails referenced in the Answer to HIKO Set I, No. 2.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

4. All documents collected or received by I&E relating to HIKO customers or any consumer complaint against HIKO, regardless of the agency, commission, government or regulatory office in which the complaint was filed or submitted, and in whatever format.

ANSWER: No such documents were collected or received by I&E, but for the BCS informal complaints previously provided in response to HIKO's Requests for Production Set I, No. 1.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

5. All documents relating to any analysis, summary, compilation, or review of any complaints made during the period December 2013 through April 2014 against any EGS operating within Pennsylvania.

ANSWER: I&E is not in possession of any document that analyzes, summarizes, compiles or reviews complaints made between December 2013 and April 2014 against any EGS operating within Pennsylvania.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

6. All documents relating to any analysis, summary, compilation, or review of any information or complaints against HIKO.

ANSWER: The only documents relating to any analysis, summary, compilation, or review of any information or complaints against HIKO are I&E's data requests, HIKO's responses to I&E's data requests, and I&E's Formal Complaint, all of which should be in the possession of HIKO or HIKO's counsel.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

8. All reports, analyses, memoranda, communications, articles, or studies of the causes of increased electric supply prices in Pennsylvania during 2014.

ANSWER: No such documents are in the possession of I&E. Further, on August 18, 2014, the Commission provided counsel for HIKO with documents concerning the causes of price increases for the supply of electricity to residential customers during the winter of 2014. Such documents are already in the possession of HIKO.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

9. Any report, analysis or study relating to the need for other, additional, or modified legislation, regulations, rules, or guidance regarding variable rate pricing (including, but not limited to, the disclosure thereof in consumer contracts) relating to residential electric supply in Pennsylvania.

ANSWER: No such documents are in the possession of I&E.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

10. All documents or information provided to any expert or consultant that I&E has retained, engaged, or employed or that is in any way assisting I&E in connection with any claims against HIKO, or anyone acting on behalf or at the direction of any such expert or consultant.

ANSWER: I&E has shared I&E's data requests, HIKO's responses to I&E's data requests, and I&E's Formal Complaint with Mr. Mumford, all of which should be in the possession of HIKO or HIKO's counsel.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

11. All documents prepared or generated by any expert or consultant that I&E has retained, engaged, or employed or that is in any way assisting I&E in connection with any claims against HIKO, or anyone acting on behalf or at the direction of any such expert or consultant.

ANSWER: Mr. Mumford has not prepared or generated documents related to claims that I&E has made against HIKO.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

12. All documents or information consulted, considered, or relied upon by any expert or consultant that I&E has retained, engaged, or employed or that is in any way assisting I&E in connection with any claims against HIKO, or anyone acting on behalf or at the direction of any such expert or consultant.

ANSWER: Mr. Mumford has considered I&E's data requests, HIKO's responses to I&E's data requests, and I&E's Formal Complaint, all of which should be in the possession of HIKO or HIKO's counsel.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

13. A current curriculum vitae for any expert or consultant that I&E has retained, engaged, or employed or that is in any way assisting I&E in connection with any claims against HIKO, including all prior matters in which that expert or consultant has testified, issued an expert report, provided an affidavit, or issued expert testimony of any kind.

ANSWER: See Attachment C.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

14. Any documents sufficient to show any compensation paid by I&E to any expert or consultant engaged, retained, or employed by I&E in connection with any claims against HIKO.

ANSWER: Mr. Mumford is a full-time employee of the Commission. I&E has not separately compensated Mr. Mumford in connection with this matter.

Responses of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

15. All documents supporting the amount of the civil penalties sought in this matter, including any documents that relate to any of the factors and standards in 52 Pa. Code § 69.1201.

ANSWER: The documents supporting a civil penalty of \$1,000 per violation for 14,780 violations are HIKO's responses to I&E's data requests, I&E's Formal Complaint, and relevant provisions of the Pennsylvania Code and Commission's regulations, all of which should be in the possession of HIKO or HIKO's counsel.

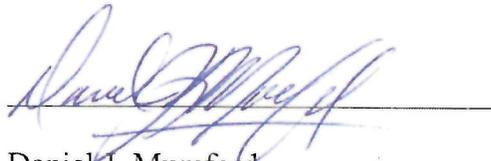
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant,	:	
	:	
v.	:	C-2014-2431410
	:	
HIKO Energy, LLC,	:	
Respondent	:	

VERIFICATION

I, Daniel J. Mumford, Consumer Services Policy Analyst Supervisor of the Pennsylvania Public Utility Commission's Bureau of Consumer Services, hereby state that the responses of the Bureau of Investigation and Enforcement to the Interrogatories and Requests for Production of Documents of HIKO Energy, LLC - Set I are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

Date: 9/4/14



Daniel J. Mumford
Consumer Services Policy Analyst Supervisor
Bureau of Consumer Services
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant,	:	
	:	
v.	:	C-2014-2431410
	:	
HIKO Energy, LLC,	:	
Respondent	:	

VERIFICATION

I, Michael L. Swindler, hereby state that the responses of the Bureau of Investigation and Enforcement to the Interrogatories and Requests for Production of Documents of HIKO Energy, LLC - Set I are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

Date: 4 SEP 14



Michael L. Swindler
Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

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 Email and First Class Mail:

John M. Abel, Esq.
Bureau of Consumer Protection
Office of Attorney General
Strawberry Square, 15th Floor
Harrisburg, PA 17120

Andrew Dressel, Esquire
Boies, Schiller & Flexner, LLP
333 Main Street
Armonk, NY 10504

Vincent E Gentile, Esquire
Drinker Biddle & Reath
105 College Road East, Suite 300
P.O. Box 627
Princeton, NJ 08542

Candis A. Tunilo, Esq.
Kristine E. Robinson, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Floor Forum Place
Harrisburg, PA 17101-1923

Sharon E. Webb, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101



Michael L. Swindler
Prosecutor
PA Attorney ID No. 43319
Bureau of Investigation and
Enforcement

Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Phone: 717-783-6369

Dated: September 4, 2014

EXHIBIT C

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. C-2014-2431410

v.

HIKO ENERGY, LLC,
Respondent.

Affidavit of Vincent E. Gentile in Support of HIKO Energy, LLC's Motion to Compel

1. I, Vincent E. Gentile, being first duly sworn, deposes and says that this affidavit was prepared by me; that I am familiar with the contents thereof; and that the facts set forth therein are true and correct to the best of my knowledge, information, and belief.

2. I am a partner with Drinker Biddle & Reath, LLP and admitted *pro hac vice* on behalf of HIKO Energy, LLC. I make this affidavit of my own personal knowledge in support of HIKO's motion to compel the Pennsylvania Public Utility Commission ("Commission"), Bureau of Investigation and Enforcement ("Complainant" or "I&E") to provide further answers to HIKO's first set of interrogatories and requests for production of documents ("Motion to Compel").

2. HIKO served its First Set of Interrogatories and Requests for Production of Documents on August 15, 2014 ("Discovery"). No objections were filed by Complainant.

3. Complainant's answers were served on September 4, 2014 ("Answers"). A copy of Complainant's Answers to HIKO's Discovery is attached as Exhibit B to HIKO's Motion to Compel. After I received Complainant's Answers I held a "meet and confer" telephone call with

Complainant's counsel, Michael Swindler and Stephanie Wimer, on September 9, 2014. We specifically discussed HIKO's view that Complainant's answers to Interrogatories 6 through 27 and Document Requests 5 and 7 were deficient. As a result of that call, Complainant's counsel agreed to conduct a search for additional responsive information or documents in other locations within the Commission.

4. Complainant served supplemental answers on September 19, 2014 ("Supplemental Answers"). A copy of Complainant's Supplemental Answers is attached as Exhibit D to HIKO's Motion to Compel. The Supplemental Answers addressed some of the deficiencies discussed during the meet and confer telephone call, but still did not adequately answer Interrogatories 6 through 27 and Document Requests 5 and 7.

5. Complainant is a party either directly or as intervenor to several other pending actions against EGS companies alleging that those EGS companies have charged excessive or unreasonable variable rates to consumers or have breached their promises of savings to consumers. See Pennsylvania, et al. v. Blue Pilot Energy, LLC, Docket No. C-2014-2427655, Petition to Intervene (July 31, 2014); Pennsylvania, et al. v. Energy Serv. Providers, Inc., Docket No. C-2014-2427656, Petition to Intervene (July 31, 2014); Pennsylvania et al. v. IDT Energy, Inc., Docket No. C-2014-2427657, Petition to Intervene (July 31, 2014); Pennsylvania, et al. v. Respond Power LLC, Docket No. C-2014-2427659, Petition to Intervene (Aug. 6, 2014). Copies of these complaints are attached hereto as Exhibits 1-4.

6. I&E is also the lead prosecutor in an action against Respond Power, LLC, which alleges that the EGS company charged customers rates of two to four times (or more) the local utility's price, also known as the price to compare. See Pa. Public Util. Comm'n, Bureau of Investigation and Enforcement v. Respond Power, LLC, Docket No. C-2014-2438640, Compl. ¶

31 (Aug. 21, 2014). A copy of I&E's complaint against Respond Power, LLC is attached as Exhibit E to HIKO's Motion to Compel.

7. Complainant's answer to HIKO's Interrogatories 31 and 32 identified as its only witness, Daniel J. Mumford, a supervisory employee of the Informal Compliance and Competition Unit of the Commission's Bureau of Consumer Services ("BCS"). See Exhibit B to HIKO's Motion to Compel, I&E's Answers to HIKO's Discovery at 41-42. Mr. Mumford identified a category of documents that is responsive to HIKO's Requests 5 and 7 but Complainant has not produced those documents. Instead, Complainant asserted that those documents would be available, if at all, only through a subpoena issued to the Commission. See Exhibit D to HIKO's Motion to Compel, I&E's Supplemental Answers to HIKO's Discovery at 25, 27 (noting that BCS provided the Commission with internal weekly reports that provided "pertinent informal complaint activity . . . received from EGS customers in a given week" but that the Commission's procedure for seeking access to such documents was through the issuance of a subpoena).

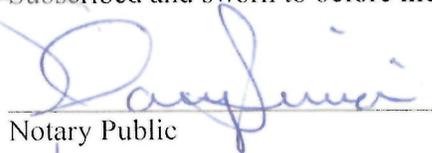
Dated:

11/11/14



Vincent E. Gentile

Subscribed and sworn to before me on this 11th day of November 2014.



Notary Public

November 11, 2014

Date

MARY LIVIA
A Notary Public of New Jersey
My Commission Expires February 22, 2018
I.D.# 2430369

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	:	
	:	
	:	
v.	:	Docket No. C-2014-2427655
	:	
	:	
Blue Pilot Energy, LLC	:	

**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

Stephanie M. Wimer
PA Attorney ID No. 207522
stwimer@pa.gov

Wayne T. Scott
PA Attorney ID No. 29133
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 Blue Pilot Energy, LLC (Blue Pilot or Company) alleging multiple violations of Pennsylvania law and Commission regulations and orders.

6. The OAG and OCA alleged, *inter alia*, that Blue Pilot failed to provide accurate pricing information, charged prices that did not conform to the Company's disclosure statement, engaged in misleading and deceptive promises of savings, failed to handle customer complaints in good faith and failed to comply with the Telemarketer Registration Act.

7. Blue Pilot filed an Answer to the Complaint on July 10, 2014.

8. Also on July 10, 2014, Blue Pilot filed Preliminary Objections to which the OAG and OCA replied on July 21, 2014.

9. An initial Pre-hearing Conference is scheduled in this matter on August 25, 2014.

INTERVENTION:

10. 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 Blue Pilot violated provisions of the Public Utility Code, Commission regulations and orders set forth in the OAG and OCA Joint

Complaint. Further, if Blue Pilot 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 31, 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:

Karen Moury, Esq.
Buchanan Ingersoll Rooney P.C.
409 North Second Street
Suite 500
Harrisburg, PA 17101
karen.moury@bipc.com

Candis A. Tunilo, Esq.
Christy Appleby, Esq.
Kristine E. Robinson, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Floor Forum Place
Harrisburg, PA 17101-1923
ctunilo@paoca.org
cappleby@paoca.org
krobinson@paoca.org

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

John M. Abel, Esq.
Margarita Tulman, Esq.
Office of Attorney General
Bureau of Consumer Protection
Strawberry Square, 15th Floor
Harrisburg, PA 17120
jabel@attorneygeneral.gov
mtulman@attorneygeneral.gov



Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

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

Date: July 31, 2014

EXHIBIT 2

**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-2014-2427656
	:	
	:	
Energy Service Providers, Inc.	:	
d/b/a Pennsylvania Gas & Electric	:	

**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

Stephanie M. Wimer
PA Attorney ID No. 207522
stwimer@pa.gov

Wayne T. Scott
PA Attorney ID No. 29133
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 Energy Service Providers, Inc. d/b/a Pennsylvania Gas & Electric (PaG&E or Company) alleging multiple violations of Pennsylvania law and Commission regulations and orders.

6. The OAG and OCA alleged, *inter alia*, that PaG&E engaged in misleading and deceptive promises of savings, switched customers to receive its supply service without their authorization, distributed a misleading and deceptive welcome letter, failed to handle customer complaints in good faith, failed to provide accurate pricing information, charged prices that did not conform to the Company's disclosure statement and failed to comply with the Telemarketer Registration Act.

7. PaG&E filed an Answer to the Complaint, as well as New Matter, on July 10, 2014.

8. Also on July 10, 2014, PaG&E filed Preliminary Objections to which the OAG and OCA replied on July 21, 2014.

9. On July 30, 2014, the OAG and OCA replied to PaG&E's New Matter

10. An initial Pre-hearing Conference is scheduled in this matter on August 25, 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 PaG&E violated provisions of the Public Utility Code, Commission regulations and orders set forth in the OAG and OCA Joint Complaint. Further, if PaG&E 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 31, 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:

Todd S. Stewart, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778
tsstewart@hmslegal.com

Candis A. Tunilo, Esq.
Brandon J. Pierce, Esq.
Kristine E. Robinson, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Floor Forum Place
Harrisburg, PA 17101-1923
ctunilo@paoca.org
bpierce@paoca.org
krobinson@paoca.org

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

John M. Abel, Esq.
Nicole R. Beck, Esq.
Office of Attorney General
Bureau of Consumer Protection
Strawberry Square, 15th Floor
Harrisburg, PA 17120
jabel@attorneygeneral.gov
nbeck@attorneygeneral.gov

Christopher A. Lewis, Esq.
Charles A. Fitzpatrick, IV, Esq.
Blank Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19130
Lewis@BlankRome.com
Fitzpatrick-C@BlankRome.com



Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

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

Date: July 31, 2014

EXHIBIT 3

**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-2014-2427657
	:	
IDT Energy, Inc.	:	

**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

Stephanie M. Wimer
PA Attorney ID No. 207522
stwimer@pa.gov

Wayne T. Scott
PA Attorney ID No. 29133
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 IDT Energy, Inc. (IDT or Company) alleging multiple violations of Pennsylvania law and Commission regulations and orders.

6. The OAG and OCA alleged, *inter alia*, that IDT engaged in misleading and deceptive acts or practices, distributed misleading and deceptive “Welcome Letters” and advertisements, switched customers to receive its electric generation supply service without their authorization, failed to handle customer complaints in good faith, failed to provide accurate pricing information, charged prices that did not conform to the Company’s disclosure statement and failed to comply with the Telemarketer Registration Act.

7. IDT filed an Answer to the Complaint, as well as New Matter, on July 10, 2014.

8. Also on July 10, 2014, IDT filed Preliminary Objections to which the OAG and OCA replied on July 21, 2014.

9. On July 30, 2014, the OAG and OCA replied to IDT’s New Matter.

10. An initial Pre-hearing Conference is scheduled in this matter on August 25, 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 IDT violated provisions of the Public Utility Code, Commission regulations and orders set forth in the OAG and OCA Joint Complaint. Further, if IDT 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 31, 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).

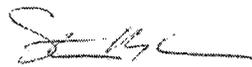
Service by First Class Mail and Email:

Michael A. Gruin, Esq.
Stevens & Lee
17 North 2nd Street, 16th Floor
Harrisburg, PA 17101
mag@stevenslee.com

Candis A. Tunilo, Esq.
Kristine E. Robinson, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Floor Forum Place
Harrisburg, PA 17101-1923
ctunilo@paoca.org
krobinson@paoca.org

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

John M. Abel, Esq.
Margarita Tulman, Esq.
Office of Attorney General
Bureau of Consumer Protection
Strawberry Square, 15th Floor
Harrisburg, PA 17120
jabel@attorneygeneral.gov
mtulman@attorneygeneral.gov



Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

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

Date: July 31, 2014

EXHIBIT 4

**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-2014-2427659
	:	
	:	
Respond Power, LLC	:	

**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:

Adam D. Young
PA Attorney ID No. 91822
adyoung@pa.gov

Michael L. Swindler
PA Attorney ID No. 43319
mwindler@pa.gov

Wayne T. Scott
PA Attorney ID No. 29133
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 Respond Power, LLC (Respond or Company)

alleging multiple violations of Pennsylvania law and Commission regulations and orders.

6. The OAG and OCA alleged, *inter alia*, that Respond 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 comply with the Unfair Trade Practices and Consumer Protection Law and failed to comply with the Telemarketer Registration Act.

7. Respond filed an Answer and New Matter to the Formal Complaint on July 10, 2014.

8. On July 30, 2014, the OAG and OCA filed an Answer to New Matter.

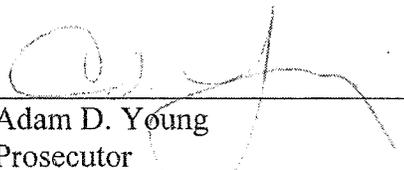
9. At the time that the OAG and OCA filed a Joint Complaint against Respond, I&E was actively investigating Respond as a result of customer complaints received by the Commission's Bureau of Consumer Services related to allegations similar to those alleged in the OAG and OCA Complaint.

INTERVENTION:

10. 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 Respond violated provisions of the Public Utility Code, Commission regulations and orders, and/or the Unfair Trade Practices and Consumer Protection Law and the Telemarketer Registration Act, as set forth in the OAG and OCA Joint Complaint. Further, if Respond violated the Public Utility Code and Commission regulations and orders, and/or the Unfair Trade Practices and Consumer Protection Law and the Telemarketer Registration Act I&E will seek to determine the civil penalty and other relief that should be imposed upon the Company.

Respectfully submitted,



Adam D. Young
Prosecutor
PA Attorney ID No. 91822

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: August 1, 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:

Karen O. Moury, Esq.
Buchanan Ingersoll & Rooney, PC
409 N. Second Street
Harrisburg, PA 17101-1357
Karen.moury@bipc.com

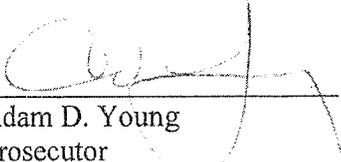
Candis A. Tunilo, Esq.
Kristine E. Robinson, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Floor Forum Place
Harrisburg, PA 17101-1923
ctunilo@paoca.org
krobinson@paoca.org

John M. Abel, Esq.
Nicole Beck, Esq.
Bureau of Consumer Protection
Office of Attorney General
Strawberry Square, 15th Floor
Harrisburg, PA 17120
jabel@attorneygeneral.gov
nbeck@attorneygeneral.gov

Adam Small, Esq.
Major Energy Services
100 Dutch Hill Road, Suite 310
Orangeburg, NY 10962
asmall@majorenergy.com

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

Saul Horowitz, CEO
Scott Foreman-Murray, Esq.
Respond Power, LLC
100 Dutch Hill Road, Suite 310
Orangeburg, NY 10962


Adam D. Young
Prosecutor
PA Attorney ID No. 91822

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

Date: August 1, 2014

EXHIBIT D

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant,	:	
	:	
v.	:	C-2014-2431410
	:	
HIKO Energy, LLC,	:	
Respondent	:	

**SUPPLEMENTAL ANSWERS OF THE BUREAU OF INVESTIGATION AND
ENFORCEMENT TO HIKO ENERGY, LLC'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

INTERROGATORIES – SET I

6. State whether you are aware of any other EGS companies that charged Duquesne customers during January 2014:

- a. between \$0.1090 and \$0.1690 per kWh; and
- b. more than \$0.1690 per kWh

and, if any, for each response in subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Duquesne customers during January 2014.

SUPPLEMENTAL ANSWER: After reasonable investigation, I&E, as an independent prosecutory arm of the Commission, is not aware of other EGS companies that charged customers in this EDC service territory the above-mentioned rates during the time period in question. I&E believes that the Commission does not regulate the rates charged by EGSs and, therefore, neither imposes reporting requirements on EGSs to provide data pertaining to rates or prices, nor has any reason to maintain such information. While current EGS pricing can be found at the Commission's website, www.papowerswitch.com/, I&E believes that EGSs are responsible for directly entering their pricing information onto the website. I&E is not aware that the Commission maintains any current or archived data on prices entered by EGSs.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

7. State whether you are aware of any other EGS companies that charged Duquesne customers during February 2014:

- a. between \$0.1690 and \$0.2990 per kWh; and
- b. more than \$0.2990 per kWh

and, if any, for each response in subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Duquesne customers during February 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

8. State whether you are aware of any other EGS companies that charged Duquesne customers \$0.2990 per kWh or more during March 2014, and, if so, state how many EGS companies and indicate the highest price per kWh any such company charged Duquesne customers during March 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

9. State whether you are aware of any other EGS companies that charged Duquesne customers during April 2014:

- a. between \$0.1090 and \$0.2990 per kWh; and
- b. more than \$0.2990 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Duquesne customers during April 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

10. State whether you are aware of any other EGS companies that charged Met-Ed customers during January 2014:

- a. between \$0.0990 and \$0.1290 per kWh; and
- b. more than \$0.1290 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Met-Ed customers during January 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

11. State whether you are aware of any other EGS companies that charged Met-Ed customers during February 2014:

- a. between \$0.1290 and \$0.2890 per kWh; and
- b. more than \$0.2890 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Met-Ed customers during February 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

12. State whether you are aware of any other EGS companies that charged Met-Ed customers during March 2014:

- a. between \$0.1290 and \$0.2890 per kWh; and
- b. more than \$0.2890 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Met-Ed customers during March 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

13. State whether you are aware of any other EGS companies that charged PECO customers during January 2014:

- a. between \$0.1090 and \$0.1390 per kWh; and
- b. more than \$0.1390 per kWh

and, if any, for each subsection (a) and (b), state how many EGS companies and indicate the highest price per kWh any such company charged PECO customers during January 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

14. State whether you are aware of any other EGS companies that charged PECO customers during February 2014:

- a. between \$0.1090 and \$0.2890 per kWh; and
- b. more than \$0.2890 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged PECO customers during February 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

15. State whether you are aware of any other EGS companies that charged Penelec customers during January 2014:

- a. between \$0.0797 and \$0.1190 per kWh; and
- b. more than \$0.1190 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Penelec customers during January 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

16. State whether you are aware of any other EGS companies that charged Penelec customers during February 2014:

- a. between \$0.1190 and \$0.2840 per kWh; and
- b. more than \$0.2840 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Penelec customers during February 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

17. State whether you are aware of any other EGS companies that charged Penelec customers during March 2014:

- a. between \$0.0890 and \$0.2840 per kWh; and
- b. more than \$0.2840 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Penelec customers during March 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

18. State whether you are aware of any other EGS companies that charged Penelec customers during April 2014:

- a. between \$0.1190 and \$0.2840 per kWh; and
- b. more than \$0.2840 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged Penelec customers during April 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

19. State whether you are aware of any other EGS companies that charged PPL customers during January 2014:

- a. between \$0.0990 and \$0.1190 per kWh; and
- b. more than \$0.1190 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged PPL customers during January 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

20. State whether you are aware of any other EGS companies that charged PPL customers during February 2014:

- a. between \$0.1190 and \$0.2990 per kWh
- b. more than \$0.2990 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged PPL customers during February 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

21. State whether you are aware of any other EGS companies that charged PPL
customers during March 2014:

- a. between \$0.1190 and \$0.2990 per kWh; and
- b. more than \$0.2990 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and
indicate the highest price per kWh any such company charged PPL customers during
March 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6,
above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

22. State whether you are aware of any other EGS companies that charged PPL customers during April 2014:

- a. between \$0.1290 and \$0.1790 per kWh; and
- b. more than \$0.1790 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company [sic] PPL customers during April 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

23. State whether you are aware of any other EGS companies that charged West Penn customers during January 2014:

- a. between \$0.0599 and \$0.0990 per kWh; and
- b. more than \$0.0990 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged West Penn customers during January 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

24. State whether you are aware of any other EGS companies that charged West Penn customers during February 2014:

- a. between \$0.0990 and \$0.1990 per kWh; and
- b. more than \$0.1990 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged West Penn customers during February 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

25. State whether you are aware of any other EGS companies that charged West Penn customers during March 2014:

- a. between \$0.1350 and \$0.1990 per kWh; and
- b. more than \$0.1990 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged West Penn customers during March 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

26. State whether you are aware of any other EGS companies that charged West Penn customers during April 2014:

- a. between \$0.0790 and \$0.1350 per kWh; and
- b. more than \$0.1350 per kWh

and, if any, for each subsection (a) and (b) state how many EGS companies and indicate the highest price per kWh any such company charged West Penn customers during April 2014.

SUPPLEMENTAL ANSWER: See I&E Supplemental Answer to HIKO Set I, No. 6, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

27. State all of the factors You believe contributed to the increase in electricity supply prices in Pennsylvania during the period from November 1, 2013 through April 30, 2014 and describe how each factor contributed to the increased price and identify all studies, reports or analyses that support Your response.

SUPPLEMENTAL ANSWER: Upon reasonable investigation, I&E, as an independent prosecutory arm of the Commission, does not know whether the Commission has a position regarding the factors that contributed to the increase in electricity supply prices in Pennsylvania during the period from November 1, 2013 through April 30, 2014. It is I&E's belief that Commission does not regulate the rates that EGSs charge. Rather, the Commission's focus, as I&E understands, was to minimize the impact of the increased prices of electricity supply realized by Pennsylvania retail customers during the winter of 2014.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

REQUESTS FOR PRODUCTION – SET I

3. All documents concerning any communications with any other EGS or any EDC concerning HIKO.

SUPPLEMENTAL ANSWER: After reasonable investigation, I&E, as an independent prosecutory arm of the Commission, is not aware of any EGSs or EDCs, other than PPL (which was identified in I&E's initial answer to HIKO's Request for Production Set I, No. 3), that were consulted concerning HIKO and, therefore, no such documents exist other than what was previously provided. It is I&E's understanding that the Commission does not discuss the business operations of one particular EGS with other EGSs.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

5. All documents relating to any analysis, summary, compilation, or review of any complaints made during the period December 2013 through April 2014 against any EGS operating within Pennsylvania.

SUPPLEMENTAL ANSWER: It is I&E's understanding that in early 2014, a confidential internal weekly report was issued to the Commissioners and certain Commission staff members (but not to I&E) by the Bureau of Consumer Services. The report purportedly provided information pertaining to informal complaint activity that the Commission received from EGS customers in a given week. I&E, as an independent prosecutory arm of the Commission, does not have custody or control of the referenced report. The Commission's procedure for seeking access to such documents can be found at 52 Pa. Code § 5.421.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

6. All documents relating to any analysis, summary, compilation, or review of any information or complaints against HIKO.

SUPPLEMENTAL ANSWER: Upon further investigation, I&E's file contained a confidential memo from the Bureau of Consumer Services to I&E dated March 20, 2014, entitled "HIKO Energy Pricing and Marketing." The last page of the memo contains information protected by the attorney-client privilege and, therefore, is not included. The memo and its attachments have been enclosed as Attachment A.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

7. All documents relating to any analysis, summary, compilation, or review that shows how the nature, gravity or frequency of complaints against HIKO compares to the nature, gravity or frequency of complaints against any other EGS operating in Pennsylvania.

SUPPLEMENTAL ANSWER: See I&E's Supplemental Answer to HIKO's Request for Production Set I, No. 5, above.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC -- Set I
C-2014-2431410

8. All reports, analyses, memoranda, communications, articles, or studies of the causes of increased electric supply prices in Pennsylvania during 2014.

SUPPLEMENTAL ANSWER: After reasonable investigation, I&E, as an independent prosecutory arm of the Commission, is not aware of any such reports, analyses, memoranda, communications, articles, or studies pertaining to the causes of increased electric supply prices in Pennsylvania during 2014 known to be in the possession of the Commission, other than what was provided by Secretary Chiavetta to Attorney Gentile by letter dated August 18, 2014. With regard to the specific reference to a memorandum titled "Recommendations for addressing EGS winter-time price increases" dated February 12, 2014, I&E is not in custody or control of this document. The Commission's procedure for seeking access to such documents can be found at 52 Pa. Code § 5.421.

Supplemental Answers of the Bureau of Investigation and Enforcement to
Interrogatories and Requests for Production of Documents of HIKO Energy, LLC – Set I
C-2014-2431410

9. Any report, analysis or study relating to the need for other, additional, or modified legislation, regulations, rules, or guidance regarding variable rate pricing (including, but not limited to, the disclosure thereof in consumer contracts) relating to residential electric supply in Pennsylvania.

SUPPLEMENTAL ANSWER: After reasonable investigation regarding the need for other, additional or modified legislation, regulations, rules, or guidance regarding variable rate pricing, I&E, as an independent prosecutory arm of the Commission, is aware of the following documents: (1) The Commission's Order entered March 4, 2014, at Docket No. M-2014-2406134, captioned "Review of Rules, Policies, and Consumer Education Measures Regarding Variable Rate Retail Electric Products;" and (2) the Commission's Order entered on April 3, 2014, at Docket No. L-2014-2409385, which promulgated the Final-Omitted Rulemaking amending the Commission's customer information regulations regarding retail electric products. The Orders are enclosed as Attachment B.

EXHIBIT E

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Docket No. C-2014-_____

v.

Respond Power LLC

**RECEIVED
2014 AUG 21 PM 12: 34
PA PUC
SECRETARY'S BUREAU**

FORMAL COMPLAINT

NOW COMES the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (I&E), by its prosecuting attorneys, pursuant to Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, and files this Formal Complaint against Respond Power LLC (Respond Power or Company or Respondent) alleging violations of the Pennsylvania Code and/or Public Utility Code. In support of its Formal Complaint, I&E respectfully represents the following:

I. Commission Jurisdiction and Authority

1. The Pennsylvania Public Utility Commission (Commission), with a mailing address of P.O. Box 3265, Harrisburg, PA 17105-3265, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate

public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.*

2. The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities. *Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S.A. § 308.2(a)(11).

Complainant's attorneys are as follows:

Michael L. Swindler
Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
717.783.6369
mwindler@pa.gov

Adam D. Young
Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
717.772.8582
adyoung@pa.gov

Wayne T. Scott
First Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
717.783.6150
wascott@pa.gov

RECEIVED
2014 AUG 21 PM 12:34
PA PUC
SECRETARY'S BUREAU

3. Respondent Respond Power, LLC is a New York limited liability company licensed to supply electric generation supplier services to residential, small commercial (25Kw and under) and large commercial (over 25Kw) customers in the Allegheny Power, Duquesne Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, PECO Energy Company, PPL Electric Utilities Corporation, and UGI Utilities Inc. service territories in Pennsylvania.

4. Respond Power is a jurisdictional electric generation supplier (EGS), which maintains a principal place of business at 100 Dutch Mill Road, Suite 310, Orangeburg, New York 10962. Respondent was licensed by the Commission by Order dated August 19, 2010 at Docket No. A-2010-2163898. License Application of Respond Power LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electrical Generation Services as a Supplier of Retail Electric Power, Docket No. A-2010-2163898 (Licensing Order).

5. The Commission is responsible for regulating the service of electric generation suppliers, as it related to their activities in the marketing and sale of electricity and electric services. 66 Pa.C.S. § 2809(e); 52 Pa. Code Ch. 54, 56, and 111.

6. Respond Power, as an EGS in Pennsylvania, is a public utility as defined by Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, only for the

limited purposes as described in Sections 2809 and 2810 of the Competition Act, 66 Pa.C.S. §§ 2809-10.

7. Respond Power, as a provider of electric generation service for compensation, is subject to the power and authority of the Commission and must observe, obey and comply with the Commission's regulations and orders pursuant to Section 501(c) of the Public Utility Code, 66 Pa.C.S. § 501(c).

8. Respond Power provides EGS services to residential customers, and as such, must comply with the applicable residential service regulations in Chapters 54 and 56 of the Commission's regulations. See 52 Pa. Code Ch. 54 and 56. See also Licensing Order at 3 (August 19, 2010).

9. Accordingly, pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of Respond Power in its capacity as an EGS serving consumers in Pennsylvania.

10. Respond Power must also comply with Chapter 111 of the Commission's regulations. 52 Pa. Code § 111.1 *et seq.*

11. Under Commission regulations, a licensed EGS is responsible for any fraudulent, deceptive, or other unlawful marketing acts by its employees, agents, or representatives. See 52 Pa. Code § 54.43(f).

12. Commission regulations require EGSs to monitor telephonic and door-to-door marketing activities to ensure that their agents are providing accurate

and complete information and complying with applicable rules. See 52 Pa. Code § 111.5(e).

13. Commission regulations also require compliance with Pennsylvania's *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201-1, *et seq.* See 52 Pa. Code §§ 54.43(f) and 111.12(d)(1).

14. Section 501(a) of the Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

15. Section 3301 of the Code, 66 Pa.C.S.A. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission's authority for violations of the Code or Commission regulations or both. Section 3301 further allows for the imposition of a separate fine for each violation and each day's continuance of such violation(s). Specifically with regard to standards for changing a customer's electric generation supplier, the Commission is empowered to assess fines under the aforementioned Section 3301, pursuant to 52 Pa. Code §§ 57.177(e) and 111.3(c)(2).

II. Background

16. I&E initiated an informal investigation of Respond Power on November 8, 2013, consistent with Sections 331(a) and 506 of the Public Utility Code, 66 Pa.C.S. §§ 331(a) and 506 and 52 Pa. Code § 3.113. This investigation centered on allegations of "slamming" (enrolling customers to receive electric generation supply service without proper customer authorization) and related

unauthorized marketing practices as alleged in a telephone call to the Commission's Bureau of Consumer Services (BCS) on October 24, 2013.

a. Whistleblower Complaint

17. On October 24, 2013, the BCS complaint hotline received a call from an individual who identified himself as a senior door-to-door sales agent (on leave) of Respond Power. On October 25, 2013, a BCS representative called and talked to this individual who informed the BCS representative that he had been employed by Respond Power for the last four years.

18. This individual stated that he was a door-to-door sales agent associated with Respond Power's Philadelphia Office. Sales and marketing tactics described by this caller as allegedly being used by the door-to-door agents associated with Respond Power's Philadelphia operations included the use of false identities and associated identification materials, circumvention of the Commission's sales verification procedures by pretending to be the customer on verification calls, and the forging of customer signatures on sales contracts and/or other enrollment materials.

19. BCS requested that I&E review this matter. By letter dated November 8, 2013, I&E advised Respond Power that an informal investigation had been initiated and served multiple rounds of data requests related to Respond Power's marketing practices as an EGS in Pennsylvania.

20. In its responses to I&E's data requests, Respond Power confirmed that it does not have any employees or offices located in Pennsylvania as alleged by the caller. However, two of the Company's third party contractors have offices in Philadelphia.

21. Upon further investigation, it was determined that the caller's reference to "Respond's Philadelphia office" was, in fact, the office of a third party contractor/vendor which had a business arrangement with Respond Power to conduct door-to-door sales in the Philadelphia area on Respond Power's behalf. It was further determined that the caller had been employed by one of Respond Power's third party vendors in Philadelphia, and had not been a direct employee of Respond Power.

22. Concurrent with I&E's institution of an informal investigation, Respond Power initiated its own investigation after receiving a telephone call from an individual claiming to be a past employee of a third party vendor in Philadelphia. This individual alleged that he knew of instances of falsification of badges for agents that represent the Company. He also noted that "slamming" had occurred from some of the agents.

23. Respond Power noted that its third party contractors are required to have a "zero tolerance" policy with all of their employees in reference to any "slamming" violations.

24. According to Respond Power, it requires all of its third party contractors to follow all federal, state and local rules and regulations while acting

on behalf of the Company, but acknowledged that there may be rogue agents that do not adhere to these standards.

25. Respond Power stated that it takes full responsibility for any and all actions performed by its third party contractors.

26. Based on its own internal investigation, Respond Power concluded that its third party vendor had followed the proper protocol regarding its door-to-door sales agents.

27. Respond Power also determined that the individual who called Respond Power had been terminated from his position as a door-to-door sales agent with a third party vendor due to a customer slamming complaint that implicated the caller as the sales agent involved in the incident.

b. BCS Customer Complaints

28. From February 1, 2014 to July 31, 2014, BCS has received 1,050 informal complaints against Respond Power. Many of these informal complaints can be summarized as alleging one or more of the following illegal acts by Respond Power's employees, agents or representatives:

- A. Slamming (unauthorized transfer of a customer account)
- B. Misleading and Deceptive claims of Affiliation with Electric Distribution Companies
- C. Misleading and Deceptive Promises of Savings
- D. Failure to Disclose Material Pricing Terms in Respond Power's Disclosure Agreement/Prices not Conforming to Disclosure Agreement

- E. Lack of Good Faith in Handling Customer Complaints/Cancellations
- F. Inaccurate/Incomplete/Fraudulent Sales Agreements
- G. Incorrect Billing

BCS and I&E took a sample of eighty-six of the most egregious violations for the purposes of this Formal Complaint.

i. Slamming:

29. Upon review of the BCS informal complaints against Respond Power, including data request responses provided by the Company, it was determined that Respond Power, its employees, agents, or representatives engaged in “slamming” practices against six (6) customers by switching customers without their consent. Such acts of “slamming” include forging customer signatures on sales agreements, obtaining signatures from persons not authorized on the account, and switching customers when the Third-Party Verification (TPV) and/or Sales Agreement indicate(s) confusion by the customer and/or explicit instructions not to switch.

ii. Misleading and Deceptive Claims of Affiliation with Electric Distribution Companies or “Government Programs”:

30. Upon review of the BCS informal complaints against Respond Power, including data request responses provided by the Company, it was determined that Respond Power, its employees, agents, or representatives engaged in unfair, fraudulent or deceptive marketing acts by representing to three (3)

customers during door-to-door sales that the salesperson was from the customers' Electric Distribution Company (EDC) or a government program and/or failing to properly identify themselves as being with Respond Power. Respondent also failed to properly train and monitor its employees, agents or representatives on responsible and ethical sales practices.

iii. Misleading and Deceptive Promises of Savings:

31. Upon review of the BCS informal complaints against Respond Power, including data request responses provided by the Company, it was determined that Respond Power, its employees, agents, or representatives engaged in unfair, fraudulent or deceptive marketing acts by representing to forty-seven (47) customers that Respondent's rates would be competitive or always be lower than or equal to the EDC's rates (Price to Compare (PTC)). Other tactics employed for the purposes of inducing a customer to switch to Respondent include guaranteeing savings over the PTC or guaranteeing a savings of up to 10%. All of these customers subsequently received bills for Respondent's generation supply anywhere from two to four times (or more) that of the PTC. Nor did the customers save the guaranteed 10%.

iv. Failure to Disclose Material Pricing Terms in Respond Power's Disclosure Agreement/Prices not Conforming to Disclosure Agreement

32. Upon review of the BCS informal complaints against Respond Power, including data request responses provided by the Company, it was

determined that Respond Power, its employees, agents, or representatives engaged in unfair, fraudulent or deceptive marketing acts to eighty-six (86) customers by failing to disclose material terms and conditions of service. These acts include, failing to specify whether the customer is signing up for a fixed or variable rate, including vague conditions of variability in its disclosure statement, and having no limit on price variability in its disclosure statement.

v. Lack of Good Faith in Handling Customer Complaints/Cancellations:

33. Upon review of the BCS informal complaints against Respond Power, including data request responses provided by the Company, it was determined that Respond Power did not utilize good faith, honesty and fair dealing with eleven (11) residential customers by failing to adequately staff its call centers, provide reasonable access to company representatives for the purposes of submitting complaints, failing to properly investigate customer disputes, failing to timely cancel accounts, and failing to notify customers of the results of the company's investigation into a dispute. These customers complained of being on hold for long periods of times, many exceeding an hour, being suddenly disconnected, and/or receiving messages that the call center was not open.

vi. Inaccurate/Incomplete/Fraudulent Sales Agreements:

34. Upon review of the BCS informal complaints against Respond Power, including data request responses provided by the Company, it was determined that Respond Power, its employees, agents, or representatives engaged

in unfair, fraudulent or deceptive marketing acts to nine (9) customers by not disclosing to the customer whether the rate was fixed or variable. In some instances, neither “fixed” nor “variable” are checked on the sales agreement. Other instances include “altered” sales agreements where boxes are checked after the customer signs the sales agreement, and/or the sales agreements are filled out with ink for the customer information, and marker for the check boxes, sometimes both ink and marker are used.

vii. Incorrect Billing:

35. Upon review of the BCS informal complaints against Respond Power, including data request responses provided by the Company, it was determined that Respond Power, its employees, agents, or representatives failed to comply with the Electricity Generation Customer Choice and Competition Act, 52 Pa. Code §§ 54.1 *et seq.*, for fourteen (14) customer accounts, in that the Company or agent or agents of the Company billed a generation rate on the customer’s initial invoice that did not reflect the price agreed upon in the written enrollment materials.

III. Violations

Counts 1 - 6

36. All allegations in paragraphs 1-35 are incorporated as if fully set forth herein.

Respondent, its employees, agents or representatives, engaged in unfair, fraudulent or deceptive marketing acts by “slamming” SIX (6) customer accounts in that the Respondent, its employees, agents

or representatives switched the customers' electric generation supplier without the customer's consent.

This is a violation of 66 Pa.C.S. § 2807(d)(1).

Counts 7 - 15

37. All allegations in paragraphs 1-35 are incorporated as if fully set forth herein.

Respondent, its employees, agents or representatives, engaged in unfair, fraudulent, deceptive or otherwise unlawful marketing acts in that the Company's employees, agents or representatives through its door-to-door sales people misrepresented to THREE (3) customers an affiliation with a local EDC or a government program.

This is a violation of 52 Pa. Code § 54.43(f); 52 Pa. Code § 111.8 and 111.9 (misrepresentation); Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.*, as incorporated through 52 Pa. Code §§ 54.43(f) and 111.12(d)(1).

Counts 16 - 62

38. All allegations in paragraphs 1-35 are incorporated as if fully set forth herein.

Respondent, its employees, agents or representatives, engaged in unfair, fraudulent, deceptive or otherwise unlawful marketing acts in that the Company's employees, agents or representatives misrepresented to FORTY-SEVEN (47) customers that Respondent's rates would be competitive or always be lower than or equal to the PTC. Respondent also employed other unethical and/or fraudulent tactics for the purposes of inducing a customer to switch to respondent such as guaranteeing savings over the PTC, or guaranteeing a savings of up to 10%.

This is a violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-2(4)(ix), (xi), and (xxi), as incorporated through 52 Pa. Code §§ 54.43(f) and 111.12(d)(1).

Counts 63 - 492

39. All allegations in paragraphs 1-35 are incorporated as if fully set forth herein.

Respondent, its employees, agents or representatives, engaged in *unfair, fraudulent, deceptive or otherwise unlawful marketing acts* in that the Company, its employees, agents or representatives, failed to disclose material terms and conditions of service including the material terms and conditions of price variability, the limits on variability, and billing amounts inconsistent with advertised prices, marketed prices, or the agreed upon prices in the disclosure statement for EIGHTY-SIX (86) customers.

This is a violation of 52 Pa. Code § 54.4(a); 52 Pa. Code § 54.5(c)(2); 52 Pa. Code § 54.7(a); 52 Pa. Code § 111.12(d)(4); Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-2(4)(xxi), as incorporated through 52 Pa. Code §§ 54.43(f) and 111.12(d)(1).

Counts 492 - 524

40. All allegations in paragraphs 1-35 are incorporated as if fully set forth herein.

Respondent, its employees, agents or representatives, did not utilize good faith, honesty and fair dealing with ELEVEN (11) residential customers in that the Company, its employees, agents or representatives, failed to adequately staff its call centers, provide reasonable access to company representatives for the purposes of submitting complaints, failed to properly investigate customer disputes, failed to timely cancel accounts, and failed to notify customers of the results of the Company's investigation into a dispute.

This is a violation of 52 Pa. Code §§ 56.141(a), 56.151 and 56.152 (incorporated through 66 Pa. C.S. § 2809(e)).

Counts 524 - 568

41. All allegations in paragraphs 1-35 are incorporated as if fully set forth herein.

Respondent, its employees, agents or representatives, engaged in unfair, fraudulent, deceptive or otherwise unlawful marketing acts in that Respondent, its employees, agents or representatives, marketed the electric generation supplier services of Respondent to NINE (9) Pennsylvania consumers, including circumventing the Commission's sales verification procedures, by falsely pretending to be the customer on verification calls, forging customer signatures on sales contracts and/or other enrollment materials, not disclosing to the customer whether the rate was fixed or variable and/or checking the "variable" box on the sales agreement after the customer has signed.

This is a violation of 52 Pa. Code § 54.4(a); 52 Pa. Code § 54.5(c)(2); 52 Pa. Code § 54.7(a), 52 Pa. Code § 111.12(d)(4); Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-2(4)(xxi), as incorporated through 52 Pa. Code §§ 54.43(f) and 111.12(d)(1).

Counts 568 - 581

42. All allegations in paragraphs 1-35 are incorporated as if fully set forth herein.

Respondent, its employees, agents or representatives, failed to comply with the Electricity Generation Customer Choice and Competition Act, 52 Pa. Code §§ 54.1 *et seq*, in that the Company or agent(s) or representative(s) of the Company billed a generation rate on FOURTEEN (14) customer invoices that did not reflect the price agreed upon in the written enrollment materials.

This is a violation of 52 Pa. Code § 54.4(a).

Counts 581 - 639

43. All allegations in paragraphs 1-35 are incorporated as if fully set forth herein.

For the alleged violations in Paragraphs 37, 38, and 41 above, Respondent failed to properly train and monitor its employees, agents or representatives on responsible and ethical sales practices, in that the Company's employees, agents or representatives, committed the violations enumerated in Paragraphs 37, 38, and 41 above which demonstrated a lack of training, and/or monitoring.

This is a violation of 52 Pa. Code § 111.5(a) and (e).

IV. Requested Relief

44. I&E proposes that Respond Power pay a civil penalty of \$1,000 for each of the six hundred thirty nine (639) counts set forth in this Complaint for a total civil penalty of Six Hundred and Thirty-Nine Thousand Dollars (\$639,000.00).

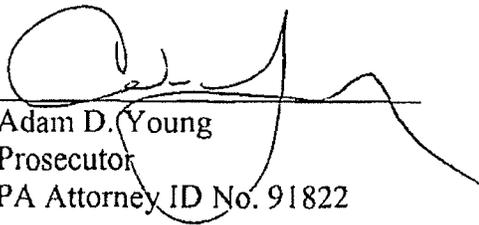
45. I&E proposes that Respond Power provide a refund to each of the affected customer accounts to which a refund has not already been provided, consisting of the difference between the amount each customer was billed and the customer's respective price to compare charged by their local EDC.

46. I&E proposes that Respondent's authority to do business as an EGS in Pennsylvania be rescinded.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement hereby requests that the Commission: (1) find Respondent to be in violation of the Public Utility Code, its regulations, and the Unfair trade Practices and Consumer Protection Law for each of the 639 Counts set forth herein; (2) impose a cumulative civil penalty upon Respondent in the amount of Six Hundred and Thirty-Nine Thousand Dollars (\$639,000.00); (3) rescind the authority of Respondent to do business as an EGS in Pennsylvania; (4) direct Respondent to provide a refund to each customer consisting of the

difference between the amount the customer was billed and the price to compare for the Customer's respective EDC; and (5) order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,



Adam D. Young
Prosecutor
PA Attorney ID No. 91822

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

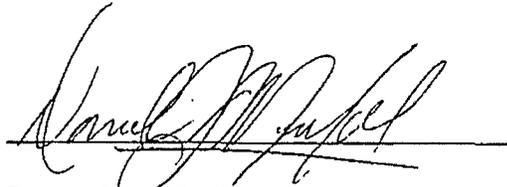
Dated: August 21, 2014

RECEIVED
2014 AUG 21 PM 12:34
PA PUC
SECRETARY'S BUREAU

VERIFICATION

I, Daniel Mumford, Manager – Informal Compliance and Competition Unit - Bureau of Consumer Services, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that Complainant will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 8/21/14



Daniel Mumford
Manager – Informal Compliance and
Competition Unit
Bureau of Consumer Services

RECEIVED
2014 AUG 21 PM 12:34
PA FUC
SECRETARY'S BUREAU

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:

Karen O. Moury, Esq.
Buchanan Ingersoll & Rooney, PC
409 N. Second Street
Harrisburg, PA 17101-1357
Karen.moury@bipc.com

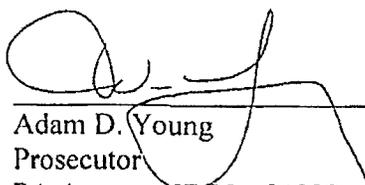
Candis A. Tunilo, Esq.
Kristine E. Robinson, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Floor Forum Place
Harrisburg, PA 17101-1923
ctunilo@paoca.org
krobinson@paoca.org

John M. Abel, Esq.
Nicole Beck, Esq.
Bureau of Consumer Protection
Office of Attorney General
Strawberry Square, 15th Floor
Harrisburg, PA 17120
jabel@attorneygeneral.gov
nbeck@attorneygeneral.gov

Adam Small, Esq.
Major Energy Services
100 Dutch Hill Road, Suite 310
Orangeburg, NY 10962
asmall@majorenergy.com

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

Saul Horowitz, CEO
Scott Foreman-Murray, Esq.
Respond Power, LLC
100 Dutch Hill Road, Suite 310
Orangeburg, NY 10962


Adam D. Young
Prosecutor
PA Attorney ID No. 91822

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

Date: August 21, 2014

RECEIVED
2014 AUG 21 PM 12:34
PA PUC
SECRETARY'S BUREAU