

Law Offices

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

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

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

December 19, 2014

VIA ELECTRONIC FILING

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

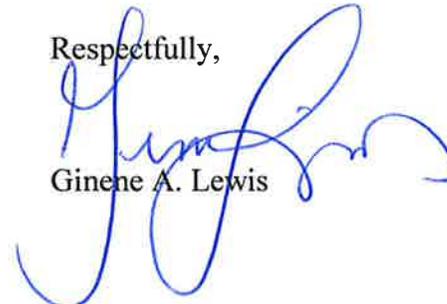
**Re: Commonwealth of Pennsylvania, by Attorney General KATHLEEN
G. KANE, Through the Bureau of Consumer Protection, and TANYA
J. McCLOSKEY, Acting Consumer Advocate v. HIKO ENERGY,
LLC, Docket No. C-2014-2427652**

Dear Secretary Chiavetta:

Enclosed for filing please find HIKO Energy, LLC's Motion for Continuance of Evidentiary Hearings and Extension of Pre-Hearing Requirements in the above-referenced matter. Copies of the Motion have been served in accordance with the attached certificate of service.

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

Respectfully,



Ginene A. Lewis

GAL

Enclosures

cc: Certificate of Service
Administrative Law Judge Elizabeth Barnes (via email and First Class mail)
Administrative Law Judge Joel Cheskis (via email and First Class mail)

COMMONWEALTH OF PENNSYLVANIA

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Commonwealth of Pennsylvania, by
Attorney General KATHLEEN G.
KANE, Through the Bureau of
Consumer Protection,

And

TANYA J. McCLOSKEY, Acting
Consumer Advocate,
Complainants

v.

HIKO ENERGY, LLC,
Respondent.

Docket No. C-2014-2427652

**UNOPPOSED MOTION OF RESPONDENT HIKO ENERGY, LLC
FOR A CONTINUANCE OF THE EVIDENTIARY HEARINGS
AND EXTENSION OF PRE-HEARING REQUIREMENTS**

HIKO Energy, LLC (“HIKO”) seeks (a) to continue, for at least 60 days, the evidentiary hearings now scheduled for January 15-16, 2015 and January 21-23, 2015 and (b) to adjourn the dates for the scheduled pre-hearing events — namely, for HIKO to identify consumers for cross examination at the evidentiary hearings (December 22, 2014), to file any motions to strike any of the consumer direct written testimony (January 5, 2015), and to identify and circulate copies of its hearing exhibits (January 9, 2015). The Joint Complainants and the two intervenors (the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (“I&E”) and the Office of the

Small Business Advocate (“OSBA”)) do not oppose this application. HIKO requires a continuance to allow it (i) to analyze the written direct testimony of 98 consumers, (ii) to review its own information and records on those 98 consumers, (iii) to review discovery on that written direct testimony that will be provided by December 31, 2014, and (iv) to continue to engage in settlement discussions with Joint Complainants. There have been no prior requests for a continuance of the evidentiary hearings.

I. INTRODUCTION

On June 20, 2014, the Pennsylvania Attorney General through the Bureau of Consumer Protection (“OAG”) and the Acting Consumer Advocate (“OCA”) (“Joint Complainants”) filed with the Public Utility Commission (“Commission”) a formal Complaint against HIKO. The Complaint contains eight separate counts alleging that HIKO violated Pennsylvania law and Commission Orders and regulations averring that consumers were misled as to the price they would pay for their electricity to their detriment. Joint Complainants sought various forms of relief, including ordering restitution, payment of civil penalties, and rescinding HIKO’s license to operate as an electric generation supplier (“EGS”). On July 30, 2014, HIKO filed an Answer and New Matter in response to the Complaint generally admitting or denying the various averments made in the Complaint, and requesting that judgment be entered in its favor and against the Joint Complainants. I&E and OSBA subsequently intervened in this matter.¹

On August 7, 2014, the Commission issued a Notice establishing an Initial

¹ The Bureau of I&E also has filed a separate action, Public Utility Commission, Bureau of Investigation and Enforcement v. HIKO Energy, LLC, Docket No. C-2014-2431410, which has not been consolidated with this action. The I&E action has a separate hearing schedule, pursuant to which evidentiary hearings will be held beginning on April 20, 2015.

Prehearing Conference for this matter for Monday, September 29, 2014 at 10:00 a.m. and assigning Honorable Joel Cheskis and Honorable Elizabeth Barnes as Presiding Officers. The Initial Prehearing Conference was held on Monday, September 29, 2014, as scheduled. Scheduling Order #1, dated October 3, 2014, was issued memorializing the issues agreed to during the Initial Prehearing Conference and scheduling evidentiary hearings on consumer testimony during January 15-16, 21-23, 2015. In accordance with Scheduling Order #1, Joint Complainants pre-served written testimony of 98 consumer complainants on Friday, December 5, 2014. Scheduling Order #2 was issued on December 5, 2014 and provided that HIKO would indicate to the Presiding Officers and other parties by December 22, 2014 which of those 98 customers it intends to cross-examine. The Order also required HIKO to file any motions to strike the pre-served consumer testimony by January 5, 2015 and to circulate to the Presiding Officers and the other parties by January 9, 2015 the exhibits it intends to use during the evidentiary hearings.

Promptly upon review of the two volumes of consumer direct testimony it received on December 5, 2014, HIKO began to gather and review its own customer information on the identified consumers. These efforts are on-going but will not be completed in time for HIKO to meet the dates in Scheduling Order #2. In addition, on December 11, 2014, within days of its receipt of the pre-served consumer testimony, HIKO served its Third Set of Interrogatories and Requests for Production of Documents upon Joint Complainants. That discovery sought information and documents relevant to the consumer direct testimony, including, *inter alia*, any instructions or communications sent by OCA or OAG with the blank questionnaires; information on the total number of

questionnaires that were mailed and the total number of responses returned; and any consumer statements that were returned by Joint Complainants to the consumer as incomplete or inadequate. Joint Complainants' responses to HIKO's Set III discovery will be due by December 31, 2014. HIKO requests a continuance in order to be able to review and analyze both its own comprehensive customer information on the 98 consumers and the new information it receives from Joint Complainants as a result of the Set III discovery.

HIKO's on-going settlement discussions with OCA and OAG provide a further basis for a continuance of the evidentiary hearing dates and the dates provided in Scheduling Order #2. HIKO proposed settlement terms on or about October 27, 2014, and OCA/OAG provided HIKO with a counter-proposal on December 17, 2014, which HIKO needs time to review. HIKO and OCA/OAG thus have exchanged comprehensive settlement proposals and intend to continue to pursue their settlement discussions in a meaningful manner. If the parties are successful in resolving the Joint Complaint, it would conserve the Commission's and the parties' time and resources. Joint Complainants and the intervenors do not oppose the request for a continuance of the hearing dates and the associated pre-hearing events.

II. HIKO HAS ESTABLISHED "GOOD CAUSE" FOR A CONTINUANCE

Section 1.15(b) of the Commission's regulations allows for continuances of hearings for "good cause shown." 52 Pa. Code § 1.15(b). HIKO submits that the circumstances meet the "good cause" standard for granting a continuance.

HIKO has been diligently working to gather and review all of its customer information and records relating to the consumer witnesses whose written testimony has

been provided. HIKO has been searching for, identifying, downloading, and producing the call records for these 98 consumers. The effort to review all of this material, analyze it in preparation for the hearings, and further investigate the relevant issues including the conduct and involvement of third-party marketers, is extremely time intensive. HIKO will need additional time to identify those consumers it intends to cross-examine, determine what motions to strike testimony will need to be made, and gather all relevant documents and information in preparation for the evidentiary hearings.

Moreover, it is in the interest of all parties and the Commission to streamline this process as much as possible and a continuance would allow HIKO the time to plan for the evidentiary hearings to proceed most efficiently. The Scheduling Order #2 directs the parties “to coordinate the most efficient means for admitting the pre-served consumer testimony into the record, subject to cross-examination and any timely motions. . . . [including] entering into any Stipulations or waiving the need to cross-examine any witnesses.” Continuing the dates for the required pre-hearing events and the hearings will allow the parties the time they need to best accomplish those objectives.

Finally, the parties have been engaging in settlement discussions and have circulated detailed proposals and counter-proposals. Continuing the dates of the hearings and all pre-hearing events would allow the parties additional time to further pursue settlement discussions. A settlement would conserve the resources of the Commission and the parties and further the Commission’s policy of promoting settlements. 52 Pa.Code § 5.231(a). Joint Complainants do not oppose HIKO’s motion for a continuance. Similarly, the two intervenors do not oppose the continuance.

III. CONCLUSION

For all of the foregoing reasons, HIKO submits that it has shown good cause for a 60 day continuance of the dates set forth in the Scheduling Order and for a continuance of the evidentiary hearing dates now scheduled for January 15-16 and 21-23, 2015.

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

Dated: December 19, 2014

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

COMMONWEALTH OF PENNSYLVANIA

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Commonwealth of Pennsylvania, by
Attorney General KATHLEEN G. KANE,
Through the Bureau of Consumer
Protection,

And

Docket No. C-2014-2427652

TANYA J. McCLOSKEY, Acting
Consumer Advocate,

Complainants

v.

HIKO ENERGY, LLC.
Respondent

CERTIFICATE OF SERVICE

I, Ginene A. Lewis, hereby certify that on this day I served a true and correct copy of HIKO Energy, LLC's Motion for Continuance 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

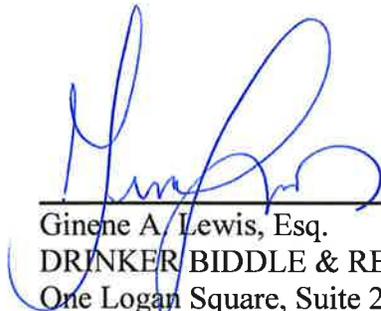
John M. Abel
Nicole R. Beck
Bureau of Consumer Protection
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
jabel@attorneygeneral.gov
nbeck@attorneygeneral.gov

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

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

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

Dated: December 19, 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