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March 30, 2015

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VIA E-FILING

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

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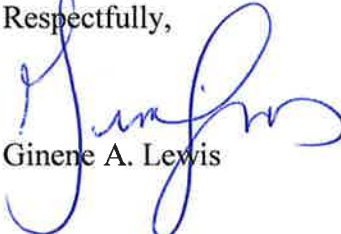
**Re: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. HIKO Energy, LLC, Docket No. C-2014-2431410**

Dear Secretary Chiavetta:

On behalf of HIKO Energy, LLC ("HIKO"), enclosed please find for electronic filing the Objections of HIKO to the Applications for Subpoena of Shevy Simins and Elly Bernstein filed by the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement on March 18, 2015. Copies will be served on the parties of record in accordance with the attached certificate of service.

Should you have any questions, please do not hesitate to contact me.

Respectfully,



Ginene A. Lewis

GAL

Enclosures

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

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

**OBJECTIONS OF HIKO ENERGY, LLC TO THE APPLICATIONS FOR
SUBPOENA OF SHEVY SIMINS AND ELLY BERNSTEIN**

TO ADMINISTRATIVE LAW JUDGES BARNES AND CHESKIS:

Pursuant to Section 5.421(f) of the Commission's regulations, 52 Pa. Code § 5.421(f), HIKO Energy, LLC ("HIKO") files these Objections to the Applications for Subpoena of Shevy Simins and Elly Bernstein filed by the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement ("I&E") on March 18, 2015, and in support thereof, avers as follows:

I. INTRODUCTION

1. On July 11, 2014, I&E filed with the Commission a formal complaint ("Complaint") against HIKO, alleging that HIKO had failed to satisfy certain price guarantees purportedly found in HIKO's disclosure statement.
2. Prior to filing the Complaint, I&E initiated an investigation of HIKO. During this investigation, HIKO fully cooperated and responded to I&E's Data Requests Sets I through III in addition to numerous informal requests for information. HIKO's data request responses included

spreadsheets containing details regarding the Pennsylvania customers enrolled with HIKO. Shevy Simins and Elly Bernstein are the HIKO representatives who responded to I&E's data requests on behalf of the Company.

3. The parties have completed discovery concerning the asserted claims and defenses and, most recently, exchanged pre-served written direct testimony of its respective witnesses. The written direct testimony of I&E witness Daniel Mumford refers to and attaches the consumer spreadsheets provided by HIKO in response to I&E's data requests.

4. As this Court is aware, HIKO has reached a settlement-in-principle with the Office of the Attorney General and the Office of Consumer Advocate in a separately filed action in which I&E is an intervening party. The relief provided for in that agreement includes full reimbursement for the same customers at issue here, in addition to significant changes to HIKO's business practices. Apparently still not satisfied with the fact that HIKO will fully repay customers and implement sweeping changes to its business practices, I&E not only presses this action seeking unprecedented penalties totaling over \$14 million and revocation of HIKO's license to operate in Pennsylvania, but also now seeks needlessly to burden individuals, cause greater expense to HIKO (including having to make this objection) and waste this Court's time on issues the parties could resolve through stipulation. Specifically, I&E now has filed Applications for Subpoena of Shevy Simins and Elly Bernstein, averring that Ms. Simins's and Mr. Bernstein's testimony is necessary "[i]n order to authenticate these spreadsheets and the information contained therein that are the crux of I&E's Complaint and contain the evidence to support the violations alleged by I&E." Appl. of Subpoena for Shevy Simins ("Simins Appl.") at 3; Appl. of Subpoena for Elly Bernstein ("Bernstein Appl.") at 3. HIKO objects to these Applications for Subpoena on two grounds.

5. *First*, Section 309 of the Public Utility Code clearly states that the Commission's power to subpoena a witness to appear and testify at a hearing is limited to the geographical boundaries of the Commonwealth. Therefore, a subpoena directed to Ms. Simins and Mr. Bernstein, both New York residents, is well beyond the geographical scope of the Commission's subpoena power.¹

6. *Second*, even if the Commission's subpoena power could compel the attendance of a resident of New York (and it cannot), compelling Ms. Simins and Mr. Bernstein to travel from New York to Pennsylvania is unwarranted because HIKO has agreed to stipulate to the authenticity of the spreadsheets at issue, thereby obviating the senseless burden and expense on HIKO, Ms. Simins, and Mr. Bernstein, as well as the waste of administrative resources and this Court's time. Unfortunately, I&E unreasonably rejected HIKO's proposal, instead proposing terms that went well beyond the stated purpose for the Subpoenas, which is the authentication of documents. Further, HIKO will have a party representative present at the hearing who I&E can question as to the authenticity of the documents. Any testimony Ms. Simins or Mr. Bernstein could offer would be merely cumulative.

7. For these reasons, HIKO objects to the Applications for Subpoena of Shevy Simins and Elly Bernstein and respectfully requests that the Applications be denied.

¹ HIKO notes that though Ms. Simins continues to assist HIKO, she no longer works for HIKO in a full-time capacity.

II. GROUNDS FOR OBJECTIONS

A. The Commission's Subpoena Power Does Not Extend Beyond The Commonwealth Of Pennsylvania

8. HIKO objects to the Applications for Subpoena of Shevy Simins and Elly Bernstein on the grounds that the Commission's power to subpoena a witness to appear and testify at a hearing does not extend beyond the boundaries of Pennsylvania.

9. I&E petitions Your Honors to subpoena Ms. Simins and Mr. Bernstein to appear and testify at the Evidentiary Hearing held in Harrisburg, Pennsylvania from April 20 to April 22, 2015 in this proceeding. The Applications for Subpoenas are directed to Ms. Simins and Mr. Bernstein at 12 College Road, Suite 100, Monsey, New York 10952.

10. Your Honors' authority to issue a subpoena to compel the testimony of a witness is derived from Section 309 of the Public Utility Code, which provides the following:

The commission, or its representative, shall have the power, *in any part of this Commonwealth*, to subpoena witnesses, to administer oaths, to examine witnesses, or to take such testimony, or compel the production of such books, records, papers, and documents as it may deem necessary or proper in, and pertinent to, any proceeding, investigation, or hearing, held by it, and to do all necessary and proper things and acts in the lawful exercise of its powers or the performance of those duties

66 Pa.C.S. § 309 (emphasis added). *See also* 66 Pa.C.S. § 331(d)(2)(authorizing presiding officers to issue subpoena).

11. As I&E well knows, the subpoena power provided for under this statute is expressly limited to "any part of this Commonwealth" and by its terms cannot support an out-of-state subpoena such as the one directed to Ms. Simins and Mr. Bernstein, both New York residents. To be sure, I&E's recent attempt to petition the Commission to subpoena Uber Technologies, Inc.'s ("UTI") out-of-state founder and CEO (a California resident) was summarily denied by Administrative Law Judges Mary D. Long and Jeffrey A. Watson. *See Pa.*

PUC, Bureau of Investigation and Enforcement v. Uber Technologies, Inc., Docket No. C-2014-2422723 (Interim Order served on January 23, 2015) at p. 2. In denying I&E’s application to subpoena the out-of-state representative, the presiding officers made clear that nothing about Section 309 of the Public Utility Code “appear[ed] to grant any power beyond the boundaries of Pennsylvania in the context of formal complaint proceedings.” *Id. See also Palmerton Telephone Company v. Global NAPs South Inc.*, PUC Docket No. C-2009-2093336 (Initial Decision served August 11, 2009), at p. 40 (“The Commission’s power to subpoena witnesses to appear and testify at a hearing does not extend beyond the boundaries of Pennsylvania.”). Notably, counsel for I&E in the instant action, Michael Swindler and Stephanie Wimer, are also counsel for I&E in the action against UTI. Thus, prior to serving the Subpoena at issue here and forcing HIKO to file this objection, I&E’s counsel were well aware of recent rulings the Commission already made as to the limited scope of its subpoena power in formal complaint proceedings.

12. Disregarding a decision that was issued less than two months ago or perhaps hoping for an inconsistent ruling from Your Honors, I&E attempts again to petition the Commission to ignore the plain rules and impermissibly extend the scope of its subpoena power to compel an out-of-state witness to appear and testify at a hearing in Harrisburg, Pennsylvania. As the presiding officers in *Palmerton Telephone Company* made clear, this type of request is impermissible and therefore must be denied.

B. HIKO Remains Willing To Stipulate To The Authenticity Of The Consumer Data Spreadsheets At Issue And Will Have A Party Representative Present At The Evidentiary Hearing

13. Even if the Commission’s subpoena power reached out-of-state witnesses like Ms. Simins and Mr. Bernstein (and it does not), such an endeavor is unwarranted because HIKO

remains willing to stipulate to the authenticity of the consumer data spreadsheets referenced in and attached to Mr. Mumford's pre-served written direct testimony and, in any event, will have a party representative present who can authenticate the documents.

14. The stated bases for I&E's application to have HIKO, Ms. Simins, and Mr. Bernstein bear the unreasonable burden and expense to have those individuals appear at the hearing in Harrisburg are because Ms. Simins and Mr. Bernstein (i) can "determine the authenticity of the data in the spreadsheets", (Simins Appl. ¶ 15; Bernstein Appl. ¶ 15), and (ii) can, in effect, explain the column headings used in the spreadsheets. (Simins Appl. ¶¶16-23; Bernstein Appl. ¶¶16-23.)

15. HIKO already proposed a stipulation to I&E that would have addressed the purported bases for the Subpoenas. Unfortunately, I&E's counter-proposal went well beyond authentication of documents and sought improperly to have HIKO prejudice itself by agreeing to selective portions of documents, the complete contents of which will be exhibits at the hearing. To the extent I&E continues to claim that they need Ms. Simins or Mr. Bernstein to compare two numbers or other plain data that expressly appear on the face of the documents, that would be a shocking admission as to the irresponsible nature of the unprecedented (and, as will be shown at the hearing, unsupportable) penalties I&E seeks. Presumably, I&E understood the information in the documents well enough to conclude that it had a basis upon which to bankrupt HIKO and jeopardize the livelihoods of its employees. I&E either had a basis to seek the extraordinary relief it seeks here or it did not and can either sufficiently prove its case or it cannot. But there is no basis in the Subpoenas or otherwise to disrupt Ms. Simins's or Mr. Bernstein's daily life, further burden HIKO, or waste this Court's time at the hearing with issues to which the parties reasonably can stipulate.

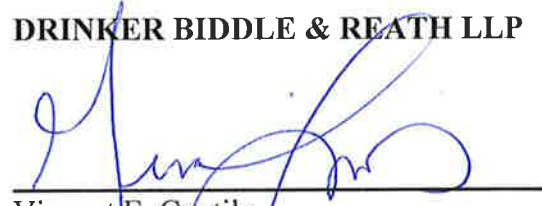
16. Regardless, and as noted above, HIKO will have a party representative at the hearing so I&E will have an opportunity to ask questions about the documents. There is no reason to force Ms. Simins or Mr. Bernstein to participate in the hearing, where any evidence they could provide would be merely cumulative.

III. CONCLUSION

WHEREFORE, on the basis of the foregoing, HIKO Energy, LLC respectfully objects to the Applications for Subpoena of Shevy Simins and Elly Bernstein filed by the Bureau of Investigation and Enforcement on March 18, 2015 and requests that the Applications be denied.

Respectfully Submitted,

DRINKER BIDDLE & REATH LLP



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Dated: March 30, 2015

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Counsel for HIKO Energy, LLC

CERTIFICATE OF SERVICE

I, Ginene A. Lewis, hereby certify that on this day I caused a true and correct copy of the foregoing 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 ELECTRONIC AND FIRST CLASS MAIL

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Dated: March 30, 2015



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