



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

March 18, 2015

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  
**(Application for Subpoena of Elly Bernstein)**

Dear Secretary Chiavetta:

Enclosed for filing is the original of the Bureau of Investigation and Enforcement's Application for Subpoena of Elly Bernstein in the above-referenced proceeding.

Copies have been served on the parties of record in accordance with the attached Certificate of Service.

Should you have any questions, please contact me at (717) 783-6369.

Sincerely,

Michael L. Swindler  
Prosecutor

Stephanie M. Wimer  
Prosecutor

Enclosures

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

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**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

**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code §5.421, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission has filed an Application for Subpoena in the above-referenced matter. You are hereby notified that you may file a written response or objection within ten (10) days of service of the Application, pursuant to 52 Pa. Code §5.421(b)(3). An original copy of your response must be sent to:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

A copy must also be served on the presiding officers and undersigned counsel.



Michael L. Swindler, Prosecutor  
PA Attorney ID No. 43319

Stephanie M. Wimer, Prosecutor  
PA Attorney ID No. 207522

Wayne T. Scott, First Deputy Chief Prosecutor  
PA Attorney ID No. 29133

Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Dated: March 18, 2015

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**APPLICATION FOR SUBPOENA**

AND NOW comes the Pennsylvania Public Utility Commission's (Commission) Bureau of Investigation and Enforcement (I&E), by and through its prosecuting attorneys, and files this Application to Subpoena Elly Bernstein to testify at the evidentiary hearing scheduled in the above captioned case, pursuant to 52 Pa. Code § 5.421(a)(2). In support thereof, I&E avers as follows:

**I. INTRODUCTION**

1. I&E initiated an informal investigation of HIKO Energy, LLC (HIKO or Company) on March 31, 2014, as a result of customer complaints received by the Commission's Bureau of Consumer Services (BCS) related to allegations that HIKO billed rates that were higher than the rates promised by the Company.

2. I&E's investigation focused on one particular HIKO variable rate price offering to residential electric customers in Pennsylvania, which provided that a customer enrolled in this offering would experience a guaranteed rate for "the first six monthly billing cycles" (the introductory period) that would be "1-7% less" than the local Electric

Distribution Company's (EDC) price to compare (PTC) (referred to hereafter as the "price offering").

3. During the course of I&E's investigation, I&E served Data Requests Sets I through III upon HIKO, through counsel, by correspondence dated April 2, 2014, May 6, 2014 and May 27, 2014.

4. HIKO, through counsel, responded to I&E Data Requests Sets I through III, in addition to numerous informal requests for information, by correspondence with attachments dated May 1, 2014, May 21, 2014 and June 16, 2014, respectively.

5. HIKO's data request responses included spreadsheets containing details regarding the customers enrolled in HIKO's "price offering."

6. I&E's Data Requests Set III, No. 2 propounded the following question: "Provide the name(s), title(s), and contact information of the Company representative(s) responsible for sponsoring each response to I&E's Set I, II and III Data Requests."

7. In response to I&E Data Request Set III, No. 2, HIKO provided the following response:

Shevy Simins, Regulatory Supervisor, [ssimins@hikoenergy.com](mailto:ssimins@hikoenergy.com)  
Elly Bernstein, Director of Operations, [ebernstein@hikoenergy.com](mailto:ebernstein@hikoenergy.com)

8. I&E filed a Formal Complaint against HIKO on July 11, 2014.

9. I&E promptly commenced formal discovery, serving its First Set of formal Interrogatories and Requests for Production of Documents on HIKO on October 10, 2014.

10. On December 23, 2014, I&E served the pre-filed Direct Testimony of its witness, Daniel Mumford. Mr. Mumford's testimony is replete with references to the spreadsheets provided by HIKO in response to I&E's Data Requests and, according to HIKO, sponsored by the aforementioned HIKO employees Simins and Bernstein.

11. On January 6, 2015, I&E served its pre-filed Exhibits to accompany the Direct Testimony of Daniel Mumford. These Exhibits included numerous customer database spreadsheets which were the very same spreadsheets that were provided to I&E by HIKO in response to I&E's data requests, with the exception of customer names. I&E omitted customer names to maintain the confidentiality of HIKO's customers, especially since HIKO had not sought a Protective Order in this proceeding at the time I&E's Exhibits were distributed.

12. In 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, it is necessary to have the HIKO personnel responsible for sponsoring these data request responses available at hearing to be questioned and provide testimony accordingly.

## **II. GROUNDS FOR THE SUBPOENA**

13. Section 5.421(a)(2) of the Commission's regulations permits a party to submit a written application for a subpoena to the presiding officer. 52 Pa. Code § 5.421(a)(2). The application for a subpoena must specify the general relevance, materiality and scope of the testimony or documentary evidence sought, including specification of the documents desired. 52 Pa. Code § 5.421(b)(1).

14. Elly Bernstein has been identified as the Director of Operations for HIKO who was named as one of two Company representatives responsible for sponsoring HIKO's responses to I&E's Data Requests, including the aforementioned data spreadsheets.

15. Upon information and belief, Elly Bernstein knows and/or has the ability to determine the authenticity of the data in the spreadsheets which are included in I&E's Exhibits, as well as the detailed customer information contained therein, specifically questions regarding the customer's invoice date, charge type, amount charged, rate, rate class, service date and PTC rate.

16. Upon information and belief, Elly Bernstein knows and/or has the ability to explain the detailed customer information contained therein, specifically questions regarding, *inter alia*, the customer's invoice date, charge type, amount charged, rate, rate class, service date and PTC rate.

17. Upon information and belief, Elly Bernstein knows and/or has the ability to confirm from the data spreadsheet that the "Rate Class" identified represents the price offering that is the subject of I&E's complaint.

18. Upon information and belief, Elly Bernstein knows and/or has the ability to confirm from the data spreadsheet that the "Rate" is the rate charged during the "Service Date" shown.

19. Upon information and belief, Elly Bernstein knows and/or has the ability to confirm from the data spreadsheet that the "Utility PTC" is the EDC price to compare for the Service Date shown.

20. Upon information and belief, Elly Bernstein knows and/or has the ability to compare from the data spreadsheet the “Rate” charged to the “Utility PTC” for the “Service Date” period and explain whether the Rate is higher or lower than the Utility PTC.

21. Upon information and belief, Elly Bernstein knows and/or has the ability to confirm from the data spreadsheet that based on the “Service Date” indicated and the “Start Date” indicated, whether the customer was within the first six months “Introductory Period” as described in the price offering.

22. Upon information and belief, Elly Bernstein knows and/or has the ability to confirm from the data spreadsheet that a customer who is within the “Introductory Period” but charged a “Rate” that is higher than the “Utility PTC” has been overcharged under the terms of the price offering.

23. The testimony of Elly Bernstein is material to substantiate I&E’s claim that HIKO charged its residential customers who enrolled in the price offering a rate per kilowatt hour (kWh) that exceeded the guaranteed discounted rate during the period in question. A proposed subpoena of HIKO employee Elly Bernstein has been included with this Application.

### III. CONCLUSION

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that the presiding Administrative Law Judges issue a Subpoena requiring Elly Bernstein, Director of Operations for HIKO Energy, LLC, to be present and to be prepared to provide testimony at the evidentiary hearing to be held in this matter currently scheduled for April 20 through 22, 2015.

Respectfully submitted,



Michael L. Swindler  
Prosecutor  
PA Attorney ID No. 43319

Stephanie M. Wimer  
Prosecutor  
PA Attorney ID No. 207522

Wayne T. Scott  
First Deputy Chief Prosecutor  
PA Attorney ID No. 29133

Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
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Date: March 18, 2015

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COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In the Matter of:  
Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement  
v.  
HIKO Energy, LLC

Docket No. C-2014-2431410

SUBPOENA

To: Elly Bernstein, HIKO Energy, LLC, 12 College Road, Suite 100, Monsey, NY 10952 c/o  
Ginene A. Lewis, Esquire, Drinker Biddle & Reath, One Logan Square, Suite 200, Philadelphia,  
PA 19103-6996.

Pursuant to the authority of this Commission under §§309, 331(d)(2) and 333(j) of the Public  
Utility Code:

1. YOU ARE ORDERED by the Commission to come to a Hearing Room on the

Plaza Level, Commonwealth Keystone Building, 400 North Street, at Harrisburg  
(place)

Pennsylvania, on April 20-22, 2015, at 09:00 o'clock, in the above case,  
(date)

to testify on behalf of the Bureau of Investigation and Enforcement and to remain until excused;

2. And bring with you and produce the following: all documents produced in  
response to the Bureau of Investigation and Enforcement's Data Requests Sets I through III,  
including, but not limited to, the Welcome Letter of HIKO Energy, LLC detailing the price  
offering in question, the Disclosure Statement of HIKO Energy, LLC and the spreadsheets  
containing customer data regarding the billing information regarding the price offering for the  
period of January 2014 to April 2014.

This subpoena is issued subject to the provisions of 52 Pa. Code §5.421 (with regard to issuance,  
notice, service and witness fees).

BY THE COMMISSION

Date \_\_\_\_\_

\_\_\_\_\_  
Elizabeth H. Barnes  
Administrative Law Judge

\_\_\_\_\_  
Joel H. Cheskis  
Administrative Law Judge

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Commonwealth of Pennsylvania )  
 ) SS:  
County of )

**AFFIDAVIT OF SERVICE**

Before me, the undersigned authority, personally appeared \_\_\_\_\_  
who, being duly sworn according to law, deposes and says that he/she served a true and correct  
copy of the within SUBPOENA upon \_\_\_\_\_  
by handing the same to him/her at \_\_\_\_\_ on the  
\_\_\_\_\_ day of \_\_\_\_\_, 2015 at \_\_\_\_\_ a.m./p.m.

\_\_\_\_\_  
(Signature)

Sworn to and subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
*Notary Public*

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## 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.  
Nicole R. DiTomo, Esq.  
Bureau of Consumer Protection  
Office of Attorney General  
Strawberry Square, 15<sup>th</sup> Floor  
Harrisburg, PA 17120

Motty Shulman, Esq.  
William Marsillo, Esq.  
Andrew Dressel, Esq.  
Boies, Schiller & Flexner, LLP  
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Armonk, NY 10504

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One Logan Square, Suite 2000  
Philadelphia, PA 19103-6996

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

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



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

Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
Phone: 717.783.6369

Dated: March 18, 2015

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