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April 9, 2015

VIA ELECTRONIC FILING

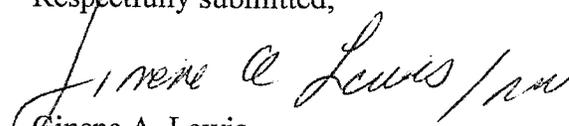
Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed for filing please find HIKO Energy, LLC's ("HIKO") Petition for Interlocutory Review and Answer to a Material Question concerning a Matter of Trial Evidence. Copies of the Petition have been served in accordance with the attached certificated of service.

Respectfully submitted,


Ginene A. Lewis

GAL
Enclosure

cc: Certificate of Service

**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

**PETITION FOR INTERLOCUTORY REVIEW
CONCERNING A MATTER OF TRIAL EVIDENCE**

Pursuant to 52 Pa. Code § 5.302, HIKO Energy, LLC (“HIKO”) hereby Petitions the Pennsylvania Public Utility Commission (“Commission”) for Interlocutory Review and Answer to a Material Question concerning a Matter of Trial Evidence (“Petition for Interlocutory Review”) which has arisen in the above-captioned matter. For the reasons set forth below, interlocutory review should be granted because it will prevent substantial prejudice to HIKO.

MATERIAL QUESTION

Does the Commission have the authority under Section 309 of the Public Utility Code to subpoena an out-of-state witness to appear and testify at a hearing in a formal complaint proceeding?

Suggested Answer: No. Section 309 of the Public Utility Code provides that:

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).

The subpoena power provided for under this statute is expressly limited to “any part of this Commonwealth” and by its terms cannot support a subpoena compelling an out-of-state witness to appear and testify at a hearing in a formal complaint proceeding.

COMPELLING REASONS FOR INTERLOCUTORY REVIEW

This Petition is filed as a result of an Order issued on April 6, 2015 in this matter, which granted the Commission’s Bureau of Investigation and Enforcement’s (“I&E”) Applications for

Subpoena of two out-of-state representatives of HIKO.¹ I&E applied for the subpoenas in order to authenticate documents at the upcoming evidentiary hearing in this matter, currently scheduled to begin on April 20. In the Order, the Presiding Officers held that Section 309 does not “unconditionally limit the Commission’s or its representative’s authority to subpoena only those witnesses residing within the boundaries of the Commonwealth of Pennsylvania, if those witnesses are officers, supervisors, or directors of a Pennsylvania-licensed electric generation supplier (EGS) which is the subject of [I&E’s] investigation and subsequent formal complaint.” *Pa. PUC, Bureau of Investigation and Enforcement v. HIKO Energy, LLC* (Interim Order dated April 6, 2015) at p.8.² HIKO seeks interlocutory review of this finding.

The Commission, created by statutory law, derives its authority from legislative action and must act within it. *City of Pittsburgh v. Pa. Public Util. Comm’n*, 43 A.2d 348 (Pa. Super. 1945). The finding that Section 309 does not limit the Commission’s power to subpoena out-of-state witnesses to appear and testify at a hearing in a formal complaint proceeding is an impermissible expansion of the Commission’s statutory authority. This finding also runs directly contrary to recent decisions by other Administrative Law Judges who expressly held that Section 309 cannot support an out-of-state subpoena. *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; *Palmerton Telephone Company v. Global NAPs South Inc.*, PUC Docket No. C-2009-2093336 (Initial Decision served August 11, 2009), at p. 40. Here, the April 6, 2015 Order circumvents this expressly defined power by relying on Commission rules and

¹ One of the subpoenaed individuals continues to assist HIKO, but no longer works for HIKO in a full-time capacity.

² The material question of whether the Commission has authority to issue an out-of-state subpoena must be analyzed in the context of a formal complaint proceeding. The instant action was initiated when I&E filed a Complaint with the Commission on July 11, 2014. Upon filing the Complaint, this action was assigned the formal complaint number C-2014-2431410. The fact that HIKO was previously subject to an I&E-initiated investigation should have no bearing on the scope of the Commission’s subpoena power once a formal complaint has been filed.

regulations that apply to an electric generation supplier's ("EGS") obligation to furnish documents to the Commission or allow the Commission to inspect its books and records. Yet, none of these provisions empower the Commission to subpoena the EGS's out-of-state representatives to appear and testify at a hearing.

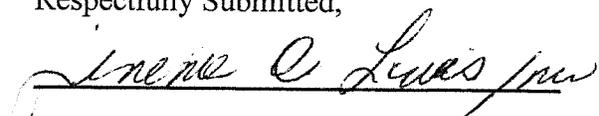
A determination regarding the scope of the Commission's subpoena power will prevent substantial prejudice to HIKO, as it would be forced to comply with an ultra vires exercise of authority in violation of the statutory limits of the Commission's subpoena power and bear the unreasonable burden and expense of preparing for the appearance of two out-of-state witnesses who were never expected to participate in the hearings. Moreover, the out-of-state witnesses will be substantially prejudiced by having to travel from New York to Harrisburg to offer testimony that would be cumulative. HIKO's chief executive officer already will be present at the hearings and can respond to all questions concerning authentication of documents. No party will be prejudiced by the Commission's interlocutory review of this issue, as all parties will benefit from clear guidance from the Commission on this fundamental issue of statutory authority.

WHEREFORE, for the foregoing reasons, HIKO Energy, LLC respectfully requests Interlocutory Review and Answer to the Material Question set forth above.

Dated: April 9, 2015

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Respectfully Submitted,



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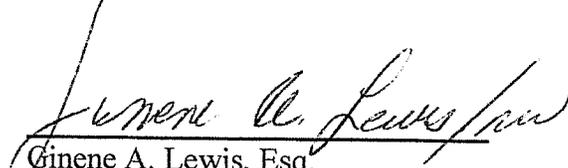
CERTIFICATE OF SERVICE

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

<p>The Honorable Elizabeth Barnes The Honorable Joel Cheskis Pa. Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105</p>	<p>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</p>
<p>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</p>	<p>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</p>

Dated: April 9, 2015


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