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August 19, 2015

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**VIA E-FILE AND FEDERAL EXPRESS**

The Honorable Ember S. Jandebeur  
Pa. Public Utility Commission  
317 State Office Building  
100 Lackwanna Ave.  
Scranton, PA 18503

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

**Re: Ayodele Tayo v. HIKO Energy, LLC (C-2015-2483059)**

Dear Judge Jandebeur:

On behalf of HIKO Energy, LLC (“HIKO”), I write to respectfully request a stay of the Initial Telephonic Hearing scheduled in the above-referenced proceeding for August 27, 2015 pending completion of HIKO’s class action settlement, which would resolve the same underlying claims as Complainant Ayodele Tayo alleges here. A postponement of this hearing would conserve judicial resources and provide Ms. Tayo with full relief without further expense to the parties and the Commission.

Ms. Tayo initiated this action for HIKO’s alleged failure during the winter of 2014 to honor its promised savings of up to 7% through the course of a year for HIKO’s electric service. While traditionally HIKO has been able to pass on savings to its customers, during the winter of 2013-2014 energy prices skyrocketed, due largely to market disruption that accompanied the weather phenomenon popularly known as the “polar vortex.” Due to this unanticipated and unprecedented sharp rise in energy prices, HIKO’s rates increased. It is this rate increase that Ms. Tayo now complains of and has led to actions brought by Pennsylvania’s Office of Attorney General and multi-state putative class actions, including two that encompass HIKO’s Pennsylvania customers.

In June 2014, Pennsylvania’s Office of Attorney General, along with the Office of Consumer Advocate (collectively, “Joint Complainants”) filed a formal complaint before the Commission against HIKO for, among other things, failing to satisfy certain guaranteed rates, deceptive marketing and pricing practices and failure to provide adequate responses to customer calls. (*See Pennsylvania, et al v. HIKO Energy, LLC*, Docket No. C-2014-2427651, Joint Complaint, attached hereto as Exhibit A.) In May 2015, HIKO reached a settlement agreement with Joint Complainants that establishes restitution funds exceeding \$2 million for HIKO’s Pennsylvania customers. (*See Joint Petition for Settlement Approval*, attached hereto as Exhibit B.) The settlement was submitted to Administrative Law Judges Cheskis and Barnes on May 1, 2015. Once this settlement is formally approved by the Commission—which is expected shortly—all claims related to HIKO’s alleged failure to honor its promised savings during the Polar

Vortex (including Ms. Tayo's claim) will be fully resolved and Pennsylvania customers covered by the settlement (including Ms. Tayo) will receive refunds.

Ms. Tayo also may obtain relief through HIKO's global settlement of multi-state class actions including Pennsylvania customers. In September 2014, a class action was filed in the United States District Court for the Eastern District of Pennsylvania on behalf of HIKO's Pennsylvania customers like Ms. Tayo with variable-rate plans for electric supply. (*See Kantor v. HIKO Energy, LLC*, No. 14-cv-05585-TJS, Complaint, attached hereto as Exhibit C.) In October 2014, a multi-state class action based on the same underlying claims and conduct was filed in the Middle District of Pennsylvania on behalf of HIKO's variable-rate customers residing in seven states including Pennsylvania. (*See Bogdanski v. HIKO Energy, LLC*, No. 14-cv-01948-MEM, Complaint, attached hereto as Exhibit D.) HIKO has reached a global settlement in principle that would resolve both of these matters, as well as two additional class actions brought on behalf of non-Pennsylvania customers in the Southern District of New York. All parties to these matters have signed a binding Memorandum of Understanding and expect to finalize the formal Settlement Agreement and Notice Plan for formal approval by mid-September. Upon finalizing the settlement and receiving formal court approval, Ms. Tayo's claims against HIKO will be fully resolved and she will be eligible to obtain restitution through the class settlement, provided she has not already received such relief through the Pennsylvania Attorney General's restitution fund.

Given the likelihood that the issues in this case will be resolved without the need for further administrative determination, a stay of the Initial Telephonic Hearing properly serves the interests of judicial economy and administrative efficiency. Ms. Tayo will be able to obtain relief through one of the multiple actions brought on her behalf for the same alleged conduct she complains of in her formal complaint without further expense of time and resources. Thus, Ms. Tayo will not be prejudiced by the granting of this request and the temporary stay of the proceedings in this action.

Please let me know if Your Honor wishes to arrange a teleconference with the parties to further discuss this matter.


DrinkerBiddle&Reath

The Honorable Jandebour

August 19, 2015

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Respectfully,



Ginene A. Lewis

GAL

Enclosures

cc: Ayodele Tayo (via e-file and federal express)

# EXHIBIT A

**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-

**JOINT COMPLAINT**

AND NOW, comes the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (Attorney General) and the Acting Consumer Advocate Tanya J. McCloskey (OCA) (collectively referred to as Joint Complainants), who bring this action pursuant to the Public Utility Code, 66 Pa. C.S. Ch. 28, the Pennsylvania Public Utility Commission's regulations, 52 Pa. Code Ch. 54, 56 and 111, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (Consumer Protection Law) and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.*

**PRELIMINARY STATEMENT**

1. This Joint Complaint is brought in the public's interest to address multiple violations of Pennsylvania law and Pennsylvania Public Utility Commission (Commission)

John M. Abel, Senior Deputy Attorney General  
Nicole R. Beck, Deputy Attorney General  
Bureau of Consumer Protection  
Office of Attorney General  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, Pennsylvania 17120

6. Hiko Energy, LLC. (Respondent) is a New York limited liability company licensed to supply retail electricity to residential, small commercial (25 kw and under demand), large commercial (over 25 kw demand), industrial and governmental customers throughout the Commonwealth. The Commission approved Respondent's license application with conditions by Final Order entered July 2, 2012 at Docket No. A-2012-2289944.

7. The Commission is responsible for regulating the service of electric generation suppliers, as it relates to their activities in the marketing and sale of electricity and electric services. See 66 Pa. C.S. § 2809(e).

8. Respondent provides electric generation supplier (EGS) services to residential customers, and as such, it must comply with applicable residential service regulations in Chapters 54 and 56 of the Commission's regulations. See 52 Pa. Code Ch. 54 and 56. See also License Application of Hiko Energy LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier of Retail Electric Power, Docket No. A-2012-2289944, Tentative Order at 2-3 (June 7, 2012) (Tentative Order), as adopted by Final Order at 1 (July 2, 2012) (Final Order).

9. Respondent must also comply with Chapter 111 of the Commission's regulations. See 52 Pa. Code § 111.1.

10. Additionally, Respondent must abide by all applicable federal and state laws and Commission regulations, procedures and orders and ensure that its employees, representatives,

charged by EGSs. Of the 7,503 consumer complaints, 254 or approximately 3.4% were against Respondent.

19. Upon information and belief, from January 1, 2014 to April 21, 2014, approximately 500 Formal Complaints were filed at the Commission by customers regarding variable rates charged by EGSs. Additionally, upon information and belief, approximately 6,500 informal complaints and nearly 10,000 inquiries were made by consumers to the Commission regarding variable rates charged by EGSs. Of the approximately 203 Formal Complaints reviewed by the OCA to date, approximately 8 or 4% were filed against Respondent.

#### **COUNT I – MISLEADING AND DECEPTIVE PROMISES OF SAVINGS**

20. The foregoing paragraphs are incorporated herein.

21. Of the referenced 254 consumer complaints against Respondent received by the Attorney General, 73 or nearly 29% of the complainants indicated that Respondent's salespeople promised guaranteed savings over the Price to Compare (PTC) as inducement for complainants to switch to Respondent. These complainants then received bills from Respondent that were at least two or three times more than the PTC.

22. Of the referenced 9 customers that provided written correspondence and information to the OCA, 3 or approximately 33% stated that Respondent's salespeople promised guaranteed savings over the PTC as inducement for complainants to switch to Respondent. These complainants then received bills from Respondent that were at least two or three times more than the PTC.

23. Of the referenced 8 Formal Complaints filed at the Commission against Respondent and reviewed by the OCA to date, at least 4 or 50% of the complainants averred that Respondent's salespeople promised guaranteed savings over the PTC as inducement for

28. Additionally, as averred above, upon information and belief, Respondent has failed to adequately train and monitor its agents, as required by the Commission's regulations. See 52 Pa. Code §§ 111.4 and 111.5.

#### **COUNT II – SLAMMING**

29. The foregoing paragraphs are incorporated herein.

30. Of the referenced 254 consumer complaints against Respondent received by the Attorney General, 18 or approximately 7% of the complainants indicated that they did not consent to switch to Respondent.

31. The Public Utility Code and the Commission's regulations prohibit switching a customer's generation supplier without the customer's consent (*i.e.* slamming). See 66 Pa. C.S. § 2807(d)(1); 52 Pa. Code § 54.42(a)(9).

32. It is averred, upon information and belief, that Respondent has violated and continues to violate the Commission's regulations and orders by switching customers to Respondent without the customers' consent.

#### **COUNT III – LACK OF GOOD FAITH HANDLING OF COMPLAINTS**

33. The foregoing paragraphs are incorporated herein.

34. Of the referenced 8 Formal Complaints filed at the Commission against Respondent reviewed by the OCA to date, at least 4 or 50% of the complainants averred that when they attempted to contact Respondent about the variable rate charges on their bills, they could not get through to the Respondent on the telephone and/or their emails to the Respondent went unanswered.

35. Of the referenced 254 consumer complaints against Respondent received by the Attorney General, at least 90 or approximately 35% of the complainants indicated that when they

41. Of the referenced 9 customers that provided written correspondence and information to the OCA, 2 provided their sign-up documents from Respondent. The documents provided to these customers failed to provide a price for the first month of service.

42. The Commission's regulations require that an EGS shall provide the customer with a copy of its disclosure statement. See 52 Pa. Code §§ 54.5(b) and 111.11.

43. Section 111.12 requires suppliers to provide accurate and timely information to customers about their services and products, including their rates. See 52 Pa. Code § 111.12(d)(4).

44. The Commission's regulations require that EGS prices billed reflect the marketed prices and the agreed-upon prices in the disclosure statement. See 52 Pa. Code § 54.4(a).

45. If an EGS offers a variable price plan, its disclosure statement must include the conditions of variability and the limits on price variability. See 52 Pa. Code § 54.5(c)(2).

46. Additionally, the EGS's advertised prices must reflect the prices in its disclosure statements and billed prices. See 52 Pa. Code § 54.7(a).

47. Pennsylvania's Consumer Protection Law defines "unfair or deceptive acts or practices" as, *inter alia*, engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding. See 73 P.S. § 201-2(xxi).

48. It is averred, upon information and belief, that Respondent has violated and continues to violate the Consumer Protection Law and the Commission's regulations and orders by failing to provide adequate price disclosures to customers and deceiving customers about the rate they would be charged by Respondent.

56. The Commission's regulations require compliance with the Consumer Protection Law. See 52 Pa. Code § 54.43(f) and 111.12(d)(1).

57. The Consumer Protection Law prohibits fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding. See 73 P.S. § 201-2(4)(xxi).

58. It is believed and therefore, averred that the Respondent has violated and continues to violate the Respondent's regulations by failing to provide pricing information in plain language and using common terms that consumers understand.

59. Further, it is believed and therefore, averred that consumers could not determine from the Disclosure Statement the price that they would or could be charged by the Respondent or how the price would be calculated by Respondent.

60. It is believed and therefore, averred that Respondent violated and continues to violate the Commission's regulations by failing to provide information to its customers in a manner that would allow them to compare offers.

#### **COUNT VI - PRICES NONCONFORMING TO DISCLOSURE STATEMENT**

61. The foregoing paragraphs are incorporated herein.

62. Upon information and belief, Respondent charged its variable rate customers prices that were at least as high as \$0.40 per kWh for electricity.

63. It is averred, upon information and belief, that Respondent's prices charged to customers in early 2014 were not reflective of the cost to serve residential customers.

64. By way of example, the cost to serve the average residential heating customer in January 2014 should not have exceeded approximately \$0.23 per kWh. See Affidavit of Dr. Steven L. Estomin, attached hereto as Appendix B.

## COUNT VIII - FAILURE TO COMPLY WITH THE TELEMARKETER

### REGISTRATION ACT

71. The foregoing paragraphs are incorporated herein.

72. Of the 254 consumer complaints against Respondent received by the Attorney General, at least 58 or approximately 23% of the complainants received a telemarketing call from the Respondent, which initiated the complainants' switch to Respondent.

73. The Commission's regulations require EGSs to comply with the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* See 52 Pa. Code § 111.10(a)(1).

74. When Respondent sells its goods or services through the use of a telemarketing call, the Telemarketer Registration Act requires the Respondent to reduce any sale of goods or services made during such call to a written contract and obtain the consumer's signature on the written contract. See 73 P.S. § 2245(a)(7).

75. Additionally, the Telemarketer Registration Act requires the Respondent to provide consumers with a contract that contains, *inter alia*, the following:

- A detailed description of the consumer goods and services purchased which shall match the oral description given in the telemarketing solicitation;
- Any oral or written representations made during the telemarketing solicitation; and
- A statement that reads: "You are not obligated to pay any money unless you sign this contract and return it to the seller."

See 73 P.S. § 2245(c).

83. Under the Consumer Protection Law, it is appropriate to impose a permanent injunction to restrain and prevent violations of the Consumer Protection Law and restore to any person in interest any moneys or property that may have been acquired by means of any violation of the Consumer Protection Law. See 73 P.S. § 201-4.1.

84. As outlined above, Respondent violated and continues to violate the Public Utility Code, the Commission's regulations and orders, the Consumer Protection Law, the Telemarketer Registration Act, and the Final Order.

WHEREFORE, Joint Complainants Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer Advocate, respectfully request that the Commission take the following actions:


A. Consolidate all similar pending formal complaints against Respondent with this Joint Complaint;

B. Find that Respondent violated the Telemarketer Registration Act, the Consumer Protection Law, the Public Utility Code, and the Commission's regulations and orders, as specified in the foregoing Joint Complaint, and revoke or suspend the Respondent's EGS license;

C. Find that Respondent violated the Telemarketer Registration Act, the Consumer Protection Law, the Public Utility Code, and the Commission's regulations and orders, as specified in the foregoing Joint Complaint, and impose a civil penalty;

D. Order Respondent to provide appropriate restitution, including without limitation, refunding all charges to its consumers that were over and above the Price To Compare in the customers' respective service territories from January 1, 2014 through the date of resolution of this matter, as well as any late, cancellation and/or termination fees and/or other such penalties

J. Impose any other such relief that the Commission deems appropriate in this matter,



John M. Abel  
Senior Deputy Attorney General  
PA Attorney

Nicole R. Beck  
Deputy Attorney General  
PA Attorney

Bureau of Consumer Protection  
Office of Attorney General  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120  
T: (717) 787-9707  
F: (717) 787-1190


Counsel for:

Kathleen G. Kane, Attorney General  
Bureau of Consumer Protection

DATE:

6-20-14

Respectfully submitted,



Candis A. Tunilo  
PA Attorney

Hobart J. Webster  
PA Attorney  
Assistant Consumer Advocates

Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
T: (717) 783-5048  
F: (717) 783-7152

Counsel for:

Tanya J. McCloskey  
Acting Consumer Advocate



1.888.264.4908

655 SUFFERN ROAD, TEANECK, NJ 07666

PENNSYLVANIA TERMS AND CONDITIONS: ELECTRIC

CUSTOMER DISCLOSURE STATEMENT

Background We at HIKO Energy ("HIKO") are licensed by the Pennsylvania Public Utility Commission ("PUC") to offer and supply electric generation services ("EGS") in Pennsylvania. Our PUC file number is A-2012-2289946. A residential or small business customer may cancel this Agreement at any time before midnight of the third business day after receiving this disclosure.

Electric We set the generation prices and charges that you pay. The PUC regulates distribution prices and services. The Federal Energy Regulatory Commission regulates transmission prices and services.

Electric Definitions: Generation charge: charge for the production of electricity

Transmission charge: charge for moving high voltage electricity from a generation facility to the distribution lines of an Electric Distribution Company ("EDC").

Distribution charge: charge for delivering electricity over a distribution system to the home or business from the transmission system.

Terms of Service

1. Agreement to Sell and Purchase Energy. This is an agreement between HIKO and the customer ("Customer" or "you" or "your") under which Customer shall initiate electricity service and begin enrollment with HIKO ("the Agreement").

Subject to the terms and conditions of this Agreement, HIKO agrees to sell and deliver, and Customer agrees to purchase and accept the quantity of electricity as estimated by HIKO (necessary to meet Customer's requirements based upon consumption data obtained by HIKO) or the delivery schedule of your EDC.

HIKO is not affiliated with and does not represent the EDC. The amount of electricity supplied under this Agreement is subject to change based upon data reflecting Customer's consumption obtained by HIKO or the EDC's delivery schedule. The EDC will continue to deliver the electricity supplied by HIKO.

2. Term and Cancellation. This Agreement shall commence as of the date Customer's notice regarding the change of Customer's provider to HIKO is deemed effective by the PUC, and shall continue for one month thereafter ("the Initial Term"). Unless otherwise agreed to, upon completion of the Initial Term, this Agreement will renew on a month to month basis with a monthly variable rate on the day of the month corresponding to the remaining terms ("the Renewal Term").

While receiving service on a month to month basis in the Renewal Term, either party may cancel this Agreement by providing 90 days advance written notice of cancellation to the other party. You may cancel your service under this Agreement by providing a 30 day written notice to HIKO. HIKO reserves the right to cancel this Agreement for any reason upon 30 days advance written notice to you. Some reasons why this Agreement may be cancelled by HIKO include: (i) non-payment if your service is terminated by your EDC, then this Agreement is cancelled on the date that your service is terminated; (ii) company-initiated cancellation; if HIKO cancels this agreement for any reason other than customer non-payment, we will follow applicable rules in providing notice to you.

Customer is liable for all HIKO charges until Customer returns to the PUC or goes to another supplier. A final bill will be rendered within twenty (20) days after the final scheduled meter reading or in access if unavailable, or estimate of consumption will be used in the final bill, which will be traced up subsequent to the final meter reading.

3. Pricing and Billing. The price will the Initial Term is the price stated at sign-up and confirmed in your written Welcome Letter from HIKO. Unless otherwise agreed to in writing, the price for all electricity sold under this Agreement in the Renewal Term shall be a variable price which each month shall reflect transportation to the Delivery Point, and other market-related factors, plus all applicable taxes, charges, and other assessments and HIKO's costs, expenses and margins. The variable price includes estimated Gross Receipts, but excludes Pennsylvania sales tax, if applicable; if you are tax-exempt you must provide HIKO with a copy of your exemption certificate. You may call HIKO or visit www.hikoenergy.com for pricing information.

HIKO will invoice Customer monthly for electricity supplied under this Agreement, as measured by the EDC, and Customer will pay each invoice in full within 20 days of the invoice date or be subject to a late payment charge of 1.5% per month. Customer may receive a single bill for both commodity and delivery costs from either HIKO or the EDC, or each of the EDC and HIKO may invoice Customer separately. Customer payment reported in response to a consolidated bill shall be processed when so required or in accordance with procedures adopted by the PUC. HIKO may assign and sell Customer accounts receivable to the EDC. In the event of failure to remit payment when due by a residential customer, HIKO may cancel commodity service under this Agreement. A \$30 fee will be charged for all returned payments made to HIKO for the last business day.

4. Assignments Customer may not assign its interests in and delegate its obligations under this Agreement without the express written consent of HIKO. HIKO may sell, transfer, pledge or assign the accounts receivable or proceeds hereof, in connection with any financing agreement or receivables purchase program, and may assign this Agreement to another energy supplier, energy services company or other entity as authorized by the PUC.

5. Information Release Authorization. Customer authorizes HIKO to obtain and review information regarding Customer's credit history from credit reporting agencies and the following information from the EDC: consumption history; billing determinants; account number; credit information; public assistance status; existence of medical emergencies; status as to whether Customer has a medical emergency as defined by the EDC; blind or disabled and data applicable to cold weather periods; and tax status and eligibility for economic development or other incentives. This information may be used by HIKO to determine whether to sell and commence and/or continue to provide energy supply service to Customer and will not be disclosed to a third party unless required by law. Customer's execution of this Agreement shall constitute authorization for the release of this information to HIKO. This authorization will remain in effect during the Initial Term and any Renewal Term. Customer may rescind this authorization at any time by providing written notice (direct to HIKO or by calling HIKO at 1.888.264.4908). HIKO reserves the right to cancel this Agreement in the event Customer rescinds the authorization.

6. Customer Protections. The services provided by HIKO Energy are protected by the terms and conditions of this Agreement and the PUC. The complete text of the PUC Customer Protection Rules referenced herein can be found in the Chapters 24 and 26 of Title 52 of the Pennsylvania Code.

7. Right of Recession. A residential or small business Customer may rescind this Agreement within 3 business days after receipt of this Agreement, whichever comes first, by contacting HIKO at 1.888.264.4908 or by writing.

8. Agency Electric. Customer hereby designates HIKO as agent to arrange and administer contracts and service agreements between Customer and HIKO and those entities including the PSM, utility companies engaged in the generation, transmission and delivery of Customer electricity supply, and the name and schedule with the appropriate utility including the EDC for the delivery of electricity to the Sales Point and the customer end-use premises. HIKO as agent for the customer will schedule the delivery of adequate supplies of electricity that meet the Customer's requirements as established by the EDC and in response to information provided by the PUC. The Sales Point for the electricity will be a point at the PSM Meter connection HIKO has installed outside of the municipality where Customer resides. These services are provided on an arm's length basis and market based compensation is included in the price noted above.

9. Title. HIKO and HIKO agree that title to control of, and risk of loss to the electricity applied by HIKO under this Agreement, will transfer from HIKO to Customer at the Sales Point.

10. Warrants. The Agreement, including the Welcome Letter, any enrollment form and applicable attachments, as written makes up the entire Agreement between Customer and HIKO. HIKO makes no representations or warranties other than those expressly set forth in this Agreement, and HIKO expressly disclaims all other warranties, express or implied, including merchantability and fitness for a particular use.

11. Force Majeure. HIKO will make commercially reasonable efforts to provide electricity hereunder but HIKO does not guarantee a continuous supply of electricity to Customer. Certain causes and events out of the control of HIKO ("Force Majeure Events") may result in interruptions in service. HIKO will not be liable for any such interruptions caused by a Force Majeure Event, and HIKO is not and shall not be liable for damages caused by Force Majeure Events. Force Majeure Events shall include acts of God (fire, flood, storm, terrorism, war, civil disturbance, acts of any governmental authority, accidents, strikes, labor disputes or problems), required maintenance work, inability to access the local distribution system, computer malice by the EDC (including, but not limited to, a facility outage on its distribution lines or electric losses, changes in laws, rules, or regulations of any governmental authority or any other cause beyond HIKO's control.

12. Liability. The remedy in any claim or suit by Customer against HIKO will be solely limited to direct actual damages, which will not exceed the amount of Customer's single largest monthly service amount to the immediately preceding 12 months. All other remedies at law or in equity, in hereto waived. In no event will either HIKO or Customer be liable for consequential, incidental, indirect, special or punitive damages. These limitations apply without regard to the cause of any liability or damages. There are no third-party beneficiaries to this Agreement.

13. HIKO Contact Information. Customer may contact HIKO's Customer Service Center at 1.888.264.4908, Monday through Friday 8:00 a.m. - 8:00 p.m. EST (contact center hours subject to change). A notice may also be sent to HIKO at: HIKO, 120 College Road, Suite 100, Monaca, N.Y. 10922.

14. Dispute Resolution. In the event of a billing dispute or a disagreement involving HIKO's service hereunder, the parties will use their best efforts to resolve the dispute. Customer should contact HIKO (by telephone or by writing as provided above). The dispute or complaint relating to a residential customer may be submitted by other party at any time to the PUC, pursuant to its "Consumer Handling Procedures Procedure" or calling the PUC at 1.800.692.3800 or by writing to the PUC at the following address: Public Utility Commission, P.O. Box 426, Harrisburg, Pennsylvania 17120. Customer must pay the bill in full, except for the disputed amount, during the pendency of the dispute, and such payment shall be refunded if your suit by the PUC.

15. A Choice of Laws. Venue for any lawsuit brought to enforce any term or condition of this Agreement or to construe the terms hereof shall be exclusively in the State of Pennsylvania. This Agreement shall be governed under and shall be governed by the laws of the State of Pennsylvania without regard to the application of its conflict of law principles.

16. Taxes and Fees, except as otherwise provided in the Agreement or provided by law, all taxes of whatsoever kind, nature and description due and payable with respect to service provided under this Agreement, other than taxes based on HIKO's net income, shall be paid by Customer, and Customer agrees to indemnify HIKO and hold HIKO harmless from and against any and all such taxes.

17. Regulatory Changes. This Agreement is subject to present and future legislation, orders, rules, regulations or recommendations of duly constituted governmental authority having jurisdiction over this Agreement.

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AFFIDAVIT  
OF  
STEVEN L. ESTOMIN, Ph.D.

JUNE 19, 2014

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**EXETER**

ASSOCIATES, INC.  
10480 Little Patuxent Parkway  
Suite 300  
Columbia, Maryland 21044

- Capacity cost
  - Cost of ancillary services, margin (i.e., profit) and risk.
6. Prices were calculated for four separate 4-week billing cycles:
    - January 1 through January 30
    - January 8 through February 6
    - January 15 through February 13
    - January 22 through February 20
  7. The APS and Duquesne zones exhibit the lowest total all-in, per-MWh generation costs, varying from approximately \$70 per MWh (based on real-time energy prices for the Duquesne zone over the January 8 through February 6 billing cycle) to approximately \$135 per MWh (based on day-ahead energy prices for the APS zone over the January 15 through February 13 billing cycle).
  8. Costs for the remaining four zones are similar to each other and range from a total cost of approximately \$129 per MWh (based on real-time energy prices for the Penelec zone for non-space heat customers over the January 8 through February 6 billing cycle) to approximately \$228 per MWh (based on day-ahead energy prices for the PECO zone for space heating customers over the January 1 through February 30 billing cycle).
  9. The results obtained from this analysis suggest that the cost to serve residential consumers covering any of the four billing cycles examined would be not more than \$0.23 per kWh in any of the six EDC zones examined, even under the assumption that all supply were procured on the PJM spot markets.

**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.

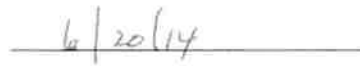
HIKO ENERGY, LLC,  
Respondent

Docket No. C-2014-

**VERIFICATION**

I, Tanya J. McCloskey, Acting Consumer Advocate, hereby state that the facts set forth above in this Joint Complaint 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 (relating to unsworn falsification to authorities).

  
Signature

  
Date

**PUBLIC STATEMENT OF THE OFFICE OF CONSUMER ADVOCATE  
PURSUANT TO 71 P.S. § 309-4(e)**

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161 and for the following reasons, Acting Consumer Advocate Tanya J. McCloskey has determined to file a Joint Complaint with the Commonwealth of Pennsylvania by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (OAG) and participate in proceedings before the Commission involving Hiko Energy, LLC (Hiko Energy). The Joint Complaint alleges violations of the Public Utility Code, Commission regulations and orders, the Unfair Trade Practices and Consumer Protection Law and the Telemarketer Registration Act.

Hiko Energy is licensed by the Commission to supply electric generation to residential and commercial customers throughout Pennsylvania. Early in 2014, the OAG and the OCA received thousands of consumer complaints and contacts about supplier variable rate charges on their electric bills. The OCA joined in the filing of this Complaint to address multiple identified violations of the Commission's regulations and Pennsylvania law and to seek protections for consumers. The OCA will represent the interests of consumers before the Commission and ensure that Hiko Energy follows the requirements of the law and Commission regulations and orders when it engages in marketing and sales of its electric supply in Pennsylvania.

# EXHIBIT B

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
800-684-6560

FAX (717) 783-7152  
consumer@paoca.org

May 1, 2015

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,  
Complainants

v.

HIKO Energy, LLC,

Respondent

Docket No. C-2014-2427652

Secretary Chiavetta:

Enclosed please find the Joint Petition for Approval of Settlement with accompanying Exhibits and Statements in Support, in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

Handwritten signature of Candis A. Tunilo in cursive.

Candis A. Tunilo  
Assistant Consumer Advocate  
PA Attorney I.D. #89891

Enclosures

cc: Honorable Elizabeth Barnes, ALJ  
Honorable Joel Cheskis, ALJ  
Certificate of Service

\*185197

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the  
Joint Petition for Approval of Settlement with accompanying Exhibits and Statements in Support, in  
the manner and upon the persons listed below:

Dated this 1st day of May 2015.

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185178

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	:	

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**JOINT PETITION FOR APPROVAL OF SETTLEMENT**

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The Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection (BCP or OAG) and Tanya J. McCloskey, Acting Consumer Advocate (OCA), (together, Joint Complainants), the Office of Small Business Advocate (OSBA), and HIKO Energy, LLC (HIKO or the Company) (collectively, Joint Petitioners)<sup>1</sup> hereby join in this Joint Petition For Approval of Settlement (Settlement), which resolves all issues among the Joint Petitioners.

The Joint Petitioners respectfully request that Administrative Law Judges Elizabeth Barnes and Joel H. Cheskis (ALJs) recommend and the Pennsylvania Public Utility Commission (Commission) approve all terms and conditions of the Settlement without modification on an expedited basis. The Settlement provides for refunds and injunctive relief in full satisfaction of

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<sup>1</sup> The Bureau of Investigation and Enforcement (I&E) does not join in this Settlement but does not oppose the Settlement.

the Joint Complaint filed with the Commission by Joint Complainants against HIKO on June 20, 2014.

In support of this Settlement, the Joint Petitioners state the following:

**I. BACKGROUND**

1. The Attorney General is the chief law officer of the Commonwealth of Pennsylvania pursuant to Article IV § 4.1 of the Pennsylvania Constitution and is authorized to initiate and maintain this action pursuant to the Commonwealth Attorneys Act, 71 P.S. § 732-204.

2. Tanya J. McCloskey is the Acting Consumer Advocate. The OCA is authorized by law to represent the interests of utility consumers before the Commission, as provided in 71 P.S. § 309-1 *et seq.*

3. HIKO is a New York limited liability company licensed to supply retail electricity to residential, small commercial (25 kw and under demand), large commercial (over 25 kw demand), industrial and governmental customers throughout the Commonwealth. The Commission approved Respondent's license application with conditions by Final Order entered July 2, 2012 at Docket No. A-2012-2289944.

4. On June 20, 2014, Joint Complainants filed a Joint Complaint with the Commission pursuant to the Public Utility Code, 66 Pa. C.S. Ch. 28, the Commission's regulations, 52 Pa. Code Ch. 54, 56 and 111, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (Consumer Protection Law), and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* (TRA). The Joint Complaint includes eight separate counts as follows: (1) misleading and deceptive promises of savings; (2) slamming; (3) lack of good faith handling of complaints; (4) failing to provide rate information; (5) failing to provide accurate

pricing information; (6) prices nonconforming to disclosure statement; (7) failing to follow POR program parameters; and (8) failure to comply with the Telemarketer Registration Act. With respect to relief, Joint Complainants requested that the Commission find that HIKO violated the Public Utility Code, the Consumer Protection Law, the TRA, and the Commission's regulations and Orders; provide restitution to HIKO's customers; impose a civil penalty; order HIKO to make various modifications to its practices and procedures; and revoke or suspend HIKO's EGS license, if warranted.

5. On July 10, 2014, the OSBA filed a Notice of Appearance, Notice of Intervention and Public Statement in this proceeding.

6. On July 30, 2014, I&E filed a Notice of Intervention in this proceeding.

7. On July 30, 2014, HIKO filed an Answer with New Matter to the Joint Complaint. In its Answer, HIKO generally denied the various averments of violations of Pennsylvania law and Commission regulations and order made by the Joint Complainants in the Joint Complaint. In its New Matter, HIKO averred various affirmative defenses and requested that judgment be entered in favor of the Company.

8. On August 19, 2014, Joint Complainants filed their Reply to New Matter specifically denying the viability of each of HIKO's affirmative defenses.

9. On September 19, 2014, HIKO filed an unopposed Motion for Protective Order. The Motion was granted by Order dated September 25, 2014.

10. An Initial Prehearing Conference was convened on September 29, 2014. Following the Initial Prehearing Conference, Scheduling Order dated October 3, 2014 was issued establishing, *inter alia*, that the Joint Complainants would serve written direct testimony of consumer witnesses by Friday, December 5, 2014; that evidentiary hearings for purposes of

admitting the written direct testimony of the consumer witnesses subject to cross examination and timely objections would be held January 15-16 and 21-23, 2015; and a further prehearing conference was scheduled for February 3, 2015.<sup>2</sup>

11. On December 5, 2014, Joint Complainants served the direct testimony of 98 consumer witnesses, comprising two volumes and 464 pages.

12. On December 19, 2014, HIKO filed an unopposed Motion for Continuance Evidentiary Hearings scheduled for January 15-16 and 21-23, 2015.

13. By Order Granting Motion for Continuance dated December 22, 2014, the ALJs granted HIKO's Motion for Continuance and scheduled hearings for the cross examination of consumer witnesses for March 23-27, 2015. The ALJs also directed HIKO to (1) identify which consumers it intended to cross by February 24, 2015; (2) submit any motions to strike consumer testimony by March 13, 2015; and (3) serve the Company's cross exhibits on the ALJs, parties and consumer witnesses by March 13, 2015. The ALJs also rescheduled the further prehearing conference for April 8, 2015.

14. On February 24, 2015, HIKO notified the ALJs and parties that the Company intended to cross examine all of the Joint Complainants' consumer witnesses at hearings on March 23-27, 2015.

15. On March 3, 2015, Joint Complainants filed a Memorandum of Law Regarding the Admission of Pattern of Practice Evidence.

16. On March 13, 2015, HIKO filed a Motion to Strike Pre-Served Consumer Direct Testimony. Additionally, HIKO served its cross examination exhibits intended for use at the

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<sup>2</sup> Later, in Scheduling Order #3 entered December 5, 2014, the ALJs also directed HIKO to: (1) identify which consumer witnesses it intended to cross-examine by December 22, 2014; (2) file any motions to strike consumer witness direct testimony by January 5, 2015; and (3) provide its cross-examination exhibits to the ALJs, parties and witnesses by January 9, 2015.

evidentiary hearings scheduled for March 23-27, 2015 on the ALJs, parties and consumer witnesses.

17. Also on March 13, 2015, HIKO filed a Reply Memorandum of Law Regarding the Admission of "Pattern and Practice" Evidence.

18. On March 17, 2015, Joint Complainants filed an Answer to HIKO's Motion to Strike Consumer Direct Testimony.

19. By Order entered March 18, 2015, the ALJs granted in part and denied in part HIKO's Motion to Strike Consumer Direct Testimony.

20. Via tele-conference call on March 20, 2015, Joint Petitioners advised the ALJs that they had reached a settlement in principle and requested that the ALJs suspend the litigation schedule until such final approval could be obtained. The ALJs granted the request and cancelled the evidentiary hearings scheduled for March 23-27, 2015, and directed that the parties convene on April 8, 2015 to move consumer testimony into the record and set a deadline for submission of settlement documents.

21. On April 8, 2015, the ALJs convened a status conference with the parties, wherein the redacted<sup>3</sup> consumer testimony sponsored by Joint Complainants was moved into the record and a deadline of May 1, 2015 was set for submission of a Joint Petition for Settlement and Statements in Support. The parties stipulated that by admitting the consumer testimony into the record, HIKO was not admitting to any wrongdoing. The consumer testimony was introduced solely for the purpose of providing substantial evidence in the record that would support the approval of settlement, and that if the parties had not reached a Settlement in Principle, Joint Complainants would have relied on the consumer statements to prove the allegations in their

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<sup>3</sup> The names, street addresses and verification signatures were redacted from each piece of consumer direct testimony. Also redacted to the extent the information appeared in testimonies were account/meter numbers, telephone numbers and BCP file numbers.

Joint Complaint, and HIKO would have challenged the accuracy of the allegations made by the Customer Witnesses through cross-examination, cross-examination exhibits, and rebuttal testimony.

Thereafter, the ALJs issued an Order dated April 8, 2015 suspending the procedural schedule and directing that the Joint Petition for Settlement, along with factual stipulations and statements in support be filed by May 1, 2015.

## II. SETTLEMENT TERMS AND CONDITIONS

22. The Settlement shall become effective 15 days after a final non-appealable order has been entered (Effective Date).

A. Refunds.

23. Refund Pool – HIKO agrees to pay the sum of \$2,025,383.85 (Refund Pool), which reflects the total refund amount minus \$159,320.15 in refunds provided by the Company to date and shall be allocated as follows:

a. Regarding the group of customers enrolled in HIKO's guaranteed 1%-7% savings program, all customers will receive a refund reflecting 3.5% savings as compared to the applicable Price to Compare for January, February and March 2014 after taking into account any refunds a customer may have already received from HIKO. This amount totals \$1,672,523.10 of the Refund Pool, and reflects \$1,789,704.00 of refunds minus \$117,180.90 in refunds provided by the Company to date.

b. The amount of \$352,860.75 from the Refund Pool shall be allocated as refunds for HIKO's customers not enrolled in HIKO's 1%-7% guaranteed savings program, which reflects \$395,000.00 of refunds minus \$42,139.25 in refunds provided by the Company to

date to this group of customers. Refunds shall be provided to all HIKO customers in this group that were on variable rate plans in January, February or March 2014. The OAG and OCA will determine the refund amount to offer eligible HIKO customers based on the individual customer's usage, price charged and refund amounts already received directly from HIKO. The refund determinations will be designed so as to fully utilize the Refund Pool after accounting for any administration fees not otherwise paid by HIKO pursuant to this Settlement.

c. HIKO shall honor all commitments to customers enrolled in HIKO's one-free month program who meet the eligibility requirements to receive one free month of service whether or not the customer has received a refund.

B. Administration of Refund Pool.

24. OAG and OCA shall retain a third-party Administrator of the Refund Pool. HIKO shall be responsible for all costs and expenses relating to the third-party Administrator, up to a maximum of \$50,000.

25. HIKO shall deposit one-half (1/2) of the full amount of the Refund Pool identified above with the Administrator within 15 days after OAG and OCA identify to HIKO the Administrator retained (or 15 days after the Effective Date, whichever is later), and HIKO will deposit the remaining one-half (1/2) within 60 days thereafter.

26. HIKO shall fully and timely cooperate with OAG, OCA and the Administrator by providing all customer information necessary to calculate each customer's refund amount. Such information shall include, but not be limited to, customer billing rates, usage and addresses. The Settlement Administrator shall use best efforts to distribute funds from the Refund Pool within one hundred and eighty (180) days of receiving the Refund Pool funds from HIKO. The Settlement Administrator shall provide monthly reports to OCA, OAG, HIKO and designated

Commission staff of funds distributed that include at a minimum, the customer's name and other available identifying information, the amount of funds dispersed to each customer and the period for which the funds were dispersed.

27. If any funds remain in the Refund Pool after issuance of the calculated refunds, they shall be provided to EDCs' hardship funds and allocated by the ratio of HIKO customers in the EDC's territory to the total amount of HIKO customers in Pennsylvania as of January 1, 2014.

28. Any unclaimed funds for refunds issued that remain in the Refund Pool shall be forwarded to the Pennsylvania Department of the Treasury pursuant to unclaimed property requirements for the customer(s) entitled to the refund.

C. Contributions to Hardship Funds.

29. Within 15 days of the Effective Date, HIKO shall make a contribution payment of \$25,000 to the EDCs' hardship funds. The contribution shall be allocated by the ratio of HIKO customers in the EDC's territory to the total amount of HIKO customers in Pennsylvania as of January 1, 2014.

D. Injunctive Relief.

30. Modifications to Business Practices: In addition to complying with all Commission regulations, Orders and policies, HIKO shall implement the following modifications to its business practices:

a. Product Offering:

1. HIKO agrees that it will not accept any new Pennsylvania customers starting April 1, 2015 and lasting until June 30, 2016; provided, however, that if

HIKO finds that it is able to offer a fixed rate product before June 1, 2016, it will be able to do so pursuant to the provisions set forth in Exhibit A hereto.

2. Regarding HIKO's current customers, HIKO shall comply with the procedures set forth in 52 Pa. Code § 54.10 relating to changes at the end of any fixed price contract terms. HIKO acknowledges that as part of these procedures, Section 54.10 permits, *inter alia*, the movement of a customer to a month-to-month plan with no cancellation fees if the customer does not respond to the options notice, and Section 54.10(2)(ii)(A)(I) requires 30 days' advanced notification to the customer moved to a month-to-month plan of any price change before being charged the new price. Further, if HIKO offers fixed rate products after the time period set forth in Paragraph 30(a)(1) above, HIKO shall comply with the procedures set forth in 52 Pa. Code § 54.10.

3. If HIKO offers variable rate products to consumers in the Commonwealth after the time period set forth in Paragraph 30(a)(1) above, HIKO agrees that, in addition to the other requirements in this Settlement, it will not charge Pennsylvania customers cancellation or termination fees for the Company's variable rate products.

b. Marketing: If HIKO offers electric generation supply to Pennsylvania consumers after the time period set forth in Paragraph 30(a)(1) above:

1. HIKO shall comply with all Pennsylvania laws, including the Public Utility Code, 66 Pa. C.S. § 101 *et seq.*, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (Consumer Protection Law) and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* (TRA), and other applicable laws, as well as Commission regulations, Orders and policies.

2. HIKO commits that the Company, its agents, employees and representatives shall not make misrepresentations to consumers.

3. HIKO, its agents, employees and representatives shall not make representations, either directly or by implication, about savings that consumers may realize by switching to HIKO except when referencing an explicit, affirmative guaranteed savings program; provided, however, that as long as HIKO does not violate this or any other provision of this Settlement, nothing herein shall preclude HIKO from including data comparing actual historical HIKO rates with actual rates of the local EDC in any statements made to, or materials provided, any consumers.

4. HIKO, its agents, employees and representatives shall refrain from using terms in their variable rate marketing campaigns, such as “risk free,” “competitive,” “guaranteed,” or any other terminology that represents, explicitly or by implication, that HIKO guarantees that the price offered will be lower than the EDC’s Price to Compare.

5. If HIKO offers variable rate products to consumers in the Commonwealth, after the time period set forth in Paragraph 30(a)(1) above, HIKO its agents, employees and representatives shall refrain from using terms in their variable rate marketing campaigns, such as “trial period” or “introductory rate,” without a clear and conspicuous disclosure of the material terms and conditions thereof, including and without limitation to, a full description of the price that will be charged after the expiration of that introductory or trial period, the circumstances under which the consumer can cancel, and the consequences of cancellation.

6. HIKO specifically commits to complying with 52 Pa. Code § 57.175 and shall not enter into a sales agreement or change the commodity provider for any

consumer that is not personally accepted by the EDC Customer of Record. HIKO salespeople shall confirm that any person who grants consent to a service change is the EDC Customer of Record or has been authorized by the Customer of Record to grant such consent. Otherwise, HIKO shall not proceed with the switch.

7. Every communication by a HIKO representative with a potential customer shall begin with the sales representative identifying his or her name, and stating (i) that he or she is calling on behalf of HIKO Energy, LLC; (ii) that HIKO can provide the customer with electricity; and (iii) that the sales representative does not work for or represent the customer's electric utility company.

8. In addition to the requirements of Paragraph 30(b)(7) above, the HIKO salesperson shall explain that if the consumer switches to HIKO, his or her electric bill will contain HIKO's charges for generation as well as delivery charges from his or her electric utility.

9. If HIKO offers variable rate products to consumers in the Commonwealth after the time period set forth in Paragraph 30(a)(1) above that are not capped or otherwise limited, the HIKO salesperson must include the following statement during any variable rate sales contacts:

After \_\_\_ month(s) [if Introductory Price period is applicable], the price you pay under this variable rate contract can change every month. This is not a fixed rate contract. Variable means the price can go up or down. There is no limit on how high the price can go.

10. During a variable rate sales contact or on any variable rate advertising, if HIKO makes a representation to the consumer that they may cancel their contract at any time, HIKO must also state that cancellations will be handled promptly, but it could take several days to switch suppliers.

11. If HIKO offers a guaranteed rate for a certain time period, HIKO is prohibited from stating that it has no term plans.

12. Regarding all in-person sales solicitations, the HIKO salesperson shall provide the Disclosure Statement before presenting a contract to the consumer for his or her signature and inform the consumer that the document sets out his or her rights and obligations.

13. HIKO, its agents, employees and representatives shall deposit with the United States Postal Service (or such other mail delivery service the Company may employ) its Disclosure Statement and Welcome documents within three (3) business days after the account is enrolled.

14. A Disclosure Statement shall contain the following information:

i. The terms of the product.

ii. A detailed description of the product, which shall match the oral description given in the telemarketing solicitation. This description may be satisfied with appropriate use of the Schumer box.

15. HIKO shall retain records in accordance with the Commission's requirements, including but not limited to, confirmations of mailing, which shall include the date that the Disclosure Statement and Welcome documents were deposited with U.S.P.S. (or other delivery service) and the customer name and address stated on the envelope containing the documents.

16. Regarding online enrollments, HIKO shall revise its Website so that it displays all required disclosures and terms and conditions, as one or multiple unavoidable separate screen page(s) during the enrollment process. HIKO shall require new customers to

acknowledge that they have reviewed the Terms and Conditions, which the Consumer shall be able to print, before proceeding to complete enrollment.

17. In all advertising to consumers, HIKO shall include a clear and conspicuous display of HIKO's brand identification information and clear and conspicuous notice that HIKO is independent of the consumer's electric utility, but not formally name the electric utility. Further, HIKO shall include clear and conspicuous language that the consumer is not required to switch to an alternate generation supplier, but if the consumer chooses to switch, he or she will continue to receive one bill from his or her electric utility and the bill will reflect HIKO's generation charges.

18. If the Company offers variable rate products after the time period specified in Paragraph 30(a)(1) above, the Company's variable rate product marketing materials that offer terms of service for acceptance by consumers and Welcome documents to consumers that have enrolled in variable rate products with HIKO, the Company shall provide a statement of the average price per kwh, as required by 52 Pa. Code § 54.7(b)(2); the Company shall also provide a statement of the total impact of the Company's 24-month average price under the program for the levels of monthly usage of 500 kWh, 1,000 kWh and 2,000 kWh. The information would be organized as follows:

Monthly usage	500 kWh	1,000 kWh	2,000 kWh
HIKO Average price	\$xxx	\$xxx	\$xxx

This information shall also be conveyed to the consumer during the sales contact. If HIKO begins offering variable rates, it will provide at least an average variable price, in fulfillment of the requirements of 52 Pa. Code § 54.7(b)(2).

c. Third Party Verifications: If HIKO offers electric generation supply to Pennsylvania consumers after the time period set forth in Paragraph 30(a)(1) above:

1. For live Third Party Verifications (“TPVs”), the Company representative shall provide the following explanation, in a slow and audible manner, to consumers prior to beginning the TPV process:

You are going to hear a series of questions to confirm your understanding of the agreement. If the representative speaks too quickly, please interrupt and tell the representative to speak more slowly. If you do not understand a question, please interrupt and say that you do not understand the question. If you have a question of your own, please interrupt and ask your question.

2. HIKO shall add the following questions to all TPVs, whether via live agent or an Interactive Voice Response system (“IVR”):

- What is your name? (for live agent only)
- What is your address? (for live agent only)
- Do you understand that HIKO is not your electric utility?
- Do you understand that you are not required to switch to HIKO in order to continue receiving electric service?
- Does your name appear on the electric bill?
- If not, do you know whether the person whose name appears on the electric bill has sent written notice to your electric utility authorizing you to switch providers?

If the consumer answers that his or her name does not appear on the electric bill, the HIKO representative may request that the consumer produce the person whose name appears on the electric bill to verify authorization to switch. If the customer of record (or other properly authorized person) is not available, the sales solicitation and TPV must immediately end.

If the consumer answers that he or she is the customer of record (or is a properly authorized person) and the sales solicitation is for a variable rate product, HIKO shall also add the following questions to the TPV:

- Do you understand that you are agreeing to a variable rate that changes on a month-to-month basis?
- Do you understand that a variable rate can go up as well as go down?
- Do you understand that there is no limit on the price? (If offering an uncapped or otherwise unlimited variable rate.)
- Do you understand that your variable rate could be higher or lower than the rate you would pay your local utility?

3. HIKO agrees that all TPVs will be performed outside the presence of the HIKO sales representative in accordance with the Commission's regulations. Further, the HIKO in-person sales representative shall leave the premises during the TPV in accordance with the Commission's regulations.

4. HIKO sales representatives shall not prompt consumers' responses to TPV questions, instruct the consumers as to the manner in which to respond to TPV questions, or otherwise participate in the TPV of any sale.

d. Disclosure Statement: Within 10 days of the Effective Date, HIKO shall provide to OAG and OCA its current Disclosure Statement and Schumer Box, drafted pursuant to the Commission's Final-Omitted Rulemaking at Docket No. L-2014-2409385.

1. Further, HIKO shall provide to the OCA and the Commission any subsequently amended Disclosure Statements for use in the Commonwealth for the period of five years after the Effective Date.

2. In addition to adhering to the Commission's regulations, Orders and policies regarding the requirements for disclosure statements, term and conditions, and marketing materials, if the Company offers variable rate products after the time period specified in Paragraph 30(a)(1) above, HIKO shall:

i. Include the following language in at least 12-point bold font in the "Price Structure" section of the Company's Disclosure Statement and the Schumer Box, if possible, for all variable rate products:

After \_\_\_ month(s) [if Introductory Price period is applicable], the price you pay under this variable rate contract can change every month. This is not a fixed rate contract. Variable means the price can go up or down. There is no limit to how high the price can go.

ii. Under the heading "Cancellation/Early Termination Fees" of the Disclosure Statement, HIKO shall state the following in at least 12 point font:

You may cancel this contract at any time without an early termination fee. All cancellations will be handled promptly, but it could take several days to switch suppliers.

3. If the Company offers variable rate products after the time period specified in Paragraph 30(a)(1) above, HIKO shall not state or represent to customers in the Company's variable rate programs that the price HIKO will charge will be market-based unless

HIKO provides a specific means or formula, readily understandable for the customers, the Commission, OAG and OCA to monitor and confirm that the price charged is market-based.

4. HIKO shall remove from its Disclosure Statement the language that authorizes HIKO to obtain and review information regarding the customer's credit history (i.e. Disclosure Statement ¶ 5).

5. HIKO shall comply with the EDCs' Purchase of Receivables program parameters and tariff provisions.

6. The parties agree that the Disclosure Statement language stated in Paragraphs 30(d)(2) and 30(d)(4) above, are not a change in contract terms pursuant to 52 Pa. Code § 54.10. HIKO, however, shall notify all of its current Pennsylvania customers enrolled in variable rate programs as of the date of execution of this Settlement of the updated Disclosure Statement, as provided in Paragraphs 30(d)(2) and 30(d)(4) above.

e. Training: Prior to offering electric generation supply to Pennsylvania consumers after the time period set forth in Paragraph 30(a)(1) above, HIKO shall implement a new training program specifically tailored to the requirements of the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.

1. Within 180 days of the expiration of the time period set forth in Paragraph 30(a)(1) above, HIKO shall provide to the Commission, OAG and OCA a detailed description of the training HIKO will implement.

2. After a 30-day review period, the Company will meet with OAG, OCA and designated Commission staff to review and discuss the training HIKO plans to implement.

3. HIKO's training materials for its sales representatives and customer service representatives will accurately and comprehensively cover the following:

- i. The requirements of the Public Utility Code and the Commission's regulations, Orders and policies regarding marketing and billing practices for EGSs;
- ii. The requirements of the Consumer Protection Law and TRA, including both prohibited practices and affirmative requirements;
- iii. Local laws regarding door-to-door sales;
- iv. An express warning that deceptive sales practices will not be tolerated by HIKO's management;
- v. An express warning and material description of the remedial steps that will be taken against any sales representatives and customer service representatives that violate any term of this Settlement or otherwise engages in improper sales practices; and
- vi. A description of the quality assurance, monitoring, auditing and reporting practices HIKO maintains to identify and prevent improper sales practices.

4. The training, at a minimum, shall include the following:

- i. Initial training to be completed prior to offering electric generation supply to Pennsylvania consumers pursuant to Paragraph 30(a)(1) above and subsequent refresher training

at least every six months for all HIKO employees, agents and third-party contractors in the modifications listed in this Settlement and the implementation thereof;

- ii. Initial training to be completed prior to offering electric generation supply to Pennsylvania consumers pursuant to Paragraph 30(a)(1) above and subsequent refresher training at least every six months for all HIKO employees, agents and third-party contractors in Pennsylvania laws applicable to Respondent, including but not limited to the Public Utility Code, the Consumer Protection Law and the TRA; and
- iii. Initial training to be completed prior to offering electric generation supply to Pennsylvania consumers pursuant to Paragraph 30(a)(1) above and subsequent refresher training at least every six months for all HIKO employees, agents and third-party contractors in current Commission regulations, policies and Orders.

5. HIKO, itself, shall implement and conduct the training and ensure that its sales agents comply with the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.

6. Individual marketers retained by HIKO shall be required to successfully complete HIKO's training program before marketing to and enrolling customers on

behalf of HIKO. Each trainee shall be required to sign a form acknowledging that he or she has received and understands the information provided in HIKO's training materials.

f. Compliance Monitoring: Prior to offering electric generation supply to Pennsylvania consumers after the time period set forth in Paragraph 30(a)(1) above, HIKO shall increase internal quality control efforts to include at least the following:

1. HIKO shall record all telephonic communications between customers and HIKO's customer service representatives. For its current customers in Pennsylvania, however, HIKO shall record all telephonic communications between customers and HIKO's customer service representatives upon the Effective Date.

2. HIKO shall require its telemarketers to record all telephonic communications with consumers that result in a sale.

3. HIKO shall maintain such recordings in accordance with the Commission's requirements.

4. HIKO shall implement a provision in its contracts with telemarketers that no commissions shall be paid for any enrollment unless a recording of the entire sales presentation to that consumer is supplied to HIKO within three days of the sale.

5. HIKO shall, at least every seven (7) business days, randomly select no less than fifteen (15) recordings of telephone solicitations of Pennsylvania customers that resulted in a successful enrollment and review them in order to evaluate the sales practices employed and ensure that the sales practices comply with this Settlement, the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.

i. Whenever such sample reveals one or more non-compliant sales calls by an agent, third-party contractor or sales representative, HIKO shall investigate whether any of the consumers enrolled by the agent, third-party contractor or sales representative were subjected to sales practices that violated this Settlement, the Public Utility Code, the Consumer Protection Law, the TRA, or Commission regulations, Orders and policies.

ii. Such investigation, at a minimum, shall include a review of the sales calls and call notes for the ten Pennsylvania consumers enrolled before the call in question and the ten Pennsylvania consumers enrolled after the call in question.

iii. If HIKO identifies additional non-compliant sales calls, HIKO shall implement remedial steps as described in Paragraph 30(f)(7).

iv. Additionally, HIKO shall offer to any consumer subjected to the non-compliant sales practice a refund equal to the difference between the price charged by HIKO and the consumer's applicable Price to Compare for the period in which the consumer was a customer as a result of the non-compliant sales practice. Such refund shall be paid to the consumer within ten days of the date upon which the determination is made that the consumer was subjected to a non-compliant sales practice.

6. Any substantiated consumer complaint about a HIKO sales representative or other information indicating that a HIKO sales representative has violated any term of this Settlement or otherwise engaged in improper sales practices shall trigger an investigation by HIKO into whether any of the other HIKO customers enrolled by that sales representative were subjected to sales practices that violated the terms of this Settlement or were otherwise improper.

i. Such investigation shall, at a minimum, include examination of customer enrollment records, sales service call notes for the ten Pennsylvania consumers enrolled by the sales representative immediate prior to and subsequent to the enrollment that triggered the investigation.

7. In the event HIKO determines that a sales representative has violated any terms of this Settlement, the Public Utility Code, the Consumer Protection Law, the TRA, or Commission regulations, Orders and policies or otherwise engaged in improper sales practices, HIKO shall take prompt remedial actions, which at a minimum shall include:

- i. For the first violation, provide additional training and re-training;
- ii. For two violations in a twelve-month period, suspend the sales representative for a period of no fewer than 30 days; and
- iii. For any violations in excess of two within a twelve-month period, permanently disqualify the sales representative from marketing HIKO's services to Pennsylvania consumers.
- iv. The HIKO marketing contractor which employs the sales representative shall forfeit an amount equal to twice the total marketing contractor's sales commissions applicable to the non-compliant sales. All sales commissions claimed by the marketing contractor shall be subject to forfeiture for

a period of six months in the event violations are found by HIKO.

g. Reporting: Within 30 days of implementation of the training and compliance monitoring described above and quarterly thereafter for a period of three years, HIKO shall provide to the Commission and OCA:

1. An explanation of all internal audits and investigations performed during the reporting period, including a description of the audit(s) or investigation(s) performed as well as the results thereof and

2. A report of all customer complaints and disputes received by HIKO during the reporting period.

h. Customer Service:

1. HIKO shall employ regulatory personnel whose duties include, at a minimum:

i. Compliance with the Chapter 56 of the Commission's regulations, including but not limited to, prompt investigation of all customer complaints, providing the customer with information necessary to make an informed judgment and issue a report to the customer within 30 days;

ii. Resolution of customer complaints fairly and expeditiously; and

iii. Training customer service representatives in accurately recording the reason for a customer's call in a customer

contact log and ensuring compliance with the training described in this Settlement.

2. HIKO shall at all times maintain a staff of customer service representatives necessary to at least:

- i. Provide consumers with immediate access, within normal business hours, to a “live” customer service representative, whether the consumer seeks such access via telephone and/or e-mail;
- ii. Provide a timely response to any voice mail messages left on the Company’s customer service toll-free number outside of normal business hours, but in no event, later than 24-hours after the message was left;
- iii. Provide for the check of its voice mail message system at the beginning of each day’s normal business hours;
- iv. Prevent its voice mail customer service message system from becoming “full” such that consumers cannot leave a voice mail message; and
- v. Respond to all inquiries made by letter within 24 hours of receipt of said letter.

3. HIKO shall develop and implement an action plan for handling periods of high call volumes. Such action plan will, at a minimum:

- i. Provide for the answering of overflow calls to HIKO's system by additional customer service staff or temporary services;
- ii. Provide a detailed description for use by all such staff or temporary services answering calls regarding inputting of the nature of customer calls;
- iii. Provide clear and consistent information to all such staff or temporary services answering calls to convey to customers with the same or similar issues; and
- iv. Provide clear and consistent information to all such staff or temporary services answering calls regarding relief that will be provided by HIKO to convey to customers.

4. If HIKO experiences a period of high call volumes in which it could not and did not comply with the provisions of this Settlement, HIKO shall within 60 days provide to the Commission, OAG and OCA a report of the occurrence, an explanation of underlying reasons for the occurrence and a description of all remedial measures implemented by HIKO.

31. Release: In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Settlement, in order to fully and finally resolve the Joint Complaint of Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection and the Acting Consumer Advocate Tanya J. McCloskey filed with the Pennsylvania Public Utility Commission on June 20, 2014, and conditioned upon HIKO providing refunds and making the payments and implementing the consumer protection procedures in the manner set

forth herein, Joint Complainants hereby agree to release HIKO from any and all civil claims, including all administrative or regulatory claims within the jurisdiction of the Pennsylvania Public Utility Commission, to the extent permitted by the laws of the Commonwealth of Pennsylvania, which Joint Complainants brought or which Joint Complainants could have brought against HIKO arising from or related to the conduct alleged in the Joint Complaint.

### **III. THIS SETTLEMENT IS IN THE PUBLIC INTEREST**

32. This Settlement was achieved by the Joint Petitioners after extensive investigation into HIKO's marketing and billing practices, including formal and informal discovery and the direct testimony of 98 consumers admitted into the record by Joint Complainants.

33. The agreed-upon provisions regarding refunds and comprehensive injunctive relief in the Settlement will provide reasonable relief for HIKO's current and former customers affected by the Company's conduct as alleged in the Joint Complaint and found in the investigation by Joint Complainants into HIKO's marketing and billing practices described in Paragraph 32 above.

34. Attached to this Settlement are the respective Statements in Support of the Joint Petitioners setting forth the basis upon which each considers the Settlement to be in the public interest. The Joint Petitioners' respective Statements in Support are attached hereto as Appendices "A" through "C."

### **IV. ADDITIONAL TERMS AND CONDITIONS**

35. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission modifies the Settlement, then any Joint Petitioner may elect to withdraw from this Settlement and may proceed with litigation and, in such event, this entire Settlement shall be void and of no effect. Such election

to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties and the ALJs within five business days after the entry of an Order modifying the Settlement.

36. This Settlement is proposed by the Joint Petitioners to settle all issues among them in the instant proceeding. If the Commission does not approve the Settlement, the Joint Petitioners reserve their respective rights to conduct further hearings, including cross-examine consumers on their direct testimony, submit additional direct, rebuttal and surrebuttal testimony, as contemplated by the litigation schedules adopted in this proceeding, and briefing regarding contested issues. This Settlement is made without any admission against, or prejudice to, any position which any Joint Petitioner may adopt in the event of any subsequent litigation of this proceeding or in any other proceeding.

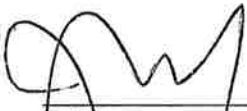
37. This Settlement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. The Settlement shall not be deemed an admission by HIKO as to any of the allegations in the Joint Complaint. The Settlement is presented without prejudice to any position which any of the parties may have advanced and without prejudice to the position any of the parties may advance in the future on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of the Settlement. This Settlement does not preclude the parties from taking other positions in other proceedings involving the marketing and billing practices of Electric Generation Suppliers or Natural Gas Suppliers or other aspects of the competitive market.

38. If the ALJs adopt this Settlement without modification in their Initial Decision, the Joint Petitioners waive their rights to file exceptions to the issues addressed by the Settlement.

**WHEREFORE**, the Joint Petitioners, by their respective counsel, respectfully request:

1. That the ALJs recommend that the Commission approve this Settlement, including all the terms and conditions thereof, without modification on an expedited basis;
2. That the Commission approve the Settlement without modification on an expedited basis; and
3. That the Joint Complaint of BCP and OCA be marked satisfied.

Respectfully submitted,



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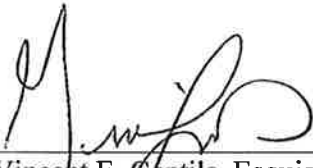
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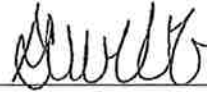


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## **Exhibit A**

### Fixed Rate Product Offering

If HIKO decides to offer a fixed rate product for all residential and small business customers before June 1, 2016, it will be able to do so, after providing ninety (90) days written notice to the Office of Attorney General and the Office of Consumer Advocate, pursuant to the provisions set forth below, in addition to complying with all Commission regulations, Orders and policies.

A. Product Offering:

1. Regardless of the date when HIKO begins to offer fixed rate products for all residential and small business customers, HIKO will offer fixed rate products that run for three-months or longer up and until September 1, 2016.
2. HIKO agrees that it will not charge Pennsylvania customers cancellation or termination fees for the Company's fixed rate products when such products are offered in accordance with Exhibit A – Paragraph A.1.

All other injunctive terms and conditions set forth in the Joint Petition for Settlement remain in effect regardless, of whether HIKO begins to offer a fixed rate product.

206064

**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

**STIPULATION OF FACTS IN SUPPORT OF SETTLEMENT**

At the Further Prehearing Conference on April 8, 2015, Administrative Law Judges Elizabeth Barnes and Joel H. Cheskis (ALJs) requested the parties to provide a Factual Stipulation for the purpose of categorizing the testimony of record. Pursuant to the direction of the ALJs and 52 Pa. Code § 5.232(a), the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer Advocate, (together, the Joint Complainants) and HIKO Energy, LLC (HIKO or the Company) by their undersigned attorneys, agree and stipulate to the following facts for the sole purpose of supporting the approval of the parties' proposed settlement of the above-captioned matter by the Pennsylvania Public Utility Commission (Commission):

PROCEDURAL HISTORY<sup>1</sup>

1. On June 20, 2014, the Joint Complainants filed with the Commission a Formal Complaint against HIKO at Docket Number C-2014-2427652 (Joint Complaint).
2. The Joint Complainants averred that the Company offers variable rate electric generation service to customers in Pennsylvania and that the Company uses a variety of marketing and advertising mediums to solicit customers for its variable rate plans, including telephonic, internet, mass mail, and print solicitations.
3. The Joint Complainants further averred that in early 2014, they received numerous contacts and complaints from consumers related to variable rates charged by HIKO and that the OCA had reviewed approximately 8 Formal Complaints filed by consumers at the Commission.
4. The Joint Complainants included eight separate counts in the Joint Complaint against HIKO:
  - A. Count I - Misleading and Deceptive Promises of Savings;
  - B. Count II - Slamming;
  - C. Count III – Lack of Good Faith Handling of Complaints;
  - D. Count IV – Failing to Provide Rate Information;
  - E. Count V - Failing to Provide Accurate Pricing Information;

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<sup>1</sup> A full outline of the procedural history in this matter can be found in Section I of the Joint Petition for Approval of Settlement. A brief procedural history is provided herein.

- F. Count VI - Prices Nonconforming to Disclosure Statement;
- G. Count VII- Failing to Follow Purchase of Receivables Program Parameters, and
- G. Count VIII - Failure to Comply with the Telemarketer Registration Act.

5. The Joint Complainants made several requests for relief, including providing restitution to customers, prohibiting deceptive practices in the future, and revocation of HIKO's Electric Generation Supplier (EGS) license, if warranted.

6. On July 30, 2014, HIKO filed an Answer with New Matter and admitted or denied the various averments made by the Joint Complainants and specifically denied the violations of law and other wrongdoing as alleged in the Joint Complaint.

7. On August 19, 2014, the Joint Complainants filed a Reply to New Matter in which they denied the averments contained in the New Matter filed by HIKO.

8. An Initial Prehearing Conference was convened on September 29, 2014. Pursuant to the litigation schedule adopted at the Initial Prehearing Conference, the Joint Complainants pre-served the written Consumer Testimony of 98 customers, comprising 464 pages of written statements and exhibits.

9. On April 8, 2015, Joint Complainants and HIKO notified the Administrative Law Judges (ALJs) that they and the Office of Small Business Advocate had reached a Settlement on all issues in this case.<sup>2</sup>

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<sup>2</sup> The Commission's Bureau of Investigation and Enforcement does not join the Settlement but does not oppose it.

10. Joint Complainants moved redacted versions of the Consumer Testimony into the record on April 8, 2015 for the purpose of providing substantial evidence in the record that would support the approval of the Settlement.

STIPULATION OF FACTS BASED UPON CUSTOMER TESTIMONY

11. Although redacted, the Consumer Testimony included the witnesses' signed verifications that the facts set forth in their statements were true and correct to the best of their knowledge, information and belief. The statements were verified subject to the penalties of Section 4904 of the Crimes Code, 18 Pa. C.S. §4904, relating to unsworn falsification to authorities. The signatures were redacted by agreement of the parties for admission into the record.

12. Most of the Consumer Testimony statements contain complaints about HIKO's charges for electric generation service provided during the period January – March 2014.

13. Approximately 83 consumer witnesses averred that the HIKO sales representatives had guaranteed savings, and they did not receive those savings.

14. Approximately 6 consumer witnesses averred that they were misled by HIKO's Disclosure Statement.

15. Approximately 3 consumer witnesses averred that they were misled by HIKO's Welcome Letter.

16. Approximately 4 consumer witnesses averred that they believed that the HIKO sales representative was affiliated with an Electric Distribution Company.

17. Approximately 9 consumer witnesses averred that their electric generation service was switched to HIKO without their authorization.

18. Approximately 54 consumer witnesses averred that that they experienced difficulties when they attempted to contact HIKO to complain about their charges or their complaints were mishandled by HIKO.

19. Approximately 8 consumer witnesses averred that HIKO failed to notify them of a rate change.

20. Approximately 23 consumer witnesses averred that HIKO's sales representative failed to disclose whether the rate was fixed or variable.

21. Approximately 50 consumer witnesses averred that they never received a Disclosure Statement.


22. Approximately 17 consumer witnesses averred that they suffered financial difficulties after receiving HIKO's charges.

#### CONCLUSION

23. A Settlement in Principle was reached by the parties before the dates scheduled for cross-examination of consumer witnesses or proffer of rebuttal testimony. Therefore, the parties agreed to waive cross-examination of Consumer Testimony statements 1 through 98 and to stipulate their statements and accompanying exhibits into the record. The parties stipulate that by admitting the Consumer Testimony into the record, HIKO is not admitting any wrongdoing. The Consumer Testimony is being introduced solely for

the purpose of providing substantial evidence in the record that would support the approval of the Settlement. The parties stipulate that if a Settlement had not been reached, Joint Complainants would have relied on the Consumer Testimony, along with the testimony of their experts and other witnesses, to prove the allegations in their Joint Complaint, and HIKO would have challenged the accuracy of the allegations made by the consumer witnesses through cross- examination, cross-examination exhibits, and rebuttal testimony.

Respectfully submitted,



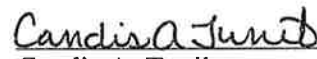
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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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	:	
	:	

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**STATEMENT IN SUPPORT OF JOINT PETITION FOR APPROVAL OF  
SETTLEMENT OF JOINT COMPLAINANTS COMMONWEALTH OF  
PENNSYLVANIA, BUREAU OF CONSUMER PROTECTION AND OFFICE OF  
CONSUMER ADVOCATE**

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The Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection (BCP or OAG) and Tanya J. McCloskey, Acting Consumer Advocate (OCA), (together, Joint Complainants), both signatory parties to the Joint Petition for Approval of Settlement (Joint Petition or Settlement) in the above-captioned matter, submit that the terms and conditions of the Settlement are reasonable and in the public interest for the following reasons:

**I. BACKGROUND**

On June 20, 2014, the Commonwealth of Pennsylvania and the Office of Consumer Advocate filed a Joint Complaint asserting eight separate counts and alleging that HIKO Energy,

LLC (HIKO, Respondent or the Company) violated Pennsylvania law and the Pennsylvania Public Utility Commission (Commission) orders and regulations. The eight separate counts in the Joint Complaint are as follows: I) misleading and deceptive promises of savings; II) slamming; III) lack of good faith handling of complaints; IV) failing to provide rate information; V) failing to provide accurate pricing information; VI) prices nonconforming to disclosure statement; VII) failing to follow Purchase of Receivables program parameters; and VIII) failure to comply with the Telemarketer Registration Act. With respect to relief, the Joint Complainants request that the Commission find that Respondent violated the Public Utility Code, the Consumer Protection Law, the Telemarketer Registration Act, and the Commission's regulations and orders; provide restitution to Respondent's customers; impose a civil penalty; and order Respondent to make various modifications to its practices and procedures; and revoke or suspend Respondent's Electric Generation Supplier (EGS) license, if warranted. The Bureau of Investigation and Enforcement and the Office of Small Business Advocate intervened in the proceeding.<sup>1</sup>

Pursuant to the litigation schedule adopted at the September 29, 2014 Initial Prehearing Conference in this matter, Joint Complainants timely served Administrative Law Judges Elizabeth Barnes and Joel H. Cheskis (ALJs) and the parties on December 5, 2014 with consumer direct testimony, consisting of testimony in question-and-answer form and exhibits of 98 consumer witnesses and encompassing 2 volumes, totaling 464 pages. The testimony relates to each consumer's firsthand experience with HIKO's marketing, billing and customer service

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<sup>1</sup> On July 11, 2014, I&E also filed a Formal Complaint against HIKO Energy, LLC at docket C-2014-2431410. In the Complaint, I&E alleges that HIKO violated the Commission's regulations at 52 Pa. Code § 54.4(a) for failing to charge prices to customers that matched the prices marketed and agreed upon. By way of relief, I&E seeks that the Commission order a civil penalty in the amount of \$14,780,000, refunds to customers of the difference between the promised price and the price HIKO charged, and revocation of HIKO's license. The OCA and the OAG intervened in this proceeding on August 8, 2014 and August 18, 2014, respectively. The I&E proceeding has not been consolidated with the proceeding initiated by Joint Complainants.

practices. Hearings for the cross-examination of the consumer witnesses were scheduled for March 23 through 27, 2015. A Further Prehearing Conference to determine the remainder of the litigation schedule for the submission of the testimony of expert and other non-consumer witnesses was scheduled for April 8, 2015.

Joint Petitioners reached a settlement on all issues prior to the commencement of hearings for the cross-examination of Joint Complainants' consumer witnesses or proffer of rebuttal testimony. During the Further Prehearing Conference on April 8, 2015, redacted versions of the consumer testimonies were admitted into the record (Consumer Testimonies 1-98). The parties agreed to waive cross-examination of Consumer Testimonies 1 through 98 and to stipulate their statements and accompanying exhibits into the record. The parties stipulated that by admitting Consumer Testimonies 1-98 into the record, HIKO is not admitting any wrongdoing. Consumer Testimonies 1-98 were introduced solely for the purpose of providing substantial evidence in the record that would support the approval of the Settlement. The parties stipulated that if a Settlement had not been reached, Joint Complainants would have relied on the Consumer Testimonies 1-98, along with the testimony of their experts and other witnesses, to prove the allegations in their Joint Complaint, and HIKO would have challenged the accuracy of the allegations made by the consumer witnesses through cross-examination, cross-examination exhibits, and rebuttal testimony.

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the parties held a series of settlement discussions. These discussions resulted in the Joint Petition, which addresses the numerous complex issues raised in this case and applies to residential and small business customers. The Joint Complainants submit that the terms and conditions of the Joint Petition satisfactorily address the broad range of issues raised in

the Joint Complaint. Joint Complainants submit that the provisions of the Joint Petition, taken as a whole, constitute a reasonable compromise of the complex issues presented in the Joint Complaint. In this Statement in Support, Joint Complainants address those areas of the Settlement that specifically relate to most salient issues and submit that the Joint Petition is in the public interest and in the interests of past and present HIKO customers and in the interests of future HIKO customers should HIKO obtain new customers pursuant to the terms of the Joint Petition. Additionally, the Settlement supports the continued development of the retail choice market in Pennsylvania. Joint Complainants request that Commission approve the Joint Petition on an expedited basis without modification.

## **II. SETTLEMENT TERMS**

### **A. Introduction.**

Joint Complainants submit that this Joint Petition results from compromises of the factual allegations in the Joint Complaint, which the Joint Complainants intended to prove and which the Company has disputed. Although the Joint Complainants and the Company may disagree with respect to the allegations regarding the conduct of the Company's employees and agents, all acknowledge the importance of the matters at issue to Pennsylvania consumers and to the retail market. Full and accurate information and disclosures to consumers, as well as fair and transparent marketing and billing practices, are of paramount importance both to consumer protections and the continued development of a retail choice market. The Joint Complainants recognize that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of continued litigation. Joint Complainants submit that the Settlement is comprehensive, appropriate and reasonable under the circumstances and in the public interest.

As such, Joint Complainants respectfully request that the Commission approve the Settlement on an expedited basis and without modification.

**B. Refunds and Contribution to Electric Distribution Companies' (EDCs) Hardship Funds. (Joint Petition at ¶¶ 23-29)**

As alleged in the Joint Complaint, on or about February 10, 2014, the OCA began receiving a high volume of calls and written correspondence from residential consumers on variable rate plans with EGSs regarding the level of electric generation charges on the consumers' electric bills. Joint Complaint at ¶ 15. As of May 5, 2014, the OCA had collected information from approximately 2,434 of its consumer contacts, and approximately 109 or 4.5% were from customers of HIKO. Joint Complaint at ¶¶ 16-17. Further, from February 27, 2014 to June 4, 2014, OAG received approximately 39,607 telephone calls and 7,503 consumer complaints related to variable rates charged by EGSs, and of the 7,503 consumer complaints received by BCP, 254 or approximately 3.4% were against HIKO. Joint Complaint at ¶ 18.

In Count I of the Joint Complaint, Joint Complainants alleged that HIKO's salespeople provided misleading and deceptive promises of savings to consumers in order to gain their business. See Joint Complaint at Count I. Specifically, Joint Complainants alleged that HIKO's salespeople promised guaranteed savings over the Price to Compare (PTC) as inducement for complainants to switch to HIKO. Joint Complaint at ¶¶ 22-23. Joint Complainants alleged that HIKO then charged customers prices that were at least two or three times the PTC and some as high as \$0.40 per kWh for electricity. Joint Complaint at ¶¶ 22-23, 62. Also as alleged in the Joint Complaint, HIKO is responsible for any fraudulent, deceptive or other unlawful marketing acts by its employees, agents and representatives pursuant to 52 Pa. Code § 54.43(f). See Joint Complaint at ¶ 24. Joint Complainants further alleged that HIKO's salespeople engaged in activities that are fraudulent and deceptive by promising savings that may not, and for many

consumers did not, materialize in violation of the Commission's regulations at 52 Pa. Code §§ 54.43(f) and 111.12(d)(1). See Joint Complaint at ¶¶ 25-27. Also, Joint Complainants alleged that HIKO failed to adequately train and monitor its agents, as required by the Commission's regulations in violation of 52 Pa. Code §§ 111.4 and 111.5. See Joint Complaint at ¶ 28.

In Count IV of the Joint Complaint, Joint Complainants alleged that the Company failed to provide accurate price information to customers and deceived customers about the rate they would be charged by HIKO in violation of 52 Pa. Code §§ 54.4(a), 54.5(c)(2), and 54.7(a). See Joint Complaint at ¶¶ 44-46, 48.

Regarding variable rate pricing, HIKO's Disclosure Statement states:

**Pricing and Billing.** The price will [sic] the Initial Term is the price stated at sign-up and confirmed in your written Welcome Letter from HIKO. Unless otherwise agreed to in writing, the price for all electricity sold under this Agreement in the Renewal Term shall be a variable price which each month shall reflect transportation to the Delivery Point, and other market-related factors, plus all applicable taxes, fees, charges or other assessments and HIKO's costs, expenses and margins. The variable price includes estimated Gross Receipts Tax but excludes Pennsylvania sales tax, if applicable. If you are tax exempt you must provide HIKO with a copy of your exemption certificate. You may call HIKO or visit [www.hikoenergy.com](http://www.hikoenergy.com) for pricing information.

Joint Complaint at ¶ 51 and App. A.

As alleged in Count V of the Joint Complaint, upon information and belief, HIKO failed to provide pricing information in plain language and using common terms that consumers understand, in violation of 52 Pa. Code §§ 54.5(c), 54.43(1). See Joint Complaint at ¶¶ 52-54, 58-60. Additionally, Joint Complainants alleged that HIKO's prices charged to consumers in early 2014 were not reflective of the cost to serve residential customers, as HIKO charged some of its variable rate customers prices at least as high as \$0.40 per kWh for electricity. Joint Complaint at ¶¶ 62-63 and App. B. Joint Complainants would have proven these allegations through the testimony and accompanying exhibits of customer witnesses and expert witnesses.

By way of relief, Joint Complainants requested, *inter alia*, that the Commission impose a civil penalty and direct HIKO to provide appropriate restitution. Joint Complaint at ¶¶ C, D.

Pursuant to the partial litigation schedule adopted in this proceeding at the Prehearing Conference, Joint Complainants served the direct testimony of 98 consumer witnesses. Most of the consumer witnesses challenged HIKO's charges for January, February or March 2014. See Consumer Testimonies 1-98; See also Joint Petition at Exh. B, ¶ 12. Of the 98 customer witnesses, approximately 83 customer witnesses averred that HIKO's sales representatives had promised them savings; approximately 23 customer witnesses averred that the HIKO's salesperson failed to disclose whether the rate was fixed or variable; approximately 50 customer witnesses averred that they never received a Disclosure Statement; and approximately 6 customer witnesses averred that they were misled by HIKO's Disclosure Statement. See Consumer Testimonies 1-98; See also Joint Petition at Exh. B, ¶¶ 13-14, 20-21. Further, Joint Complainants intended to submit expert testimony regarding HIKO's misleading and deceptive promises of savings and charges to customers in early 2014 that did not conform to the Company's variable pricing provision in its Disclosure Statement.

In the Settlement, HIKO has agreed to provide refunds of at least \$2,025,383.85 (Refund Pool). Joint Petition at ¶ 23. Of the total sum, HIKO has already voluntarily provided \$159,320.15 in cash refunds directly to customers. Id. In the Settlement, there are two groups of HIKO's customers that will be considered for refunds. See Id. The first group of customers are those that were enrolled in HIKO's guaranteed 1% - 7% savings program. See Id. The customers in this group will all receive a refund reflecting 3.5% savings as compared to the applicable PTC for January, February, and March 2014 after taking into account any refunds a customer may have already received from HIKO. Id. This amount totals \$1,789,704.00 of

refunds minus \$117,180.90 in refunds already provided by the Company to date, resulting in a net amount of \$1,672,523.10. See Id. The second group of customers are those that were not enrolled in HIKO's guaranteed 1% - 7% savings program. See Id. The amount of \$352,860.75 from the Refund Pool is allocated as refunds for HIKO's customers in this group, which reflects \$395,000.00 of refunds minus \$42,139.25 in refunds already provided by the Company to date to this group of customers, resulting in a net amount of \$352,860.75. See Id. As Joint Complainants alleged in the Joint Complaint, HIKO did not provide the savings or benefits promised to customers by its salespeople; HIKO failed to provide rate information; HIKO failed to provide pricing information in plain language in its Disclosure Statement; and HIKO's prices charged in early 2014 did not conform to its variable rate pricing provision in its Disclosure Statement. See Joint Complaint at Counts I, IV, V, VI. As such, refunds will be provided to all customers in these groups that were on variable rate plans in January, February or March 2014. Joint Petition at ¶ 23.

The OAG and OCA will determine the refund amount to offer eligible HIKO customers based on the individual customer's usage, price charged, refund amounts already received directly from HIKO and whether the customer was in the guaranteed savings group. Id. The refund determinations will be designed so as to fully utilize the Refund Pool after accounting for any administration fees not otherwise paid by HIKO pursuant to this Settlement. Id. Additionally, the Joint Petition provides that HIKO will honor all commitments to customers enrolled in HIKO's one-free month program who meet the eligibility requirements to receive one free month of service whether or not the customer has received a refund. Id.

The Company will deposit one-half (1/2) of the full amount of the Refund Pool with a third-party Administrator within 15 days of Joint Complainants identifying to HIKO the

Administrator retained (or 15 days after the Effective Date, whichever is later), and HIKO will deposit the remaining one-half (1/2) within 60 days thereafter. Joint Petition at ¶ 25. HIKO will fully and timely cooperate with Joint Complainants and the Settlement Administrator by providing all customer information necessary to calculate each customer's refund amount. Joint Petition at ¶ 26. The Settlement Administrator will use best efforts to distribute funds from the Refund Pool within 180 days of receiving the Refund Pool funds from HIKO and will provide monthly reports of funds distributed to Joint Complainants, HIKO and designated Commission staff. Id.

Additionally, the Joint Petition provides that HIKO will make a total contribution of \$25,000 to the EDCs' hardship funds in proportion to the number of HIKO customers in the EDC's territory to the total amount of HIKO customers in Pennsylvania as of January 1, 2014. See Joint Petition at ¶ 29. For the reasons discussed below, Joint Complainants submit that the refund and contribution amounts are appropriate, especially in light of the other terms and conditions outlined in the Joint Petition.

The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten factors (Rossi Factors) that the Commission will consider in evaluating litigated and settled proceedings and determining whether a fine for violating a Commission order, regulation or statute is appropriate, as well as whether a proposed settlement for violations is reasonable and approval of the settlement agreement is in the public interest. When applied in settled cases, the factors will not be applied in as strict a fashion as in a litigated proceeding. 52 Pa. Code § 69.1201(b). The parties in settled cases will be afforded flexibility in reaching amicable resolutions so long as the settlement is in the public interest. Id. The factors and standards that will be considered by the Commission include the following:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

See 52 Pa. Code § 69.1201(b).

With regard to the first Rossi Factor, Joint Complainants submit that the allegations, *inter alia*, that HIKO did not provide the savings or benefits promised to customers by its salespeople,

failed to provide rate information, failed to provide pricing information in plain language in its Disclosure Statement, and charged prices in early 2014 that did not conform to its Disclosure Statement are of a serious nature. See 52 Pa. Code § 69.1201(c)(1). This Commission has made it clear that it will not tolerate unlawful activity that threatens to harm Pennsylvania's consumers and thereby the burgeoning retail electricity market in Pennsylvania. See Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff v. MXenergy Electric Inc., Docket No. M-2012-2201861, Order at 5 (May 3, 2012). "When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty." See 52 Pa. Code § 69.1201(c)(1).

With regard to the second Rossi Factor, Joint Complainants submit that the resulting consequences of HIKO's alleged conduct in early 2014 resulted in harm to Pennsylvania's consumers and the retail electricity market in Pennsylvania. See 52 Pa. Code § 69.1201(c)(2). Joint Complainants' investigation into this matter revealed that numerous affected HIKO customers received shut-off notices from their EDCs or experienced other financial difficulties resulting from HIKO's charges. See e.g., Consumer Testimonies 1-2, 5; See also Joint Petition at Exh. B, ¶ 22. Several consumer witnesses detailed their hardships in the consumer testimony. Id. For example, Consumer 1 testified, "[I am] 87 years old[.] I was in over my head ... Only threw [sic] my neighbor [sic] ... [was I] informed I was eligible [sic] to get help threw [sic] cap programs [sic] that they stoped [sic] the nightmare exsperince [sic] I was going threw [sic] with Hico [sic] Energy LLC." Id. at 5. Additionally, Consumer 2 testified as follows regarding his or her financial hardships: "I made it clear that I was not satisfied with ... [HIKO's refund] offer, but because of my financial situation and a need to clear my accounts with PPL, I accepted ... I

made payment arrangements to clear this debt. [S]ince I am on a fixed income, this has caused financial hardship for me.” Id. at 9. Consumer 5 also testified as to his or her financial hardships. See Id. at 21. Consumer 5 stated, “On May 27[, I] received [a] 10 day shut-off notice[,] even though I was on a budget plan ... I am on oxygen and can not [sic] be with out [sic] power[.] I need it to live.” Id.

Given the serious nature of the alleged violations and the resulting consequences, Joint Complainants submit that refunds to customers and a contribution to the EDCs’ hardship funds are appropriate, reasonable and in the public interest. Joint Complainants submit that the disbursement of the Refund Pool to HIKO’s eligible customers will assist these affected customers in restoring some portion of their financial losses incurred as a result of HIKO’s alleged conduct. The \$25,000 contribution that will be allocated to the EDCs’ hardship funds based on the number of HIKO customers in each EDC territory as of January 1, 2014, will assist consumers who have experienced difficulties as a result of high electric bills. As further discussed in the analysis of the other Rossi factors below, Joint Complainants submit that this amount is appropriate in light of the other comprehensive relief provided in the Joint Petition.

The fourth Rossi Factor<sup>2</sup> is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Prior to the Settlement, HIKO voluntarily provided \$159,320.15 in cash refunds directly to customers. The Settlement provides for additional refunds to HIKO’s customers that were allegedly affected by the violations asserted in the Joint Complaint. Thus, Joint Complainants submit that the refunds and contributions to EDCs’ hardship funds are reasonable, appropriate, and in the public interest. Additionally, as detailed

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<sup>22</sup> Joint Complainants submit that the third Rossi Factor pertains only to the evaluation of litigated cases, and therefore, it does not apply to this Settlement. See 69 Pa. Code § 1201(c)(3).

*infra*, HIKO has also agreed to injunctive relief that will result in modifications to its business practices, and Joint Complainants submit that these modifications will help to prevent the conduct alleged in the Joint Complaint from occurring in the future.

The fifth Rossi Factor is the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). Joint Complainants alleged that as of May 5, 2014, the OCA had received approximately 109 contacts from HIKO customers regarding variable rates, and as of June 4, 2014, BCP had received approximately 254 contacts from HIKO customers regarding variable rates. See Joint Complaint at ¶¶ 17-18. Further, of the approximately 203 Formal Complaints against EGSs that were filed by consumers with the Commission that OCA had reviewed by May 5, 2014, approximately 8 or 4% were filed against HIKO. See Joint Complaint at ¶ 19. This Commission has recognized that where there is one complaint made to the Commission, there are likely substantially more of the same nature that have not been formally made. See e.g. Arthur Rand v. GTE North, 1999 Pa. PUC LEXIS 55, \*9-10 (March 19, 1999). Hence, Joint Complainants submit that the majority, if not all, of HIKO's customers on variable rate plans in early 2014 were affected by HIKO's alleged actions. Joint Complainants submit that the number of customers who were impacted by the Company's conduct as alleged in the Joint Complaint is significant. Accordingly, Joint Complainants submit that the refunds and the \$25,000 contribution to the EDCs' hardship funds are reasonable and in the public interest when considered along with the injunctive relief outlined in the Joint Petition.

The sixth Rossi Factor is the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). "An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty." Id. Joint Complainants submit that the Company's compliance history poses no barrier to approval

of the proposed Settlement. Additionally, as discussed in Section C, *infra*, Joint Complainants submit that the injunctive terms of the Settlement will help to ensure compliance with regulatory standards.

The seventh Rossi Factor is whether the regulated entity cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). Joint Complainants submit that HIKO cooperated in the investigation in this matter, including cooperating in formal and informal discovery and settlement negotiations. The ability of the parties to comprehensively resolve this matter prior to extensive litigation demonstrates the level of cooperation.

The eighth Rossi Factor is the amount of the civil penalty necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). Joint Complainants submit that the Settlement comprehensively addresses their allegations in the Joint Complaint. The contributions to the EDCs' hardship funds, the refunds to customers, and the injunctive relief, which includes an agreement that HIKO will refrain from accepting any new Pennsylvania customers from April 1, 2015 until June 30, 2016, are sufficient to deter similar future conduct.

The ninth Rossi Factor is past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). Joint Complainants submit that the scope of the conduct complained of in this proceeding is unique and unlike other complaint proceedings against EGSs that this Commission has decided. This Commission, however, has approved settlements involving EGSs that involve refunds, civil penalties and injunctive relief. See e.g. Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Energy Services Provider, Inc. d/b/a Pennsylvania Gas & Electric And U.S. Gas & Electric, Inc. d/b/a Pennsylvania Gas & Electric, Docket No. M-2013-2325122, Order (Oct. 2, 2014) (The Commission approved a Settlement that required PaG&E to pay a civil penalty, refunds to its customers affected by the conduct complained of,

and implement revisions to its operating procedures); See also Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. IDT Energy, Inc., Docket No. 2013-2314312, Opinion and Order (entered October 17, 2013) (The Commission approved a Settlement that required IDT to make modifications to its practices relating to its training and supervision of its sales agents and handling of customer complaints). Joint Complainants submit that the Settlement is comprehensive *vis a vis* the allegations in the Joint Complaint and is therefore, reasonable and in the public interest.

The tenth Rossi Factor to consider is other “relevant factors.” 52 Pa. Code § 69.1201(c)(10). Joint Complainants submit that it has been over a year since HIKO’s alleged actions and omissions bringing rise to the Joint Complaint. Given the fact that a Further Prehearing Conference was scheduled for April 8, 2014 to determine the remainder of the litigation schedule for the submission of testimony of expert and other non-consumer witnesses, it is unlikely that a Commission decision could have been entered until at least the end of 2015 had this action been fully litigated. Additionally, there is inherent uncertainty in the outcomes of fully litigated proceedings. The Settlement will ensure that HIKO’s customers will receive refunds, and the customers will receive them much sooner. Additionally, the Settlement saves costs and resources of the parties and Commission.

Joint Complainants submit that based on the foregoing Rossi Factor analysis, the refund and contribution to EDCs’ hardship funds provisions in the Settlement are reasonable and in the public interest. The refunds that HIKO provided directly to customers combined with the Refund Pool will help restore the financial losses incurred by HIKO’s consumers that were alleged to have been charged extraordinarily high prices in early 2014. The Settlement will provide refunds to customers and do so sooner than a fully litigated proceeding. The contribution to

EDCs' hardship funds will assist customers in need with payment of their electric bills. Further, Joint Complainants submit that the robust injunctive relief in the Settlement, discussed *infra*, will help protect HIKO's current and possible future customers and will better inform customers of the products and services provided by HIKO.

**C. Injunctive Relief/Modifications to Business Practices. (Joint Petition at ¶¶ 30(a)-(h))**

As stated above, the Joint Complaint includes eight separate counts, as follows: I) misleading and deceptive promises of savings; II) slamming; III) lack of good faith handling of complaints; IV) failing to provide rate information; V) failing to provide accurate pricing information; VI) prices nonconforming to disclosure statement; VII) failing to follow Purchase of Receivables program parameters; and VIII) failure to comply with the Telemarketer Registration Act.

In support of the allegations in the Joint Complaint, Joint Complainants filed the written, direct testimony of 98 customer witnesses. Of the 98 customer witnesses, approximately 83 customer witnesses averred that HIKO's sales representatives had promised them savings, approximately 23 customer witnesses averred that HIKO's salesperson failed to disclose whether the rate was fixed or variable, and approximately 50 customer witnesses averred that they never received a Disclosure Statement. See Customer Testimonies 1-98; See also Joint Petition at Exh. B, ¶¶ 13, 20-21. Additionally, approximately 9 customer witnesses averred that HIKO switched their electric generation service without their consent. See Customer Testimonies 1-98; See also Joint Petition at Exh. B, ¶ 17. Further, approximately 54 customers averred that they experienced difficulties when they attempted to contact HIKO to complain about their charges or their complaints were mishandled by HIKO. See Customer Testimonies 1-98; See also Joint Petition at Exh. B, ¶ 18.

The Settlement includes comprehensive injunctive relief that requires HIKO to implement various modifications to its business practices to address the allegations in the Joint Complaint. See Joint Petition at ¶ 30. Specifically, the required modifications to business practices are as follows:

- **Product offering:** HIKO agrees that it will not accept any new Pennsylvania customers from April 1, 2015 until June 30, 2016; provided, however, that if HIKO finds that it is able to offer a fixed rate product before June 1, 2016, it will be able to do so pursuant to the provisions of the Settlement. See Joint Petition at ¶ 30(a); See also Joint Petition at Exh. A.
- **Marketing:** If HIKO offers variable rate products to consumers after June 30, 2016, HIKO specifically commits to complying with all Pennsylvania laws and Commission regulations, Orders and policies. See Joint Petition at ¶ 30(b)(1). Further, HIKO commits that the Company and its agents, employees and representatives shall not make misrepresentations to consumers. See Joint Petition at ¶ 30(b)(2). To that end, the Settlement provides specific restrictions regarding representations to consumers about savings that the consumer may realize by switching to HIKO and use of the terms “risk free,” “competitive,” “guaranteed,” “trial period,” and “introductory rate.” See Joint Petition at ¶¶ 47(b)(3)-(5). Additionally, HIKO specifically commits to complying with 52 Pa. Code § 57.175 and not enter into a sales agreement that is not personally accepted by the EDC’s Customer of Record. See Joint Petition at ¶ 47(b)(6). The Settlement also imposes requirements regarding HIKO’s salespeople’s communications with consumers, including a specific statement that the

salesperson does not work for or represent the consumer's electric utility; that if the consumer switches to HIKO, his or her electric bill will contain HIKO's charges for generation as well as delivery charges from his or her EDC; and for variable rates, when permitted under the Settlement, a statement that there is no limit on how high the price can go and that the consumer may cancel at any time, which cancellation will be handled promptly, but it may take several days to switch suppliers. See Joint Petition at ¶¶ 47(b)(7)-(10). For all in-person sales solicitations, HIKO's salesperson must provide the consumer with the Disclosure Statement prior to presenting the consumer with a contract to obtain his or her signature. Joint Petition at ¶ 12. The Settlement also contains requirements for the contents of HIKO's Disclosure Statement; the prompt provision thereof to customers, and maintenance of adequate records regarding the provision of documents to customers. See Joint Petition at ¶¶ 30(b)(13)-(15). Finally, the Settlement contains specific requirements regarding HIKO's online enrollments and advertising to consumers. See Joint Petition at ¶¶ 47(b)(16)-(18).

- Third party verifications (TPVs): The Settlement contains specific requirements for HIKO's TPVs, including specific language to be used prior to beginning the TPV process and specific questions that must be asked during TPVs. See Joint Petition at ¶¶ 30(c)(1)-(2). Further, the Settlement requires that all TPVs be performed outside the presence of the HIKO salesperson, and the in-person salesperson must leave a consumer's premises during a TPV in accordance with the Commission's regulations. See Joint Petition at ¶ 30(c)(3). Finally, the Settlement prohibits HIKO salespeople from prompting consumers' responses to

TPV questions or instructing consumers in the manner in which to answer TPV questions. See Joint Petition at ¶ 30(c)(4).

- Disclosure statement: Specifically with regard to HIKO's Disclosure Statement, the Settlement requires that within ten days of the Commission's final order, the Company provide to BCP and OCA its current Disclosure Statement and Schumer Box drafted pursuant to the Commission's Final-Omitted Rulemaking and provide any subsequently amended Disclosure Statements to the OCA and the Commission for a period of five years. See Joint Petition at ¶¶ 30(d), (d)(1). Further, the Company will include specific language in its Disclosure Statement and if possible, Schumer Box regarding HIKO's variable rate products and cancellation/early termination fees. See Joint Petition at ¶ 30(d)(2). The Settlement also provides for specific restrictions if HIKO represents to consumers in the Company's variable rate programs that the price HIKO will charge will be "market-based." See Joint Petition at ¶ 30(d)(3). Additionally, under the terms of the Settlement, HIKO specifically agrees to comply with the EDCs' Purchase of Receivables program parameters and tariff provisions and agrees to remove from its Disclosure Statement the language that authorizes it to obtain and review information regarding the customer's credit history. See Joint Petition at ¶¶ 30(d)(4)-(5).
- Training: The Settlement requires that HIKO implement a new training program prior to offering electric generation supply to Pennsylvania customers and provide a description of the new training plan to BCP, OCA and the Commission within 180 days of the expiration provided in Paragraph 30(a)(1) of the Settlement and

then meet with BCP, OCA and designated Commission staff to review and discuss the training. See Joint Petition at ¶¶ 47(e)(1)-(2). The Settlement requires HIKO's new training program to accurately and comprehensively cover the applicable requirements of the Public Utility Code, Consumer Protection Law, TRA and the Commission's regulations, Orders and policies and specifically cover requirements related to door-to-door sales. See Joint Petition at ¶ 30(e)(3)(i)-(iii). The new training program must include a warning that deceptive sales practices will not be tolerated by HIKO's management and describe the remedial steps that will be taken if the representatives violate any terms of the Settlement or otherwise engage in improper sales practices. See Joint Petition at ¶ 30(e)(3)(iv)-(v). The Settlement requires that HIKO provide initial training and subsequent refresher training at least every six months. See Joint Petition at ¶ 30(e)(4). The Settlement requires that HIKO, itself, shall conduct the training. See Joint Petition at ¶30(e)(5).

- Compliance monitoring: The Settlement contains requirements regarding the recording and reviewing of communications with customers. See Joint Petition at ¶¶ 30(f)(1)-(5). The Settlement also contains requirements regarding HIKO's investigation into non-complaint sales calls, substantiated consumer complaints about HIKO sales representatives, violations of the Settlement, Pennsylvania laws or Commission regulations, Orders or policies, and remedial steps for identified non-compliant sales calls. See Joint Petition at ¶¶ 30(f)(5)-(7).
- Reporting: The Settlement requires that within 30 days of implementation of the training and compliance monitoring required in the Settlement and quarterly

thereafter for three years, HIKO provide to the OCA and Commission an explanation of all internal audits and investigations performed and the results thereof and reports of all customer complaints and disputes received by the Company. See Joint Petition at ¶ 30(g).

- Customer service: The Settlement requires that HIKO employ regulatory personnel who will help to ensure compliance with Chapter 56 of the Commission's regulations, fair and timely resolutions of customer complaints, and the proper training of customer service representatives. See Joint Petition at ¶ 30(h)(1). HIKO is also required to maintain a staff of customer service representatives, who will provide reasonable access to a "live" customer service representative and provide timely responses to any voicemail messages or inquiries made by letter. Joint Petition at ¶ 30(h)(2). Additionally, the Settlement requires HIKO to develop and implement an action plan for handling periods of high call volumes and lays out specific factors that must be included in the plan. See Joint Petition at ¶ 30(h)(3). If HIKO experiences a period of high call volumes in which it does not comply with the provisions of the Joint Petition, HIKO will provide a report to the Commission and the Joint Complainants. Joint Petition at ¶ 30(h)(4).

Joint Complainants submit that HIKO's agreement to refrain from accepting any new Pennsylvania customers from April 1, 2015 until June 30, 2016 is appropriate, reasonable, and in the public interest. This provision of the Settlement will help to deter similar conduct in the future. Additionally, this moratorium will give HIKO the opportunity to implement the

necessary modifications to its business practices as well as the training, as outlined in the Settlement, prior to enrolling any new customers in Pennsylvania.

Additionally, Joint Complainants submit that the modifications to HIKO's disclosure statement and advertising practices are designed to provide accurate information to customers in a clear, direct and understandable manner. For instance, should HIKO begin accepting new customers pursuant to the terms of the Settlement, modifications to HIKO's marketing and Disclosure Statement are intended to reduce confusion for customers by, *inter alia*, specifically restricting the use of certain terms and representations by HIKO's agents, employees and representatives and in the Company's Disclosure Statement.

Joint Complainants also submit that the modifications to HIKO's TPV process will help to further assure the customers' understanding and agreement to the product offered by requiring specific statements to be made to all customers during the TPV and specific questions to be asked to confirm the understanding of the agreement with the product offered.

Further, the Settlement provides for initial and ongoing training for HIKO's sales and customer service representatives that comprehensively covers the applicable requirements of Pennsylvania law and Commission regulations, Orders and policies. Joint Complainants submit that such training will increase the likelihood of compliance with these requirements and lead to clearer communications with customers about the products that HIKO offers, which will lead to a better understanding by customers of the products that HIKO offers.

The compliance monitoring requirements of the Settlement are designed to ensure that HIKO comprehensively monitors its Pennsylvania sales agents and that HIKO takes timely remedial steps if non-compliance is found. The reporting provisions in the Settlement are designed to provide OCA, OAG and the Commission with ongoing information regarding

HIKO's compliance with the Settlement, Pennsylvania law and Commission regulations, Orders and policies.

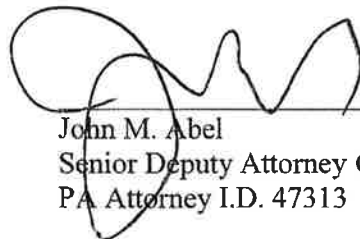
The customer service requirements in the Settlement are designed to ensure that HIKO's customers receive prompt access to HIKO's customer service representatives and prompt and accurate replies to inquiries. Further, the customer service requirements in the Settlement are designed to ensure HIKO's compliance with Chapter 56 of the Commission's regulations.

Joint Complainants submit that these modifications address many of the concerns raised by consumers to the Joint Complainants and in the consumer testimony as well as the allegations in the Joint Complaint. By agreeing to these specific modifications, HIKO will be providing more accurate, full and clear information in its sales process, from the initial sales contact through final enrollment and verification. These modified practices should lead to more fully informed consumers and correspondingly, a better functioning retail choice market. As such, the injunctive relief set out in the Settlement is appropriate, reasonable and in the public interest. Joint Complainants respectfully request that the Commission approve the Settlement on an expedited basis without modification.

**III. CONCLUSION**

For all of the foregoing reasons, Joint Petitioners respectfully request that the Public Utility Commission approve the Joint Petition for Approval of Settlement on an expedited basis without modification.

Respectfully submitted,



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**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

**Docket No. C-2014-2427652**

v.

HIKO ENERGY, LLC.  
Respondent.

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**HIKO ENERGY, LLC'S STATEMENT IN SUPPORT OF  
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

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Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201 and to the April 8, 2015 Order Suspending Procedural Schedule, Respondent HIKO Energy, LLC ("HIKO" or the "Company"), by its undersigned attorneys, submit this statement in support of the Settlement Agreement among the parties in the above-captioned matter (the "Settlement"). The Settlement is in the public interest and thus should be approved by the Commission without delay and on an expedited basis for the following reasons.

**I. INTRODUCTION**

This Settlement reflects HIKO's commitment to work with the Office of Attorney General ("OAG") and the Office of Consumer Advocate ("OCA") (collectively, "Joint

Complainants”) to provide substantial relief to customers affected by the extraordinary spikes in electric prices during the 2014 Polar Vortex and to improve its business operations and marketing practices to make them more protective of Pennsylvania consumers. Upon approval and implementation of the Settlement without modification, HIKO shall have paid full refunds to all customers enrolled in the Company’s guaranteed 1% to 7% savings program, as requested in the Joint Complaint. These refunds will provide affected customers with cash payments that go beyond the actual terms of the promised guarantee. Although HIKO’s price offer was that the customer would save at least 1% from the given local utility’s price, also known as the “price to compare,” the Settlement assumes that these customers would have received a discount averaging 3.5% (mid-way between 1% and 7%) of the price to compare. This refund amount totals \$1,672, 523.10 of the Refund Pool, and reflects \$1,789,704.00 of refunds minus \$117,180.90 in refunds voluntarily provided by HIKO to these affected customers to date.

HIKO will also make substantial refunds to customers that were enrolled in the Company’s variable rate plan in January, February, and March 2014. Notably, HIKO’s variable rate plan did not contain any ceiling on the amount of the variable price and, during the relevant time period (January through March 2014), it is well recognized that the costs of wholesale energy in the spot markets tripled and even quadrupled in response to the unforeseen market conditions and sustained frigid weather during the Polar Vortex. *See Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134 (Order entered Mar. 4, 2014) (Variable Rate Order) at 1-2. HIKO has learned from the Polar Vortex crisis of 2014 and is committed to providing substantial relief to affected customers and improving its business practices. Accordingly, the Settlement provides for \$352, 860.75 from the Refund Pool to be allocated to customers enrolled in HIKO’s variable

rate plan, which reflects \$395,000.000 of refunds minus \$42,139.25 in refunds voluntarily provided by HIKO to these affected customers to date.

In addition, HIKO has agreed to pay up to \$50,000 of the costs and expenses related to administering refunds and to make a \$25,000 contribution to the EDCs' hardship fund. The Settlement also provides for significant injunctive relief in the form of requirements governing HIKO's marketing practices, third-party verification procedures, disclosure statements, sales representative training, compliance monitoring reporting, and customer service. In addition, HIKO has agreed to extend through June 30, 2016 what had been a voluntary "time out" from selling its variable rate products to Pennsylvania consumers in early 2014.<sup>1</sup>

As discussed in the following section, the Settlement meets the criteria for approval of settlements involving allegations of violations of the Public Utility Code and the Commission's regulations set forth in the Commission's Policy Statement at 52 Pa. Code § 69.1201. Upon approval and implementation of the Settlement without modification, this Settlement shall provide immediate, concrete benefits to the public that would otherwise be unavailable in the near term given the delays and uncertainties in administrative and appellate litigation.

Additionally, HIKO's prompt and complete cooperation with Joint Complainants, the Office of Small Business Advocate ("OSBA"), and the Commission's Bureau of Investigation and Enforcement ("I&E") demonstrates its commitment to redressing the unfortunate experiences of affected customers and to strengthening its own policies and procedures.

## **II. THE SETTLEMENT SHOULD BE APPROVED AS IN THE PUBLIC INTEREST**

HIKO submits that the Settlement is in the public interest and serves to maintain the integrity of the retail electric market in Pennsylvania. Specifically, this Settlement is a complete

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<sup>1</sup> HIKO has the ability prior to June 30, 2016 to sell fixed rate service products subject to prior review by Joint Complainants.

and final resolution of all issues related to the Joint Complaint, avoids the time and expense of litigation and possible appeals, and provides substantial restitution to HIKO's current and former customers and implementation of marketing and business practices that would otherwise be unavailable in the near term.

HIKO further submits that approval of the Settlement is consistent with the factors and standards for evaluating litigated and settled proceedings, as articulated in *Rosi v. Bell Atlantic – Pennsylvania, Inc.*, 94 Pa. P.U.C. 103 (2000) and codified in the Commission's Policy Statement at 52 Pa. Code § 69.1201. Under this Policy Statement, while the same factors and standards may still be considered in both litigated and settled cases, the Commission specifically recognized that in settled cases parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa. Code § 69.1201(b).

The ten factors of the Policy Statement, as applied in this case, are addressed below.

1. The first factor to be considered under the Policy Statement is whether the alleged actions were of a serious nature, such as willful fraud or misrepresentation, or were merely administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). Many of the violations alleged here were of a serious nature in that they involved, among other things, alleged misrepresentations by sales representatives, alleged changing of customers' electricity generation supplier without authorization, and HIKO's alleged failure to abide by the terms of its price guarantee.

2. The second factor to be considered under the Policy Statement is whether the resulting consequences of the actions were of a serious nature. 52 Pa. Code § 69.1201(c)(2). There is no contention that the alleged violations resulted in personal injuries or property

damage. While HIKO acknowledges that the alleged violations, if true, could have caused customers financial harm, prior to entering into the Settlement, HIKO voluntarily provided \$159,320.15 in refunds to customers. Pursuant to the Settlement, HIKO will pay an additional \$2,025,383.85 into a Refund Pool, which shall be distributed under the auspices of an administrator chosen by Joint Complainants, to remedy any alleged financial harm to customers that remain uncompensated. Furthermore, the Settlement provides that any remaining funds in the Refund Pool shall be transferred to the EDCs' hardship fund and allocated by ratio of HIKO customers in the EDCs' territory to the total amount of HIKO customers in Pennsylvania as of January 2014. HIKO will also honor its commitment to offer additional savings to eligible customers through the One Month Free Program, which allows the customer to receive one free month of service whether or not the customer received a refund. Thus, any financial harm to customers during the Polar Vortex will have been remedied by HIKO's actions, both prior to and pursuant to the Settlement.

3. The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This factor may only be considered in evaluating litigated cases." *Id.* Since this matter is being resolved by settlement of the parties, this factor is not relevant here.

4. The fourth factor to be considered under the Policy Statement is whether HIKO made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). HIKO has agreed to substantial changes in its product offering, marketing practices, disclosure statements, third-party verification procedures, sales representative training, compliance protocols, and other internal operations in order to address the alleged conduct and to avoid similar incidents in the future. In addition, HIKO has agreed

not to offer variable rate plans starting April 1, 2015 and lasting until June 30, 2016, a measure that comes at substantial cost to the Company. Notably, HIKO voluntarily chose not to continue marketing to Pennsylvania consumers in early 2014 when it realized the impact of the Polar Vortex.

5. The fifth factor to be considered under the Policy Statement relates to the number of customers affected by the Company's actions and the duration of its violations. 52 Pa. Code § 69.1201(c)(5). Given the nature of the allegations of the Joint Complaint, all of HIKO's current and former customers enrolled in the guaranteed savings plan and variable rate plan may have been affected in different ways by the conduct alleged. All of the allegations relate to the Polar Vortex period during the winter of 2014, which was a period of extreme and unforeseen cold weather and accompanying aberrational price volatility in the wholesale electric markets. Although HIKO was not able to offer a price lower than the utility price to compare during the Polar Vortex, for many months before that period the Company regularly offered better rates than the local utility and is committed to restoring customer goodwill by providing lower prices to current and future customers in the future.

6. The sixth factor to be considered under the Policy Statement relates to HIKO's compliance history. 52 Pa. Code § 69.1201(c)(6). "An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty." *Id.* As noted above, all of the alleged violations occurred during the Polar Vortex period. HIKO has a satisfactory compliance history with the Public Utility Code and the Commission's regulations. Moreover, Joint Complainants, OSBA, or I&E have not raised any issues with HIKO's compliance history during the course of this Complaint Proceeding or settlement discussions. Therefore, the allegations of the Joint Complaint and the

informal and formal complaints referenced therein are the first infractions on HIKO's otherwise clean compliance history.

7. The seventh factor to be considered under the Policy Statement relates to whether HIKO cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). HIKO fully cooperated with OAG, OCA, OSBA, and I&E in providing information both formally and informally during the litigation and settlement discussions. Moreover, HIKO voluntarily ceased marketing in Pennsylvania as soon as it became apparent that due to the Polar Vortex it would not be able to keep the price guarantees and long before the Complaint was filed or any settlement discussions and it will continue to work with these Pennsylvania advocates to improve its operations.

8. The eighth factor to be considered under the Policy Statement is the appropriate settlement amount. 52 Pa. Code § 69.1201(c)(8). As stated above, HIKO voluntarily provided \$159,320.15 in cash refunds to customers prior to the Settlement. Pursuant to the Settlement, HIKO has agreed to pay an additional \$2,025,383.85, which comprises a net Refund Pool amount of \$2,184,704.00, up to \$50,000 of the costs and expenses related to administering the Refund Pool, and a \$25,000 contribution to the EDCs' hardship fund. In addition, the Settlement provides that any remaining funds in the Refund Pool shall be contributed to the EDCs' hardship fund and that eligible customers will receive one free month of service under the One Free Month Program whether or not they received a refund. HIKO submits that the combination of:

- (i) the Company's prior provision of refunds in the amount of \$159,320.15 to affected customers;
- (ii) HIKO's current provision of refunds in the additional amount of \$2,025,383.85 to affected customers; and
- (iii) the ability for customers to receive immediate relief from HIKO upon

approval of this Settlement constitutes a substantial and sufficient amount to resolve this proceeding and deter HIKO from committing future violations.

9. The ninth factor to be considered under the Policy Statement relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). The Joint Complainants have filed similar complaints against other EGS providers, all of which are in various stages of litigation or settlement. To date, there are no past Commission decisions related to the settlement in any of the complaints against these other EGS providers; however, the presiding Administrative Law Judges are considering a similar petition for approval of settlement between Joint Complainants and Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric (“PaG&E”). See *Pennsylvania et al. v. Energy Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric*, Docket No. C-2014-2427656, Joint Petition for Approval of Settlement (March 24, 2015). Like the instant Settlement, the proposed settlement with PaG&E requires the EGS provider to fund a Refund Pool for cash payments to affected customers, cover costs and expenses of administering the Refund Pool, and contribute to the EDCs’ hardship fund. The PaG&E proposed settlement with Joint Complainants also includes similar injunctive relief, including a time out period from the market and significant modifications to the Company’s marketing practices, disclosure statements, third-party verification procedures, sales representative training, compliance monitoring reporting, and other internal business practices. Like the PaG&E proposed settlement, the HIKO Settlement reflects a good faith, cooperative effort to correct alleged violations of the Commission’s regulations and maintain the integrity of the retail electric market in Pennsylvania.

Furthermore, in looking at the relevant factors that are comparable to other incidents, such as the allegations at issue here — namely, alleged misleading and deceptive sales practices

and unauthorized switching — and comparing the allegations to the relief provided in the Settlement, this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome. *See Pa. PUC, Bureau of Investigation & Enforcement v. Power Public, LLC*, No. M-2012-2257858, 2013 WL 6835126 (Pa. P.U.C. Dec. 19, 2013) (approving \$64,500 settlement in case involving “fraudulent, deceptive acts “ by a third party vendor representing Public Power resulting in slamming 263 customers with 2,937 customer accounts whose slams were rescinded before billing).

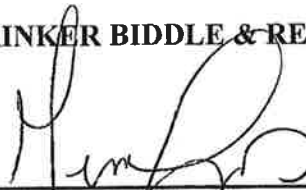
10. The tenth factor to be considered under the Policy Statement is “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). HIKO submits that an additional factor — whether the case was settled or litigated — is of pivotal importance to this Settlement. This Settlement reflects that this matter was resolved amicably and without any adjudication of the issues. By foregoing administrative and appellate litigation, the parties were able to negotiate reasonable terms that represent economic and programmatic compromise, mitigate business uncertainty, and permit HIKO to timely implement corrective measures and customer restitution. Even if the Commission were to order similar payments by HIKO and injunctive relief, the uncertainty and delay inherent in litigation would prevent the public from receiving immediate, concrete benefits — including very substantial refunds — and distract the parties’ focus on implementing the necessary remedial actions. Hence, this carefully balanced compromise between the parties is in the public interest and therefore should be approved.

### **III. CONCLUSION**

For all the foregoing reasons, HIKO respectfully requests that the Public Utility Commission approve the Joint Petition for Approval of Settlement on an expedited basis without modification.

Respectfully Submitted,

**DRINKER BIDDLE & REATH, LLP**



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*Counsel for HIKO Energy, LLC*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Commonwealth of Pennsylvania, by Attorney</b>	:	
<b>General Kathleen G. Kane, Through the Bureau</b>	:	
<b>Of Consumer Protection</b>	:	
<b>And</b>	:	
<b>Tanya J. McCloskey, Acting Consumer</b>	:	
<b>Advocate</b>	:	<b>Docket No. C-2014-2427652</b>
<b>Complainants</b>	:	
<b>v.</b>	:	
<b>HIKO Energy, LLC</b>	:	
<b>Respondent</b>	:	

**STATEMENT OF  
THE OFFICE OF SMALL BUSINESS ADVOCATE  
IN SUPPORT OF THE  
JOINT PETITION FOR SETTLEMENT**

**Introduction**

The Small Business Advocate is authorized and directed to represent the interests of the small business consumers of utility services in the Commonwealth of Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50. Pursuant to that statutory authority, the Office of Small Business Advocate (“OSBA”) filed a notice of intervention in the above-captioned proceeding which was initiated by the June 20, 2014, filing of a Joint Complaint by the Office of Consumer Advocate and the Office of Attorney General through the Bureau of Consumer Protection against HIKO Energy, LLC (“HIKO” or the “Company”) alleging multiple violations of Pennsylvania law and Pennsylvania Public Utility Commission (“Commission”) orders and regulations.

The OSBA participated in the negotiations that led to the proposed Joint Petition for Settlement and is a signatory to the Joint Petition for Settlement (“*Settlement*”). The OSBA submits this statement in support of the *Settlement*.

### **The Settlement**

The *Settlement* sets forth a comprehensive list of issues that were resolved through the negotiation process. The following issues was of particular significance to the OSBA when it concluded that the *Settlement* was in the best interests of HIKO's small business customers. On April 8, 2015 at a hearing with the Administrative Law Judges, the redacted<sup>1</sup> consumer testimony and accompanying exhibits of 98 consumers sponsored by the Joint Complainant's was moved into the record. While HIKO has not admitted to any wrongdoing with the admission of the consumer testimony, the introduction of the testimony is critical for the purpose of providing substantial evidence in the record.

The facts that are not in dispute, which are set forth more fully in the in **Stipulation of Facts in Support of the Settlement**, reflect that HIKO customers, including small business customers, averred that they had been guaranteed savings which did not materialize, were misled by written communications with HIKO such as the Disclosure Statement and Welcome Letter, were switched without authorization, and were not informed about whether they would be paying fixed or variable rates. Further, customers averred that they experienced difficulties when they attempted the contact HIKO to complain about their charges, that their complaints were mishandled by HIKO, and that they suffered financial difficulties after receiving HIKO's charges.<sup>2</sup>

#### **1. Refunds**

As part of the Settlement, HIKO has agreed to pay the sum of \$2,025,283.85 which will be designated as a Refund Pool. The Office of Attorney General ("OAG") and Office of Consumer Advocate ("OCA") will determine the amount of the refund for all eligible HIKO

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<sup>1</sup> For the protection of the consumers, identifying information such as names, street addresses, account numbers and telephone numbers were redacted from each piece of consumer testimony submitted.

<sup>2</sup> Joint Petition for Settlement, Exhibit B pages 4-5.

customers, including small business customers who were on variable rate plans in January, February or March of 2014, based on the customer's usage, price charged, and offset by any refund amounts already received directly from HIKO.

A third-party Administrator to be retained by OAG and OCA oversee the Refund Pool but HIKO will bear the burden of the costs and expenses relating to the Refund Pool up to \$50,000. Any funds remaining in the Refund Pool after the issuance of the calculated refunds will be provided to the EDC's hardship funds as allocated by the ratio of HIKO's customers within the EDC's service territory. Further, any unclaimed refunds remaining in the Refund Pool will be forwarded to the Pennsylvania Treasury Department Unclaimed Property Division and thereby preserved for those customers entitled to a refund.

## **2. Injunctive Relief**

### **Limited Product Offerings from March 31, 2015-June 30, 2016**

As part of the Settlement, HIKO has agreed not to accept any new Pennsylvania customers after March 31, 2015 until June 30, 2016 except for fixed products in limited circumstances. Any fixed products offered by HIKO to new customers until September 1, 2016 will be no less than 3 month fixed rate products and will not include cancellation or termination fees.<sup>3</sup>

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<sup>3</sup> Joint Petition for Settlement, Exhibit A.

**Conclusion**

For the reasons set forth in the *Settlement*, as well as the additional factors that are enumerated in this statement, the OSBA supports the proposed *Settlement* and respectfully requests that the ALJs and the Commission approve the *Settlement* in its entirety.

Respectfully submitted,



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Sharon E. Webb  
Assistant Small Business Advocate  
Attorney ID No. 73995

Office of Small Business Advocate  
300 North Second Street, Suite 202  
Harrisburg, PA 17101

Dated: May 1, 2015

# EXHIBIT C

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL KANTOR, on behalf of himself and  
all others similarly situated,

Plaintiff,

vs.

HIKO ENERGY, LLC

Defendant.

Civil Action No. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

Plaintiff, Michael Kantor, as and for his class action complaint, alleges, with personal knowledge as to his own actions, and upon information and belief as to those of others, as follows:

**I. Nature of the Case**

1. This lawsuit arises from a fraudulent and deceptive scheme perpetrated by Defendant Hiko Energy LLC (“Defendant” or “HIKO”). Defendant promises customers competitive market-based rates and savings on their monthly energy bills if they switch from their local utilities or other energy suppliers to HIKO. However, these representations are a bait-and-switch trap. Within a few billing cycles, Defendant routinely increases its customers’ rates well above the market. A customer may even end up paying two to three times more for electricity than what he or she paid before converting to HIKO. Instead of benefitting from switching to HIKO, a typical customer loses out – to the tune of hundreds or even thousands of

dollars per year. Thus, Defendant deceptively causes its customers to pay considerably more for energy services than they should have and otherwise would have paid.

2. Plaintiff Michael Kantor, on behalf of the class he seeks to represent, brings this lawsuit to redress Defendant's unlawful and unconscionable consumer practices in the Commonwealth of Pennsylvania.

3. Defendant's practices emerge from and take advantage of the deregulation of the energy supply markets in Pennsylvania and other states where HIKO does business – including Connecticut, Illinois, Maryland, New York, Ohio, and New Jersey. Under these states' deregulation laws, the supply portion of a consumer's electric or natural gas bill is separated from the delivery portion. In theory, with the supply portion open to competition, customers can freely shop around for the best price on their energy supplies. However, by engaging in its bait-and-switch scheme, HIKO subverts the consumer-friendly purpose of these laws and prevents its customers from making free, informed choices. In reality, most customers would be far better off staying with their local utilities or another supplier than switching to HIKO.

4. Plaintiff Michael Kantor brings this action on behalf of a class of Pennsylvania consumers under the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. § 201-1 *et seq.*, as well as under Pennsylvania common law based on the covenant of good faith and fair dealing. Plaintiff also brings a claim in the alternative for unjust enrichment. Through its deceptive and unconscionable practices, upon information and belief, Defendant bilked the class, consisting of thousands or tens of thousands of current and former customers with variable-rate plans in Pennsylvania, out of millions of dollars per year. Upon information and belief, the class consists of thousands or tens of thousands of current and former

customers with variable-rate plans in Pennsylvania, each of whom has sustained damages of as much as hundreds or even thousands of dollars annually.

5. Plaintiff brings this class action under to recover damages, statutory penalties, and other relief for himself and the class of HIKO customers who have suffered damages from Defendant's imposition of unreasonable and exorbitant energy prices in violation of the company's representations. Only a class action will provide Plaintiff and the class with any possibility of relief. Plaintiff and the class are therefore entitled to a class-wide remedy.

## **II. Jurisdiction and Venue**

6. Jurisdiction in this civil action is authorized pursuant to 28 U.S.C. § 1332(d), as minimal diversity exists, there are more than 100 class members, and the amount in controversy is in excess of \$5 million.

## **III. The Parties**

7. Plaintiff Michael Kantor is a resident of the Commonwealth of Pennsylvania. In or about February 2013, Mr. Kantor enrolled as a HIKO customer as a result of the company's deceptive representations and began to receive electricity from HIKO in March 2013. Because of Defendant's conduct, Mr. Kantor has incurred hundreds of dollars in overcharges from March 2013 to April 2014. In some of those months, the rate that HIKO charged per kilowatt hour (kWh) was significantly higher than the market rate. When Mr. Kantor finally discovered Defendant's billing practices and the fact that he was paying significantly more than he would be as a customer of his local utility company, PECO, he switched back to PECO.

8. Defendant Hiko Energy, LLC, a New York limited liability company, is licensed as an electricity supplier in the Commonwealth of Pennsylvania.

**IV. Operative Facts**

9. In 1996, Pennsylvania deregulated energy supply in the state. Energy deregulation has enabled consumers to purchase their energy supply from an Energy Services Company (ESCO) of their choice. The intent of the deregulation law is to provide consumer choice and allow competition to drive down customer rates. Since deregulation, the utility company is no longer the only option for energy supply. Customers may now purchase electricity and/or natural gas through ESCOs while continuing to obtain delivery from their local public utilities.

10. HIKO takes advantage of the regime in deregulated states such as Pennsylvania by adopting deceptive and unconscionable business tactics. Defendant misleads consumers to believe that by switching to HIKO they will save money over their local public utilities. HIKO further represents that its rates will be tied to market factors and its rates will be competitive with the market. In fact, as many customers soon discover, HIKO's representations only hold true, if at all, for the first few months of service; after that, their rates skyrocket, completely divorced from prevailing market conditions. At a minimum, HIKO exploits ambiguities in its representations and customer agreements to draw consumers in by creating the expectation of competitive prices they will never see. HIKO fails to disclose that, on a consistent basis, its regular rates are substantially higher than its competitors and are exorbitant when compared to the market.

11. Plaintiff received several direct solicitations from HIKO in 2012 and 2013. The solicitations stated that customers such as Mr. Kantor who switched to HIKO for electricity would save money on their electric bills as compared to their local utility company. Upon

information and belief, HIKO's advertisements and promotional materials routinely indicated that customers would save on their energy rates. For example, HIKO's website states that HIKO strives to offer "the most competitive pricing in the marketplace" and that "By keeping a close eye on markets and trends and strategically purchasing energy on your behalf, we work to ensure more stays where it belongs – in your pocket." These statements are misleading because they fail to indicate that HIKO's rates are generally substantially higher than the local utility company and that new customers were virtually assured of receiving far more expensive service.

12. After receiving HIKO's solicitation in the mail, Plaintiff visited the company's website where he viewed additional representations about the company's service and prices. The website reemphasized that HIKO's rates were competitive and that customers could save on their energy bill.

13. Furthermore, the company's salespeople represent to potential customers that they will save on energy costs if they switch to HIKO. Salespeople even tell customers to expect a particular percentage in savings. When confronted about the company's billing practices, HIKO salespeople and representatives also attempt to reassure customers that the company's prices are "competitive" and will average out over time.

14. But as most customers eventually realize, they will not save money on their electric bills. After the first several months with HIKO, customers' rates go up and will never reflect market prices. In fact, HIKO's rates are not competitive with the local provider or in line with market factors. Customers who switch to HIKO can wind up paying as much as two to three times above the going rate in the area. The company's customers in Pennsylvania and nationwide regularly complain that HIKO's rates far exceed that of any other supplier, that their

rates have doubled or more after the first month, and that they are often being overcharged by more than 100% as compared to remaining with their local utilities.

15. Moreover, HIKO's claims that its rates are market sensitive are undermined by the fact that there is no correlation between the prices it charges its customers and the local cost of energy; often HIKO's rates remain the same from month-to-month or increase, even in periods where market costs decline.

16. HIKO does not disclose these material facts to its customers but rather actively encourages the false perception that switching to and remaining with HIKO will mean savings to the cost-conscious consumer.

17. HIKO's various representations regarding price are materially misleading to consumers and have the capacity to mislead. Given knowledge of the relevant facts regarding HIKO's exorbitant rates after the first month, no reasonable consumer would choose it as an energy supplier.

18. In fact, in June 2014, the Pennsylvania Attorney General through the Bureau of Consumer Protection and the Office of Consumer Advocate filed a Joint Complaint before the Pennsylvania Public Utility Commission ("PUC") in order to address multiple violations of the Pennsylvania law and the PUC's regulations, whereby consumers were misled and deceived as to the price they would pay for their electricity. *See* PUC Complaint, attached hereto as Exhibit A.

19. Among other things, the complaint before the PUC sought to prohibit Defendant's salespeople from making price guarantees to consumers that are deceiving an inaccurate and to discontinue its marketing practices that violate the Consumer Protection Law, the Public Utility Code and the Commission's regulations or orders.

**V. Factual Allegations Regarding Michael Kantor**

20. After viewing the company's advertisements, website, and other representations, Plaintiff Michael Kantor submitted an application on or about February 2013 to switch to HIKO as his electricity supplier. The company accepted and he began receiving electricity from HIKO in or about March 2013.

21. For the first several months of HIKO service, the HIKO rate per kilowatt hour remained somewhat competitive with the PECO rate. However, in February 2014, the HIKO rate per kilowatt hour almost tripled from 0.096723 in January 2014 to 0.289000 in February 2014. In March 2014, the HIKO rate per kilowatt hour was still 0.0179. Thereafter, he cancelled his HIKO service and switched back to PECO.

22. In total, from March 2013 until April 2014 HIKO overcharged Mr. Kantor by hundreds of dollars as compared to PECO.

23. HIKO's misstatements and omissions caused Mr. Kantor injury because he believed that he would be charged less for electricity than he was actually charged by HIKO. Mr. Kantor would not have enrolled in HIKO's service but for Defendant's deceptive and unconscionable marketing and business practices. Had Mr. Kantor known that the rates he would be charged by HIKO would in fact be substantially higher than the rates available from his previous energy supplier, PECO, he would not have enrolled with HIKO. Mr. Kantor has sustained economic injury caused by Defendant's omissions and misstatements.

24. Similarly, the other members of the class have routinely paid substantially more for HIKO service as compared with their previous suppliers and have not received the competitive rates and savings they have been told to expect by the company.

**VI. Class Action Allegations**

25. Plaintiff Michael Kantor brings this action pursuant to recover damages and other relief on behalf of himself and a class of all HIKO customers with variable-rate plans who used HIKO as their electricity supplier in Pennsylvania during the applicable statutory period.

26. Defendant has engaged in an ongoing unlawful practice of deceptively inducing customers to switch energy providers to HIKO and to retain their HIKO accounts by misrepresenting that they will receive competitive market-based rates and/or will likely save money on average over their local public utilities or other alternative providers.

27. This action is properly brought as a class action for the following reasons:

- (a) The class consists of at least thousands of members and is so numerous that joinder of all members is impractical.
- (b) There exist questions of law and fact common to the class which predominate over any questions affecting only individual members, including:
  - (1) whether Defendant charged exorbitant, undisclosed energy supply rates in violation of its representations to the class members;
  - (2) whether Defendant's conduct violates the Pennsylvania Unfair Trade Practices and Consumer Protection Law;
  - (3) whether Defendant breached the contract and/or the implied covenant of good faith and fair dealing inherent in all Pennsylvania contracts;
  - (4) whether Defendant's conduct has resulted in the unjust enrichment of HIKO, to the detriment of the class members, requiring restitution and/or disgorgement of unjustly retained monies;
  - (5) whether Defendant should be enjoined from continuing its unlawful practices; and
  - (6) whether Defendant is liable to the Class and the measure of damages.

- (c) Plaintiff Michael Kantor's claims are typical of the claims of the class. In common with all class members, Plaintiff was injured by Defendant's imposition of exorbitant, undisclosed energy supply rates that were not commensurate with the market. Plaintiff has suffered the same kind of harm as other class members.
- (d) Plaintiff has hired counsel able and experienced in class action litigation and will fairly and adequately protect the interests of the class.
- (e) A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Individual damages to any one class member may be relatively small, making the expense of individual litigation prohibitive or impractical for class members.

**COUNT I**  
**VIOLATION OF P.S. 73 § 201-1, *ET SEQ.*,**  
**PENNSYLVANIA UNFAIR TRADE PRACTICES**  
**AND CONSUMER PROTECTION LAW**

28. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs of this complaint and incorporates such paragraphs by reference.

29. The Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL") protects consumers against "unfair or deceptive acts or practices" in connection with the sale or advertisement of any merchandise. 73 PS. § 201-1 *et seq.*

30. Defendant HIKO has engaged in unfair, unlawful and deceptive acts in trade and commerce which have the capacity and tendency to deceive and, in fact, did deceive Plaintiff and the class, and damaged Plaintiff and class members.

31. Defendant represented that its energy supply rates would be market-based and competitive and/or that customers would on average save money over their local public utilities and other alternative providers. But consumers did not save money. In fact, Defendant's actual rates were excessive and unreasonable and bore no reasonable relationship to market conditions.

32. Defendant committed an unlawful, deceptive, and unconscionable trade practice by inducing its customers to switch from other providers and/or to remain with HIKO and then proceeding to charge them exorbitant rates far out of line with Defendant's competitors.

33. Defendant wrongfully concealed, suppressed, and omitted to disclose that its average rates were far higher than their competitors and that the main goal of the so-called "competitive," "market-based" pricing system was not to save money on behalf of Plaintiff and the class members but to reap undue profits at their expense.

34. Defendant's misrepresentations and omissions had the capacity to mislead Plaintiff and the members of the class into believing (i) that HIKO's rates would be significantly lower than the amounts HIKO actually charged, and (ii) that these rates would be substantially equivalent to or better than the rates charged by Plaintiff's and the class members' local public utilities. Plaintiff and the class members were injured as a result.

35. Defendant's practices are grossly disproportionate with the industry. Upon information and belief, most ESCOs do charge competitive market-based rates which generally meet or beat a customer's local public utility. On the occasions where a private supplier's rates are higher than the public utility, it is usually only by a very small percentage.

36. Because of Defendant's unlawful, deceptive, unfair, and unconscionable trade practice and scheme, Plaintiff and other members of the class have suffered injury and damages in an amount to be determined at trial. Pursuant to the Pennsylvania Unfair Trade Practices and Consumer Protection Law, this court has the power to enjoin the Defendant's conduct. Unless enjoined by this court, Defendant will continue their unlawful practice of charging excessive undisclosed rates to Energy Plus' Pennsylvania customers.

**COUNT II**  
**BREACH OF CONTRACT/BREACH OF THE  
COVENANT OF GOOD FAITH AND FAIR DEALING**

37. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs of this complaint and incorporate such paragraphs by reference.

38. Plaintiffs and Defendant HIKO entered into a valid contractual agreement. (*See*, Terms and Conditions attached hereto as “Exhibit B”).

39. The act of imposing unreasonable and exorbitant energy prices – unrelated to the market values – in violation of the company’s representations amounts to a breach of a valid contract, which caused Plaintiffs and class members to suffer actual, ascertainable losses.

40. Plaintiffs and the Class have performed all material obligations imposed on them in the contract. Defendants have not performed the obligations imposed on them in the contract.

41. In addition, every contractual arrangement inherently carries with it a covenant of good faith and fair dealing. Under this covenant, we are not to suppose that one party is put at the mercy of the other but will read in any necessary conditions to ensure a mutuality of obligation under fair terms.

42. When a contract contains an indefinite price term – such, as here, Defendant’s variable “market-based” pricing – the seller does not have unfettered discretion to set the price. Rather, under the covenant of good faith and fair dealing, the seller must set the price reasonably and in good faith.

43. Here, Defendant has failed to satisfy this obligation. Instead of setting their rates in good faith consistent with the market, Defendant has unilaterally imposed exorbitant, undisclosed rates on its customers, including Plaintiff and the members of the class. In actuality, Defendant’s rates bear no reasonable relationship to market conditions. While Defendant

represents that, on average, their rates will be competitive with and/or undercut the market (as represented by the local public utilities that most HIKO customers switch from), in reality, HIKO's rates generally far exceed that market.

44. Under the covenant of good faith and fair dealing, HIKO should have billed customers like Plaintiff at a reasonable, market-based rate as promised – that is, a rate similar, competitive, or equivalent to the rate charged by the class members' local public utilities during the class period. All monies paid above this reasonable amount should be restored to the class as damages.

45. Plaintiff and the class have been damaged by HIKO's breach of the covenant of good faith in an amount to be determined at the trial of this action.

**COUNT III**  
**UNJUST ENRICHMENT**  
**(IN THE ALTERNATIVE)**

46. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs of this complaint and incorporate such paragraphs by reference.

47. Should the Court determine that a valid, enforceable, and binding contractual relationship did not exist between the parties at any time or covering any aspect of their relationship, Plaintiff brings this claim in the alternative for unjust enrichment.

48. Because of the wrongful activities described above, including charging Plaintiff exorbitant rates grossly out of line with market conditions; Defendant has received money belonging to the Plaintiff and the class.

49. By collecting exorbitant and unreasonable rates from HIKO customers, Defendant has benefited from receipt of the excessive rates, and under principles of equity and good conscience, Defendant should not be permitted to keep this money.

50. Defendant has reaped illegal profits and unjustly enriched themselves at the expense of Plaintiff and class members.

51. As a result of Defendant's imposition of these excessive and unreasonable energy rates, Defendant must account to the Plaintiff and class members for such unjust enrichment and disgorge their unlawful profits as restitution to the class.

52. By reason of the foregoing, Plaintiff and the class have suffered money damages in an amount to be determined at the trial of this action.

**PRAYER FOR RELIEF**


**WHEREFORE**, plaintiffs and the class pray for judgment:

- A. declaring this action to be maintainable as a class action;
- B. awarding compensatory damages to Plaintiff and the class members;
- C. awarding treble damages pursuant to law;
- D. enjoining Defendant from continuing to implement its unlawful and illegal trade practices and schemes;
- E. awarding Plaintiff all costs and disbursements, including attorneys' fees, experts' fees, and other class action related expenses;
- F. awarding pre-judgment and post-judgment interest to Plaintiff and the class members on their damages; and
- G. granting such other and further relief as may be just and proper.

**Jury Demand**

Pursuant to Federal Rule of Civil Procedure Rule 38, Plaintiff and the class demand a trial by jury of all issues.

**GOLOMB & HONIK, P.C.**



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Attorneys for Plaintiff

**DATED: September 26, 2014**

**EXHIBIT A**

**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

Docket No. C-2014-

v.

HIKO ENERGY, LLC,

Respondent

**JOINT COMPLAINT**

AND NOW, comes the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (Attorney General) and the Acting Consumer Advocate Tanya J. McCloskey (OCA) (collectively referred to as Joint Complainants), who bring this action pursuant to the Public Utility Code, 66 Pa. C.S. Ch. 28, the Pennsylvania Public Utility Commission's regulations, 52 Pa. Code Ch. 54, 56 and 111, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (Consumer Protection Law) and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.*

**PRELIMINARY STATEMENT**

1. This Joint Complaint is brought in the public's interest to address multiple violations of Pennsylvania law and Pennsylvania Public Utility Commission (Commission)

orders and regulations, whereby consumers were misled and deceived as to the price they would pay for their electricity, all to their harm and detriment.

**PARTIES**

2. Tanya J. McCloskey is the Acting Consumer Advocate. The Office of Consumer Advocate is the agency authorized by law to represent the interests of utility consumers before the Commission as provided in 71 P.S. § 309-1. *et seq.* The names and address of the OCA's attorneys are as follows:

Candis A. Tunilo  
Assistant Consumer Advocate  
Hobart J. Webster  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, Pennsylvania 17101

3. The Attorney General is authorized by the Consumer Protection Law to bring an action in the name of the Commonwealth of Pennsylvania to restrain by temporary or permanent injunction unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as provided in 73 P.S. § 201-4.

4. The Consumer Protection Law further authorizes the Attorney General to take such action when she has reason to believe that any person is using or is about to use a method, act, or practice unlawful under the Consumer Protection Law and when she determines that proceedings would be in the public interest as provided in 73 P.S. § 201-4.

5. The Attorney General, as the chief law officer of the Commonwealth of Pennsylvania pursuant to Article IV § 4.1 of the Pennsylvania Constitution, is further authorized to initiate and maintain this action, and does so, pursuant to the Commonwealth Attorneys Act, 71 Pa. Stat. § 732-204. The names and address of the Attorney General attorneys are as follows:

John M. Abel, Senior Deputy Attorney General  
Nicole R. Beck, Deputy Attorney General  
Bureau of Consumer Protection  
Office of Attorney General  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, Pennsylvania 17120

6. Hiko Energy, LLC, (Respondent) is a New York limited liability company licensed to supply retail electricity to residential, small commercial (25 kw and under demand), large commercial (over 25 kw demand), industrial and governmental customers throughout the Commonwealth. The Commission approved Respondent's license application with conditions by Final Order entered July 2, 2012 at Docket No. A-2012-2289944.

7. The Commission is responsible for regulating the service of electric generation suppliers, as it relates to their activities in the marketing and sale of electricity and electric services. See 66 Pa. C.S. § 2809(e).

8. Respondent provides electric generation supplier (EGS) services to residential customers, and as such, it must comply with applicable residential service regulations in Chapters 54 and 56 of the Commission's regulations. See 52 Pa. Code Ch. 54 and 56. See also License Application of Hiko Energy LLC for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier of Retail Electric Power, Docket No. A-2012-2289944, Tentative Order at 2-3 (June 7, 2012) (Tentative Order), as adopted by Final Order at 1 (July 2, 2012) (Final Order).

9. Respondent must also comply with Chapter 111 of the Commission's regulations. See 52 Pa. Code § 111.1.

10. Additionally, Respondent must abide by all applicable federal and state laws and Commission regulations, procedures and orders and ensure that its employees, representatives,

agents and independent contractors do so as well. See Tentative Order at 3, as adopted by Final Order at 1.

11. Respondent offers variable rate electric generation service to residential customers in the service territories designated in the Final Order.

12. Upon information and belief, Respondent uses a variety of marketing and advertising mediums to solicit residential customers for its variable rate plan including door-to-door, telephonic, internet, mass mail and print solicitations.

13. Respondent, by advertising, marketing, and selling variable rate electric generation service is engaged in trade or commerce within the Commonwealth.

14. Among the consumers charged high variable prices by Respondent's actions are over a hundred citizens over the age of 60.

15. On or about February 10, 2014, the OCA began receiving a high volume of calls and written correspondence from residential consumers on variable rate plans with EGSs regarding the level of electric generation charges on the consumers' electric bills. The OCA has received approximately 3,000 contacts from consumers regarding variable rates.

16. As of May 5, 2014, the OCA had collected information from approximately 2,434 of its consumer contacts.

17. Of the referenced 2,434 contacts, 109 or approximately 4.5% were from customers of Respondent. Of the referenced 109 total contacts, the OCA collected written information from approximately 9 customers.

18. From February 27, 2014 to June 4, 2014, the Attorney General received approximately 39,607 telephone calls and 7,503 consumer complaints related to variable rates

charged by EGSs. Of the 7,503 consumer complaints, 254 or approximately 3.4% were against Respondent.

19. Upon information and belief, from January 1, 2014 to April 21, 2014, approximately 500 Formal Complaints were filed at the Commission by customers regarding variable rates charged by EGSs. Additionally, upon information and belief, approximately 6,500 informal complaints and nearly 10,000 inquiries were made by consumers to the Commission regarding variable rates charged by EGSs. Of the approximately 203 Formal Complaints reviewed by the OCA to date, approximately 100 were filed against Respondent.

#### **COUNT I – MISLEADING AND DECEPTIVE PROMISES OF SAVINGS**

20. The foregoing paragraphs are incorporated herein.

21. Of the referenced 254 consumer complaints against Respondent received by the Attorney General, 73 or nearly 29% of the complainants indicated that Respondent's salespeople promised guaranteed savings over the Price to Compare (PTC) as inducement for complainants to switch to Respondent. These complainants then received bills from Respondent that were at least two or three times more than the PTC.

22. Of the referenced 9 customers that provided written correspondence and information to the OCA, 3 or approximately 33% stated that Respondent's salespeople promised guaranteed savings over the PTC as inducement for complainants to switch to Respondent. These complainants then received bills from Respondent that were at least two or three times more than the PTC.

23. Of the referenced 8 Formal Complaints filed at the Commission against Respondent and reviewed by the OCA to date, at least 4 or 50% of the complainants averred that Respondent's salespeople promised guaranteed savings over the PTC as inducement for

complainants to switch to Respondent. These complainants then received bills from Respondent that were at least two or three times more than the PTC.

24. The Commission's regulations state that a licensed EGS is responsible for any fraudulent, deceptive or other unlawful marketing acts by its employees, agents and representatives. See 52 Pa. Code § 54.43(f).

25. The Commission's regulations require compliance with the Unfair Trade Practices and Consumer Protection Law (Consumer Protection Law). See 52 Pa. Code §§ 54.43(f) and 111.12(d)(1).

26. The Consumer Protection Law defines "unfair or deceptive acts or practices" *inter alia*:

- Advertising goods or services with the intent not to sell them as advertised;
- Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; and
- Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

See 73 P.S. § 201-2(4)(ix), (xi) and (xxi).

27. It is averred, upon information and belief, that Respondent's employees, agents and/or representatives have engaged in and continue to engage in activities that are fraudulent, deceptive and/or in violation of the Commission's regulations and orders and the Consumer Protection Law by promising savings that may not, and for many customers did not, materialize.

28. Additionally, as averred above, upon information and belief, Respondent has failed to adequately train and monitor its agents, as required by the Commission's regulations. See 52 Pa. Code §§ 111.4 and 111.5.

#### **COUNT II – SLAMMING**

29. The foregoing paragraphs are incorporated herein.

30. Of the referenced 254 consumer complaints against Respondent received by the Attorney General, 18 or approximately 7% of the complainants indicated that they did not consent to switch to Respondent.

31. The Public Utility Code and the Commission's regulations prohibit switching a customer's generation supplier without the customer's consent (*i.e.* slamming). See 66 Pa. C.S. § 2807(d)(1); 52 Pa. Code § 54.42(a)(9).

32. It is averred, upon information and belief, that Respondent has violated and continues to violate the Commission's regulations and orders by switching customers to Respondent without the customers' consent.

#### **COUNT III – LACK OF GOOD FAITH HANDLING OF COMPLAINTS**

33. The foregoing paragraphs are incorporated herein.

34. Of the referenced 8 Formal Complaints filed at the Commission against Respondent reviewed by the OCA to date, at least 4 or 50% of the complainants averred that when they attempted to contact Respondent about the variable rate charges on their bills, they could not get through to the Respondent on the telephone and/or their emails to the Respondent went unanswered.

35. Of the referenced 254 consumer complaints against Respondent received by the Attorney General, at least 90 or approximately 35% of the complainants indicated that when they

attempted to contact Respondent about the variable rate charges on their bills, they could not get through to the Respondent on the telephone and/or their emails to the Respondent went unanswered.

36. The Commission's regulations require EGSs to utilize good faith, honesty and fair dealing with residential customers. See 52 Pa. Code § 56.1(a). See also Tentative Order at 2-3, as adopted by Final Order at 1.

37. The Commission's regulations set forth the procedure for EGSs to use when they receive notice of a dispute, including a billing dispute, from a residential customer. Upon notice of such dispute, EGSs are required to investigate the matter, provide the customer with information necessary to make an informed judgment and issue a report to the customer within 30 days. See 52 Pa. Code §§ 56.141(a), 56.151 and 56.152.

38. It is averred, upon information and belief, that Respondent has violated and continues to violate the Commission's regulations and orders by failing to adequately staff its call center, failing to provide reasonable access to Respondent representatives for purposes of submitting complaints, failing to properly investigate customer disputes, failing to properly notify customers of the results of the Respondent's investigation into a dispute when such investigation was conducted, and failing to utilize good faith, honesty and fair dealing in its dealings with customers.

#### **COUNT IV - FAILING TO PROVIDE RATE INFORMATION**

39. The foregoing paragraphs are incorporated herein.

40. Of the referenced 254 consumer complaints against Respondent received by the Attorney General, at least 26 or approximately 10% of the complainants indicated that they were not told that their rate was a variable rate.

41. Of the referenced 9 customers that provided written correspondence and information to the OCA, 2 provided their sign-up documents from Respondent. The documents provided to these customers failed to provide a price for the first month of service.

42. The Commission's regulations require that an EGS shall provide the customer with a copy of its disclosure statement. See 52 Pa. Code §§ 54.5(b) and 111.11.

43. Section 111.12 requires suppliers to provide accurate and timely information to customers about their services and products, including their rates. See 52 Pa. Code § 111.12(d)(4).

44. The Commission's regulations require that EGS prices billed reflect the marketed prices and the agreed-upon prices in the disclosure statement. See 52 Pa. Code § 54.4(a).

45. If an EGS offers a variable price plan, its disclosure statement must include the conditions of variability and the limits on price variability. See 52 Pa. Code § 54.5(c)(2).

46. Additionally, the EGS's advertised prices must reflect the prices in its disclosure statements and billed prices. See 52 Pa. Code § 54.7(a).

47. Pennsylvania's Consumer Protection Law defines "unfair or deceptive acts or practices" as, *inter alia*, engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding. See 73 P.S. § 201-2(xxi).

48. It is averred, upon information and belief, that Respondent has violated and continues to violate the Consumer Protection Law and the Commission's regulations and orders by failing to provide adequate price disclosures to customers and deceiving customers about the rate they would be charged by Respondent.

49. Additionally, as averred above, upon information and belief, Respondent has failed to adequately train and monitor its agents, as required by the Commission's regulations. See 52 Pa. Code §§ 111.4 and 111.5.

**COUNT V – FAILING TO PROVIDE ACCURATE PRICING INFORMATION**

50. The foregoing paragraphs are incorporated herein.

51. Respondent's Disclosure Statement regarding variable pricing states:

**Pricing and Billing.** The price will [sic] the Initial Term is the price stated at sign-up and confirmed in your written Welcome Letter from HIKO. Unless otherwise agreed to in writing, the price for all electricity sold under this Agreement in the Renewal Term shall be a variable price which each month shall reflect transportation to the Delivery Point, and other market-related factors, plus all applicable taxes, fees, charges or other assessments and HIKO's costs, expenses and margins. The variable price includes estimated Gross Receipts Tax but excludes Pennsylvania sales tax, if applicable. If you are tax exempt you must provide HIKO with a copy of your exemption certificate. You may call HIKO or visit [www.hikoenergy.com](http://www.hikoenergy.com) for pricing information.

The Disclosure Statement is attached hereto as Appendix A.

52. The Commission's regulations require that variable pricing terms include, i.e., conditions of variability and the limits on price variability. See 52 Pa. Code § 54.5(e).

53. The variable pricing terms of Respondent fail to adequately state the conditions of variability and the limits on price variability in violation of the Commission's regulation. *Id.*

54. The Commission's regulations require that EGSs "provide accurate information about their electric generation services using plain language and common terms in communications with consumers." See 52 Pa. Code § 54.43(1).

55. Additionally, EGSs must provide information to consumers "in a format that enables customers to compare the various electric generation services offered and the prices charged for each type of service." *Id.*

56. The Commission's regulations require compliance with the Consumer Protection Law. See 52 Pa. Code § 54.43(f) and 111.12(d)(1).

57. The Consumer Protection Law prohibits fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding. See 73 P.S. § 201-2(4)(xxi).

58. It is believed and therefore, averred that the Respondent has violated and continues to violate the Respondent's regulations by failing to provide pricing information in plain language and using common terms that consumers understand.

59. Further, it is believed and therefore, averred that consumers could not determine from the Disclosure Statement the price that they would or could be charged by the Respondent or how the price would be calculated by Respondent.

60. It is believed and therefore, averred that Respondent violated and continues to violate the Commission's regulations by failing to provide information to its customers in a manner that would allow them to compare offers.

#### **COUNT VI - PRICES NONCONFORMING TO DISCLOSURE STATEMENT**

61. The foregoing paragraphs are incorporated herein.

62. Upon information and belief, Respondent charged its variable rate customers prices that were at least as high as \$0.40 per kWh for electricity.

63. It is averred, upon information and belief, that Respondent's prices charged to customers in early 2014 were not reflective of the cost to serve residential customers.

64. By way of example, the cost to serve the average residential heating customer in January 2014 should not have exceeded approximately \$0.23 per kWh. See Affidavit of Dr. Steven L. Estomin, attached hereto as Appendix B.

65. It is averred, upon information and belief, that the aforementioned prices do not conform to the variable rate pricing provision of the Respondent's Disclosure Statement.

**COUNT VII – FAILING TO FOLLOW POR PROGRAM PARAMETERS**

66. The foregoing paragraphs are incorporated herein.

67. Respondent's Disclosure Statement states: "Customer authorized HIKO to obtain and review information regarding Customer's credit history from credit reporting agencies ... ." See Hiko Energy Disclosure Statement at ¶ 5, which is attached hereto as Appendix A.

68. It is believed and therefore, averred that Respondent participates in the Purchase of Receivables (POR) programs of EDCs throughout the Commonwealth, including but not limited to: PECO, PPL Electric Utilities Corporation (PPL), Metropolitan Edison Company (Met Ed), and Pennsylvania Electric Company (Penelec).

69. The terms of EDCs' POR programs, as approved by the Commission, prohibit the denial of service to residential customers by EGSs for credit-related reasons. See e.g. Petition of PECO Energy for Approval of its Revised Electric Purchase of Receivables Program, Docket No. P-2009-2143607, Order at 8, 49 (June 18, 2010); PPL Tariff Electric Pa. P.U.C. No. 1s at § 12.9.1, as approved by Pa. PUC v. PPL Electric Utilities Corp., Docket No. R-2010-2161694, Order (Dec. 21, 2010); Met Ed Tariff Electric Pa. P.U.C. No. S-1 at Original Page No. 38, § 12.9; and Penelec Tariff Electric Pa. P.U.C. No. S-1 at Original Page No. 38, § 12.9.

70. It is believed and therefore, averred that Respondent is reviewing potential customers' creditworthiness prior to deciding whether to accept as them as customers. As such, Respondent has violated and continues to violate EDCs' POR program requirements, approved by the Commission.

**COUNT VIII - FAILURE TO COMPLY WITH THE TELEMARKETER  
REGISTRATION ACT**

71. The foregoing paragraphs are incorporated herein.

72. Of the 254 consumer complaints against Respondent received by the Attorney General, at least 58 or approximately 23% of the complainants received a telemarketing call from the Respondent, which initiated the complainants' switch to Respondent.

73. The Commission's regulations require EGSs to comply with the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* See 52 Pa. Code § 111.10(a)(1).

74. When Respondent sells its goods or services through the use of a telemarketing call, the Telemarketer Registration Act requires the Respondent to reduce any sale of goods or services made during such call to a written contract and obtain the consumer's signature on the written contract. See 73 P.S. § 2245(a)(7).

75. Additionally, the Telemarketer Registration Act requires the Respondent to provide consumers with a contract that contains, *inter alia*, the following:

- A detailed description of the consumer goods and services purchased which shall match the oral description given in the telemarketing solicitation;
- Any oral or written representations made during the telemarketing solicitation; and
- A statement that reads: "You are not obligated to pay any money unless you sign this contract and return it to the seller."

See 73 P.S. § 2245(c).

76. Respondent failed to provide consumers with a contract that contained all of the required information set forth in Sections 2245(a)(7) and 2245(c) of the Telemarketer Registration Act, 73 P.S. § 2245(a)(7) and (c), and has therefore, violated and continues to violate the Commission's regulations and orders and the Telemarketer Registration Act.

77. Under the Telemarketer Registration Act, any violation of 73 P.S. § 2241, *et seq.* is also a violation of the Consumer Protection Law. See 73 P.S. §2246(a).

78. The Commission's regulations require that EGSs comply with the Telemarketer Registration Act and the Consumer Protection Law. See 52 Pa. Code § 54.43(f) and 111.10(a).

79. The Consumer Protection Law prohibits fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding. See 73 P.S. § 201-2(4)(xxi).

80. By failing to provide a contract that complies with the Telemarketer Registration Act, Respondent has also violated and continues to violate the Consumer Protection Law.

#### **RELIEF**

81. The foregoing paragraphs are incorporated herein.

82. Pursuant to Section 54.42 of the Commission's regulations, 52 Pa. Code § 54.42, the Commission may suspend or revoke an EGS's license and impose civil penalties for the following EGS conduct:

- Failure to follow the principles in 52 Pa. Code § 54.43;
- Violation of applicable provisions of the Public Utility Code, Commission regulations and Commission orders;
- Violation of the consumer protection law; and
- The transfer of a customer without the customer's consent.

83. Under the Consumer Protection Law, it is appropriate to impose a permanent injunction to restrain and prevent violations of the Consumer Protection Law and restore to any person in interest any moneys or property that may have been acquired by means of any violation of the Consumer Protection Law. See 73 P.S. § 201-4.1.

84. As outlined above, Respondent violated and continues to violate the Public Utility Code, the Commission's regulations and orders, the Consumer Protection Law, the Telemarketer Registration Act, and the Final Order.

WHEREFORE, Joint Complainants Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer Advocate, respectfully request that the Commission take the following actions:

A. Consolidate all similar pending formal complaints against Respondent with this Joint Complaint;

B. Find that Respondent violated the Telemarketer Registration Act, the Consumer Protection Law, the Public Utility Code, and the Commission's regulations and orders, as specified in the foregoing Joint Complaint, and revoke or suspend the Respondent's EGS license;

C. Find that Respondent violated the Telemarketer Registration Act, the Consumer Protection Law, the Public Utility Code, and the Commission's regulations and orders, as specified in the foregoing Joint Complaint, and impose a civil penalty;

D. Order Respondent to provide appropriate restitution, including without limitation, refunding all charges to its consumers that were over and above the Price To Compare in the customers' respective service territories from January 1, 2014 through the date of resolution of this matter, as well as any late, cancellation and/or termination fees and/or other such penalties

charged to customers as a result of Respondent's charges and customers leaving Respondent to obtain generation service elsewhere;

E. Order Respondent to prohibit its salespeople from making price guarantees to consumers that are deceiving and inaccurate;

F. Order Respondent to cease and desist switching consumers to its generation supply without their explicit consent;

G. Order Respondent to implement proper customer dispute procedures and adequately staff, train and monitor all employees and agents in such procedures;

H. Order Respondent to discontinue all other marketing practices that violate the Consumer Protection Law, the Public Utility Code, and the Commission's regulations or orders;

I. Order Respondent to comply with EDCs' Purchase of Receivables program requirements; and

J. Impose any other such relief that the Commission deems appropriate in this matter.

Respectful,

at

Nicole R. Beck  
Deputy Attorney General  
PA Attorney

Bureau of Consumer Protection  
Office of Attorney General  
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F: (717) 783-7152

Counsel for:

J. McCloskey  
Consumer Advocate

DATE: 6.20.14

## APPENDIX A



APPENDIX B

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AFFIDAVIT  
OF  
STEVEN L. ESTOMIN, Ph.D

JUNE 19, 2014

**EXETER**

ASSOCIATES, INC.  
10460 Little Patuxent Parkway  
Suite 300  
Columbia, Maryland 21044

**AFFIDAVIT**

1. My name is Steven L. Estomin. I am a Senior Economist and Principal with Exeter Associates, Inc., an economics consulting firm. My business address is 10480 Little Patuxent Parkway, Suite 300, Columbia, Maryland 21044.
2. At the request of the Pennsylvania Office of Consumer Advocate (OCA), I performed an analysis addressing residential variable rate pricing in Pennsylvania during the winter of 2014. Specifically, I conducted an analysis regarding day-ahead and real-time market prices for electric energy during the winter of 2014.
3. Separate analyses were conducted for electric space heating and non-electric space heating residential customers.
4. Separate analyses were conducted for the residential customers in the following Electric Distribution Company (EDC) service territories:
  - Allegheny Power System (APS)
  - Duquesne Light Company (DLC)
  - Metropolitan Edison Company (Met-Ed)
  - PECCO
  - Penelec
  - PPL Utilities (PPL)
5. The categories of generation costs included in the analyses are:
  - Energy cost (the cost of energy delivered to the relevant EDC zone) both day-ahead and real-time prices were relied upon
  - Cost of Alternative Energy Portfolio Standard compliance

Capacity cost

- Cost of ancillary services, margin (i.e., profit) and r

Prices were calculated for four separate 4-week billing cycle

- January 1 through January 30
- January 8 through February 6
- January 15 through February 13
- January 22 through February 20

The APS and Duquesne zones exhibit the lowest total all-in, per-MWh generation costs, varying from approximately \$70 per MWh (based on real-time energy prices for the Duquesne zone over the January 8 through February 6 billing cycle) to approximately \$135 per MWh (based on day-ahead energy prices for the APS zone over the January 15 through February 13 billing cycle).

Costs for the remaining four zones are similar and range from a total cost of approximately \$129 per MWh (based on real-time energy prices for the Penelec zone for non-space heat customers over the January 8 through February 6 billing cycle) to approximately \$228 per MWh (based on day-ahead energy prices for the PECO zone for space heating customers over the January 1 through February 30 billing cycle).

The results obtained from this analysis suggest that the cost to serve residential consumers covering any of the four billing cycles examined would be not more than \$0.23 per kWh in any of the six EDC zones examined, even under the assumption that all supply were procured on the PJM spot markets.

**AFFIDAVIT**

Steven L. Estomin, being first duly sworn, deposes and says that this affidavit was prepared by him; that he is familiar with the contents thereof; and that the facts set forth therein are true and correct to the best of his knowledge, information and belief.

  
Steven L. Estomin

Subscribed and sworn to before me on this 17 day of June 2014

  
Notary Public

My Commission Expires 2/2015

**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-

**VERIFICATION**

I, Tanya J. McCloskey, Acting Consumer Advocate, hereby state that the facts set forth above in this Joint Complaint 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 (relating to unsworn falsification to authorities).

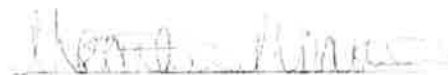
  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Date

**VERIFICATION**

I, Heather M. Weaver, Consumer Protection Agent for the Office of Attorney General, Bureau of Consumer Protection, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that the Pennsylvania Office of Attorney General's Bureau of Consumer Protection expects 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 (relating to unsworn falsification to authorities).

Date: 10-20-14



Heather M. Weaver  
Consumer Protection Agent  
Bureau of Consumer Protection  
Office of Attorney General  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, Pennsylvania 17120

**PUBLIC STATEMENT OF THE OFFICE OF CONSUMER ADVOCATE  
PURSUANT TO 71 P.S. § 309-4(e)**

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161 and for the following reasons, Acting Consumer Advocate Tanya J. McCloskey has determined to file a Joint Complaint with the Commonwealth of Pennsylvania by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (OAG) and participate in proceedings before the Commission involving Hiko Energy, LLC (Hiko Energy). The Joint Complaint alleges violations of the Public Utility Code, Commission regulations and orders, the Unfair Trade Practices and Consumer Protection Law and the Telemarketer Registration Act.

Hiko Energy is licensed by the Commission to supply electric generation to residential and commercial customers throughout Pennsylvania. Early in 2014, the OAG and the OCA received thousands of consumer complaints and contacts about supplier variable rate charges on their electric bills. The OCA joined in the filing of this Complaint to address multiple identified violations of the Commission's regulations and Pennsylvania law and to seek protections for consumers. The OCA will represent the interests of consumers before the Commission and ensure that Hiko Energy follows the requirements of the law and Commission regulations and orders when it engages in marketing and sales of its electric supply in Pennsylvania.

**EXHIBIT B**



1.888.264.4908

655 SUFFERN ROAD, TEANECK, NJ 07666

## PENNSYLVANIA TERMS AND CONDITIONS: ELECTRIC

### CUSTOMER DISCLOSURE STATEMENT

**Background:** We at HIKO Energy ("HIKO") are licensed by the Pennsylvania Public Utility Commission ("PUC") to offer and supply electric generation services ("EGS") in Pennsylvania. Our PUC EGS license number is A-2012-2289944. A residential or small business customer may cancel this Agreement at any time before midnight of the third business day after receiving this disclosure.

**Electric:** We set the generation prices and charges that you pay. The PUC regulates distribution prices and services. The Federal Energy Regulatory Commission regulates transmission prices and services.

**Electric Definitions:** **Generation charge-** charge for the production of electricity.  
**Transmission charge-** charge for moving high voltage electricity from a generation facility to the distribution lines of an Electric Distribution Company ("EDC").  
**Distribution charge-** charge for delivering electricity over a distribution system to the home or business from the transmission system.

#### Terms of Service

**1. Agreement to Sell and Purchase Energy.** This is an agreement between HIKO the customer ("Customer" or "you" or "your") under which Customer shall initiate electricity service and begin enrollment with HIKO (the "Agreement").

Subject to the terms and conditions of this Agreement, HIKO agrees to sell and deliver, and Customer agrees to purchase and accept the quantity of electricity, as estimated by HIKO, necessary to meet Customer's requirements based upon consumption data obtained by HIKO or the delivery schedule of your EDC.

HIKO is not affiliated with and does not represent the EDC. The amount of electricity supplied under this Agreement is subject to change based upon data reflecting Customer's consumption obtained by HIKO or the EDC's delivery schedule. The EDC will continue to deliver the electricity supplied by HIKO.

**2. Term and Cancellation.** This Agreement shall commence as of the date Customer's notice regarding the change of Customer's provider to HIKO is deemed effective by the EDC, and shall continue for one month thereafter (the "Initial Term"). Unless otherwise agreed to, upon completion of the Initial Term, this Agreement will renew on a month-to-month basis with a monthly variable rate methodology with no change to the remaining terms (the "Renewal Term").

While receiving service on a month-to-month basis in the Renewal Term, either party may cancel this Agreement by providing 30 days' advance written notice of cancellation to the other party. You may cancel your service under this Agreement by providing a 30 day written notice to HIKO. HIKO reserves the right to cancel this Agreement for any reason upon (30) days advance written notice to you. Some reasons why this Agreement may be canceled by HIKO include: (i) non-payment: if your service is terminated by your EDC, then this Agreement is cancelled on the date that your service is terminated. (ii) company-initiated cancellation: if HIKO cancels this agreement for any reason other than customer non-payment, we will follow applicable rules in providing notice to you.

Customer is liable for all HIKO charges until Customer returns to the EDC or goes to another supplier. A final bill will be rendered within twenty (20) days after the final scheduled meter reading or if access is unavailable, an estimate of consumption will be used in the final bill, which will be trueed up subsequent to the final meter reading.

**3. Pricing and Billing.** The price will the Initial Term is the price stated at sign-up and confirmed in your written Welcome Letter from HIKO. Unless otherwise agreed to in writing, the price for all electricity sold under this Agreement in the Renewal Term shall be a variable price which each month shall reflect), transportation to the Delivery Point, and other market-related factors, plus all applicable taxes, fees, charges or other assessments and HIKO's costs, expenses and margins. The variable price includes estimated Gross Receipts Tax but excludes Pennsylvania sales tax, if applicable. If you are tax exempt you must provide HIKO with a copy of your exemption certificate. You may call HIKO or visit [www.hikoenergy.com](http://www.hikoenergy.com) for pricing information.

HIKO will invoice Customer monthly for electricity supplied under this Agreement, as measured by the EDC, and Customer will pay each invoice in full within 20 days of the invoice date or be subject to a late payment charge of 1.5% per month. Customer may receive a single bill for both commodity and delivery costs from either HIKO or the EDC, or each of the EDC and HIKO may invoice Customer separately. Customer payments remitted in response to a consolidated bill shall be pro-rated (when so required) in accordance with procedures adopted by the PUC. HIKO may assign and sell Customer accounts receivable to the EDC. In the event of failure to remit payment when due by a residential customer, HIKO may cancel commodity service under this Agreement. A \$30 fee will be charged for all returned payments made to HIKO by the Customer.

**4. Assignment.** Customer may not assign its interests in and delegate its obligations under this Agreement without the express written consent of HIKO. HIKO may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof, in connection with any financing agreement or receivables purchase program, and may assign this Agreement to another energy supplier, energy services company or other entity as authorized by the PUC.

**5. Information Release Authorization.** Customer authorizes HIKO to obtain and review information regarding Customer's credit history from credit reporting agencies and the following information from the EDC: consumption history; billing determinants; account number; credit information; public assistance status; existence of medical emergencies, status as to whether Customer has a medical emergency, is human needs, elderly, blind or disabled and data applicable to cold weather periods; and tax status and eligibility for economic development or other incentives. This information may be used by HIKO to determine whether it will commence and/or continue to provide energy supply service to Customer and will not be disclosed to a third party unless required by law. Customer's execution of this Agreement shall constitute authorization for the release of this information to HIKO. This authorization will remain in effect during the Initial Term and any Renewal Term. Customer may rescind this authorization at any time by providing written notice thereof to HIKO or by calling HIKO at 1.888.264.4908. HIKO reserves the right to cancel this Agreement in the event Customer rescinds the authorization.

**6. Consumer Protections.** The services provided by HIKO Energy are protected by the terms and conditions of this Agreement and the PUC. The complete text of the PUC Customer Protection Rules referenced herein can be found in the Chapters 54 and 56 of Title 52 of the Pennsylvania Code.

**7. Right of Rescission.** A residential or small business Customer may rescind this Agreement within 3 business days after receipt of this Agreement, whichever comes first, by contacting HIKO at 1.888.264.4908 or in writing.

**8. Agency-Electric:** Customer hereby designates HIKO as agent to; (a) arrange and administer contracts and service agreements between Customer and HIKO and those entities including the PJM Interconnection engaged in the generation, transmission and delivery of Customer electricity supplies; and (b) nominate and schedule with the appropriate entities including the EDC for the delivery of electricity to the Sales Point and the Customer's end-use premises. HIKO as agent for the Customer will schedule the delivery of adequate supplies of electricity that meet the Customer's requirements as established by the EDC and in response to information provided by the EDC. The Sales Points for the electricity will be a point at the PJM Interconnection HIKO load bus (located outside of the municipality where Customer resides). These services are provided on an arm's length basis and market-based compensation is included in the price noted above.

**9. Title.** Customer and HIKO agree that title to, control of, and risk of loss to the electricity supplied by HIKO under this Agreement will transfer from HIKO to Customer at the Sales Point(s).

**10. Warranty.** This Agreement, including the Welcome Letter, any enrollment form and applicable attachments, as written makes up the entire Agreement between Customer and HIKO. HIKO makes no representations or warranties other than those expressly set forth in this Agreement, and HIKO expressly disclaims all other warranties, express or implied, including merchantability and fitness for a particular use.

**11. Force Majeure.** HIKO will make commercially reasonable efforts to provide electricity hereunder but HIKO does not guarantee a continuous supply of electricity to Customer. Certain causes and events out of the control of HIKO ("Force Majeure Events") may result in interruptions in service. HIKO will not be liable for any such interruptions caused by a Force Majeure Event, and HIKO is not and shall not be liable for damages caused by Force Majeure Events. Force Majeure Events shall include acts of God, fire, flood, storm, terrorism, war, civil disturbance, acts of any governmental authority, accidents, strikes, labor disputes or problems, required maintenance work, inability to access the local distribution system, non-performance by the EDC (including, but not limited to, a facility outage on its distribution lines or electric facilities), changes in laws, rules, or regulations of any governmental authority or any other cause beyond HIKO's control.

**12. Liability.** The remedy in any claim or suit by Customer against HIKO will be solely limited to direct actual damages (which will not exceed the amount of Customer's single largest monthly invoice amount in the immediately preceding 12 months). All other remedies at law or in equity are hereby waived. In no event will either HIKO or Customer be liable for consequential, incidental, indirect, special or punitive damages. These limitations apply without regard to the cause of any liability or damages. There are no third-party beneficiaries to this Agreement.

**13. HIKO Contact Information.** Customer may contact HIKO's Customer Service Center at 1.888.264.4908, Monday through Friday 8:00 a.m. - 8:00 p.m. EST (contact center hours subject to change). Customer may write to HIKO at: HIKO, 12 College Road, Suite 100, Monsey, N.Y. 10952.

**14. Dispute Resolution.** In the event of a billing dispute or a disagreement involving HIKO's service hereunder, the parties will use their best efforts to resolve the dispute. Customer should contact HIKO by telephone or in writing as provided above. The dispute or complaint relating to a residential customer may be submitted by either party at any time to the PUC pursuant to its Complaint Handling Procedures ("Procedures") or calling the PUC at 1.800.692.7380 or by writing to the PUC at the following address: Public Utility Commission, PO Box 3265, Harrisburg, Pennsylvania 17120. Customer must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute, and such payment shall be refunded if warranted by the decision of PUC.

**15. Choice of Laws.** Venue for any lawsuit brought to enforce any term or condition of this Agreement or to construe the terms hereof shall lie exclusively in the State of Pennsylvania. This Agreement shall be construed under and shall be governed by the laws of the State of Pennsylvania without regard to the application of its conflicts of law principles.

**16. Taxes and Laws.** Except as otherwise provided in the Agreement or provided by law, all taxes of whatsoever kind, nature and description due and payable with respect to service provided under this Agreement, other than taxes based on HIKO's net income, shall be paid by Customer, and Customer agrees to indemnify HIKO and hold HIKO harmless from and against any and all such taxes.

**17. Regulatory Changes.** This Agreement is subject to present and future legislation, orders, rules, regulations or decisions of a duly constituted governmental authority having jurisdiction over this Agreement or

the services to be provided hereunder. If at some future date there is a change in any law, rule, regulation, tariff, or regulatory structure ("Regulatory Change") which impacts any term, condition or provision of this Agreement including, but not limited to price, HIKO shall have the right to modify this Agreement to reflect such Regulatory Change by providing 30 days' written notice of such modification to the Customer.

18. **Emergency Service.** The EDC will continue to respond to leaks and emergencies. In the event of a service interruption or other emergency, Customer should immediately call their EDC.

19. **Refund Policy:** As the commodity supplied under this Agreement is immediately used and consumed by Customer upon delivery, it is not practical to return the product subject to this Agreement, and therefore refunds with respect to the commodity are not provided.

20. **Parties Bound.** This Agreement shall not become effective until accepted by HIKO. This Agreement is binding upon the parties hereto and their respective successors and legal assigns. Customer and HIKO have caused this Agreement to be executed as of the date noted above on the first page of this Agreement, by individuals authorized to bind each party, and Customer has reviewed all of the terms herein. In the case of telephonic or electronic enrollment execution shall be deemed provided pursuant to the methods authorized by the PUC.

**21. Other Provisions:**

A. **Severability:** If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being invalidated in any way.

B. **Waiver:** No partial performance, delay or failure on the part of HIKO in exercising any rights under this Agreement and no partial or single exercise thereof shall constitute a waiver of such rights or of any other rights hereunder.

C. **Universal Service:** Your EDC may have programs available to customers who are on a limited or fixed income to assist them with utility bills. Information on these programs is available from your .

**Contact Information:** HIKO Energy (HIKO): 12 College Road, Monsey, NY 10952, 888-264-4908

**Pennsylvania Public Utility Commission (PUC):** P.O. Box 3265 Harrisburg, PA 17105-3265 Choice Hotline Number: 1.800.692.7380

**Electric Distribution Company (EDC):**

PPL Electric Utilities: 827 Hausman Road, Allentown, PA 18104-9392 1.800.342.5775

PECO: 2301 Market Street, P.O. Box 8699, Philadelphia, PA 19101 1.800.841.4141

Duquesne: 411 Seventh Avenue, Pittsburgh, PA 15129 1.888.393.7100

Metropolitan Edison (MetEd), 2800 Pottsville Pike, Reading, PA 19612 1.800.545.7741

Pennsylvania Electric (Penelec): 1091 Broad Street Johnstown, PA 15906 1.800.545.7741

Pennsylvania Power (Penn Power): 233 Frenz Drive, New Castle, PA 16101 1.800.720.3600

West Penn Power: 800 Cabin Hill, Greensburg, PA 15601 1.800.686.0021

## PENNSYLVANIA TERMS AND CONDITIONS: NATURAL GAS SERVICES

### C U S T O M E R   D I S C L O S U R E   S T A T E M E N T

**Background:** We at HIKO Energy ("HIKO") are licensed by the Pennsylvania Public Utility Commission ("PUC") to offer and supply natural gas services ("NGS") in parts of Pennsylvania. Our PUC NGS license number is A-2012-2298532. A residential or small business customer may cancel this Agreement at any time before midnight of the third business day after receiving this disclosure.

**Natural Gas:** We set the prices and charges that you pay. The PUC regulates distribution or delivery prices and services. The Federal Energy Regulatory Commission regulates interstate pipeline prices and services.

**Natural Gas Definitions:** **Commodity charges** — charges for natural gas supply services to retail customers.

**Distribution charges**—charges for the delivery of natural gas to a retail customer from the point of receipt into the distribution system of your natural gas distribution company ("NGDC").

**Interstate Pipeline Charges** - Charges for moving natural gas to the distribution lines of a distribution company.

**Terms of Service**

1. **Agreement to Sell and Purchase Energy.** This is an agreement between HIKO the customer ("Customer" or "you" or "your") under which Customer shall initiate natural gas service and begin enrollment with HIKO (the "Agreement"). Subject to the terms and conditions of this Agreement, HIKO agrees to sell and deliver, and Customer agrees to purchase and accept the quantity of natural gas as estimated by HIKO, necessary to meet Customer's requirements based upon consumption data obtained by HIKO or the delivery schedule of your NGDC.

HIKO is not affiliated with and does not represent the NGDC. The amount of natural gas supplied under this Agreement is subject to change based upon data reflecting Customer's consumption obtained by HIKO or the NGDC's delivery schedule. The NGDC will continue to deliver the natural gas supplied by HIKO.

2. **Term and Cancellation.** This Agreement shall commence as of the date Customer's notice regarding the change of Customer's provider to HIKO is deemed effective by the NGDC, and shall continue for one month thereafter (the "Initial Term"). Unless otherwise agreed to, upon completion of the Initial Term, this Agreement will renew on a month-to-month basis with a monthly variable rate methodology with no change to the remaining terms. (the "Renewal Term").

While receiving service on a month-to-month basis in the Renewal Term, either party may cancel this Agreement by providing 30 days' advance written notice of cancellation to the other party. You may cancel your service under this Agreement by providing a 30 day written notice to HIKO. HIKO reserves the right to cancel this Agreement for any reason upon (30) days advance written notice to you. Some reasons why this Agreement may be canceled by HIKO include: (i) non-payment if your service is terminated by your NGDC, then this Agreement is cancelled on the date that your service is terminated. (ii) company-initiated cancellation: if HIKO cancels this agreement for any reason other than customer non-payment, we will follow applicable rules in providing notice to you.

Customer is liable for all HIKO charges until Customer returns to the NGDC or goes to another supplier. A final bill will be rendered within twenty (20) days after the final scheduled meter reading or if access is unavailable, an estimate of consumption will be used in the final bill, which will be trueed up subsequent to the final meter reading.

3. **Pricing and Billing.** The price will the Initial Term is the price stated at sign-up and confirmed in your written Welcome Letter from HIKO. Unless otherwise agreed to in writing, the price for all natural gas sold under this Agreement in the Renewal Term shall be a variable price which each month shall reflect the wholesale cost of natural gas (including commodity, capacity, storage and balancing), transportation to the Delivery Point, and other market-related factors, plus all applicable taxes, fees, charges or other assessments and HIKO's costs, expenses and margins. The variable price includes estimated Gross Receipts Tax but excludes Pennsylvania sales tax, if applicable. If you are tax exempt you must provide HIKO with a copy of your exemption certificate. You may call HIKO or visit [www.hikoenergy.com](http://www.hikoenergy.com) for pricing information.

HIKO will invoice Customer monthly for natural gas supplied under this Agreement, as measured by the NGDC, and Customer will pay each invoice in full within 20 days of the invoice date or be subject to a late payment charge of 1.5% per month. Customer may receive a single bill for both commodity and delivery costs from either HIKO or the NGDC, or each of the NGDC and HIKO may invoice Customer separately. Customer payments remitted in response to a consolidated bill shall be pro-rated (when so required) in accordance with procedures adopted by the PUC. HIKO may assign and sell Customer accounts receivable to the NGDC. In the event of failure to remit payment when due by a residential customer, HIKO may cancel commodity service under this Agreement. A \$30 fee will be charged for all returned payments made to HIKO by the Customer.

4. **Assignment.** Customer may not assign its interests in and delegate its obligations under this Agreement without the express written consent of HIKO. HIKO may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof, in connection with any financing agreement or receivables purchase program, and may assign this Agreement to another energy supplier, energy services company or other entity as authorized by the PUC.

5. **Information Release Authorization.** Customer authorizes HIKO to obtain and review information regarding Customer's credit history from credit reporting agencies and the following information from the NGDC: consumption history; billing determinants; account number; credit information; public assistance status; existence of medical emergencies, status as to whether Customer has a medical emergency, is human needs, elderly, blind or disabled and data applicable to cold weather periods; and tax status and eligibility for economic development or other incentives. This information may be used by HIKO to determine whether it will commence and/or continue to provide energy supply service to Customer and will not be disclosed to a third party unless required by law. Customer's execution of this Agreement shall constitute authorization for the release of this information to HIKO. This authorization will remain in effect during the Initial Term and any Renewal Term. Customer may rescind this authorization at any time by providing written notice thereof to HIKO or by calling HIKO at 1.888.264.4908. HIKO reserves the right to cancel this Agreement in the event Customer rescinds the authorization.

6. **Consumer Protections.** The services provided by HIKO Energy are protected by the terms and conditions of this Agreement and the PUC. The complete text of the PUC Customer Protection Rules referenced herein can be found in the Chapters 62 and 56 of Title 52 of the Pennsylvania Code.

7. **Right of Recession.** A residential or small business Customer may rescind this Agreement within 3 business days after receipt of this Agreement, whichever comes first, by contacting HIKO at 1.888.264.4908 or in writing.

8. **Agency-Gas.** Customer hereby designates HIKO as agent to; (a) arrange and administer contracts and service agreements between Customer and HIKO and between the interstate pipeline transporters of Customer natural gas supplies; (b) nominate and schedule with the interstate pipeline the transportation of Customer's natural gas supplies from the Sales point to the Delivery Points, and with the NGDC for the transportation of the Customer's natural gas supplies from the Delivery Points to the Customer's end-use premises; and (c) aggregate Customer's natural gas supplies with such supplies of other customers served by HIKO to maintain qualification for NGDC transportation service and resolve imbalances that may arise during the term of this Agreement. HIKO as agent for the Customer will schedule the delivery of adequate supplies of natural gas that meet the Customer's city gate requirements as established by the NGDC and in response to information provided by the NGDC. The Sales Points for the natural gas supplies provided under this Agreement will be a point or points located outside the State of Pennsylvania as selected from time to time by HIKO to assure service reliability. The Delivery Points for the natural gas transported by interstate pipelines will be the city gate stations of the NGDC. HIKO agrees to arrange for the transportation of the natural gas supplied under this Agreement from the Sales Points to the Delivery Points and from the Delivery Points to the Customer's end-use premises. These services are provided on an arm's length basis and market-based compensation is included in the price noted above.

9. **Title.** Customer and HIKO agree that title to, control of, and risk of loss to the natural gas supplied by HIKO under this Agreement will transfer from HIKO to Customer at the Sales Point(s).

10. **Warranty.** This Agreement, including the Welcome Letter, any enrollment form and applicable attachments, as written makes up the entire Agreement between Customer and HIKO. HIKO makes no representations or warranties other than those expressly set forth in this Agreement, and HIKO expressly disclaims all other warranties, express or implied, including merchantability and fitness for a particular use.
11. **Force Majeure.** HIKO will make commercially reasonable efforts to provide natural gas hereunder but HIKO does not guarantee a continuous supply of natural gas to Customer. Certain causes and events out of the control of HIKO ("Force Majeure Events") may result in interruptions in service. HIKO will not be liable for any such interruptions caused by a Force Majeure Event, and HIKO is not and shall not be liable for damages caused by Force Majeure Events. Force Majeure Events shall include acts of God, fire, flood, storm, terrorism, war, civil disturbance, acts of any governmental authority, accidents, strikes, labor disputes or problems, required maintenance work, inability to access the local distribution system, non-performance by the NGDC (including, but not limited to, a facility outage on its gas distribution lines or gas facilities), changes in laws, rules, or regulations of any governmental authority or any other cause beyond HIKO's control.
12. **Liability.** The remedy in any claim or suit by Customer against HIKO will be solely limited to direct actual damages (which will not exceed the amount of Customer's single largest monthly invoice amount in the immediately preceding 12 months). All other remedies at law or in equity are hereby waived. In no event will either HIKO or Customer be liable for consequential, incidental, indirect, special or punitive damages. These limitations apply without regard to the cause of any liability or damages. There are no third-party beneficiaries to this Agreement.
13. **HIKO Contact Information.** Customer may contact HIKO's Customer Service Center at 1.888.264.4908, Monday through Friday 8:00 a.m. - 8:00 p.m. EST (contact center hours subject to change). Customer may write to HIKO at: HIKO, 12 College Road, Suite 100, Monsey, N.Y. 10952.
14. **Dispute Resolution.** In the event of a billing dispute or a disagreement involving HIKO's service hereunder, the parties will use their best efforts to resolve the dispute. Customer should contact HIKO by telephone or in writing as provided above. The dispute or complaint relating to a residential customer may be submitted by either party at any time to the PUC pursuant to its Complaint Handling Procedures ("Procedures") or calling the PUC at 1.800.692.7380 or by writing to the PUC at the following address: Public Utility Commission, PO Box 3265, Harrisburg, Pennsylvania 17120. Customer must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute, and such payment shall be refunded if warranted by the decision of PUC.
15. **Choice of Laws.** Venue for any lawsuit brought to enforce any term or condition of this Agreement or to construe the terms hereof shall lie exclusively in the State of Pennsylvania. This Agreement shall be construed under and shall be governed by the laws of the State of Pennsylvania without regard to the application of its conflicts of law principles.
16. **Taxes and Laws.** Except as otherwise provided in the Agreement or provided by law, all taxes of whatsoever kind, nature and description due and payable with respect to service provided under this Agreement, other than taxes based on HIKO's net income, shall be paid by Customer, and Customer agrees to indemnify HIKO and hold HIKO harmless from and against any and all such taxes.
17. **Regulatory Changes.** This Agreement is subject to present and future legislation, orders, rules, regulations or decisions of a duly constituted governmental authority having jurisdiction over this Agreement or the services to be provided hereunder. If at some future date there is a change in any law, rule, regulation, tariff, or regulatory structure ("Regulatory Change") which impacts any term, condition or provision of this Agreement including, but not limited to price, HIKO shall have the right to modify this Agreement to reflect such Regulatory Change by providing 30 days' written notice of such modification to the Customer.
18. **Emergency Service.** The NGDC will continue to respond to leaks and emergencies. In the event of a gas leak, service interruption or other emergency, Customer should immediately call their NGDC.
19. **Refund Policy.** As the commodity supplied under this Agreement is immediately used and consumed by Customer upon delivery, it is not practical to return the product subject to this Agreement, and therefore refunds with respect to the commodity are not provided.
20. **Parties Bound.** This Agreement shall not become effective until accepted by HIKO. This Agreement is binding upon the parties hereto and their respective successors and legal assigns. Customer and HIKO have caused this Agreement to be executed as of the date noted above on the first page of this Agreement, by individuals authorized to bind each party, and Customer has reviewed all of the terms herein. In the case of telephonic or electronic enrollment execution shall be deemed provided pursuant to the methods authorized by the PUC.
21. **Other Provisions:**
- A. **Severability:** If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being invalidated in any way.
  - B. **Waiver:** No partial performance, delay or failure on the part of HIKO in exercising any rights under this Agreement and no partial or single exercise thereof shall constitute a waiver of such rights or of any other rights hereunder.
  - C. **Universal Service.** Your NGDC may have programs available to customers who are on a limited or fixed income to assist them with utility bills. Information on these programs is available from your NGDC.

Contact Information: HIKO Energy (HIKO): 12 College Road, Monsey, NY 10952, 888-264-4908

Pennsylvania Public Utility Commission (PUC): P.O. Box 3265 Harrisburg, PA 17105-3265 Choice Hotline Number: 1.800.692.7380

Natural Gas Distribution Company (NGDC):

PECO: 2301 Market Street, P.O. Box 8699, Philadelphia, PA 19101

1.800.841.4141

UGI Utilities: 2525 North 12th Street, Suite 360, Reading, PA 19605

1.800.276.2722

# EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

AUDREY BOGDANSKI, on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

HIKO ENERGY, LLC

Defendant.

NO. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiff, Audrey Bogdanski (“Plaintiff”) files this class action complaint on behalf of herself and all others similarly situated, by and through the undersigned attorneys, against Defendant HIKO Energy (“HIKO” or “Defendant”) and alleges as follows upon personal knowledge as to herself and her own acts and experiences and, as to all other matters, upon information and belief based upon, *inter alia*, investigation conducted by her attorneys.

**NATURE OF THE CASE**

1. Plaintiff brings this class action individually and on behalf of the Class defined below against Defendant to obtain relief, including, among other things, damages and declaratory relief. This class action is brought to remedy violations of law in connection with Defendant's fraudulent and deceptive bait-and-switch sales model with their variable rate customers. Defendant represents to potential customers, that if they switch to HIKO from their local utilities or other energy suppliers, they will receive a low introductory rate on their energy bill, followed by competitive market-based rates and savings on their energy bills. However, these representations are a bait-and-switch scheme. Following the low introductory rate, Defendant's energy rates increase dramatically, causing HIKO customers' electricity bills to rise substantially.

2. Defendant's sales pitch is in reality false and misleading in that the rates actually charged to consumers are not competitive and bear little relation to prevailing market conditions. As a consequence of this scheme, consumers across the nation are essentially being scammed out of millions of dollars in exorbitant charges for electricity.

**JURISDICTION AND VENUE**

3. This is a proposed class action covering the states of Connecticut, Illinois, Maryland, New Jersey, New York, Ohio, and Pennsylvania. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(d)(2), because Plaintiff and Defendant are of diverse citizenship and the aggregate amount in controversy exceeds \$75,000.00 exclusive of interest and costs. Likewise, this court has jurisdiction under 28. U.S.C. §1332(d)(2), members of the putative class (each individual member a "Class member" and collectively the "Class

members”) are of diverse citizenship from the Defendant and the aggregate amount in controversy exceeds \$5,000,000.00 exclusive of interest and costs. There are 100 or more members of the proposed Plaintiff Class.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred here, a substantial part of the property that is the subject of this action is situated in this district, and Defendant is subject to personal jurisdiction in this district.

#### **PARTIES**

5. Plaintiff Audrey Bogdanski is a resident of Moscow, Pennsylvania. On or around September 2013, Plaintiff switched her energy supplier to HIKO Energy with the promise of energy cost savings and competitive market rates.

6. Defendant HIKO Energy, LLC, a corporation with its principal place of business in Monsey, New York, is a retail electricity and natural gas provider.

#### **FACTUAL ALLEGATIONS**

7. Until recently, electricity and natural gas were supplied and distributed by local utility companies. Over the last several years however, states have begun to change the regulations in the energy industry to enhance competition between energy providers.

8. In theory, the deregulation of energy allows consumers to shop around for the best energy rates. But, as the Defendant has demonstrated, the deregulation has also provided energy companies with the opportunity to gouge unsuspecting consumers. Specifically, HIKO has exploited deregulated markets by engaging in a bait-and-switch sales scheme with potential consumers.

9. Defendant lures consumers away from their local utility companies or other energy suppliers by falsely suggesting that they will lower their energy costs. The Defendant's misleading scheme promises consumers low introductory rates, followed by a competitive market rate. But in reality, after the teaser rate, consumers' energy bills skyrocket.

10. Energy rates subject to market fluctuations, like those offered by Defendant, are higher than the rates previously paid by Plaintiff and other Class members for their electricity, a material fact that Defendant does not disclose.

11. Adding to the fraudulent scheme, Defendant makes the cancellation process lengthy and difficult. Defendant requires a 30 day notice prior to cancellation. It can take up to two billing cycles for a disgruntled customer who wishes to switch to another company to do so.

12. HIKO consistently and repeatedly represents its rates as both low and competitive, and guarantees customer satisfaction. Misleading statements on their website and in their marketing materials include the following:

"HIKO Energy, LLC is committed to lowering the cost for energy consumers in all markets we serve"

"[W]e strive to offer the most competitive pricing in the marketplace"

"[W]e work to ensure more money stays where it belongs - in your pocket"<sup>1</sup>

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<sup>1</sup> <http://www.hikoenergy.com/index.html>

21. Consumers regularly complain that they were lured into switching energy suppliers to HIKO with the promise of energy bill savings, but following a low promotional rate, their energy bills skyrocketed, sometimes even doubling in price from their previous local utility provider.

22. Below is a small sample of customer complaints made on the Internet regarding Defendant's fraudulent sales and marketing scheme:

- I was told they could give me a better price for my electric and when I got my bill for 1/\*\*/14 \$206.30, My February bill was even higher \$ 971.33, this is for one month, how could that be?
- Representative came to front door to advertise the energy supplier selected without great detail to pricing. The representative said that our bills would be a certain percentage cheaper if we switched to HIKO Energy and that we would receive a check in the mail for our highest bill after 12 months with this supplier. She also didn't tell us that HIKO Energy used variable rates. After we signed up, for the months of February - May our bills were insanely high. For those 4 months PPL Electric charged us a total of \$330.77 but HIKO Energy charged us \$1597.41 in that same amount of time.
- Our electric service was changed to HIKO in June of 2013. The representative stated that this service would be less expensive and the prices were competitive with our current service provider. They explained how we would still have our current service as the delivery charge and they would represent the electric charge. During the summer months we did not keep track of our services charges, so did not realize that their charges were actually more than our current provider. I will only go back for 3 bills, from from 11/\*\*to 12/\*\*/13, 12/24 to 1/\*\*/13 and 1/24 to 2/\*\*/2013 to compare what the energy charges would have been if we stayed with NYSEG and what our charges WERE with HIKO Our meter was read on October \*\*, December \*\*, 2013 and again on 2/\*\*/2013. It is read every other month. I will give only the energy charges to simplify this. 11/\*\*/2014 to 12/\*\*/2014 2547 kwh used @ 0.15900 billed for \$404.98 (from HIKO). With NYSEG their cost was 0.076 kwh the cost would have been 193.57. The difference being \$211.41. 12/\*\*/2014 to 1/\*\*/2014 - 1818 kwh used @ 0.16525 billed for \$300.42 (from HIKO) With NYSEG their cost was 0.076 kwh, the cost would have been \$138.16. The difference being \$162.26. This last bill is where HIKO increased their price. My feeling is that they knew that this actually read of the meter would be extremely high due to the frigid winter and they increased their prices considerably. There was no notice of this extreme increase. We are

requesting the differences refunded for the past 3 months, but if we can't get all 3 months, we would like this past month of 1/\*\*to 2/\*\*to be refunded. 1/\*\*/2014 to 2/\*\*/2014 - 3630 kwh used @ 0.24174 billed for \$877.53 (from HIKO). With NYSEG their actual cost was 0.076 kwh, the cost would have been \$275.88. The difference being \$601.65. We are so disturbed by this and cannot afford this bill. We realize that we should have been keeping better track of the prices, but unfortunately, trusted the sales pitch and didn't notice until our bill was pheonominally high. I don't have much trust that I will reach a \*\*\*\*\* or anyone at HIKO that will do anything about this. I called HIKA on Tuesday morning and reached a message machine, which stated they would return the call within 24 hours. Called a few more times trying to reach a live person. When I did reach a phone representative I asked for a \*\*\*\*\* after I saw the conversation was going nowhere. Someone else came on the phone and basically just grunted. He did not even introduce himself. I was told after asking what his name was and who he was, that he was not a \*\*\*\*\*; "just a customer representative". I asked for the \*\*\*\*\*, again, and he said that she would not be in until Thursday. I called again on Wednesday, and again reached a recording, left a message, and have so far not received a call back from Tuesday or today. It is peculiar that there is no \*\*\*\*\* available.

- Recently I was convinced by HIKO Energy representative Travis to choose them as a third party gas and electric supplier. Travis came to my home and was very persevering, he promised me guaranteed savings and one month free. On my signed agreement with HIKO Energy stated that they guarantee 1-7% lower price than my local utility. On the first bill I received instead of savings I was charged 2 times higher price for the gas supply portion comparing to what PSE&G would charge me (\$142 comparing to \$71) and slightly overcharged for the electric part. I cancelled their service but it takes 2-3 billing circles to switch. On my second bill they charged me 3 times higher price. I still have two more months to pay them. For some reasons PSE&G cannot terminate contract immediately even though it's an emergency. HIKO Energy don't answer the phone, do not return messages. Board of Public Utilities said they receive countless calls from the customers like me, but they can't help. They licensed HIKO Energy but they don't regulate them. I don't know where to seek help. I'm a single mother living in an apartment with a little child and they just rip me off. Last bill was \$415! Its cold months now and the hitting system works on gas. And of course I never received promised one month free.
- My wife made a change to HIKO Energy from \*\*\*\*\* May of last year. The reason for the change was due to lower prices. When the salesperson was on the phone with my wife they never mentioned a variable rate. For the first six months the rate did not change. Two months ago the rate increased from 8 cents per KwH to 13 cents per KwH. This past month the rate increased from 13 cents per KwH to 29 cents per KwH which increased our bill to over \$500 when we used less

electric than we have in the past six months. This increased our bill by over \$350. We attempted to call them to dispute the fact that the governor called a state of emergency in PA in early February which should have frozen increases as well as dispute the fact that they did not inform us originally that this was a variable rate. We have tried to contact the company over twenty times in the last week and left messages many time since we got dumped straight into voicemail but no one has called us back. We have sent the required paperwork to the attorney general and as a last resort now sending this to the BBB.

- This company offers to give the customer the lowest possible rates on energy supply. I was told by the representative that my electric bill would be lower if I used HIKO Energy instead of my current provider. This was never the case. For the first few months my rates stayed the same and then this month I get my bill and it was over .20kwh when PP&L is offering 0.08754. I stay current and check my bill consistently using PP&L's website. My bill that I just received was projected to be appr. \$600 give or take some change because of the fees and taxes. This was not the case. My bill was \$1442.20. I used 4303 khW and was charged over .20 khw. This resulted in my bill being \$871 more than it would be with PP&L. HIKO Energy states that the bill will be less not more than double. I attempted several times to contact them to cancel the service and find out about these charges. Every time I called I received an automated service where I left my name and number and did not receive a return call. I finally sent an email and received a response saying that it will be canceled by not for 30-60 days and I am assuming this will be at their outrageous prices resulting in thousands of dollars. At this rate I would owe them \$4326 for 3 months of electric?? I asked to have this financial matter resolved, I was also told in the email that it would be forwarded to a manager and I would receive a return phone call to resolve this matter. That was one week ago and still no call. HIKO Energy mislead me and told me I would SAVE money, not that they would wait until your bill was higher in the winter and then change the rate and COST you money.
- I SIGNED UP FOR HIKO BECAUSE THEY GUARANTEED ME THAT I WOULD SAVE MONEY AND I WOULD BE PAYING LESS ON MY BILLS. LITTLE DID I KNOW THE OUTRAGEOUS BILLS THAT I WOULD BE RECEIVING. MY BILLS HAVE GOTTEN SO HIGH THAT LAST MONTH MY BILL CAME OUT TO OVER \$1800. I TRIED CONTACTING HIKO ON SEVERAL OCASSIONS AND WAS UNSUCCESSFUL TILL JUST A FEW DAYS AGO. I HAVE A DISABLED HUSBAND AND SHOULD NOT HAVE TO CHOOSE BETWEEN BUYING HIS MEDICINE (THAT WILL KEEP HIM ALIVE) OR PAYING THE UTILITY BILL THAT WILL KEEP HIM WARM (SINCE A SIMPLE COLD CAN SEND HIM STRAIGHT TO THE HOSPITAL OR WORSE). THIS COMPANY IS A COMPLETE DISGRACE AND THEY SHOULD BE ASHAMED! TO HAVE TO WAIT 60DAYS (2 BILLING CYCLES) TO BE REMOVED FROM THIS PROGRAM IS ABSURD. I'M

TRULY AFRAID TO SEE WHAT THESE TWO BILLING CYCLES WILL BRING. THIS BUSINESS SHOULD BE SHUT DOWN! PLEASE HELP.<sup>2</sup>

23. These complaints reflect the false and misleading course of conduct that HIKO is engaged in, resulting in damages to consumers across the nation.

24. Government action has already been taken against the Defendant. The Pennsylvania Office of Attorney General's Bureau of Consumer Protection and the Office of Consumer Advocate filed a Formal Complaint against HIKO Energy with the Pennsylvania Public Utility Commission after consumers complained about their electricity cost increasing by as much as 300%.<sup>3</sup>

#### CLASS ACTION ALLEGATIONS

25. Plaintiff brings this suit as a class action on behalf of herself and all HIKO Energy customers with variable-rate plans from January 1, 2010 to the present. The proposed class (the "Class") is defined as follows:

All variable-rate customers in Connecticut, Illinois, Maryland, New Jersey, New York, Ohio, and Pennsylvania, who used HIKO as their electricity supplier. Excluded from the Class are (a) any Judge or Magistrate presiding over this action and members of their families; (b) HIKO Energy, and their subsidiaries and affiliates; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

26. Plaintiff reserves the right to redefine the Class(es) prior to class certification.

27. The exact number of Class members is unknown as such information is in the exclusive control of the Defendant. Plaintiff, however, believes that the Class encompasses thousands of individuals who are geographically dispersed throughout

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<sup>2</sup> <http://www.bbb.org/new-york-city/Business-Reviews/energy-service-companies/hiko-energy-llc-in-monsey-ny-129091/Complaints#breakdown>

<sup>3</sup> See *Commonwealth of Pennsylvania v. Hiko Energy LLC*, docket number C-2014-2427652.

the nation. Therefore, the number of persons who are members of the Class described above are so numerous that joinder of all members in one action is impracticable.

28. Questions of law and fact that are common to the entire Class predominate over individual questions because the actions of Defendant's complained of herein were generally applicable to the entire Class. These legal and factual questions include, but are not limited to:

- a. The nature, scope and operations of Defendant's wrongful practices;
- b. Whether Defendant engaged in fraudulent practices as to Class members;
- c. Whether Defendant's conduct amounts to a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law;
- d. Whether Defendant breached its contracts with consumers;
- e. Whether Defendant breached the covenant of good faith and fair dealing with Class members;
- f. Whether Defendant negligently misrepresented the true nature of its energy rates;
- g. Whether Defendant has been unjustly enriched;
- h. Whether Plaintiff and the Class suffered damages as a result of Defendant's misconduct and, if so, the proper measure of damages.

29. Plaintiff's claims are typical of the members of the Class because Plaintiff and Class members were injured by the same wrongful practices. Plaintiff's claims arise from the same practices and course of conduct that gives rise to the claims

of the Class members, and are based on the same legal theories. Plaintiff has no interests that are contrary to or in conflict with those of the Class she seeks to represent.

30. Questions of law or fact common to Class members predominate; a class action is superior to other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. While the Class members' aggregate damages are likely to be in the millions of dollars, the individual damages incurred by each Class member are, as a general matter, too small to warrant the expense of individual suits. The likelihood of individual Class members prosecuting separate claims is remote, and even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials on the same factual issues. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Certification of the Class under Rule 23(b)(3) is proper.

31. Relief concerning Plaintiff's rights under the laws herein alleged and with respect to the Class would be proper. Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive

relief or corresponding declaratory relief with regard to Class members as a whole and certification of the Class under Rule 23(b)(2) proper.

**COUNT I**  
**VIOLATION OF PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW**

32. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

33. Plaintiff asserts this cause of action on behalf of herself and the other members of the Class.

34. This cause of action is brought pursuant to Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* ("UTPCPL").

35. UTPCPL declares unlawful all unfair and deceptive acts or practices in or affecting commerce.

36. Under UTPCPL, Defendant's misleading representations regarding energy cost savings and competitive market rates are unfair, deceptive and unconscionable.

37. In the course of soliciting and promoting energy cost savings and competitive market rates to consumers and in entering into agreements with consumers to provide such purported services, Defendant has engaged in unfair and deceptive acts and practices in trade or commerce in violation of the UTPCPL.

38. Defendant violated the UTPCPL by engaging in a fraudulent and deceptive bait-and-switch- sales model of inducing customers to switch from their energy suppliers to HIKO

Energy with a low promotional rate offer and energy savings, and then charging the consumer exorbitant non-competitive energy rates following the promotional period.

39. Defendant violated the UTPCPL by falsely representing that consumers would save money on their energy bills by switching to HIKO.

40. Defendant violated the UTPCPL by failing to disclose that on a consistent basis, HIKO's regular rates are substantially higher than its competitors and not competitive in the market.

41. Defendant violated the UTPCPL by failing to disclose to consumers that after the initial promotional period, energy rates were almost guaranteed to increase substantially.

42. Defendant violated the UTPCPL by failing to adequately inform consumers that HIKO's energy rates generally increase and will rarely ever be lower than the competitive market price.

43. Defendant's acts and practices as alleged in the foregoing paragraphs were false, misleading, deceptive, and unfair to consumers, in violation of the UTPCPL.

44. Plaintiff and Class members relied on Defendant's misrepresentations. Had HIKO disclosed in its marketing and sales statements that a consumer's energy bills would more likely than not substantially increase, Plaintiff and Class members would not have switched to HIKO for their energy supply.

45. As a direct and proximate result of Defendant's deceptive, fraudulent, and unfair practices, Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

46. Plaintiff, on behalf of herself and all others similarly situated, demands judgment against Defendant for damages and declaratory relief.

**COUNT II**  
**BREACH OF CONTRACT**

47. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

48. Where the relevant agreements between HIKO and its customers do not specify the applicable price, to prevent the contract from being too indefinite or from placing Plaintiff and the Class at Defendant's mercy, the agreements should be deemed to contain an implied contractual term mandating a reasonable price. In this case, a reasonable price would be the prevailing market rates in effect during the applicable class period. The best approximation of such a reasonable market price is the rates charged by the Plaintiff and Class members' local public utility companies.

49. Defendant breached this implied contractual term by charging Plaintiffs and Class members unreasonable and exorbitant energy rates well above market prevailing rates.

50. As a direct and proximate result of Defendant's wrongful conduct, the Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

51. Plaintiff, on behalf of herself and all others similarly situated, demands judgment against Defendant for damages and declaratory relief.

**COUNT III**  
**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

52. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

53. HIKO has a duty of good faith and fair dealing with respect to its dealings with consumers, including Plaintiff and the Class members.

54. There is an implied duty of good faith and fair dealing in every contract, and the Defendant had an implied duty to ensure that their marketing materials and other representations regarding electricity and gas rates were not false and misleading with respect to energy consumers.

55. When a contract contains an unspecified price term such as in the HIKO agreement, the seller does not have unlimited discretion to set the prices. Rather, under the covenant of good faith and fair dealing, the seller must set the prices reasonably and in good faith.

56. Defendant knows that the possibility of energy savings is the primary incentive to induce consumers to switch to HIKO.

57. Defendant breached the covenant of good faith and fair dealing by engaging in deceptive and misleading representations of energy cost savings and failing to set rates at a competitive market rate, and instead, charging customers excessive energy rates that generally far exceed the market rate. In so doing, Defendant acted recklessly, maliciously, in bad faith, and without good cause, thereby preventing Plaintiff and the Class from receiving their reasonably expected benefits under the services agreements.

58. Under the covenant of good faith and fair dealing, the court should read in the applicable price properly paid by the Class for HIKO's services as a reasonable, market-based

rate, which is the rate charged by the Class members' local public utilities companies during the class period. All monies paid above this reasonable amount should be restored to the Class as damages.

59. Plaintiff and Class members relied to their detriment upon misleading assertions and conduct of Defendant's and such reliance may be presumed based on the Defendant's unlawful conduct.

60. As a direct and proximate result of Defendant's deceptive, fraudulent, and unfair practices, Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

61. Plaintiff, on behalf of herself and all others similarly situated, demands judgment against Defendant for damages and declaratory relief.

**COUNT IV**  
**COMMON LAW FRAUD, INCLUDING FRAUDULENT INDUCEMENT, AND**  
**FRAUDULENT CONCEALMENT**

62. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

63. Defendant made several false and fraudulent representations of material fact to Plaintiff and Class members regarding the cost savings benefits of switching to HIKO, and concealed certain material information regarding the upward trend of their energy rates from the Plaintiff and Class members.

64. Among those representations, Defendant fraudulently represented to consumers that they would save money on their energy bills by switching to HIKO.

65. Defendant fraudulently represented to consumers that their energy rates were competitive in the market when in fact, on a consistent basis, their rates are not competitive and more often than not, higher than the market rate.

66. Defendant fraudulently concealed from consumers that after the initial promotional period, their energy rates were almost guaranteed to increase substantially, generally higher than the rates at local utility companies.

67. Defendant's misrepresentations and concealments of material facts concerning their energy rates and alleged savings were made purposefully, willfully, wantonly, and recklessly to induce Plaintiff and the Class to switch to HIKO as their energy supplier.

68. At the time Defendant made these misrepresentations and concealments, and at the time Plaintiff and consumers switched to HIKO, Plaintiff and consumers were unaware of the falsity of these representations, and reasonably believed them to be true.

69. In making these representations, Defendant knew they were false and intended that the Plaintiff and Class members would rely upon such misrepresentations.

70. Plaintiff and Class members did in fact rely upon such misrepresentations.

71. Defendant's misrepresentations fraudulently induced Plaintiff and Class members to switch to HIKO, only to have their energy bills increase.

72. Plaintiff and Class members' reliance was reasonable as they trusted that Defendant would act honestly and in good faith.

73. As a direct and proximate result of Defendant's deceptive, fraudulent, and unfair practices, Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

74. Plaintiff, on behalf of herself and all others similarly situated, demands judgment against Defendant for damages and declaratory relief.

**COUNT V**  
**NEGLIGENT MISREPRESENTATION**

75. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

76. Under the circumstances alleged, Defendant owed a duty to Plaintiff and the Class to provide them with accurate information regarding the true nature of HIKO's energy rates and lack of energy cost savings.

77. Defendant represented to Plaintiff and Class members that by switching to HIKO, they would enjoy savings with competitive market rates.

78. Defendant's representations were false, negligent and material.

79. Defendant negligently made these false misrepresentations with the understanding that Plaintiff and Class members would rely upon them.

80. Plaintiff and Class members did in fact reasonably rely upon these misrepresentations and concealments made by Defendant.

81. As a direct and proximate result of Defendant's negligent actions, Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

82. Plaintiff, on behalf of herself and all others similarly situated, demands judgment against Defendant for damages and declaratory relief.

**COUNT VI**  
**UNJUST ENRICHMENT**

83. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

84. Plaintiff and the Class have conferred substantial benefits on Defendant by switching to HIKO as their energy supplier, and Defendant have consciously and willingly accepted and enjoyed these benefits.

85. Defendant knew or should have known that consumers' payments for HIKO energy were given and received with the expectation that consumers would be saving money on their energy bills as represented by Defendant.

86. Because of the deliberate fraudulent misrepresentations, concealments, and other wrongful activities described above, including but not limited to, inducing consumers to switch to HIKO with representations of energy cost savings, and charging consumers exorbitant undisclosed rates grossly out of line with market conditions, Defendant have been unjustly enriched by their wrongful receipt of Plaintiff and Class members' monies.

87. As a direct and proximate result of Defendant's wrongful conduct and unjust enrichment, Plaintiff and Class members have suffered damages in an amount to be determined at trial.

88. Defendant should be required to disgorge all monies, profits and gains which they have obtained or will unjustly obtain in the future at the expense of consumers.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this case be certified and maintained as a class action and for a judgment to be entered upon Defendant as follows:

- A. Appointing Plaintiff as the representative of the Class and their counsel as Class counsel;
- B. For economic and compensatory damages on behalf of Plaintiff and all Class members;
- C. For actual damages sustained;
- D. For treble damages pursuant to law, and all other actual, general, special, incidental, statutory, punitive, and consequential damages to which Plaintiff and Class members are entitled;
- E. For injunctive relief, compelling Defendant to cease their unlawful actions;
- F. For reasonable attorneys' fees, reimbursement of all costs for the prosecution of this action, and pre-judgment and post-judgment interest; and
- G. For such other and further relief this Court deems just and appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff respectfully demands a trial by jury on all issues within the instant action so triable.

Dated: October 7, 2014

By: s/Michelle R. O'Brien

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