

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 it 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

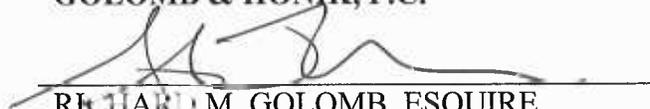
WHEREFORE, plaintiffs and the class pray for judgment:

- 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.

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Attorneys for Plaintiff

DATED: September 26, 2014

EXHIBIT A

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
5th 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
15th 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 _____ 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 for pricing information.

The Disclosure Statement is attached hereto as Appendix A.

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

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, submitted,

Nicole R. Beck

Nicole R. Beck
Deputy Attorney General
PA Attorney

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

Counsel for:

Kathleen G. Kane, et al
Bureau of Consumer Protection

Hobart J. Webster
PA Attorney
Assistant Consumer Advocates

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

Counsel for:

J. McCloskey
Consumer Advocate

DATE: 6.20.14

APPENDIX A



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 ("E/S") in Pennsylvania. Our PUC license number is A-2012-239994. 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 from 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")/seller which Customer shall initiate electric 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 on the date Customer's notice regarding the change of generation 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 shall renew on a month-to-month basis with a monthly variable rate and no charge for the remaining terms (the "Renewal Term").

While our term of service is 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 30 days advance 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 ended by HIKO include: (1) non-payment; if your service is terminated by your EDC, then this Agreement is cancelled on the date that your service is terminated; (2) completion of 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 relates to the EDC or goes to some or 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 transmitted to you as soon as possible.

3. Pricing and Billing: The price will be 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 and other assessments, and HIKO's costs, expenses and margins. The variable price includes estimated Good Freight, 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 at 1.888.264.4908 for more information regarding 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 after the invoice date or be subject to late payment charges of 1.5% per month. Customer may receive a single bill for both electricity and delivery cost from either HIKO or the EDC, or each of the EDC and HIKO may invoice its invoice separately. Customer payment received 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 PUC. In the event of future non-payment when due by a residential customer, HIKO may assign commodity assets under this Agreement. A 2.0% 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 receivable or proceeds thereon, in connection with any financing agreement or receivable 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; human needs; elderly, blind or disabled and data applicable to cold weather, poverty, 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 services 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, through 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 Consumer Protection Rules referenced herein can be found in the Chapter 101 and 50 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 third parties including the PJM Interconnection region for the generation, transmission and delivery of Customer electricity supplies, and (b) coordinate and schedule with the appropriate entities including the EDC, for the delivery of electricity to the Sales Point and also as Customer's end-use provider. 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 instructions provided by the EDC. The Sales Point for the electricity will be a point at the PJM Interconnection HIKO local bus located outside of the municipality where Customer resides. These services are provided on an on-call basis and include a fixed compensation as is noted in the price noted above.

9. Title: Customer and HIKO agree that title to control of each unit of electricity delivered to the distribution system by HIKO under this Agreement will transfer from HIKO to Customer at the Sales Point(s).

10. Warranty: The Agreement, including the Welcome Letter, and all 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 circumstances out of the control of HIKO ("Force Majeure Events") may result in interruption in service. HIKO will not be liable for any such interruptions caused by a Force Majeure Event, and HIKO is not liable for any 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, industrial disputes or problems, required maintenance work, inability to access the local distribution system, misoperation by the EDC, including, but not limited to, a facility outage on its distribution lines or electric facilities, change in rates, 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 whether 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, NY 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 1.800.922.7400 or by writing to the PUC at the following address: Public Utility Commission, PO Box 220, Harrisburg, Pennsylvania 17120. Customer must pay the bill in full except for the specific disputed amount, along the pendency of the dispute, and such payment shall be refunded if warranted by the decision of PUC.

15. Choice of Laws: Any for one lawsuit brought to enforce any provision of this Agreement or to construe the terms hereof shall be conducted 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 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 decisions of a duly constituted governmental authority having jurisdiction over this Agreement or

APPENDIX B

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AFFIDAVIT
OF
STEVEN L. ESTOMIN, Ph.D

JUNE 19, 2014

EXETER
ASSOCIATES, INC.
10480 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)
 - PECO
 - 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 cyc

- 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 19 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.

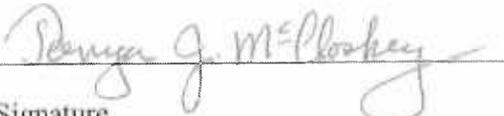
HIKO ENERGY, LLC,

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

6/20/14
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: 6-20-14



Heather M. Weaver
Consumer Protection Agent
Bureau of Consumer Protection
Office of Attorney General
15th 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

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 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 trued 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 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 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-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 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 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-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

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Michael Kantor, on behalf of himself and all others similarly situated</p> <p>(b) County of Residence of First Listed Plaintiff <u>Bucks County, PA</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Richard Golomb, Esq, Kenneth Grunfeld, Esq, Steven Resnick, Esq 1515 Market Street, Suite 1100, Philadelphia, PA 19102 (215) 985-9177</p>	<p>DEFENDANTS HIKO Energy, LLC</p> <p>County of Residence of First Listed Defendant <u>Rockland County, NY</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i> Unknown</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT <i>(Place an "X" in One Box Only)</i>	
<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i></p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input checked="" type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p> <p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p> <p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395f)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p> <p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
<p>REAL PROPERTY</p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease & Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p>CIVIL RIGHTS</p> <p><input type="checkbox"/> 440 Other Civil Rights</p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 445 Amer. w/Disabilities - Employment</p> <p><input type="checkbox"/> 446 Amer. w/Disabilities - Other</p> <p><input type="checkbox"/> 448 Education</p> <p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <p><input type="checkbox"/> 463 Alien Detainee</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p>Other:</p> <p><input type="checkbox"/> 540 Mandamus & Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p> <p><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement</p>

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
28 USC § 1332(d)

Brief description of cause:

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE 9/29/14 SIGNATURE OF PLAINTIFF OR PLAINTIFFS' ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 3178 Burnley Place, Holland, PA 18966

Address of Defendant: 12 College Road, Suite 100, Monsey, NY

Place of Accident, Incident or Transaction: Bucks County, PA (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes No

Does this case involve multidistrict litigation possibilities? Yes No

RELATED CASE, IF ANY: Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

CIVIL: (Place in ONE CATEGORY ONLY)

- A. Federal Question Cases:
1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations
7. Civil Rights
8. Habeas Corpus
9. Securities Act(s) Cases
10. Social Security Review Cases
11. All other Federal Question Cases (Please specify)

- B. Diversity Jurisdiction Cases:
1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)
7. Products Liability
8. Products Liability — Asbestos
9. All other Diversity Cases (Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Steven D. Resnick, Esquire, counsel of record do hereby certify: Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs; Relief other than monetary damages is sought.

DATE: September 29, 2014

Handwritten signature of Steven D. Resnick, Esquire, Attorney-at-Law

86972 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: September 29, 2014

Handwritten signature of Steven D. Resnick, Esquire, Attorney-at-Law

86972 Attorney I.D.#

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

CASE MANAGEMENT TRACK DESIGNATION FORM

Michael Kantor, on behalf of himself and all other
similarly situated

CIVIL ACTION

v.

HIKO Energy, LLC

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

September 29, 2014

Steven D. Resnick, Esquire

Plaintiff

Date

Attorney-at-law

Attorney for

(215) 985-9177

(215) 985-4169

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Telephone

FAX Number

E-Mail Address