

**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, :
 :
v. :
 :
HIKO Energy, LLC :

C-2014-2427652

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

Joel H. Cheskis
Administrative Law Judge

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I. INTRODUCTION

This Decision approves a Joint Petition for Approval of Settlement (“Joint Petition” or “Settlement”) filed on May 1, 2015, resolving a formal Complaint filed by the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, and Tanya J. McCloskey, Acting Consumer Advocate, against an electric generation supplier (EGS). The Complaint averred that the EGS, among other things, engaged in misleading and deceptive practices, switched customers without their consent, and failed to provide accurate pricing information. The Settlement requires the EGS to pay \$2.03 million in refunds to customers, contribute \$25,000 to electric distribution companies’ (EDCs) Hardship Funds and make numerous corrective changes to its business practices. The Settlement is adopted in its entirety and without modification because it is in the public interest.

II. HISTORY OF THE PROCEEDING

On June 20, 2014, the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection (OAG), and Tanya J. McCloskey, Acting Consumer Advocate (OCA) (collectively referred to as “the Joint Complainants”) filed with the Pennsylvania Public Utility Commission (Commission) a formal Joint Complaint including eight counts against HIKO Energy Company (“HIKO” or “the Company”), at Docket Number C-2014-2427652. The Joint Complainants averred that they had received numerous contacts and complaints from consumers related to variable rates charged by HIKO. The Joint Complainants averred eight separate counts against HIKO, including: 1) misleading and deceptive promises of savings; 2) slamming; 3) lack of good faith handling of complaints; 4) failing to provide rate information; 5) failing to provide accurate pricing information; 6) prices nonconforming to disclosure statements; 7) failing to follow purchase of receivables program parameters; and 8) failure to comply with the Telemarketer Registration Act. The Joint Complainants made several requests for relief, including providing restitution, prohibiting deceptive practices in the future, and the revocation of HIKO’s EGS license.

1. On July 30, 2014, HIKO filed an Answer and New Matter in response to the Complaint generally admitting or denying the various averments made in the Complaint. In its New

Matter, HIKO averred, among other things: a) that the regulations are unenforceable because they are inherently vague, ambiguous, and susceptible to multiple interpretations; b) that HIKO's pricing was consistent with a Commission-approved Disclosure Statement, except to the extent that some prices did not conform for a limited period of time due to unforeseen and anomalous causes beyond HIKO's control, including the polar vortex winter of 2013 – 2014; and c) the Commission lacks authority to enforce the Consumer Protection Law and Telemarketer Registration Act against HIKO. Joint Petition at 3. HIKO concluded its Answer by requesting that judgment be entered in its favor and against the Joint Complainants. The Bureau of Investigation and Enforcement (I&E) and the Office of Small Business Advocate (OSBA) intervened in this proceeding.¹

On August 7, 2014, the Commission issued a Notice establishing an Initial Prehearing Conference for this matter for Monday, September 29, 2014 at 10:00 a.m. and assigning us as Presiding Officers. On August 19, 2014, Joint Complainants filed a Reply to New Matter in which they denied the averments contained in HIKO's New Matter. On September 25, 2015, a Protective Order was entered in this case. An Initial Prehearing Conference was held on September 29, 2014. A Scheduling Order dated October 3, 2014 was issued. By Hearing Notice dated October 7, 2015, evidentiary hearings for the purpose of admitting the written direct testimony of consumer witnesses into the record, subject to objections and cross examination, was scheduled for January 15-16, and January 21-23, 2015.

On December 5, 2014, Joint Complainants pre-served the written Consumer Testimony of 98 consumer witnesses they intended to present at hearing, comprising of 464 pages of written testimony and exhibits. The testimony was accompanied by signed verifications. Stipulation at 3. Scheduling Order #2 was issued on December 5, 2014, directing HIKO to: 1) provide notification by December 22, 2014, stating which of the OAG & OCA's 98 customer witnesses HIKO intended to cross examine during the hearing; 2) file any motions to strike any

¹ On July 10, 2014, the OSBA filed a Notice of Appearance, Notice of Intervention, and Public Statement. On July 30, 2014, I&E filed a Notice of Intervention pursuant to 52 Pa.Code § 5.72. I&E filed a separate complaint at Docket No. C-2014-2431410, Public Utility Commission, Bureau of Investigation and Enforcement v. HIKO Energy, LLC, (I&E v. HIKO), which has not been consolidated with this action. The hearing in I&E v. HIKO was held on April 20, 2015.

consumer direct written testimony by January 5, 2015; and 3) to circulate by January 9, 2015, the exhibits it intends to use during the evidentiary hearings.

On December 19, 2014, HIKO filed an Unopposed Motion for Continuance of Evidentiary Hearings and Extension of Pre-Hearing Requirements. In its Motion, HIKO requested a continuance for the following reasons: 1) to analyze the written direct testimony of 98 consumers; 2) to review its own information and records regarding those consumers; 3) to review responses to pending discovery requests on or about December 31, 2014; and 4) to continue to engage in settlement negotiations with Complainants. In consideration of HIKO's unopposed motion for continuance, by Order Granting Motion For Continuance and by Hearing Cancellation/Reschedule Notice dated December 22, 2014, the evidentiary hearings scheduled for January 15-16 and 21-23, 2015 were cancelled and rescheduled for March 23-27, 2015. Additionally, by Notice dated February 20, 2015, the Further Prehearing Conference scheduled for February 3, 2015 was cancelled and rescheduled to April 8, 2015.

On March 13, 2015, Respondent filed a Motion to Strike Pre-Served Consumer Direct Testimony. In its Motion, HIKO sought to strike all or portions of certain pre-served testimony of consumer witness statements and attachments or exhibits served by the Joint Complainants. On or about March 16, 2015, HIKO pre-served Cross Exhibits to be used at the hearing. On March 17, 2015, the Joint Complainants filed a Joint Answer to HIKO's Motion. HIKO's Motion was granted in part and denied in part by Order Granting In Part and Denying In Part Motion to Strike dated March 18, 2015.

On March 17, 2015, during an off-the-record conference call, the parties notified us that Joint Complainants and HIKO had reached an agreement in principle and that they intended to file a joint settlement petition at a future date and to move for the admission of written pre-served consumer testimony into the record as well as any other evidence they deemed necessary to support the settlement. At that time, OSBA agreed to the settlement terms; however, I&E stated it needed time to review the settlement terms and to decide whether or not it would object to the joint settlement petition.

Therefore, the evidentiary hearing for March 23-27, 2015 was cancelled, and the Further Prehearing Conference was held on April 8, 2015. The Joint Complainants and HIKO indicated that they had reached a settlement in principle and intended to file a joint petition for settlement as well as the statements of each party in support of the settlement petition on or before May 1, 2015. Additionally, the parties agreed to waive cross examination and stipulated to the admission of the consumer direct testimony on behalf of the Joint Complainants at Volumes 1 and 2 (Statements of Consumers 1-98). The consumers' names and addresses were redacted from the consumer statements. There being no objection, Volumes 1 and 2 of Consumer Testimony were admitted into the record. Stipulation at 4.

The parties indicated a willingness to file statements in support, factual stipulations, and proposed conclusions of law at the time they file the joint petition for settlement. The OSBA indicated it had no opposition to the proposed settlement terms. The I&E indicated that as long as nothing in the settlement precluded I&E from separately prosecuting its complaint at Docket No. C-2014-2431410, then it would file a letter of non-opposition to the joint settlement.

On May 1, 2015, the Joint Complainants, OSBA, and HIKO ("Settling Parties") submitted a Joint Petition for Approval of Settlement. Each of the signatory parties included a Statement in Support of the Settlement in Appendices A-C. I&E indicated by a separate letter dated May 1, 2015, that it does not join the Settlement but does not oppose the Settlement. Attached to the Settlement was a Stipulation of Facts in Support of Settlement that the signatory parties agreed to for the purpose of supporting the approval of the proposed Settlement and that will be admitted into the record as part of this Decision. The signatory parties stipulated to the admission of the consumer direct testimony on behalf of the Joint Complainants at Volumes 1 and 2 (Statements of Consumers 1-98).

Also on May 1, 2015, I&E filed a Motion of the Bureau of Investigation and Enforcement to Hold in Abeyance Consideration of the Joint Settlement Petition at Docket No. C-2014-2427652 requesting that any ruling related to the merits of the Joint Settlement Petition be held in abeyance pending any issuance of an Initial or Recommended Decision in Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. HIKO Energy, LLC,

C-2014-2431410. I&E admitted that the two causes of action are concurrent governmental enforcement actions against the same electric generation supplier (EGS), HIKO, before the Commission. However, I&E requested a ruling on its case first or at least on the same date concurrently with a ruling in the instant case for the following reasons.

I&E was concerned with overlaps of issues and agreed upon relief not directly related to Joint Complainants' claims in their Joint Complaint, but appearing now for the first time in a Joint Settlement Petition. I&E requested simultaneous decisions if not a decision regarding I&E's complaint first. Although we denied the request by Order Denying Motion to Hold In Abeyance Consideration of the Joint Settlement dated June 2, 2015, we indicated to the parties that it would be likely that the initial decisions will be issued concurrently in accordance with Section 332(g) of the Public Utility Code due to the timing of the closings of records in each case. 66 Pa. C.S. § 332(g).²

The record in this case closed on June 2, 2015. This matter is ripe for a decision. For the reasons discussed below, we hereby approve the Settlement in its entirety without modification because it is in the public interest and supported by the redacted testimony and exhibits pertaining to 98 of HIKO's consumers.

III. FINDINGS OF FACT

1. Joint Complainant Kathleen G. Kane, Attorney General, is the chief law officer of the Commonwealth of Pennsylvania and is authorized to initiate and maintain this action pursuant to Article IV § 4.1 of the Pennsylvania Constitution and the Commonwealth Attorneys Act, 71 P.S. § 732-204. Joint Petition at 2.

² Section 332(g) provides in pertinent part that administrative law judges shall render decisions within 90 days after the record is closed, unless the commission for good cause by order allows an extension not to exceed an additional 90 days. 66 Pa. C.S. § 332(g).

2. Joint Complainant Tanya J. McCloskey, is the Acting Consumer Advocate who is authorized by law to represent the interests of utility consumers before the Commission pursuant to 71 P.S. § 309-1, *et seq.* Joint Petition at 2.

3. The Respondent in this case is HIKO Energy, LLC, a limited liability company established in the State of New York on January 14, 2010. At all relevant times, HIKO Energy has maintained a principal place of business at 12 College Road, Monsey, New York, 20952. Joint Petition at 2.

4. On July 2, 2012, HIKO was licensed by the Commission at Docket No. A-2012-2289944 to be an electric generation supplier (EGS) that supplies electric generation service to residential, small commercial, large commercial, industrial, and governmental consumers in the service territories of various electric distribution companies (EDCs) including: Duquesne Light Company, Metropolitan Edison Company, PECO Energy Company, PPL Electric Utilities, Pennsylvania Electric Company, and West Penn Power Company. Joint Petition at 2.

5. At all relevant times, HIKO advertised, marketed, offered for sale, and sold electric generation service to retail customers in Pennsylvania through door-to-door solicitations, telephone solicitations, and the HIKO website on the Internet.

6. In January, 2014, wholesale market prices for energy supply increased dramatically in part due to a period of sustained cold weather popularly called a “polar vortex” resulting in an increased use of electricity in Pennsylvania and the PJM Interconnection LLC (PJM) service area.³

³ A polar vortex is a system of upper-level winds that circle around one of the poles. In the northern hemisphere, the arctic polar vortex interacts extensively with the polar jet stream and may affect weather patterns at mid-latitudes. When the arctic polar vortex is strong, it acts to contain the coldest air masses in the polar regions favoring periods of milder winter temperatures in northern North America, Europe and Asia. When the winds of the polar vortex weaken, however, or interact with high-amplitude wave patterns in the jet stream, the shape of the vortex may become distorted. The circulation pattern around the pole may become increasingly asymmetrical, elongated and, in more extreme cases, may even split into two or more patterns. When this happens large incursions of arctic air may follow southward pointing lobes of the jet stream into mid-latitudes causing a period of colder than normal winter temperatures. <http://climatechange.cornell.edu/what-is-a-polar-vortex>.

7. Although redacted for consumer confidentiality of identity, the non-proprietary versions of Consumer Testimony (Volumes 1 and 2) include the Customer Witnesses'⁴ signed verifications that the facts set forth in their statements were true and correct to the best of their knowledge, information and belief and the statements were verified subject to the penalties of Section 4904 of the Crimes Code, 18 Pa.C.S. §4904, relating to unsworn falsification to authorities. Stipulation at 4.

8. Most of the Customer Witness statements contain complaints about HIKO's charges for electric generation service provided during the period January – March 2014. Stipulation at 4.

9. Approximately eighty three (83) Customer Witnesses averred that the HIKO sales representatives had guaranteed savings in comparison to the respective EDC's price to compare (PTC) rate, which those customers did not receive. Stipulation at 4.

10. Approximately six (6) Customer Witnesses averred that they were misled by HIKO's Disclosure Statement. Stipulation at 4.

11. Approximately three (3) Customer Witnesses averred that they were misled by HIKO's Welcome Letter, which contained misleading or confusing statements. Stipulation at 4.

12. Approximately four (4) Customer Witnesses testified that they believed that HIKO's sales agent was affiliated with an Electric Distribution Company (EDC). Stipulation at 4.

13. Approximately nine (9) Customer Witnesses averred that their electric generation service was switched to HIKO without their authorization. Stipulation at 5.

⁴ "Customer Witness" is defined as one of the 98 consumers of HIKO electric generation services who provided written and verified testimony for the Commission's consideration.

14. Approximately fifty four (54) Customer Witnesses averred that they experienced difficulties when they attempted to contact HIKO to complain about their charges or their complaints were mishandled by HIKO. Stipulation at 5.

15. Approximately eight (8) Customer Witnesses averred that HIKO failed to notify them prior to the rate change. Stipulation at 5.

16. Approximately twenty three (23) Customer Witnesses averred that the HIKO's sales representative failed to disclose whether the rate was fixed or variable. Stipulation at 5.

17. Approximately fifty (50) Customer Witnesses averred that they never received a Disclosure Statement from HIKO. Stipulation at 5.

18. Approximately seventeen (17) Customer Witnesses averred that they suffered financial difficulties after receiving HIKO's charges. Stipulation at 5. Consumer Testimonies 1-2, 5.

IV. DISCUSSION

A. Legal Standard

In this case, the signatory parties submitted a Settlement of all issues. Commission policy promotes settlements. 52 Pa.Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a "burden of proof" standard, as is utilized for contested matters. Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103, *et al.* (Opinion and Order entered July 14, 2011) (Lancaster). The Commission must review proposed settlements to determine

whether the terms are in the public interest. Pa. Pub. Util. Comm'n LBPS v. PPL Utilities Corporation, M-2009-2058182 (Opinion and Order November 23, 2009); Pa. Pub. Util. Comm'n v. Philadelphia Gas Works, M-00031768 (Opinion and Order January 7, 2004); 52 Pa. Code § 69.1201; Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996) (Warner); Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

Section 69.1201 of the Commission's regulations provides a Policy Statement regarding factors and standards to be used when evaluating litigated and settled proceedings. 52 Pa.Code § 69.1201. The Policy Statement notes that "these factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest." 52 Pa.Code § 69.1201(a). The Policy Statement notes that "when applied in settled cases, these factors and standards will not be applied in as strict a fashion as in a litigated proceeding. The parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa.Code § 69.1201(b). These factors and standards are as follows:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include

activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

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

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

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

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

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa.Code § 69.1201(c); see also, Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company, Docket No. C-0092409 (Final Order entered February 10, 2000).

B. Terms of Settlement

The settling parties have submitted a comprehensive Settlement. The effective date of the Settlement is 15 days after the date the Commission enters its final order in the case. The Settlement proposes three forms of relief including: 1) refunds, 2) contributions to EDCs' Hardship Funds, and 3) injunctive relief. Settlement terms in pertinent part, with the original paragraph numbers maintained, are as follows:

1. Refunds.

A) Refund Pool

23. Upon the effective date of this Settlement, HIKO agrees to pay the sum of \$2,025,383.85 into a refund pool (hereinafter “Refund Pool”), which reflects the total refund amount minus \$159,320.15 in refunds provided by the Company to date and shall be allocated as follows:

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

b. The amount of \$352,860.75 from the Refund Pool shall be allocated as refunds for HIKO’s customers not enrolled in HIKO’s 1%-7% guaranteed savings program, which reflects \$395,000.00 of refunds minus \$42,139.25 in refunds provided by the Company to date to this group of customers. Refunds shall be provided to all HIKO customers in this group that were on variable rate plans in January, February or March 2014. The OAG and OCA will determine the refund amount to offer eligible HIKO customers based on the individual customer’s usage, price charged and refund amounts already received directly from HIKO. The refund determinations will be designed so as to fully utilize the Refund Pool after accounting for any administration fees not otherwise paid by HIKO pursuant to this Settlement.

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

B) Administration of Refund Pool.

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

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

26. HIKO shall fully and timely cooperate with OAG, OCA and the Administrator by providing all customer information necessary to calculate each customer's refund amount. Such information shall include, but not be limited to, customer billing rates, usage and addresses. The Settlement Administrator shall use best efforts to distribute funds from the Refund Pool within one hundred and eighty (180) days of receiving the Refund Pool funds from HIKO. The Settlement Administrator shall provide monthly reports to OCA, OAG, HIKO and designated Commission staff of funds distributed that include at a minimum, the customer's name and other available identifying information, the amount of funds dispersed to each customer and the period for which the funds were dispersed.

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

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

2. Contributions to Hardship Funds.

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

3. Injunctive Relief.

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

a. Product Offering:

1. HIKO agrees that it will not accept any new Pennsylvania customers starting April 1, 2015 and lasting until June 30, 2016; provided, however, that if HIKO finds that it is able to offer a fixed rate product before June 1, 2016, it will be able to do so pursuant to the provisions set forth in Exhibit A hereto.

2. Regarding HIKO's current customers, HIKO shall comply with the procedures set forth in 52 Pa. Code § 54.10 relating to changes at the end of any fixed price contract terms. HIKO acknowledges that as part of these procedures, Section 54.10 permits, *inter alia*, the movement of a customer to a month-to-month plan with no cancellation fees if the customer does not respond to

the options notice, and Section 54.10(2)(ii)(A)(I) requires 30 days' advanced notification to the customer moved to a month-to-month plan of any price change before being charged the new price. Further, if HIKO offers fixed rate products after the time period set forth in Paragraph 30(a)(1) above, HIKO shall comply with the procedures set forth in 52 Pa. Code § 54.10.

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

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

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

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

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

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

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

charged after the expiration of that introductory or trial period, the circumstances under which the consumer can cancel, and the consequences of cancellation.

6. HIKO specifically commits to complying with 52 Pa. Code § 57.175 and shall not enter into a sales agreement or change the commodity provider for any consumer that is not personally accepted by the EDC Customer of Record. HIKO salespeople shall confirm that any person who grants consent to a service change is the EDC Customer of Record or has been authorized by the Customer of Record to grant such consent. Otherwise, HIKO shall not proceed with the switch.

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

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

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

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

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

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

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

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

14. A Disclosure Statement shall contain the following information:

- i. The terms of the product.
- ii. A detailed description of the product, which shall match the oral description given in the telemarketing solicitation. This description may be satisfied with appropriate use of the Schumer box.⁵

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

16. Regarding online enrollments, HIKO shall revise its Website so that it displays all required disclosures and terms and conditions, as one or multiple unavoidable separate screen page(s) during the enrollment process. HIKO shall require new customers to acknowledge that they have reviewed the Terms and Conditions, which the Consumer shall be able to print, before proceeding to complete enrollment.

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

18. If the Company offers variable rate products after the time period specified in Paragraph 30(a)(1) above, the Company's variable rate product marketing materials that offer terms of service for acceptance by consumers

⁵ A Schumer Box is template used by the credit card industry to present certain terms and conditions. This template is named after Senator Charles Schumer (NY) who was responsible for the legislation associated with the requirements for outlining credit card terms. The Commission created an EGS Contract Summary template separate from the regulations themselves, attached to its Final-Omitted Rulemaking Order as Attachment A. This template is meant to provide pertinent information in a clearly understandable "Schumer Box" style format for consumers to view, in addition to the disclosure statement they currently receive. Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statements for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers. (Final-Omitted Rulemaking Order entered April 3, 2014).

and Welcome documents to consumers that have enrolled in variable rate products with HIKO, the Company shall provide a statement of the average price per kwh, as required by 52 Pa. Code § 54.7(b)(2); the Company shall also provide a statement of the total impact of the Company’s 24-month average price under the program for the levels of monthly usage of 500 kWh, 1,000 kWh and 2,000 kWh. The information would be organized as follows:

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

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

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

1. For live Third Party Verifications (“TPVs”), the Company representative shall provide the following explanation, in a slow and audible manner, to consumers prior to beginning the TPV process: You are going to hear a series of questions to confirm your understanding of the agreement. If the representative speaks too quickly, please interrupt and tell the representative to speak more slowly. If you do not understand a question, please interrupt and say that you do not understand the question. If you have a question of your own, please interrupt and ask your question.

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

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

If the consumer answers that his or her name does not appear on the electric bill, the HIKO representative may request that the consumer produce the person whose name appears on the electric bill to verify authorization to switch. If the

customer of record (or other properly authorized person) is not available, the sales solicitation and TPV must immediately end.

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

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

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

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

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

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

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

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

After ___ month(s) [if Introductory Price period is applicable], the price you pay under this variable rate contract can change every month. This is not a

fixed rate contract. Variable means the price can go up or down. There is no limit to how high the price can go.

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

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

3. If the Company offers variable rate products after the time period specified in Paragraph 30(a)(1) above, HIKO shall not state or represent to customers in the Company’s variable rate programs that the price HIKO will charge will be market-based unless HIKO provides a specific means or formula, readily understandable for the customers, the Commission, OAG and OCA to monitor and confirm that the price charged is market-based.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

h. Customer Service:

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

- i. Compliance with the Chapter 56 of the Commission's regulations, including but not limited to, prompt investigation of all customer complaints, providing the customer with information necessary to make an informed judgment and issue a report to the customer within 30 days;
- ii. Resolution of customer complaints fairly and expeditiously; and
- iii. Training customer service representatives in accurately recording the reason for a customer's call in a customer contact log and ensuring compliance with the training described in this Settlement.

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

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

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

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

- iv. Provide clear and consistent information to all such staff or temporary services answering calls regarding relief that will be provided by HIKO to convey to customers.

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

31. Release: In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Settlement, in order to fully and finally resolve the Joint Complaint of Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection and the Acting Consumer Advocate Tanya J. McCloskey filed with the Pennsylvania Public Utility Commission on June 20, 2014, and conditioned upon HIKO providing refunds and making the payments and implementing the consumer protection procedures in the manner set forth herein, Joint Complainants hereby agree to release HIKO from any and all civil claims, including all administrative or regulatory claims within the jurisdiction of the Pennsylvania Public Utility Commission, to the extent permitted by the laws of the Commonwealth of Pennsylvania, which Joint Complainants brought or which Joint Complainants could have brought against HIKO arising from or related to the conduct alleged in the Joint Complaint.

* * * *

35. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission modifies the Settlement, then any Joint Petitioner may elect to withdraw from this Settlement and may proceed with litigation and, in such event, this entire Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties and the ALJs within five business days after the entry of an Order modifying the Settlement.

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

37. This Settlement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and

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

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

C. **Public Interest**

The signatory parties indicated that the Settlement is in the public interest because it was achieved after extensive investigation into HIKO's marketing and billing practices, including formal and informal discovery and is supported by evidence in the record including the written direct testimony of 98 consumer witnesses. N.T. 40, *Stipulation* at 4-5. The parties indicated that the agreed upon provisions regarding refunds and comprehensive injunctive relief provide reasonable relief for HIKO's current and former customers affected by the alleged conduct. Contributions to EDCs' Hardship Funds in their *pro rata* share will further assist low income consumers in those EDCs' territories in paying their bills. The parties also discussed why they believe the Settlement is in the public interest in their respective Statements in Support of the Settlement.

1. **Positions of the parties**

a. **Joint Complainants**

In their Statement in Support of the Settlement, the Joint Complainants noted that the Settlement provides for a moratorium on sales and marketing practices in Pennsylvania from April 1, 2015 until June 30, 2016, which will give HIKO the opportunity to implement the

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

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

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

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

The Joint Complainants added that the Joint Petition is in the public interest because the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of continued litigation, given the inherent unpredictability of the outcome of a contested proceeding.

More specifically, the Joint Complainants noted in their Statement in Support of the Settlement that the Joint Petition is in the public interest because, among other things, it offers \$2,025,383.85 in refunds to HIKO's customers. Specifically, the group of customers enrolled in

HIKO's guaranteed 1%-7% savings program will receive a refund reflecting 3.5% savings as compared to the applicable Price to Compare for January, February, and March, 2014 after taking into account any refunds a customer may have already received from HIKO. This amount totals \$1,672,523.10 of the Refund Pool, and reflects \$1,789,704.00 of refunds minus \$117,180.90 in refunds provided by the Company to date. Further, \$352,860.75 from the Refund Pool will be allocated as refunds for HIKO's customers not enrolled in HIKO's 1%-7% guaranteed savings program, which reflects \$395,000.00 of refunds minus \$42,139.25 in refunds provided by the Company to date to this group of customers. Refunds shall be provided to all HIKO customers in this group that were on variable rate plans in January, February or March 2014. The OAG and OCA will determine the refund amount to offer eligible HIKO customers based on the individual customer's usage, price charged and refund amounts already received directly from HIKO. The refund determinations will be designed so as to fully utilize the Refund Pool after accounting for any administration fees not otherwise paid by HIKO pursuant to this Settlement.

The Joint Complainants also specifically noted in their Statement in Support of the Settlement that the Joint Petition is in the public interest because HIKO will pay \$50,000 towards Refund Pool administration costs, and HIKO will make a total contribution of \$25,000 to the EDCs' Hardship Funds in proportion to the number of HIKO customers in the EDC's territory to the total amount of HIKO customers in Pennsylvania as of January 1, 2014.

Although the parties agreed to no civil penalty, the Joint Complainants addressed each factor in the Commission's Policy Statement regarding civil penalties in support of their position that the Settlement is in the public interest and should be approved. The Joint Complainants noted that HIKO has agreed to injunctive relief that will result in modifications to its business practices and that these modifications will help to prevent the conduct alleged in the Joint Complaint from occurring in the future. The Joint Complainants note that the Settlement is in the public interest because it will help to ensure compliance with regulatory standards. The Joint Complainants noted that the injunctive relief will help protect HIKO's current and future customers and will better inform customers of the products and services provided by HIKO. As noted above, the Joint Complainants provided extensive additional detail in support of their position that the Joint

Petition addresses the concerns raised in the Joint Complaint is in the public interest and should be adopted without modification.

b. HIKO Energy, LLC

In its Statement in Support of the Settlement, HIKO stated that it has learned from the Polar Vortex crisis of 2014, and is committed to providing substantial relief to affected customers and improving its business practices as a result. HIKO contends the Joint Petition is in the public interest and should be adopted without modification because it is significant in both its scope and precedential nature. HIKO is agreeing to pay the total of \$2,025,383.85 to customers in refunds, as well as \$50,000 for the administration of the refund pool, and \$25,000 to EDC Hardship Funds.” HIKO stated the 3.5% savings to customers enrolled in HIKO’s 1-7% guaranteed savings plan refunds those customers more than the 1% savings from EDC prices than the customers were legally entitled to. Thus, the settlement term of 3.5%, which is an average of 1-7%, benefits these customers and is in the public interest. HIKO noted that its customers enrolled in the Company’s variable rate plan in January, February and March, 2014 also receive substantial refunds totaling \$352,860.75.

HIKO noted the injunctive relief in the form of a moratorium on marketing in Pennsylvania, as well as changes in its product offerings, marketing practices, third-party verification procedures, Disclosure Statement, sales representative training, compliance monitoring, reporting and customer service are all in the public interest. HIKO also discussed in its Statement in Support of the Settlement the various factors regarding civil penalties but noted in particular that the most significant aspects of the Settlement go beyond the criteria enumerated in the Policy Statement. First, the refunds and injunctive relief will be provided much sooner pursuant to the Settlement instead of through the uncertainties and delays inherent in administrative and appellate litigation. Second, HIKO avers that the Settlement provides a model for resolution of similar disputes in the EGS industry, thus potentially multiplying the substantial public benefits generated by the Settlement. HIKO cited a similar case involving a similar petition for approval of a settlement in Pennsylvania et al. v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric, Docket No. C-2014-2427656, Joint Petition for Approval of Settlement (filed March 24,

2015)(PaG&E case). The joint petition in that case also called for a refund pool, contributions to EDC Hardship Funds and injunctive relief including moratoriums on sales practices. HIKO concluded by submitting that the Settlement is in the public interest and should be approved without modification.

c. Bureau of Investigation and Enforcement

I&E did not file a Statement in Support of the Joint Petition. I&E neither joins nor opposes the Settlement.

d. Office of Small Business Advocate

OSBA⁶ states the Joint Petition is in the public interest and should be adopted without modification because it will resolve all issues related to the Joint Complaint involving allegations of inappropriate sales, marketing, billing and disclosure practices of HIKO to small businesses operating in Pennsylvania and HIKO has been cooperative and proactive with identifying corrective actions which can enhance the experience of customers and reduce the risk of similar consumer complaints in the future. OSBA noted that some small businesses in Pennsylvania were switched to HIKO without proper authorization from the companies and some were not informed about whether they would be paying fixed or variable rates. Further, some small businesses averred that they experienced difficulties in contacting HIKO to complain about high charges on their bills and that they also sustained financial difficulties after these high charges.

OSBA further noted that small business customers who were on a variable rate plan in January, February, or March of 2014, are eligible for refund relief from the refund pool depending on what refund amounts they may have already received from HIKO. Thus, OSBA agrees and joins in the Settlement.

⁶ OSBA represents the interests of small business consumers of utility services in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41- 399.50.

D. Disposition

As an initial matter, we commend the signatory parties for reaching an extensive Settlement on the various issues. The public importance of this matter is evident in the seriousness and substantiality of the terms of the Settlement. The parties are commended for putting forth what are clearly significant efforts to reach an accord of the various issues raised in the Joint Complaint and we note that such efforts are consistent with the Commission policy to promote settlement and are appreciated.

Further, we infer from this Settlement that the parties admit jurisdiction of this Commission over the subject matter and over the parties for the purpose of approving, modifying, and enforcing the terms of this Settlement. 66 Pa. C.S. §§ 701, 2809.

1. Refund Pool

With regard to the first aspect of the Settlement, refunds, we find these provisions in the Settlement to be in the public interest and support adopting the Settlement without modification. The Settlement provides that HIKO agrees to pay the total sum of \$2,025,383.85 into a refund pool. This amount excludes \$159,320.15 already voluntarily paid previously in cash refunds to customers. The refund pool is to be allocated such that \$1,672,523.10 of the amount is allocated to customers in the guaranteed 1-7% savings program such that each customer receives approximately 3.5% savings for the months of January –March, 2014. The remaining \$352,860.75 is allocated to HIKO’s customers not enrolled in the 1-7% guaranteed savings program, but which were on variable rate plans during the months of January – March 2014. The Settlement provides that the OAG and OCA will determine which customers were affected by the Company’s conduct alleged in the Joint Complaint and determine how much restitution to offer to any individual consumers based on the individual customer’s usage, price charged and refund amount already received.

The Settlement further provides for the establishment of a third-party administrator of the refund pool to administer and distribute the refunds with the costs and expenses of the administration of the pool paid by HIKO up to a capped amount of \$50,000. Any OCA-OAG

approved administrator costs over and above \$50,000 shall be paid to the administrator with the refund monies provided by HIKO. The administrator will use best efforts to distribute the funds from the pool within 180 days of receiving refund pool monies from HIKO. The administrator will provide monthly reports to the Joint Complainants, the Company and designated Commission staff until all fund monies are distributed and the fund is exhausted and terminated.⁷

Any funds remaining in the pool after all refund disbursements are issued will be divided and issued in their *pro rata* share to the EDCs' Hardship Funds allocated by the ratio of the Company's customers in the EDC's territory to the total amount of customers of the Company in Pennsylvania as of January 1, 2014. Any unclaimed funds from the refund pool will be forwarded to the Pennsylvania Department of the Treasury pursuant to unclaimed property requirements for the customers entitled to the refund.

We find these provisions of the Settlement to be in the public interest in part because hundreds of customers who complained to OCA, OAG, and OSBA will be afforded some financial relief from HIKO in the form of refunds, and a 3.5% savings from the PTC is reasonable given the 1-7% guaranteed savings promise. The Joint Complainants averred in the Complaint that they received approximately 2,500 calls from consumers on variable rate plans regarding the rates they were charged, including misleading and deceptive promises of savings. The Joint Complainants averred that hundreds of consumers complained that they were guaranteed a certain rate or were promised savings over their EDC's price to compare. The Joint Complainants averred that the Company's actions violated various provisions of the Commission's regulations. For relief, the Joint Complainants sought, among other things, that HIKO be directed to provide appropriate restitution, including refunding all charges to its customers that were over and above the price to compare in the customer's respective service territories beginning January 1, 2014, as well as any late, cancellation or termination fees and any other such penalties charged to customers. The refund provisions in the Settlement are consistent with Commission precedent.

⁷ We interpret "Commission staff" to include at a minimum the Commission's Bureau of Consumer Services and the Office of Administrative Law Judge. These two offices handle informal and formal complaints by consumers, respectively, and should be made aware of the distributions.

The Commission is authorized to direct refunds to complainants who are customers of EGSs. 66 Pa.C.S. § 501. However, in the instant case, the customers themselves are not the complainants in the cause of action. Rather, Joint Complainants are statutory advocates for consumers in Pennsylvania. We infer from this Settlement that Joint Complainants have the legal authority to issue a request for proposals (RFP) or request for qualifications (RFQ) and to hire an independent third-party Administrator, which would collect and distribute the fund monies. This would give the affected consumers financial relief.

Similar to the OCA and OAG, the Commission, as a governmental agency, has issued RFPs and RFQs to hire third-party administrators pursuant to various regulatory provisions in the past. See, Implementation of the Alternative Energy Portfolio Standards Act of 2004, Docket No. M-00051865, Request for Qualifications For Alternative Energy Credit Program Administrator, April 12, 2006. Alternative Energy Portfolio Standards Act of 2004, 73 P.S. §§ 1648.1-1648.8; see also, Establishment of a Pennsylvania Universal Service Fund, M-00001337 (Order entered April 18, 2000); 52 Pa.Code §§ 63.161, *et seq.* Thus, in the interest of assisting the OAG and OCA to obtain relief on behalf of consumers who it is alleged were financially distressed by violations of various Commission regulations, we approve this term of the Settlement as it appears to be mutually advantageous to the Commission and the OAG and OCA to expedite refund and injunctive relief to customers in Pennsylvania.

Furthermore, in Commonwealth of Pa, et al. v. IDT Energy, Inc., Docket No. C-2014-2427657 (Opinion and Order entered Dec. 18, 2014) (IDT Order), the Commission responded to a Petition for Interlocutory Review questioning, among other things, whether the Commission has authority under Section 1312 of the Public Utility Code to order EGSs to issue refunds to customers. In answering the question in the negative, the Commission relied on its plenary authority under Section 501 of the Public Utility Code to direct an EGS to issue a credit or refund for an over bill. Id. at 17, citing, 66 Pa.C.S. § 501 (“in addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders or otherwise, all and singular, the provisions of this part, and the full intent thereof”). The Commission noted that its “powers have

been interpreted broadly to include both the express powers conferred by the Code and those implied powers necessarily implicit in the Code” and stated:

Directing a billing adjustment for an EGS over bill of supply charges is within the Commission’s Section 501 powers to carry out the consumer protections in the Electric Competition Act that are applicable to competitive electricity generation supply service. These consumer protections include the Section 2809(b) requirement that EGSs comply with the Commission’s regulations, including the Chapter 54 billing and disclosure regulations.

Id. The Commission concluded that “ordering EGS billing adjustments for an over bill of supply charges is fully consistent with the policy objectives of the Electric Competition Act as well.” Id. at 18.

Similarly, on October 2, 2014, the Commission approved a settlement agreement between I&E and PaG&E involving allegations pertaining to the unauthorized switching of commercial electric and natural gas accounts to receive supply service provided by PaG&E.⁸ See, Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas and Electric and U.S. Gas and Electric d/b/a Pennsylvania Gas and Electric, Docket No. M-2013-2325122 (Order entered October 2, 2014) (October, 2014 Order). In that decision, PaG&E paid a \$150,200 civil penalty, and refunded the entire electric generation or natural gas supply portion of the bill for the period of time the 10 customers with 108 slammed accounts were served by PaG&E. Id. at 3. The Commission ordered the Company to directly issue the refunds on the 108 slammed accounts, rather than through a third-party administrator. The Company issued refunds in excess of \$67,000 in that case. Id. at 5. We find the refund pool established in the settlement to be consistent with the IDT Order and the October, 2014 Order, as well as other Commission precedent, especially because approximately 9 Customer Witnesses testified that their electric generation service was switched to HIKO without their authorization. Stipulation at 5.

⁸ Unauthorized switching is also known as “slamming.” See 52 Pa. Code § 64.2. See also 52 Pa. Code §§ 57.171 -57.177, effective on June 13, 2014, which tightened the time frame requirements for authorized customers switching EGSs.

On or about June 8, 2015, we issued an Initial Decision in the PaG&E case approving a similar settlement, which provided for an EGS paying approximately \$6 million into a “refund pool” to be administered by a third-party administrator, selected by Joint Complainants but paid for by the EGS up to a capped amount of \$100,000 in administrative fees. These settlements under review are consistent with Commission precedent.

Recently, in the case of Stephen Kiback, Jr. v. IDT Energy, Inc., Docket No. C-2014-2409676, (Opinion and Order entered August 20, 2015), the Commission held that its plenary authority under Section 501(a) of the Code includes directing an EGS to issue a credit or refund for an overbill in violation of 52 Pa. Code § 54.4(a) and a violation of the Commission’s Interim Guidelines, Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers, Docket No. M-2010-2185981 (Order entered November 5, 2010) (2010 Interim Guidelines). The Commission found substantial evidence supported a decision that Section 54.4(a) and these Interim Guidelines had been violated; accordingly, a civil penalty in the amount of \$2,000 and refunds in the amount of the difference between the price billed and the DSP’s price-to-compare in effect for the months of January through February, 2014, were warranted. Id. at 35.

This decision is consistent with an Initial Decision in Herp v. Respond Power, LLC, Docket No. C-2014-2413756, 2014 Pa. PUC Lexis 697 (December 17, 2014)(Herp case), wherein the ALJ acknowledged and exercised the Commission’s authority under Section 501 of the Public Utility Code, in directing an EGS found to be in violation of regulations similar to the ones alleged in the instant Joint Complaint to refund Mr. Herp the difference between the rate he was charged by the EGS, and the price to compare rate that he would have been charged by his default service provider, West Penn Power, during the months of January – April, 2014. Both cases direct a remedy relief in the form of refunds to the customer for alleged misleading marketing and sales activities of a competitive EGS through their agents and disclosure statements. The Herp decision also directed the EGS pay a \$10,000 civil penalty for violations, but neither revoked nor suspended the EGS’s license given this was one of the first fully litigated variable rate complaints against the EGS at the Commission. The Commission has not rendered a final decision in the Herp case.

This decision is consistent with the Commonwealth Court’s recent Opinion in Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania; the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia and Tanya J. McCloskey, Acting Consumer Advocate v. Pa.PUC, Nos. 445 C.D. 2014 and 596 C.D. 2014, (Slip Opinion filed July 14, 2015)(CAUSE/OCA cases), which held that the Commission has authority to impose or approve Customer Assistance Program (CAP) rules, which would limit a participating customer’s ability to choose an EGS and remain eligible for CAP benefits. The Court specifically held, “[t]he General Assembly has reserved with the PUC the authority to ‘bend’ competition to further other important aspects of the Code, including the Choice Act, where it provides substantial reasons why the restriction on competition is necessary (i.e. there are no reasonable alternatives.)” Id. Slip Opinion at 35. In applying the rules of statutory construction, the Court inferred that the Electricity Generation Customer Choice and Competition Act⁹ had an overarching goal of competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers. However, the Court found that this “scheme does not demand absolute and unbridled competition.” Slip Opinion at 26.

The Commonwealth Court has stated the Choice Act authorizes the Commission to “bend” competition in order to further other important aspects of the Public Utility Code, where it provides substantial reasons why the restriction on competition is necessary especially where the interests of low-income residential consumers are concerned. Id. at 35 citing PP&L Industrial Customer Alliance v. Pa. Pub. Util. Comm’n, 780 A.2d 773 (Pa.Cmwlt. 2001). This holding supports our decision today to approve the Settlement which provides for refunds, EDC Hardship Fund contributions and various forms of injunctive relief and conditions upon the EGS’s license in the interest of protecting Pennsylvania’s consumers and the integrity of the retail electric market.

Additionally, nothing precludes a party from agreeing to perform under a settlement that which the party may not necessarily be legally obliged to do under law. See e.g., Pa.P.U.C., Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation, Docket No. M-2009-205812 (Opinion and Order entered September 10, 2009) (PPL Order) (approving a settlement prohibiting

⁹ Electricity Generation Customer Choice and Competition Act, 1996, Dec. 3, P.L. 802, No. 138, § 4, effective Jan. 1, 1997. (“Choice Act”), 66 Pa. C.S. §§ 2801, *et seq.*

Friday electric service terminations). It is apparent that the Settlement benefits consumers while providing the Company with an agreed upon outcome to this case regarding the status of their EGS license, financial risk, corrective action, and other injunctive relief.

In the instant case, we find the refund pool is in the public interest because those consumers who paid more than they believed that they would be required to pay for electric generation service based on their interactions with HIKO will be remunerated for the additional amount they paid above their EDC's PTC and many will receive the 3.5% savings they expected, which is a reasonable amount. It may not be an amount punitive in nature or compensatory for damage claims resulting from the misconduct, but financially reimburses the customers a reasonable amount of money.

In order for the market for the competitive provision of electric generation service to flourish in Pennsylvania, consumers must have confidence that the price they are paying is the price they were told they would be paying. While HIKO does not expressly admit to any wrongdoing or violations of the Pennsylvania Public Utility Code, Commission regulations or orders, and the Settlement does not provide that the averments in the Complaint are true, the Settlement compensates numerous consumers for amounts they believe they were overcharged and provides a level of assurance to the marketplace that the EGS's actions will be watched and any inappropriate actions will be raised with the Commission. The Commission takes seriously its role in the development the competitive provision of electric generation service and this Settlement is in the public interest because the refund provisions aid in that development.

As such, we find that the refund provisions contained in the Settlement agreement are in the public interest and support adopting the Settlement in its entirety without modification.

2. Penalty and Contribution to EDC Hardship Funds

There is no provision in the Settlement for the imposition of a civil penalty. Rather, there is a provision for \$25,000 in contributions to EDCs' Hardship Funds in their *pro rata* share. The hardship fund contribution amount is calculated by dividing the number of customers HIKO

had in an EDC's service territory as of the date January 1, 2014, by the total number of HIKO customers HIKO had in Pennsylvania on January 1, 2014.

We are mindful of the fact that the Commission has been assessing civil penalties in prior cases involving consumers and governmental entities alleging similar misconduct and regulatory violations as in the instant case. However, we are inclined to approve the Settlement in its entirety despite the lack of civil penalty in order to expedite refund relief to customers and because we are also issuing today *ad seriatim* an Initial Decision in the fully litigated proceeding, Bureau of Investigation and Enforcement v. HIKO Energy, LLC, at Docket No. C-2014- 2431410, (I&E case). The I&E case assesses a civil penalty against the same Company in the amount of \$1,836,125 (which is a \$125 penalty multiplied by 14,689 violations of 52 Pa. Code §54.4(a)), one of the regulations alleged by Joint Complainants in the instant case to have been violated numerous times during roughly the same time period in 2014, by the same respondent. Thus, the two decisions, although they are being issued separately, when viewed as a whole, do provide for a substantial civil penalty for similarly alleged conduct concerning similar parties/intervenors, an overlapping customer base, the same regulation of 52 Pa. Code § 54.4(a), essentially the same time period in question, and both cases request refund relief to the customer class enrolled in HIKO's 1-7% guaranteed savings plan.

In the I&E case, I&E alleged 14,689 violations of 52 Pa. Code §54.4(a) occurred throughout Pennsylvania during the timeframe of January – April, 2014, and requested relief including civil penalties in the amount of \$14,689,000, a revocation of license, and refunds to customers enrolled in the 1-7% guaranteed savings plan in January – April 2014. As these two decisions involve similar parties/intervenors, overlapping facts, allegations, and requests for relief, neither decision is being made in a vacuum without consideration for the impact each case has upon the other. Although the cases were never consolidated due to the request from I&E that they remain severed, we believe the rulings should be issued concurrently, consistent with, and in the public interest as a whole. Thus, the reasonableness of a lack of civil penalty in the instant Settlement is evaluated considering the substantial civil penalty we are directing the Company to pay in the I&E case. The civil penalty in the I&E case is assessed after consideration of a fully litigated record involving expert testimony of Daniel Mumford for I&E, Dr. Charles J. Cicchetti for HIKO, as well

as the testimony of Harvey Klein, CEO of the Company. Our Initial Decision in that case contains further detail explaining our reasoning in calculating the civil penalty. In summary, we found a civil penalty totaling \$1,836,125 to be a sufficient deterrent to HIKO.

With regard to the provision in the Settlement that the Company will make a total contribution of \$25,000 to the EDCs' Hardship Funds with the contribution allocated by the ratio of HIKO customers in the EDC's territory to the total amount of HIKO customers in Pennsylvania as of January 1, 2014, we find this provision of the Settlement is also in the public interest and supports adopting the Settlement without modification. This is particularly true because of the strain placed on Hardship Funds and low-income consumers as a result of the increased bills consumers paid during the months at issue in this case. The Hardship Funds benefit all low-income consumers in the EDCs' territories, not solely the customers of HIKO. As a result, we find the \$25,000 contribution to EDCs' Hardship Funds to be reasonable and a pragmatic compromise between the parties allowing them to more expeditiously implement the agreed upon remedial actions.

3. Injunctive Relief

With regard to the third aspect of the Settlement, injunctive relief, we note that the parties' settlement discusses modifications to business practices as equating to injunctive relief. This "injunctive relief" as described in the settlement appears to be "corrective actions" which HIKO agrees to going forward, *i.e.* changing the Company's disclosure statement, marketing and sales activities. These are terms of settlement which we are approving as they are in the public interest. The Settlement provides extensive provisions requiring numerous modifications to HIKO's business practices. The Settlement provides significant detail regarding changes to HIKO's product offering, marketing practices, third party verifications, Disclosure Statement, training of internal and external sales representatives, compliance monitoring, reporting and customer service. These provisions address many of the issues raised in the Complaint. The parties agree HIKO will not accept any new variable rate customers in Pennsylvania until June 30, 2016.

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

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

- Product offering: HIKO agrees that it will not accept any new Pennsylvania customers from April 1, 2015 until June 30, 2016; provided, however, that if HIKO finds that it is able to offer a fixed rate product before June 1, 2016, it will be able to do so pursuant to the provisions of the Settlement. See Joint Petition at ¶ 30(a); see also Joint Petition at Exh. A.
- Marketing: If HIKO offers variable rate products to consumers after June 30, 2016, HIKO specifically commits to complying with all Pennsylvania laws and Commission regulations, Orders and policies. See Joint Petition at ¶ 30(b)(1). Further, HIKO commits that the Company and its agents, employees and representatives shall not make misrepresentations to consumers. See Joint Petition at ¶ 30(b)(2). Additionally, HIKO specifically commits to complying with 52 Pa. Code § 57.175 and not enter into a sales agreement that is not personally accepted by the EDC's Customer of Record. See Joint Petition at ¶ 47(b)(6). The Settlement also imposes requirements regarding HIKO's salespeople's communications with consumers, including a specific statement that the salesperson does not work for or

represent the consumer's electric utility; that if the consumer switches to HIKO, his or her electric bill will contain HIKO's charges for generation as well as delivery charges from his or her EDC; and for variable rates, when permitted under the Settlement, a statement that there is no limit on how high the price can go and that the consumer may cancel at any time, which cancellation will be handled promptly, but it may take several days to switch suppliers. See Joint Petition at ¶¶ 47(b)(7)-(10). For all in-person sales solicitations, HIKO's salesperson must provide the consumer with the Disclosure Statement prior to presenting the consumer with a contract to obtain his or her signature. Joint Petition at ¶ 12. The Settlement also contains requirements for the contents of HIKO's Disclosure Statement; the prompt provision thereof to customers, and maintenance of adequate records regarding the provision of documents to customers. See Joint Petition at ¶¶ 30(b)(13)-(15). Finally, the Settlement contains specific requirements regarding HIKO's online enrollments and advertising to consumers. See Joint Petition at ¶¶ 47(b)(16)-(18).

- Third party verifications (TPVs): The Settlement contains specific requirements for HIKO's TPVs, including specific language to be used prior to beginning the TPV process and specific questions that must be asked during TPVs. See Joint Petition at ¶¶ 30(c)(1)-(2). Further, the Settlement requires that all TPVs be performed outside the presence of the HIKO salesperson, and the in-person salesperson must leave a consumer's premises during a TPV in accordance with the Commission's regulations. See Joint Petition at ¶ 30(c)(3). Finally, the Settlement prohibits HIKO salespeople from prompting consumers' responses to TPV questions or instructing consumers in the manner in which to answer TPV questions. See Joint Petition at ¶ 30(c)(4).
- Disclosure statement: Specifically with regard to HIKO's Disclosure Statement, the Settlement requires that within ten days of the Commission's final order, the Company provide to BCP and OCA its current Disclosure Statement and Schumer Box drafted pursuant to the Commission's Final-Omitted Rulemaking at L-2014-2409385 and provide any subsequently amended Disclosure Statements to the OCA and the Commission for a period of five years. See Joint Petition at ¶¶ 30(d), (d)(1). Further, the Company will include specific language in its Disclosure Statement and

if possible, Schumer Box regarding HIKO's variable rate products and cancellation/early termination fees. See Joint Petition at ¶ 30(d)(2). The Settlement also provides for specific restrictions if HIKO represents to consumers in the Company's variable rate programs that the price HIKO will charge will be "market-based." See Joint Petition at ¶ 30(d)(3). Additionally, under the terms of the Settlement, HIKO specifically agrees to comply with the EDCs' Purchase of Receivables program parameters and tariff provisions and agrees to remove from its Disclosure Statement the language that authorizes it to obtain and review information regarding the customer's credit history. See Joint Petition at ¶¶ 30(d)(4)-(5).

- **Training:** The Settlement requires that HIKO implement a new training program prior to offering electric generation supply to Pennsylvania customers and provide a description of the new training plan to BCP, OCA and the Commission within 180 days of the expiration provided in Paragraph 30(a)(1) of the Settlement and then meet with BCP, OCA and designated Commission staff to review and discuss the training. See Joint Petition at ¶¶ 47(e)(1)-(2). The Settlement requires HIKO's new training program to accurately and comprehensively cover the applicable requirements of the Public Utility Code, Consumer Protection Law, TRA and the Commission's regulations, Orders and policies and specifically cover requirements related to door-to-door sales. See Joint Petition at ¶ 30(e)(3)(i)-(iii). The new training program must include a warning that deceptive sales practices will not be tolerated by HIKO's management and describe the remedial steps that will be taken if the representatives violate any terms of the Settlement or otherwise engage in improper sales practices. See Joint Petition at ¶ 30(e)(3)(iv)-(v). The Settlement requires that HIKO provide initial training and subsequent refresher training at least every six months. See Joint Petition at ¶ 30(e)(4). The Settlement requires that HIKO, itself, shall conduct the training. See Joint Petition at ¶30(e)(5).
- **Compliance monitoring:** The Settlement contains requirements regarding the recording and reviewing of communications with customers. See Joint Petition at ¶¶ 30(f)(1)-(5). The Settlement also contains requirements regarding HIKO's investigation into non-compliant sales calls, substantiated consumer complaints

about HIKO sales representatives, violations of the Settlement, Pennsylvania laws or Commission regulations, Orders or policies, and remedial steps for identified non-compliant sales calls. See Joint Petition at ¶¶ 30(f)(5)-(7).

- Reporting: The Settlement requires that within 30 days of implementation of the training and compliance monitoring required in the Settlement and quarterly thereafter for three years, HIKO provide to the OCA and Commission an explanation of all internal audits and investigations performed and the results thereof and reports of all customer complaints and disputes received by the Company. See Joint Petition at ¶ 30(g).
- Customer service: The Settlement requires that HIKO employ regulatory personnel who will help to ensure compliance with Chapter 56 of the Commission’s regulations, fair and timely resolutions of customer complaints, and the proper training of customer service representatives. See Joint Petition at ¶ 30(h)(1). HIKO is also required to maintain a staff of customer service representatives, who will provide reasonable access to a “live” customer service representative and provide timely responses to any voicemail messages or inquiries made by letter. Joint Petition at ¶ 30(h)(2). Additionally, the Settlement requires HIKO to develop and implement an action plan for handling periods of high call volumes and lays out specific factors that must be included in the plan. See Joint Petition at ¶ 30(h)(3). If HIKO experiences a period of high call volumes in which it does not comply with the provisions of the Joint Petition, HIKO will provide a report to the Commission and the Joint Complainants. Joint Petition at ¶ 30(h)(4).

HIKO’s agreement to refrain from accepting any new Pennsylvania customers from April 1, 2015 until June 30, 2016 is appropriate, reasonable, and in the public interest. This provision of the Settlement will help to deter similar conduct in the future. Additionally, this moratorium will give HIKO the opportunity to implement the necessary modifications to its business practices as well as the training, as outlined in the Settlement, prior to enrolling any new customers in Pennsylvania.

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

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

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

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

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

These modifications address many of the concerns raised in the consumer testimony as well as the allegations in the Joint Complaint. By agreeing to these specific modifications, HIKO will be providing more accurate, full and clear information in its sales process, from the initial sales contact through final enrollment and verification. These modified practices should lead to more fully informed consumers and correspondingly, a better functioning retail choice market. As such, the injunctive relief set out in the Settlement is appropriate, reasonable and in the public interest.

Section 2807 of the Electricity Generation Customer Choice and Competition Act, for example, requires that “the Commission establish regulations to ensure that an EDC does not change a customer’s electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer’s consent to a change of supplier.” 66 Pa.C.S. § 2807(d)(1). As a result, Section 54.42 of the Commission’s regulations prohibits a licensed EGS from “transferring a customer without the customer’s consent.” 52 Pa.Code § 54.42(a)(9). Additionally, the Commission’s regulations provide standards of conduct and disclosure for EGSs that make EGSs responsible for any fraudulent or deceptive or other unlawful marketing or billing acts performed by the EGS, its employees, agents or representatives. 52 Pa.Code § 54.43(f); see also, 52 Pa.Code § 111.12(d)(1) (“a supplier may not engage in misleading or deceptive conduct as defined by State or Federal law, or by Commission rule, regulation or order.”). Finally, the Commission has several regulations requiring the use of “good faith, honesty and fair dealings” and requiring EGSs to investigate a dispute, including providing the consumer with information necessary to make an informed judgment and issue a report within 30 days. 52 Pa.Code §§ 56.1(a), 56.141(a), 56.151 and 56.152. The various provisions of the Settlement are in the public interest and should be adopted without modification because they seek to ensure HIKO’s compliance with these, and other Commission regulations.

Furthermore, the injunctive relief provisions of the Settlement are consistent with other Commission decisions approving settlements that included modifications to a utility’s business practices. In PPL Order, *supra*, the Commission approved a settlement that included, among other things, extensive modifications to customer service representative procedures, call scripts, training and supervision, in addition to the imposition of a civil penalty and contributions to low-income programs. Id. at 11-16. Similarly, in Pa.P.U.C., Law Bureau Prosecutory Staff v. UGI

Utilities, Inc., Docket No. C-20066664 (Opinion and Order entered Feb. 6, 2009) (UGI Order), the Commission approved a settlement that required procedural revisions and training and education programs, in addition to the payment of a civil penalty, and other related issues. Id. at 6-8. The provisions included in the Settlement at issue in this proceeding are consistent with these prior Commission decisions.

HIKO has shown a recent willingness to correct its business practices and stay in the retail markets of other States as well. See, In the Matter of the Investigation by Eric T. Schneiderman, Attorney General of New York, of HIKO Energy, LLC, AOD No. 14-069, Assurance of Discontinuance Pursuant to Executive Law § 63(15), dated October 1, 2014. The Office of Attorney General of New York reached an agreement with HIKO on or about October 1, 2014, after an investigation into HIKO's marketing and provision of retail natural gas and electricity services. See also, John J. Hoffman, Acting Attorney General of the State of New Jersey, THE NEW JERSEY BOARD OF PUBLIC UTILITIES, and STEVE C. LEE, Acting Director of the New Jersey Division of Consumer Affairs v. HIKO Energy, LLC, et al., Final Consent Judgment entered on January 5, 2015, in the Superior Court of New Jersey Chancery Division, Mercer County, Docket No. MER-C-32-14. We infer from these aforementioned proceedings that in New York and New Jersey, HIKO agreed to injunctive remedies similar to the instant case in order to retain its license to continue supplying electric generation service in those States.

All of the “injunctive relief” provisions in the instant Settlement incorporate various changes to HIKO's business practices that address the various issues raised in the Complaint and support adopting the Settlement as being in the public interest without modification. As noted above, the Settlement contains various other provisions not discussed herein that also warrant finding that the Settlement is in the public interest and should be adopted without modification. The parties should be commended for entering into a comprehensive and extensive settlement. The Settlement incorporates substantial actions that further the policy of the Commonwealth to “permit retail customers to obtain direct access to a competitive generation market,” 66 Pa.C.S. § 2802(3), and should be adopted without modification.

As such, we find that the “injunctive relief” provisions contained in the Settlement agreement are in the public interest and support adopting the Settlement in its entirety without modification.

4. Application of the Policy Statement Factors

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

The Policy Statement notes that “these factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest.” 52 Pa.Code § 69.1201(a). The factors in the Policy Statement are applied to both the Settlement in general and the civil penalty specifically. A review of the factors articulated in the Policy Statement, as applied to both the Settlement and the civil penalty, as well as the various positions of the parties with regard to each of the factors, supports finding that the Settlement should be adopted without modification as being in the public interest.

With regard to the first Rosi Factor, we find the allegations are of a serious nature including that HIKO: 1) did not provide the savings or benefits promised to customers by its salespeople or welcome letters; 2) failed to provide rate information; 3) failed to provide pricing information in plain language in its Disclosure Statement; and 4) charged prices in early 2014 that did not conform to its Disclosure Statement. 52 Pa. Code § 69.1201(c)(1). The Commission held in Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff v. MXenergy Electric Inc., Docket No. M-2012-2201861, Order at 5 (May 3, 2012) as follows. “When conduct of a serious

nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.” See 52 Pa. Code § 69.1201(c)(1). The conduct alleged in the instant case warrants the remedial relief outlined in the Settlement. A moratorium on variable rate sales in Pennsylvania until June, 2016 will give the company time to implement the numerous corrective actions outlined in the settlement to bring their marketing and sales techniques into regulatory compliance. Further, the refund pool amount will reimburse the customers who were charged rates higher than what had been promised by the Company.

With regard to the second Rosi Factor, the resulting consequences of HIKO’s alleged conduct in early 2014 resulted in harm to Pennsylvania’s consumers and the retail electricity market in Pennsylvania. See 52 Pa. Code § 69.1201(c)(2). Numerous affected HIKO customers received shut-off notices from their EDCs or experienced other financial difficulties resulting from HIKO’s charges. See e.g., Consumer Testimonies 1-2, 5; see also Joint Petition at Exh. B, ¶ 22. Several consumer witnesses detailed their hardships in the consumer testimony. Id. For example, Consumer 1 testified, “[I am] 87 years old[.] I was in over my head ... Only threw [sic] my neighbor [sic] ... [was I] informed I was eligible [sic] to get help threw [sic] cap programs [sic] that they stoped [sic] the nightmare exsperince [sic] I was going threw [sic] with Hico [sic] Energy LLC.” Id. at 5. Additionally, Consumer 2 testified as follows regarding his or her financial hardships: “I made it clear that I was not satisfied with ... [HIKO’s refund] offer, but because of my financial situation and a need to clear my accounts with PPL, I accepted ... I made payment arrangements to clear this debt. [S]ince I am on a fixed income, this has caused financial hardship for me.” Id. at 9. Consumer 5 also testified as to his or her financial hardships. See Id. at 21. Consumer 5 stated, “On May 27[, I] received [a] 10 day shut-off notice[.] even though I was on a budget plan ... I am on oxygen and can not [sic] be with out [sic] power[.] I need it to live.” Id.

Given the serious nature of the alleged violations and the resulting consequences, refunds to customers and a contribution to the EDCs’ Hardship Funds are appropriate, reasonable and in the public interest. The disbursement of the Refund Pool to HIKO’s eligible customers will assist these affected customers in restoring some portion of their financial losses incurred as a result of HIKO’s alleged conduct. The \$25,000 contribution that will be allocated to the EDCs’ Hardship

Funds based on the number of HIKO customers in each EDC's territory as of January 1, 2014, will assist consumers who have experienced difficulties as a result of high electric bills.

The fourth Rosi Factor¹⁰ is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Prior to the Settlement, HIKO voluntarily provided \$159,320.15 in cash refunds directly to customers. The Settlement provides for additional refunds to HIKO's customers that were allegedly affected by the violations asserted in the Joint Complaint. Thus, the refunds and contributions to EDCs' Hardship Funds are reasonable, appropriate, and in the public interest. HIKO's agreement to substantial corrective modifications to its business practices will help to prevent the conduct alleged in the Joint Complaint from occurring in the future.

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

¹⁰ The third Rosi Factor pertains only to the evaluation of litigated cases, and therefore, it does not apply to this Settlement. See 69 Pa. Code § 1201(c)(3).

The sixth Rosi Factor is the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). “An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.” *Id.* If this case had been fully litigated the Company would have been given an opportunity to defend its actions and compliance history. We find the lack of evidence in this area poses no barrier to approval of the proposed Settlement. The injunctive terms of the Settlement will help to ensure compliance with regulatory standards.

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

The eighth Rosi Factor is the amount of the civil penalty necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). The parties are in agreement that no civil penalty is necessary to deter future violations and aver that the Settlement comprehensively addresses their allegations in the Joint Complaint. Our concurrent decision at C-2014-2431410 issued today addresses and imposes civil penalties.

The ninth Rosi Factor is past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). The Commission has approved settlements involving EGSs that involve refunds, civil penalties and injunctive relief. See e.g. Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Energy Services Provider, Inc. d/b/a Pennsylvania Gas & Electric And U.S. Gas & Electric, Inc. d/b/a Pennsylvania Gas & Electric, Docket No. M-2013-2325122, Order (Oct. 2, 2014) (The Commission approved a Settlement that required PaG&E to pay a civil penalty, refunds to its customers affected by the conduct complained of, and implement revisions to its operating procedures); see also Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. IDT Energy, Inc., Docket No. 2013-2314312, (Opinion and Order entered October 17, 2013) (The Commission approved a Settlement that required IDT to make

modifications to its practices relating to its training and supervision of its sales agents and handling of customer complaints). The Settlement is comprehensive and is therefore, reasonable and in the public interest.

The tenth Rosi Factor to consider is other “relevant factors.” 52 Pa. Code § 69.1201(c)(10). Joint Complainants stated that it has been over a year since HIKO’s alleged actions and omissions bringing rise to the Joint Complaint. Given the fact that a Further Prehearing Conference was scheduled for April 8, 2014 to determine the remainder of the litigation schedule for the submission of testimony of expert and other non-consumer witnesses, it is unlikely that a Commission decision could have been entered until at least the end of 2015 had this action been fully litigated. Additionally, there is inherent uncertainty in the outcomes of fully litigated proceedings. The Settlement will ensure that HIKO’s customers will receive refunds, and the customers will receive them sooner. Additionally, the Settlement saves costs and resources of the parties and Commission. Finally, we consider our separate but concurrent ruling in the I&E case wherein we assess a civil penalty of \$1,836,125 for 14,689 violations of 52 Pa. Code §54.4(a) (relating to billing in accordance with disclosure statements). The I&E case involves similar facts, parties, and law to the instant proceeding, and given the substantial civil penalty in that case, we consider our rulings together, and find the lack of a civil penalty in the instant case to be reasonable and just in the interest of expediting the refund relief to HIKO’s affected customers.

Based on the foregoing Rosi Factor analysis, the refund and contribution to EDCs’ Hardship Funds provisions in the Settlement are reasonable and in the public interest. The refunds that HIKO provided directly to customers combined with the Refund Pool will help restore the financial losses incurred by HIKO’s consumers that were alleged to have been charged extraordinarily high prices in early 2014. The Settlement will provide refunds to customers and do so sooner than a fully litigated proceeding. The contribution to EDCs’ Hardship Funds will assist customers in need with payment of their electric bills. Further, the injunctive relief in the Settlement will help protect HIKO’s current and possible future customers and will better inform customers of the products and services provided by HIKO.

V. CONCLUSION

In conclusion, this Decision adopts the Joint Petition for Approval of Settlement resolving the formal Complaint filed against HIKO by the Attorney General and Acting Consumer Advocate in its entirety and without modification because doing so is in the public interest and supported by substantial evidence. Commission policy promotes settlement and settlements will be approved if they are in the public interest. See, Lancaster, Warner, supra. The Settlement is in the public interest because it requires HIKO to pay a substantial amount of refunds to customers, contribute to Hardship Funds and make numerous changes to its business practices. The parties are commended for their efforts in resolving this complex proceeding via a comprehensive and detailed settlement. While various provisions of the Settlement provide greater public benefits than other provisions, we recognize that the Settlement is a compromise among the parties regarding many varied and complex issues associated with a matter that caused significant public outcry during the winter of 2014. When viewed as a whole, adopting this Settlement in its entirety without modification satisfies the standards and factors the Commission considers when evaluating settlements and will promote the continued development of the competitive market for the provision of electric generation service.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa. C.S. §§ 701, 2809.
2. Commission policy promotes settlements. 52 Pa.Code § 5.231.
3. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401.
4. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested

matters. Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103, *et al.* (Opinion and Order entered July 14, 2011).

5. The benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103, *et al.* (Opinion and Order entered July 14, 2011); *citing*, Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996).

6. Decisions of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

7. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth. 1984).

8. Section 69.1201 of the Commission's regulations provides a Policy Statement regarding factors and standards to be used when evaluating litigated and settled proceedings. 52 Pa.Code § 69.1201.

9. The factors in the Policy Statement will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. 52 Pa.Code § 69.1201(a).

10. When applied in settled cases, the factors and standards in the Policy Statement will not be applied in as strict a fashion as in a litigated proceeding but the parties in

settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest. 52 Pa.Code § 69.1201(b).

11. The Commission, as a governmental agency, has issued request for proposals and request for qualifications to hire third-party administrators pursuant to various regulatory provisions in the past. See, Implementation of the Alternative Energy Portfolio Standards Act of 2004, Docket No. M-00051865, Request for Qualifications For Alternative Energy Credit Program Administrator, April 12, 2006; Alternative Energy Portfolio Standards Act of 2004, 73 P.S. §§ 1648.1-1648.8; see also, Establishment of a Pennsylvania Universal Service Fund, M-00001337 (Order entered April 18, 2000); 52 Pa.Code §§ 63.161, *et seq.*

12. The Commission has plenary authority under Section 501 of the Public Utility Code to direct an electric generation supplier to issue a credit or refund for an over bill. Commonwealth of Pa, et al. v. IDT Energy, Inc., Docket No. C-2014-2427657 (Opinion and Order entered Dec. 18, 2014).

13. In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders or otherwise, all and singular, the provisions of this part, and the full intent thereof. 66 Pa.C.S. § 501.

14. Commission regulations prohibit a licensed EGS from transferring a customer without the customer's consent. 52 Pa.Code § 54.42(a)(9); see also, 66 Pa.C.S. § 2807(d)(1).

15. Commission regulations provide standards of conduct and disclosure for electric generation supplier that make electric generation suppliers responsible for any fraudulent or deceptive or other unlawful marketing or billing acts performed by the electric generation suppliers, its employees, agents or representatives. 52 Pa.Code § 54.43(f).

16. An electric generation supplier may not engage in misleading or deceptive conduct as defined by State or Federal law, or by Commission rule, regulation or order. 52 Pa.Code § 111.12(d)(1).

17. Commission regulations require the use of “good faith, honesty and fair dealings” and require electric generation suppliers to investigate a dispute, including providing the consumer with information necessary to make an informed judgment and issue a report within 30 days. 52 Pa. Code §§ 56.1(a), 56.141(a), 56.151 and 56.152.

18. It is the policy of the Commonwealth to “permit retail customers to obtain direct access to a competitive generation market.” 66 Pa.C.S. § 2802(3).

21. The Commission has approved settlements that have included, among other things, extensive modifications to customer service representative procedures, call scripts, training and supervision, in addition to the imposition of a civil penalty and contributions to low-income programs. Pa. Pub. Util. Comm’n Law Bureau Staff v. PPL Electric Utilities Corporation, Docket No. M-2009-205812 (Opinion and Order entered September 10, 2009).

19. The Joint Petition for Approval of Settlement submitted in this proceeding on May 1, 2015 should be adopted in its entirety without modification because it is in the public interest and supported by substantial evidence.

VI. ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Approval of Settlement dated May 1, 2015 and submitted at Docket Number C-2014-2427652 by the Commonwealth of Pennsylvania by Attorney

General Kathleen G. Kane, Tanya J. McCloskey, Acting Consumer Advocate, HIKO Energy, LLC, and the Office of Small Business Advocate, is hereby approved in its entirety without modification.

2. That the Stipulation of Facts in Support of the Settlement submitted on May 1, 2015 as Exhibit B to Joint Petition for Approval of Settlement is admitted into the record of this proceeding.

3. That the effective date of this Settlement shall be 15 days from the date of entry of the Commission's Final Order at Docket No. C-2014-2427652.

4. That this Commission retains subject matter jurisdiction over the parties for the purpose of modifying upon request, and enforcing the terms of this Settlement.

5. That HIKO Energy, LLC is directed to file a sworn certification with the Commission showing its compliance with the term of this Settlement regarding a \$25,000 contribution to EDCs' Hardship Funds within ninety (90) days of the date of entry of the Final Order in this proceeding.

6. That Docket No. C-2014-2427652 shall remain open for the purpose of modifying upon request, and enforcing the terms of this Settlement until the Commission receives a report from the Administrator of the Refund Pool indicating HIKO Energy, LLC, has paid \$2,025,383.85 into a Refund Pool, which letter shall be served upon the parties and inserted into the documents folder for this proceeding.

7. That upon HIKO Energy, LLC's filing the certificate of compliance and the Refund Pool Administrator's filing of a report showing HIKO Energy, LLC paid \$2,025,383.85 in a Refund Pool, the Secretary's Bureau shall mark Docket No. C-2014-2427652 closed.

8. That HIKO Energy, LLC shall comply with all directives, conclusions and recommendations in the joint settlement petition as approved and adopted in this Initial Decision

that are not the subject of individual ordering paragraphs as fully as if they were the subject of specific ordering paragraphs.

9. That HIKO Energy, LLC shall cease and desist any and all violations of the Public Utility Code and the Pennsylvania Public Utility Commission's regulations and orders.

Date: August 21, 2015

/s/
Elizabeth H. Barnes
Administrative Law Judge

/s/
Joel H. Cheskis
Administrative Law Judge