

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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August 4, 2015

Rosemary Chiavetta  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

RE: Commonwealth of Pennsylvania, by Attorney General  
KATHLEEN G. KANE, Through the Bureau of Consumer  
Protection,  
And  
TANYA J. McCLOSKEY, Acting Consumer Advocate,  
Complainants

v.

IDT Energy, Inc.

Respondent

Docket No. C-2014-2427657

Secretary Chiavetta:

Enclosed please find the Joint Petition for Approval of Settlement, in the above-referenced proceeding.

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

Respectfully Submitted,

*Candis A. Tunilo*

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

Enclosures

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

\*185194



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185176

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Commonwealth of Pennsylvania, by Attorney	:	
General KATHLEEN G. KANE, Through the	:	
Bureau of Consumer Protection,	:	
	:	
And	:	Docket No. C-2014-2427657
	:	
TANYA J. McCLOSKEY, Acting Consumer	:	
Advocate,	:	
Complainants	:	
	:	
v.	:	
	:	
IDT Energy, Inc.,	:	
	:	
Respondent	:	
	:	

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**JOINT PETITION FOR APPROVAL OF SETTLEMENT**

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

The Joint Petitioners respectfully request that Administrative Law Judges Elizabeth Barnes and Joel H. Cheskis (ALJs) recommend and the Pennsylvania Public Utility Commission (Commission) approve all terms and conditions of the Settlement without modification. The Settlement provides for refunds and modifications to business practices in full satisfaction of the

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

Joint Complaint filed with the Public Utility Commission (Commission) by Joint Complainants against IDT on June 20, 2014.

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

## **I. BACKGROUND**

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

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

3. IDT is a Delaware corporation licensed to supply electric generation to residential and commercial customers throughout Pennsylvania by Order entered January 15, 2010 at Docket No. A-2009-2134623. See License Application of IDT Energy, Inc. for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier of Retail Electric Power, Docket No. A-2009-2134623, Order (Jan. 15, 2010). Further, IDT Energy is an indirect subsidiary of Genie Energy, Ltd., a publicly traded company listed on the New York Stock Exchange and trading under the ticker symbol “GNE.”

4. On June 20, 2014, the Joint Complainants filed a Joint Complaint with the Commission pursuant to the Public Utility Code, 66 Pa. C.S. Ch. 28, the Commission’s regulations, 52 Pa. Code Ch. 54, 56 and 111, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (Consumer Protection Law), and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* (TRA). The Joint Complaint includes seven separate

counts as follows: (1) misleading and deceptive promises of savings; (2) misleading and deceptive welcome letter and advertisements; (3) slamming; (4) lack of good faith handling of complaints; (5) failing to provide accurate pricing information; (6) prices nonconforming to disclosure statement; and (7) failure to comply with the Telemarketer Registration Act. With respect to relief, Joint Complainants requested that the Commission find that IDT violated the Public Utility Code, the Consumer Protection Law, the TRA, and the Commission's regulations and Orders; provide restitution to IDT's customers; impose a civil penalty; order IDT to make various modifications to its practices and procedures; and revoke or suspend IDT's Electric Generation Supplier (EGS) license, if warranted.

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

6. On July 10, 2014 IDT filed Preliminary Objections to the Joint Complaint. In its Preliminary Objections, IDT argued that: (1) Count 6 contained impertinent material that should be stricken; (2) Counts 6 and 7 should be dismissed for legal insufficiency; and (3) the Commission lacked authority to grant Joint Complainants' request for restitution, and the request should, therefore, be denied.

7. On July 21, 2014, Joint Complainants filed an Answer to Preliminary Objections asserting that IDT's Preliminary Objections were unsupported and that it was clear and free from doubt that the Joint Complaint is legally sufficient and sought that the Commission make determinations pursuant to the Commission's powers and jurisdiction.

8. Also on July 10, 2014, IDT filed an Answer with New Matter to the Joint Complaint. In its Answer, IDT admitted or denied the various averments made by the Joint Complainants in the Joint Complaint. In its New Matter, IDT averred various affirmative

defenses and concluded by requesting that the Commission dismiss the Joint Complaint with prejudice.

9. On July 30, 2014, Joint Complainants filed their Reply to New Matter specifically denying the viability of IDT's assertions in its New Matter as defenses in this matter.

10. On July 31, 2014, I&E filed a Notice of Intervention in this proceeding.

11. By Order dated August 20, 2014, the ALJs granted in part and denied in part IDT's Preliminary Objections. Specifically, the ALJs found: 1) that the Commission lacks jurisdiction to hear complaints under the TRA even though compliance with this Act is required by the Commission regulations; 2) that the Commission lacks jurisdiction to determine if the prices charged to customers conformed to the disclosure statement provided to the customer; and 3) that the Commission lacks jurisdiction to consider the equitable remedy of restitution, but could order refunds pursuant to 66 Pa. C.S. § 1312.

12. An Initial Prehearing Conference was convened on August 25, 2014. Following the Initial Prehearing Conference, Procedural Order #2 dated September 3, 2014 was issued establishing, *inter alia*, that the Joint Complainants would serve written direct testimony of consumer witnesses by Friday, October 31, 2014, and that evidentiary hearings for purposes of admitting the written direct testimony of the consumer witnesses subject to cross examination and timely objections would be held December 8-12, 2014.<sup>2</sup>

13. On September 3, 2014, IDT filed an unopposed Motion for Protective Order. The Motion was granted by Order dated September 3, 2014.

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<sup>2</sup> Later, in Procedural Order #3 entered November 3, 2014, the ALJs also directed IDT to: (1) identify which consumer witnesses it intended to cross-examine by November 24, 2014; (2) file any motions to strike consumer witness direct testimony by December 1, 2014; and (3) provide its cross-examination exhibits to the ALJs, parties and witnesses by December 4, 2014.

14. On September 8, 2014, Joint Complainants filed a Petition for Interlocutory Review and Answer to Material Questions regarding the ALJs' August 20, 2014 Order granting in part and denying in part IDT's Preliminary Objections. Specifically, Joint Complaints sought for the Commission to answer the following questions: (1) Does the Commission have authority and jurisdiction to determine whether a violation of the TRA has occurred when considering whether the Commission's regulations—which require compliance with these laws—have been violated; (2) Does the Commission have the authority and jurisdiction to determine whether the prices charged to customers by an EGS conform to the EGS disclosure statement regarding pricing; and (3) Does the Commission have the authority and jurisdiction to order equitable remedies including restitution.

15. Also on September 8, 2014, IDT filed a Petition for Interlocutory Review and Answer to Material Question with the Commission seeking for the Commission to answer whether it has the authority under Section 1312 of the Public Utility Code to order electric generation suppliers to issue refunds to customers.

16. On September 18, 2014, the Joint Complainants filed a Brief in Support of their Material Questions, and IDT filed a Brief in Opposition.

17. Also on September 18, 2014, IDT filed a Brief in Support of its Petition Requesting Interlocutory Commission Review and Answer to Material Question. Also on September 18, 2014, Joint Complainants and I&E filed Briefs in Opposition to IDT's Petition Requesting Interlocutory Commission Review and Answer to Material Question.

18. On October 31, 2014, Joint Complainants served the direct testimony of 215 consumer witnesses, comprising four volumes and 1068 pages.

19. By letter dated November 24, 2014, IDT stated that the Company intended to cross-examine every consumer witness whose direct testimony Joint Complainants served on October 31, 2014, with the exception of one consumer witness.

20. On November 25, 2014, pursuant to the ALJs' direction during a conference call with the parties on October 31, 2014, the Joint Complainants filed a Joint Memorandum of Law Regarding the Admission of Pattern and Practice Evidence.

21. On November 26, 2014, IDT filed an unopposed Motion for Continuance Evidentiary Hearings scheduled for December 8-12, 2014.

22. By Order dated December 9, 2014, the ALJs granted IDT's Motion for Continuance and rescheduled the hearings for cross examination of consumer witnesses for February 17-20, 2015. Additionally, the ALJs directed IDT to (1) identify which consumers it intends to cross examine by February 2, 2015; (2) serve its cross exhibits by February 6, 2015; and (3) file any motions to strike consumer direct testimony by February 2, 2015.

23. On December 10, 2014, IDT filed a Reply Memorandum of Law Regarding the Admission of Pattern and Practice Evidence.

24. On December 18, 2014, the Commission issued an Order (December 18 Order) in which it addressed the Petitions for Interlocutory Review and Answer to Material Question(s) filed by the Joint Complainants and IDT. The Commission determined that while it does not have the authority under Section 1312 of the Public Utility Code to order electric generation suppliers to issue refunds to customers, the Commission can direct EGSs to issue refunds for "slamming" or direct refunds when a customer has, otherwise, been switched to an EGS without the customer's consent pursuant to 52 Pa. Code § 57.177(b). December 18 Order at 16-17. Additionally, the Commission noted that it has plenary authority under 66 Pa. C.S. § 501 to

direct an EGS to issue a credit or refund for an over bill. Id. at 17. The Commission further 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. Having the authority to order EGS credits and/or refunds carries out these statutorily-prescribed consumer protections by ensuring that electric generation supply bills are adjusted accordingly when an EGS, for example, fails to bill a customer in accordance with its disclosure statement, in violation of the Commission's Chapter 54 Regulations and, in turn, Code Section 2809(b). Thus, having the authority to order EGS billing adjustments, including refunds, under the appropriate circumstances, helps ensure that EGSs comply with the Commission's Regulations and bill customers in accordance with their disclosure statement - a fundamental consumer protection under the Electric Competition Act.

Id. at 17-18. (Internal footnotes omitted.)

Additionally, the Commission determined that while it does not have the authority or jurisdiction to determine whether a violation of the TRA has occurred, it does have the authority and jurisdiction to determine whether IDT has violated its regulations at 52 Pa. Code § 111.10.

Id. at 23. The Commission also determined that it has the authority and jurisdiction to determine whether the prices charged to customers by an EGS conform to the EGS disclosure statement regarding pricing, but it does not have the authority and jurisdiction to order equitable remedies including restitution. Id. at 24-26.

25. On January 9, 2015, the ALJs issued a Further Prehearing Conference Order, scheduling a Further Prehearing Conference for January 27, 2015. At the Further Prehearing

Conference, the remaining litigation schedule was established, including dates for service of expert and other witness testimonies and hearings for cross examination.<sup>3</sup>

26. By letter dated February 2, 2015, IDT stated that it was not able to identify with certainty which consumer testimonies it would seek to strike and that IDT could not make determinations regarding the making of motions to strike until cross-examination takes place.

27. Hearings for the admission of consumer direct testimony into the record and cross examination were held February 17-20, 2015. The direct testimonies of 125 consumers were admitted into the record during the hearings along with various cross examination and redirect exhibits.

28. On April 8, 2015, Anthony Ferrare, a former customer of IDT and named plaintiff in a class action filed against IDT in the United States District Court for the Eastern District of Pennsylvania, filed a Petition to Intervene and Public Statement in this matter. Mr. Ferrare sought intervention “to protect his rights and all other customer that have contracted with IDT Energy, Inc.”

29. On April 28, 2015, Joint Complainants filed an Answer to Mr. Ferrare’s Petition to Intervene requesting that the ALJs deny the Petition because Mr. Ferrare did not meet the Commission’s requirements for intervention. Joint Complainants also asserted that should the ALJs grant Mr. Ferrare’s Petition to Intervene, Mr. Ferrare should be required to abide by the litigation schedule already established and that Mr. Ferrare be permitted to intervene on his own behalf only and not on behalf of “others similarly situated.”

30. Also on April 28, 2015, IDT filed an Answer to Mr. Ferrare’s Petition to Intervene requesting that the ALJs deny the Petition because: 1) Mr. Ferrare had not

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<sup>3</sup> By letter dated April 16, 2015, counsel for IDT requested modification of the procedural schedule in order to allow additional time for preparation of rebuttal and surrebuttal testimonies. The ALJs granted the requested modification in Procedural Order #5 dated April 17, 2015.

demonstrated good cause for the lateness of his Petition; 2) it is well settled that individuals are not permitted to represent the interests of other customers in Commission proceedings; and 3) Mr. Ferrare has not identified any interest of his that will be affected by Commission action in this case that is not adequately represented by existing participants.

31. Pursuant to the ALJs' directive in Procedural Order #5 to serve expert testimony on April 30, 2015, Joint Complainants served on the parties and ALJs the direct testimonies of Barbara R. Alexander, Steven L. Estomin and Ashley E. Everette and the direct testimony of OAG investigator Heather M. Troutman.

32. By Order dated May 1, 2015, the ALJs granted Mr. Ferrare's Petition to Intervene but also held that Mr. Ferrare is not permitted to represent the interests of "all others similarly situated." The ALJs also directed the parties to propose a revised schedule allowing for Mr. Ferrare to provide pre-served, written direct testimony and IDT to respond.

33. Pursuant to the schedule agreed upon by the parties and accepted by the ALJs, Mr. Ferrare served his direct testimony on the ALJs and parties on May 27, 2015.

34. Prior to the date for service of IDT's rebuttal testimony in this matter, Joint Complainants and IDT reached a settlement in principle and during a conference call on July 2, 2015, Joint Complainants and IDT advised the ALJs of the settlement. At that time, I&E provided its position to the ALJs and parties that it would not join the settlement but would not oppose it. OSBA indicated that it would provide its position regarding the settlement upon receipt of proper authority from the Small Business Advocate. Mr. Ferrare's counsel indicated that he could not determine whether to join or oppose the settlement until he had received additional information from IDT. In light of the settlement in principle between Joint

Complainants and IDT, the ALJs suspended the litigation schedule *vis a vis* IDT's rebuttal testimony.

35. A second conference call with the ALJs and parties, with the exception of OSBA, was convened on July 13, 2015. Counsel for Mr. Ferrare stated that he was still unable to take a position on whether Mr. Ferrare would join or oppose the settlement, as his expert continued to review the information provided by IDT. Additionally, counsel for Mr. Ferrare indicated that additional information was needed from Joint Complainants' witness Steven L. Estomin for Mr. Ferrare's expert's review before Mr. Ferrare could determine if he would join or oppose the settlement. Upon further discussion and clarification after the conference call, OCA provided additional information to counsel for Mr. Ferrare.<sup>4</sup>

36. Also during the conference call on July 13, 2015, the ALJs directed the parties to submit the Joint Petition and accompanying Statements in Support of Settlement, along with a Stipulation of Facts and Conclusions of Law and any stipulations for the admission of testimony into the record by August 4, 2015.

## **II. SETTLEMENT TERMS AND CONDITIONS**

37. It is understood that this Settlement is the compromise of the allegations in the Joint Complaint, which the Joint Complainants intend to prove and that the Company disputes. Although the Joint Complainants and the Company may disagree with the allegations as to the Company's conduct, both acknowledge the importance to consumers and the retail market of full and accurate information and disclosures to consumers, as well as the assurance of fair and transparent marketing and billing practices. The Joint Complainants and the Company recognize that this is a disputed claim, and given the inherent unpredictability of the outcome of a contested

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<sup>4</sup> By email on July 29, 2015, Mr. Ferrare's counsel notified Joint Complainants and IDT that Mr. Ferrare will oppose the Settlement.

proceeding, there are benefits to amicably resolving the disputed issues through settlement. The refunds, contributions and other measures described herein are not and should not be considered to be or construed as admissions of liability on the part of the Company.

A. Refunds.

38. Refund Pool – Upon the effective date of the Commission’s final order in this proceeding, the Company agrees to pay the total sum of \$6,577,000 in refunds (hereinafter “Refund Pool”), which will take into account prior cash refunds provided to customers by the Company. Prior to settlement, the Company voluntarily provided \$4,177,000 in cash refunds to customers. Therefore, the net Refund Pool amount due upon the effective date of the Commission’s final order in this proceeding is \$2,400,000.

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

b. IDT shall honor all commitments to customers enrolled in IDT’s promotional programs, including but not limited to IDT’s one month free program, two months free program and discount dining card promotion, who meet the eligibility requirements whether or not the customer has received a refund.

39. Administration of Refund Pool

a. OAG and OCA shall retain, with the concurrence of the Company, a third-party Administrator of the Refund Pool to administer the distribution of refunds referenced in

Paragraph 38. The first \$75,000 of costs and expenses of the Administrator of the Refund Pool shall be paid by IDT. If the costs and expenses of the Administrator exceed \$75,000, any such costs and expenses in amounts that exceed \$75,000, shall be paid out of the Refund Pool.

b. IDT shall deposit the net Refund Pool amount due identified above with the Administrator within five business days after OAG and OCA identify to IDT the Administrator retained.

c. IDT shall fully and timely cooperate with OAG, OCA and the Administrator by providing all residential and small business 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.

d. The Settlement Administrator shall use best efforts to distribute funds from the Refund Pool within one hundred and eighty (180) days of the Commission's final order in this proceeding. The Settlement Administrator shall provide monthly reports to OCA, OAG, IDT, 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.

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

f. Any unclaimed funds from 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.

40. Additional Refund Method -- Any customer of the Company that was enrolled with the Company prior to the date of this Settlement that does not receive or accept an offer of funds from the Refund Pool pursuant to ¶¶ 38(a) and 39(d) hereof shall be entitled to seek a refund as follows:

a. The customer may contact the Company directly with complaints and request for a refund.

b. The Company shall use its best efforts to investigate the customer's complaint.

c. The Company shall use its best efforts to negotiate an agreement pursuant to which the customer will agree to accept a refund from the Company in exchange for the release of any claims or causes of action that the customer has or may have against the Company.

d. If the customer is not satisfied with the Company's investigation and/or the Company's settlement offer, the customer may file a formal complaint with the Pennsylvania Public Utility Commission.

e. For one year after the Commission's final order in this proceeding, the Company shall provide quarterly reports to the OAG, OCA and designated Commission staff, setting forth the names of the complainants, the general nature of the complaints, and the disposition thereof.

41. Release -- No customer shall be paid any funds from the Refund Pool without executing a "Release of Claims" pursuant to which the customer agrees, in exchange for payment of the funds, to release, acquit, and forever discharge the Company and all of its current and former officers, shareholders, and employees from any and all claims related to the conduct alleged in the Joint Complaint over which the Commission has jurisdiction, including but not

limited to, claims regarding the Company's prices not conforming to its Disclosure Statement or marketing statements.

B. Penalty and Contribution to EDC Hardship Funds.

42. IDT shall pay a civil penalty in the amount of \$25,000 to the General Fund. IDT shall not claim a tax deduction for the \$25,000 civil penalty.

43. IDT shall make a contribution of \$75,000 to the EDCs' hardship funds. The contribution shall be allocated by the ratio of IDT customers in the EDC's territory to the total amount of IDT customers in Pennsylvania as of January 1, 2014.

C. Modifications to Business Practices. In addition to complying with all Commission regulations, Orders and policies, IDT shall implement the following modifications to its business practices in Pennsylvania and with respect to Pennsylvania customers<sup>5</sup>:

44. Product Offering:

a. For a period of 21 months beginning on a date mutually agreeable to IDT and the Joint Complainants, but not later than 10 days following the final approval of this Settlement Agreement by the Commission, IDT will not sell variable rate electricity products in Pennsylvania and will offer only fixed rate products pursuant to which the customer's price is fixed for six months or longer. This restriction will not apply to IDT's plans with existing customers.

b. If IDT offers variable rate products to consumers in the Commonwealth, after the time period set forth in Paragraph 44(a) above, IDT agrees that it will not charge

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<sup>5</sup> To the extent that the modifications to business practices described herein reference compliance with statutes, Commission regulations, Orders and policies, such references are not to be interpreted as an acknowledgment that IDT did not previously comply with such statutes, Commission regulations, Orders or policies.

Pennsylvania customers cancellation or termination fees for the Company's variable rate products.

45. Marketing:

a. IDT shall comply with all Pennsylvania laws, including the Public Utility Code, 66 Pa. C.S. § 101 *et seq.*, the Consumer Protection Law, 73 P.S. § 201-1, *et seq.*, the TRA, 73 P.S. § 2241, *et seq.* and other applicable laws, as well as Commission regulations, Orders and policies.

b. IDT commits that the Company, its agents, employees and representatives shall not make misrepresentations to residential or small business consumers.

c. IDT, its agents, employees and representatives shall not make representations, either directly or by implication, about savings that consumers may realize by switching to IDT except when comparing the rate offered by IDT to the customer's current Price to Compare (PTC), or any published future PTC or when referencing an explicit, affirmative guaranteed savings program. If the IDT agent, employee or representative compares the rate offered by IDT to the customer's current PTC or a published PTC, the IDT agent, employee or representative shall also provide the term that the referenced PTC will be in effect to the consumer and inform the consumer that savings beyond that period are not guaranteed.

d. If IDT offers variable rate products to residential or small business consumers in the Commonwealth, after the time period set forth in Paragraph 44(a) above, IDT, 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 the price offered will be lower than the EDC's Price to Compare, except when referencing an explicit, affirmative guaranteed savings program.

e. If IDT offers variable rate products to consumers in the Commonwealth, after the time period set forth in Paragraph 44(a) above, IDT, 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.

f. IDT, its agents, employees and representatives shall not make representations, either directly or by implication, about “special programs” for which a Pennsylvania consumer qualifies, unless IDT provides documentation to the consumer explaining in detail the “special program,” including but not limited to the parameters of the program, term of the program and eligibility requirements for acceptance into the program.

g. (1) Except as set forth herein, IDT, its agents, employees and representatives shall not make representations, either directly or by implication, about the Price to Compare increasing or the Price to Compare being a variable rate; notwithstanding the foregoing, nothing herein shall prohibit IDT, its agents, employees and representatives from making truthful statements about the current level of the EDC’s Price to Compare (PTC) or future PTC if that information is publically available. If an IDT agent, employee or representative identifies the current PTC or a published future PTC, the IDT agent, employee or representative shall also provide the term that the referenced PTC will be in effect; and

(2) IDT, its agents, employees and representatives shall not make any representations whatsoever about how a consumer’s utility purchases electricity.

h. IDT 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 or by a person purporting to be authorized to act on behalf of the Customer of Record. IDT Third Party Verifications shall require affirmative representation by the person consenting to the change that the person is either the EDC Customer of Record or has been authorized by the Customer of Record to act on behalf of the Customer of Record; otherwise, IDT shall not proceed with the switch.

i. IDT specifically commits that its sales representatives will comply with the provisions of 52 Pa. Code §§ 111.9 and 111.10. Every communication by an IDT sales representative with a potential customer shall begin with the sales representative stating:

My name is [Sales Representative's Name]. I am calling on behalf of IDT Energy, Inc. IDT can provide you with your electricity. I do not work for or represent your electric utility.

j. The IDT salesperson shall explain that if the consumer switches to IDT, his or her electric bill will contain IDT's charges for generation as well as delivery charges from his or her electric utility.

k. If IDT offers variable rate products to residential or small business consumers in the Commonwealth, after the time period set forth in Paragraph 44(a) above, the IDT salesperson must state the following 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.

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

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

n. Regarding all in-person sales solicitations, the IDT salesperson shall provide the Disclosure Statement before presenting a contract to the residential or small business consumer and inform the consumer that the document sets out his or her rights and obligations.

o. IDT shall comply with the applicable Commission regulations for the provision of a disclosure statement and contract summary to newly enrolled customers, including but not limited to 52 Pa. Code § 111.11. IDT shall retain records in accordance with the Commission's requirements, including but not limited to confirmations of mailing of disclosure statements to newly enrolled customers, which shall include at a minimum the date that the Disclosure Statement and Welcome documents were deposited with U.S.P.S. (or such other mail delivery service as the Company may employ) and the customer name and address stated on the envelope containing the documents.

p. IDT, 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 by the end of the next business day after a telemarketing sales contact that resulted in the sale.

q. The Disclosure Statement shall contain at least the following information:

1. The terms of the product.

2. 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.

r. Regarding online enrollments, within 90 days after approval of the Settlement, IDT shall revise its website to clearly and conspicuously display its Disclosure Statement and all contract terms and conditions as one or multiple unavoidable separate screens, which require the consumer to scroll to the end of the document and click a button indicating he or she has reviewed the documents and agrees to the terms and conditions, during the electronic customer enrollment process. IDT shall require new customers to click a screen button acknowledging that they have reviewed the terms and conditions. IDT shall offer a screen prompt enabling the consumer to print the terms and conditions.

s. In all advertising to residential or small business consumers, IDT shall include a clear and conspicuous display of IDT's brand identification information and clear and conspicuous notice that IDT is independent of the consumer's electric utility, but not formally name the electric utility. Further, IDT 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 IDT's generation charges, unless IDT is providing direct billing.

t. In all of the Company's variable rate product marketing materials that offer terms of service for acceptance by residential and small business consumers and Welcome documents to consumers that have enrolled in variable rate products with IDT, 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 use 24 months of price data to calculate the average price per kWh. If the

Company offers variable rate products after the time period specified in Paragraph 44(a) above, the Company shall also provide a statement of the total impact of the Company's 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
IDT Average price	\$xxx	\$xxx	\$xxx

This information shall also be conveyed to the residential or small business consumer during the sales contact.

46. Third Party Verifications:

a. For live Third Party Verifications ("TPVs"), the Company representative shall provide the following explanation, in a slow and audible manner, to residential and small business 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.

b. IDT shall add the following questions to all TPVs, whether via live agent or an Interactive Voice Response system:

- What is your name? (live agent only)
- What is your address? (live agent only)
- Do you understand that IDT is not your electric utility?
- Do you understand that you are not required to switch to IDT in order to continue receiving electric service?

- Does your name appear on the electric bill?

If the consumer answers that his or her name does not appear on the electric bill, the TPV representative shall request that the consumer verify that he or she is authorized by the person whose name is on the bill to consent to changes in electric generation service for the account.

If the consumer answers that he or she is the customer of record or authorized to act on behalf of the customer of record and the sales solicitation is for a variable rate product, IDT 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 cap on the price? (If IDT's product in fact has no cap)

c. IDT shall fully comply with the Commission's regulations for third-party verifications, including but not limited to 52 Pa. Code § 111.7 and agrees that all TPVs will be performed outside the physical presence of the IDT sales representative. The IDT in-person sales representative shall leave the premises during the TPV in accordance with the Commission's regulations.

d. IDT sales representatives shall not prompt consumers' responses to TPV questions or instruct the consumers as to the manner in which to respond to TPV questions. If the sales representative interrupts the TPV in this manner, the TPV shall immediately be terminated and the sale shall not be consummated unless a new TPV is initiated and successfully completed.

47. Disclosure Statement: Within 10 business days of the Commission's final Order in this proceeding, IDT 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.

a. Further, IDT shall provide to the OCA and the Commission any subsequently amended Disclosure Statements for use in the Commonwealth for the period of five years.

b. 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 IDT offers variable rate products pursuant to Paragraph 44(a) above, IDT shall:

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

[For variable rate programs:] 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.

[For fixed rate programs with ETFs:] You may cancel this contract at any time upon 30 days' notice to IDT, for which you may be separately billed an early termination fee of \$\_\_\_.

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

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

c. IDT shall not state or represent to customers in the Company's variable rate programs that the price IDT will charge will be "market-based" or set on "market conditions" unless IDT also provides a specific explanation by means of a formula, or other explanation immediately following such representation in a manner readily understandable for the customers that specifies with particularity what such "market" may consist of, some representation of what components of the price fluctuate with that market and publicly available sources of information for such market factors so that a customer can calculate the price and any applicable charges in terms of dollars and cents or cents per kWh.

d. The parties agree that the Disclosure Statement language stated in Paragraph 47(b) above is not a change in contract terms pursuant to 52 Pa. Code § 54.10. IDT, however, will notify all of its customers enrolled in variable rate programs as of the date of the execution of the Settlement of the Company's fixed rate product offer identified in Paragraph 44(a) above, and direct customers to review the updated Disclosure Statement online or via hard copy. IDT shall provide the website to view the Disclosure Statement online and a telephone number that customers may call to request a hard copy. These notifications may be provided to customers using on-bill messages and shall begin on the first billing cycle following the execution of the Settlement for which the EDCs will permit such messaging.

e. Customers who choose to switch to a fixed rate plan will be charged no fee for switching to the fixed rate plan. The Customer's choice to switch to a fixed rate plan would become effective immediately upon contacting IDT to request the switch.

f. IDT's website will be updated regularly to indicate IDT's current fixed price offering in each EDC territory.

48. Training: IDT shall ensure that its training program for internal and external sales representatives meets the requirements of this section.

a. Within 60 days of the Commission's final Order in this matter, IDT shall provide to the Commission, OAG and OCA a detailed description of the training IDT will implement.

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

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

1. The applicable requirements of the Public Utility Code and the Commission's regulations, Orders and policies regarding marketing and billing practices for EGSs;

2. The applicable requirements of the Consumer Protection Law and TRA, including both prohibited practices and affirmative requirements;

3. The applicable requirements of the Commission's regulations regarding door-to-door sales and other applicable state and federal law, with particular emphasis on the following:

i. As soon as possible and prior to describing any products or services offered for sale by IDT, a sales representative shall:

A. Produce identification, to be visible at all times thereafter, which prominently displays the full name of the marketing representative, displays a photograph of the marketing representative and depicts the legitimate trade name and logo of IDT; and provides IDT's telephone number for inquires, verification and complaints.

B. Identify the reason for the visit and state that IDT is an independent energy marketer, and identify himself or herself as a representative of IDT; explain that he or she does not represent the distribution utility; and explain the purpose of the solicitation.

C. Offer a business card or other material that lists the agent's name, identification number and title, and IDT's name and contact information, including telephone number.

ii. During the sales presentation, the marketing representative must also state that if the customer purchases electricity from IDT, that the customer's utility will continue to deliver their energy and will respond to any leaks or emergencies.

iii. The representative will provide the customer with written information regarding IDT's products and services immediately upon request, which shall include IDT's name and telephone number for inquiries, verification and complaints. Any written materials, including contracts, sales agreements, and marketing materials, must be provided to the customer in the same language utilized to solicit the customer.

iv. Where it is apparent that the customer's language skills are insufficient to allow the customer to understand and respond to the information conveyed by the marketing representative or where the customer or another third party informs the marketing representative of this circumstance, the marketing representative shall terminate contact with the customer in accordance with 52 Pa. Code § 111.9.

v. The marketing representative shall leave the premises of a customer when requested to do so by the customer or the owner or occupant of the premises.

4. An express warning that deceptive sales practices will not be tolerated by IDT's management;

5. 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 engage in improper sales practices; and

6. A description of the quality assurance, monitoring, auditing and reporting practices IDT maintains to identify and prevent improper sales practices.

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

1. Initial training and subsequent refresher training on at least a quarterly basis for all IDT internal sales representatives and customer service representatives and third-party sales agents in the modifications listed in this Settlement Agreement and the implementation thereof;

2. Initial training and subsequent refresher training on at least a quarterly basis for all IDT internal sales representatives and third-party sales agents in Pennsylvania laws applicable to IDT, including but not limited to the Public Utility Code, the Consumer Protection Law and the TRA; and

3. Initial training and subsequent refresher training on at least a quarterly basis for all IDT internal sales representatives and third-party sales agents on current Pennsylvania Public Utility Commission regulations, policies and Orders.

e. IDT shall implement and conduct the training and ensure that its internal sales representatives and third-party sales agents comply with the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.

f. Individual marketers retained by IDT shall be required to successfully complete IDT's training program. Each trainee shall be required to sign a form acknowledging that he or she has received and understands the information provided in IDT's training materials before marketing to and enrolling customers on behalf of IDT.

g. IDT specifically commits to the best of its ability, to implement the provisions of this Settlement in a timely manner. Additionally, until the provisions in this Settlement are fully implemented, IDT commits to abiding by the spirit of the Settlement in its marketing and billing practices in the Commonwealth.

49. Compliance Monitoring: IDT shall increase internal quality control efforts to include at least the following:

a. IDT shall record all telephonic communications between Pennsylvania customers and IDT's customer service representatives.

b. IDT shall require its telemarketers to record all communications with residential and small business consumers in Pennsylvania that result in a sale.

c. IDT shall maintain such recordings in accordance with the Commission's requirements.

d. IDT shall implement a provision in its contracts with telemarketers to require the telemarketers to provide recordings of the entire sales presentation to each consumer to IDT within ten business days of the sale.

e. IDT shall, on a monthly basis, review a random sample of calls recorded pursuant to the prior paragraph from each of IDT's agents and third-party contractors in order to evaluate the sales practices employed and ensure that the sales practices comply with this

Settlement Agreement, the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.

1. The sample shall include no fewer than three sales for each sales representative conducting sales solicitations for IDT to Pennsylvania customers.

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

3. 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.

4. If IDT identifies additional non-compliant sales calls, IDT shall implement remedial steps as described in Paragraph 49(e)(7) below.

5. Additionally, IDT shall offer to any residential or small business consumer subjected to the non-compliant sales practices a refund equal to the difference between the price charged by IDT 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 business days.

6. Any substantiated consumer complaint about a IDT sales representative or other information indicating that a IDT sales representative has violated any term of this Settlement Agreement or otherwise engaged in improper sales practices shall trigger

an investigation by IDT into whether any of the other IDT customers enrolled by that sales representative were subjected to sales practices that violated the terms of this Settlement Agreement 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 IDT determines that a sales representative has violated any terms of this Settlement Agreement, the Public Utility Code, the Consumer Protection Law, the TRA, or Commission regulations, Orders and policies or otherwise engaged in improper sales practices, IDT 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 six-month period, suspend the sales representative for a period of no fewer than 3 days; and

iii. For any violations in excess of two within a six-month period, disqualify the sales representative for one week, and for external sales representatives, IDT will have the representative removed from its account.

8. IDT specifically commits, to the best of its ability, to implement the provisions of this Settlement in a timely manner. Additionally, until the provisions in this Settlement are fully implemented, IDT commits to abiding by the spirit of the Settlement in its marketing and billing practices in the Commonwealth.

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

a. An explanation of all internal audits and investigations performed during the reporting period, including a detailed description of the amount of calls reviewed pursuant to Paragraph 49(e) of this Settlement and including a description of the audit(s) or investigation(s) performed as well as the results thereof and

b. The reports, as required by 52 Pa. Code §§ 56.151 and 56.152, of all customer complaints and disputes received by IDT during the reporting period.

51. Customer Service:

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

1. Compliance with 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;

2. Resolution of customer complaints fairly and expeditiously; and

3. 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 Agreement.

b. IDT shall at all times maintain a staff of customer service representatives necessary to:

1. Within normal business hours, provide consumers with reasonably timely access to a “live” customer service representative, whether the consumer seeks such access via telephone and/or e-mail. Reasonably timely access shall mean that the average hold times for consumers calling the Company shall be no more than 10 minutes, and consumer emails shall be answered within 24 hours unless sent on weekends or holidays in which case shall be responded to within 24 hours of the first business day following the weekend or holiday;

2. Provide a timely response to any voice mail messages left on its customer service toll-free number outside of normal business hours, but not, later than 24 hours after the message was left, unless the message is left on a weekend or holiday in which case shall be responded to within 24 hours of the first business day following the weekend or holiday;

3. Provide for the check of its voice mail message system at the beginning of each day’s normal business hours;

4. Use reasonable measures to prevent its voice mail customer service message system from becoming “full” such that consumers cannot leave a voice mail message;  
and

5. Respond to all inquiries made by letter within five business days of receipt of said letter.

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

1. Provide for the answering of overflow calls to IDT’s system by additional customer service staff or temporary services;

2. Provide a detailed description for use by all such staff or temporary services answering calls regarding inputting of the nature of customer calls;

3. 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

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

d. If IDT experiences a period of high call volumes in which it could not and did not comply with the provisions of this Settlement Agreement, IDT shall within 30 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 IDT.

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

52. This Settlement was achieved by the Joint Petitioners after extensive investigation into IDT's marketing and billing practices, including formal and informal discovery and Joint Complainants' service on the ALJs and parties of the direct testimonies of 215 consumers, of which the direct testimonies and related exhibits of 125 consumer witnesses were moved into the record,<sup>6</sup> and the service of the direct testimonies of Joint Complainants' witnesses Ms. Alexander, Dr. Estomin and Ms. Everette and the direct testimony of OAG investigator Heather R. Troutman.

53. The agreed-upon provisions regarding refunds and modifications to business practices in the Settlement will provide reasonable relief for IDT's current and former customers who were affected as alleged in the Joint Complaint.

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<sup>6</sup> Filed contemporaneously with this Joint Petition is Joint Complainants' and IDT's Motion for the Admission of Testimony and Exhibits by Stipulation, wherein they move for the admission into the record of the direct testimonies and exhibits of 80 additional consumer witnesses.

54. Attached to this Settlement as Exhibit A is a Stipulation of Facts in Support of Settlement and Conclusions of Law.

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

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

56. 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.

57. 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 further cross-examination, submit additional 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.

58. 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 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.

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

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

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

Respectfully submitted,

---

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Senior Deputy Attorney General  
PA Attorney I.D. 47313

Margarita Tulman  
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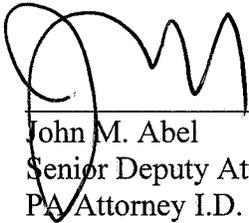
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Counsel for:  
Tanya J. McCloskey  
Acting Consumer Advocate

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

Respectfully submitted,



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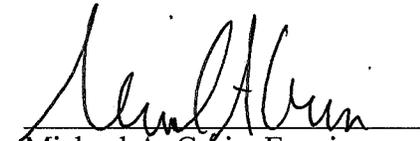
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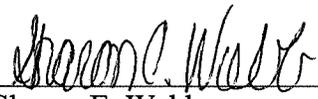
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210862

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Commonwealth of Pennsylvania, by Attorney	:	
General KATHLEEN G. KANE, Through the	:	
Bureau of Consumer Protection,	:	
	:	
And	:	Docket No. C-2014-2427657
	:	
TANYA J. McCLOSKEY, Acting Consumer	:	
Advocate,	:	
	:	
Complainants	:	
	:	
v.	:	
	:	
IDT Energy, Inc.,	:	
	:	
Respondent	:	
	:	

**STIPULATION OF FACTS IN SUPPORT OF SETTLEMENT  
AND CONCLUSIONS OF LAW**

Pursuant to 52 Pa. Code § 5.232(a) and the direction of Administrative Law Judges Elizabeth Barnes and Joel H. Cheskis (ALJs), the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection, and Tanya J. McCloskey, Acting Consumer Advocate, (collectively, Joint Complainants) and IDT Energy, Inc. (IDT or the Company), by their undersigned attorneys, agree and stipulate to the following facts for the sole purpose of supporting the approval of the parties' Joint Petition for Approval of Settlement (Joint Petition or Settlement) in the above-captioned matter by the Pennsylvania Public Utility Commission (Commission).

Joint Complainants and IDT have entered into the Settlement, which they recognize is a compromise of disputed claims. Joint Complainants and IDT also recognize that the Settlement is entered into without admission of wrongdoing or liability by IDT.

PROCEDURAL HISTORY<sup>1</sup>

1. On June 20, 2014, the Joint Complainants filed with the Commission a Formal Complaint against IDT at Docket Number C-2014-2427657 (Joint Complaint).
2. In the Joint Complaint, the Joint Complainants averred that the Company offers variable rate electric generation service to customers in Pennsylvania and that the Company uses a variety of marketing and advertising mediums to solicit customers for its variable rate plans, including door-to-door, telephonic, internet, mass mail, and print solicitations.
3. The Joint Complainants further averred that in early 2014, they received numerous contacts and complaints from consumers related to variable rates charged by IDT and that the OCA had reviewed approximately 47 Formal Complaints filed by consumers against IDT at the Commission.
4. The Joint Complainants included seven separate counts in the Joint Complaint against IDT:
  - A. Count I - Misleading and Deceptive Promises of Savings;
  - B. Count II – Misleading and Deceptive Welcome Letter and Advertisements;
  - C. Count III – Slamming;
  - D. Count IV – Lack of Good Faith Handling of Complaints;
  - E. Count V - Failing to Provide Accurate Pricing Information;
  - F. Count VI - Prices Nonconforming to Disclosure Statement; and

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

G. Count VII - Failure to Comply with the Telemarketer Registration Act.

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

6. On July 10, 2014, IDT filed an Answer with New Matter to the Joint Complaint. In its Answer, IDT admitted or denied the various averments made by the Joint Complainants in the Joint Complaint. In its New Matter, IDT averred various affirmative defenses and averred that high rates experienced by Pennsylvania retail electricity customers during early 2014 were caused by dramatic, unprecedented, and sustained spikes in wholesale electricity prices in the energy markets administered by PJM Interconnection, LLC.

7. On July 30, 2014, Joint Complainants filed their Reply to New Matter specifically denying the viability of IDT's assertions in its New Matter as defenses in this matter.

8. An Initial Prehearing Conference was convened on August 25, 2014. Pursuant to the litigation schedule adopted at the Initial Prehearing Conference, the Joint Complainants preserved the written Consumer Testimony of 215 customers, comprising four volumes and 1068 pages.

9. Hearings for the cross-examination of the consumer witnesses were held on February 17 through 20, 2015, at which time 97 witnesses were cross-examined and the direct testimonies and exhibits of 125 consumer witnesses were admitted into the record along with various cross-examination and redirect exhibits.

10. On April 30, 2015, Joint Complainants served the direct testimonies of Ms. Barbara R. Alexander, Dr. Steven L. Estomin, Ms. Ashley E. Everette, and Ms. Heather M. Troutman (collectively, Non-Consumer Testimonies).

11. Pursuant to the ALJs' directive, Intervenor Anthony Ferrare served his direct testimony on the parties and ALJs on May 27, 2015.

12. Prior to the date for service of IDT's rebuttal testimony pursuant to the litigation schedules in this matter, Joint Complainants and IDT reached a settlement in principle and during a conference call on July 2, 2015, Joint Complainants and IDT advised the ALJs of the Settlement.

13. Pursuant to the Motion for Admission of Testimony and Exhibits and attached Stipulation filed simultaneously with the Joint Petition, Joint Complainants and IDT stipulate to the admission of 80 additional consumer direct testimonies and exhibits into the record in this matter.

**STIPULATION OF FACTS BASED UPON CONSUMER WITNESS  
TESTIMONIES**

14. The consumer testimonies include the witnesses' signed verifications that the facts set forth in their statements were true and correct to the best of their knowledge, information and belief. The statements were verified subject to the penalties of Section 4904 of the Crimes Code, 18 Pa. C.S. §4904, relating to unsworn falsification to authorities. All customers who testified at the evidentiary hearings held February 17-20, 2015 testified under oath.

15. Most of the consumer testimonies contain complaints about IDT's charges for electric generation service provided during the period January through March 2014.

16. Of the 205<sup>2</sup> consumer testimonies moved into the record, approximately 129 of the testimonies included an averment that the IDT sales representatives had guaranteed some level of savings, and the witnesses did not receive those savings.

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<sup>2</sup> This total includes the 125 consumer testimonies and exhibits moved into the record at hearings on February 17-20, 2015, and the additional 80 consumer testimonies that are sought to be moved into the record by

17. Of the 205 consumer testimonies moved into the record, approximately 13 of the testimonies included an averment that an IDT representative switched the consumer's account without obtaining his or her consent.

18. Of the 205 consumer testimonies moved into the record, approximately 72 of the testimonies included an averment that the consumers experienced difficulties when they attempted to contact IDT to complain about their charges or that their complaints were mishandled by IDT.

19. Of the 205 consumer testimonies moved into the record, approximately 22 of the testimonies included an averment that IDT offered little or no relief of the charges about which the consumers complained. Approximately 60 of the testimonies included an acknowledgement that the consumer received a refund amount from IDT.

20. Of the 205 consumer testimonies moved into the record, approximately 63 of the testimonies included an averment that the consumer never received a disclosure statement from IDT.

21. Of the 205 consumer testimonies moved into the record, approximately 44 of the testimonies included an averment that the consumer was confused by IDT's salesperson's explanation of the rate IDT would charge and/or believed IDT would charge a fixed rate.

22. Many consumer witnesses testified that they suffered financial difficulties after receiving IDT's charges. Specifically, approximately 17 of the testimonies included an averment that the consumer received a Shut-Off Notice from his or her EDC after receiving IDT's charges; approximately 48 of the testimonies included an averment that the consumer entered into a

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Motion and Stipulation filed contemporaneously with the Joint Petition. The direct testimony of Intervenor Ferrare is not included in this total.

payment plan or paid off the charges over several months; approximately 16 of the testimonies included an averment that the consumer otherwise had general financial hardships due to IDT's charges; and approximately 2 of the testimonies included an averment that the consumer had to borrow money to pay IDT's charges.

23. Had a Settlement not been reached, IDT was prepared to submit rebuttal testimony and accompanying exhibits which responded to the assertions contained in the consumer testimonies.

**STIPULATION OF FACTS BASED UPON NON-CONSUMER TESTIMONY**

24. On April 30, 2015, in accordance with the procedural schedules in this proceeding, Joint Complainants served the direct testimonies of Barbara R. Alexander,<sup>3</sup> Steven L. Estomin<sup>4</sup> and Ashley E. Everette<sup>5</sup> and the direct testimony of OAG investigator Heather R. Troutman (Non-Consumer Testimony) in support of the Joint Complaint.

25. IDT was prepared to rebut this testimony, and had Settlement not been reached, IDT would have served rebuttal testimony and accompanying exhibits.

26. Had Settlement not been reached and litigation proceeded, Joint Complainants would have served surrebuttal testimonies and exhibits.

27. The parties stipulate that if a Settlement had not been reached, Joint Complainants would have relied on the Non-Consumer Testimonies and exhibits, along with the consumer testimonies and exhibits, to prove the allegations in their Joint Complaint, and IDT would have challenged

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<sup>3</sup> Barbara R. Alexander has been a consumer affairs consultant since 1996, after nearly ten years as the Director of the Consumer Assistance Division of the Maine Public Utilities Commission and three years as the Superintendent of Consumer Credit Protection for the Maine Department of Business Regulation.

<sup>4</sup> Steven L. Estomin is a senior economist and principal of Exeter Associates, Inc. with B.A., M.A. and Ph.D. degrees in economics from the University of Maryland. Dr. Estomin specializes, *inter alia*, in power supply procurement, utility load forecasting, regulatory policy and issues of competition.

<sup>5</sup> Ashley E. Everette is a regulatory analyst at the Office of Consumer Advocate with a Bachelor's degree in economics and a Master's degree in business administration from the University of Illinois.

the accuracy of the statements, opinions and conclusions of Joint Complainants' witnesses through cross-examination, cross-examination exhibits, and rebuttal testimony and otherwise vigorously defended this action.

28. This Stipulation of Facts is not an admission of wrongdoing or liability by IDT.

### **CONCLUSIONS OF LAW**

29. It is well-established that the Commission encourages and promotes settlements. See 52 Pa. Code § 5.231.

30. The benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. See e.g. Pa. PUC v. City of Lancaster – Bureau of Water, Docket No. R-2010-2179103, Order (July 14, 2011).

31. The Commission's Policy Statement at 52 Pa. Code § 69.1201 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. The factors and standards that will be considered by the Commission include the following:

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

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

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

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

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

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

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

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

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

See 52 Pa. Code § 69.1201(b).

32. When applied in settled cases, the Rossi 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.

Respectfully submitted,



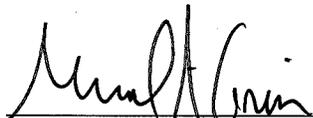
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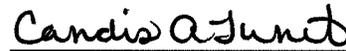
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, by	:	
Attorney General KATHLEEN G. KANE,	:	
Through the Bureau of Consumer Protection,	:	
	:	
And	:	
	:	
TANYA J. McCLOSKEY, Acting Consumer	:	
Advocate,	:	
Complainants	:	
	:	Docket No. C-2014-2427657
v.	:	
	:	
IDT ENERGY, INC.	:	
Respondent	:	

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

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

**I. BACKGROUND**

On June 20, 2014, the OAG and the OCA filed a Joint Complaint at the Pennsylvania Public Utility Commission (Commission) against IDT, pursuant to the Public Utility Code, 66 Pa. C.S.

Ch. 28, the Commission's regulations, 52 Pa. Code Ch. 54, 56 and 111, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (CPL), and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* (TRA). The Joint Complaint includes seven separate counts, as follows: I) misleading and deceptive promises of savings; II) misleading and deceptive welcome letter and advertisements; III) slamming; IV) lack of good faith handling of complaints; V) failing to provide accurate pricing information; VI) prices nonconforming to disclosure statement; and VII) failure to comply with the TRA. With respect to relief, the Joint Complainants request that the Commission find that IDT violated the Public Utility Code, the CPL, the TRA, and the Commission's regulations and orders; provide restitution to IDT's customers; impose a civil penalty; order IDT to make various modifications to its practices and procedures; and revoke or suspend IDT's Electric Generation Supplier (EGS) license, if warranted. The Bureau of Investigation and Enforcement and the Office of Small Business Advocate intervened in this proceeding. Additionally, Anthony Ferrare filed a Petition to Intervene, which was granted by Order dated May 27, 2015.

Pursuant to the litigation schedule adopted at the August 25, 2014 Initial Prehearing Conference in this matter, Joint Complainants timely served Administrative Law Judges Elizabeth Barnes and Joel H. Cheskis (ALJs) and the parties on October 31, 2014 with consumer direct testimony, consisting of testimony in question-and-answer form and exhibits of 215 consumer witnesses and encompassing 4 volumes, totaling 1068 pages. The testimony relates to each consumer's firsthand experience with IDT's marketing, billing and customer service practices. A Further Prehearing Conference to determine the remainder of the litigation schedule for the submission of the testimony of expert and other non-consumer witnesses was held on January 9, 2015. Hearings for the cross-examination of the consumer witnesses were held on

February 17 through 20, 2015, at which time 125 consumer testimonies were admitted into the record. Simultaneously with the Joint Petition, Joint Complainants and IDT also move for the admission of 80 additional consumer direct testimonies and exhibits into the record. On May 27, 2015, Intervenor Ferrare served his Direct Testimony.

On April 30, 2015, in accordance with the Procedural Schedule for serving expert witness testimony, Joint Complainants served the direct testimonies of Ms. Barbara R. Alexander,<sup>1</sup> Dr. Steven L. Estomin,<sup>2</sup> Ms. Ashley E. Everette,<sup>3</sup> and Ms. Heather M. Troutman.<sup>4</sup> Through these expert and non-consumer testimonies, Joint Complainants were prepared to show, *inter alia*:

- IDT's marketing practices, its oversight and training of marketing agents, and Terms of Service and pricing practices were unfair, deceptive and inadequate and did not comply with the Public Utility Code or the Commission's regulations that govern the retail energy market (Alexander Direct Testimony);

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<sup>1</sup> Ms. Alexander is a Consumer Affairs Consultant. She is a graduate of the University of Michigan and the University of Maine School of Law. She has appeared before over 20 U.S. and Canadian regulatory and legislative bodies, provided expert testimony in regulatory proceedings to adopt and enforce consumer protection policies for retail energy markets, and published papers and reports on consumer protection policies and programs that should govern regulated utility and competitive energy supply services for residential customers. She has appeared before the Commission on behalf of the OCA in numerous proceedings since 1998 relating to the implementation of retail electric and natural gas competition, consumer protection regulations applicable to retail electric suppliers, default service policies, retail market enhancement programs, and in utility rate cases relating to customer service and reliability of service performance.

<sup>2</sup> Dr. Estomin is a Senior Economist and Principal with Exeter Associates, Inc. Dr. Estomin holds B.A., M.A., and Ph.D. degrees in economics from the University of Maryland. He has been employed in the area of energy, utility, and telecommunications consulting for the past 34 years, working on a wide range of issues. Most of his work has focused on electric utility integrated planning, load forecasting, environmental issues, power supply procurement and market-related issues, and renewable energy issues. Dr. Estomin has provided expert witness testimony in more than 35 regulated proceedings in various jurisdictions. His testimony has addressed a variety of subjects including resource planning, load forecasting, competitive restructuring, rate design, weather normalization, statistical analysis, default service supply procurement, and other issues.

<sup>3</sup> Ms. Everette is employed as a Regulatory Analyst by the Pennsylvania Office of Consumer Advocate. She has a Master's degree in Business Administration and a Bachelor's degree in Economics from the University of Illinois. At the OCA, Ms. Everette's responsibilities include, *inter alia*, reviewing utility company filings with the Pennsylvania Public Utility Commission and analyzing the financial, economic, rate of return, and policy issues that are relevant to the filings.

<sup>4</sup> Ms. Troutman is a Consumer Protection Agent in the Pennsylvania Office of Attorney General's Bureau of Consumer Protection. Her job duties include mediating thousands of consumer complaints, conducting investigations under the supervision of an attorney, and assisting in litigation as necessary.

- IDT's responses to its customers' complaints and contacts regarding IDT's high variable prices charged in early 2014 were insufficient and discriminatory with respect to rebates and credits issued to affected customers (Alexander Direct Testimony);
- IDT's rates for its residential and small commercial variable rate customers in Pennsylvania could not be meaningfully tied to PJM market costs during January through March, 2014, as is stated in IDT's Terms of Service (Estomin Direct Testimony);
- An analysis of the billing summaries of the consumer witnesses whose testimonies were served by Joint Complainants shows that these customers of IDT consistently paid more than the Price to Compare (PTC). While a very small portion of customers saved approximately 5% by switching to IDT, the vast majority of customers paid 15% to 34% more than the PTC as a result of switching to IDT (Everette Direct Testimony);
- The OAG received and reviewed 1,913 consumer complaints against IDT from February 24, 2014 through June 4, 2014 (Troutman Direct Testimony);
- The consumer complaints were received from different geographic regions in Pennsylvania (Troutman Direct Testimony); and
- The consumers identified similar areas of concern regarding IDT's marketing and billing activities in their complaints filed with OAG (Troutman Direct Testimony).

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, Joint Petitioners engaged in settlement discussions. Joint Petitioners reached a settlement prior to IDT serving rebuttal testimony. The Joint Petition addresses the numerous complex issues raised in this case and applies to residential and small business customers. The Joint Complainants submit that the terms and conditions of the Joint Petition satisfactorily address the broad range of issues raised in the Joint Complaint. Joint Complainants submit that the provisions of the Joint Petition, taken as a whole, constitute a reasonable compromise of the complex issues presented in the Joint Complaint. In this Statement in Support, Joint Complainants address those areas of the Settlement that specifically relate to the most salient issues and submit that the Joint Petition is in the public interest and in the interests of past, present, and future IDT customers. Additionally, the Settlement supports the continued

development of the retail choice market in Pennsylvania. Joint Complainants request that Commission approve the Joint Petition without modification.

## II. SETTLEMENT TERMS

### A. Introduction.

Joint Complainants submit that this Joint Petition results from compromises of the factual allegations in the Joint Complaint, which the Joint Complainants intended to prove and which the Company has disputed. Although the Joint Complainants and the Company may disagree with respect to the allegations regarding the conduct of the Company's employees and agents, all acknowledge the importance of the matters at issue to Pennsylvania consumers and to the retail market. Full and accurate information and disclosures to consumers, as well as fair and transparent marketing and billing practices, are of paramount importance both to consumer protections and the continued development of a retail choice market. The Joint Complainants recognize that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of continued litigation. Joint Complainants submit that the Settlement is comprehensive, appropriate and reasonable under the circumstances and in the public interest. As such, Joint Complainants respectfully request that the Commission approve the Settlement on an expedited basis and without modification.

### B. Refunds, Penalty and Contribution to Electric Distribution Companies' (EDCs) Hardship Funds. (Joint Petition at ¶¶ 38-43)

As alleged in the Joint Complaint, on or about February 10, 2014, the OCA began receiving a high volume of calls and written correspondence from residential consumers on variable rate plans with EGSs regarding the level of electric generation charges on the consumers' electric bills. Joint Complaint at ¶ 15. As of May 5, 2014, the OCA had collected

information from approximately 2,434 consumer contacts, and of those, approximately 539 or 22% were from customers of IDT. Joint Complaint at ¶¶ 16-17. Further, from February 27, 2014 to June 4, 2014, OAG received approximately 39,607 telephone calls and 7,503 consumer complaints related to variable rates charged by EGSs. Of the 7,503 consumer complaints received by BCP, 1,917 or approximately 26% were against IDT. Joint Complaint at ¶ 18.

In Count I of the Joint Complaint, Joint Complainants alleged that IDT's salespeople provided misleading and deceptive promises of savings to consumers in order to gain their business. See Joint Complaint at Count I. Specifically, Joint Complainants alleged that IDT's salespeople promised guaranteed savings over the PTC as inducement for consumers to switch to IDT. Joint Complaint at ¶¶ 24-25. Joint Complainants alleged that IDT then charged customers prices that were at least two or three times the PTC and as high as \$0.34 per kWh for electricity. Joint Complaint at ¶¶ 24-25, 64. Also as alleged in the Joint Complaint, IDT is responsible for any fraudulent, deceptive or other unlawful marketing acts by its employees, agents and representatives pursuant to 52 Pa. Code § 54.43(f). See Joint Complaint at ¶ 27. Joint Complainants further alleged that IDT's salespeople represented to the consumers that they were required to switch from their EDC to an alternative supplier and used this deception to induce the consumers to switch to IDT. See Joint Complaint at ¶¶ 25-26. Also, Joint Complainants alleged that IDT's salespeople engaged in activities that are fraudulent and deceptive by promising savings that may not, and for many consumers did not, materialize in violation of the Commission's regulations at 52 Pa. Code §§ 54.43(f) and 111.12(d)(1). See Joint Complaint at ¶¶ 27, 30, and 32. Joint Complainants also alleged that IDT failed to adequately train and monitor its agents, as required by the Commission's regulations in violation of 52 Pa. Code §§ 111.4 and 111.5. See Joint Complaint at ¶ 33.

In Count II of the Joint Complaint, Joint Complainants alleged that IDT's claims in its Welcome Letters to customers and advertising documents represent benefits of services that IDT did not provide to its customers and EDC sponsorship that IDT does not have in violation of 52 Pa. Code §§ 54.43(f) and 111.12(d)(1). See Joint Complaint at ¶¶ 36-38. Joint Complainants further alleged that IDT's Welcome Letters and advertising documents were and are deceptive and create a likelihood of confusion and misunderstanding for IDT's customers. See Joint Complaint at ¶ 39.

In Count V of the Joint Complaint, Joint Complainants alleged that the Company failed to provide accurate price information to customers in violation of 52 Pa. Code §§ 54.43(1), 54.43(f), and 111.12(d)(1). See Joint Complaint at ¶¶ 55-57, 60. Joint Complainants further averred that IDT failed to provide accurate pricing information to its customers in a manner that would allow them to compare offers. See Joint Complaint at ¶ 62. Also, Joint Complainants alleged that IDT's consumers could not determine from the Disclosure Statement the price that they would or could be charged by IDT and how that price would be calculated. See Joint Complaint at ¶ 61. IDT's Disclosure Statement states:

**Basic Services Prices** – Respondent offers a variable price for all electric generation sold under this Agreement. The price for electric generation sold is established on an approximately monthly basis based upon electric generation market pricing as furnished by PJM clearing house, transportation or transmission, and other market and business price related factors. This price may be higher or lower than the EDC's price in any particular month. There is no ceiling price. Electric generation supply charges include estimated total state taxes. Respondent will comply with all required laws regarding sales tax and will include or exclude the appropriate sales taxes in each jurisdiction served, if any, as required by the Pennsylvania Department of Revenue for all Electric generation supply charges. Customers can call Respondent's Customer Service Dept. at 877-887-6866 for current variable pricing rates.

Joint Complaint at ¶ 53 and App. B.

As alleged in Count VI of the Joint Complaint, upon information and belief, IDT's prices charged to consumers in early 2014 were not reflective of the cost to serve residential customers, as IDT charged some of its variable rate customers prices at least as high as \$0.34 per kWh for electricity. Joint Complaint at ¶¶ 64-65 and App. C.

Joint Complainants contend that they would have proven these allegations through the testimony and accompanying exhibits of customer and expert witnesses. By way of relief, Joint Complainants requested, *inter alia*, that the Commission impose a civil penalty and direct IDT to provide appropriate restitution. Joint Complaint at ¶¶ B, C.

Pursuant to the partial litigation schedule adopted in this proceeding at the Initial Prehearing Conference, Joint Complainants served the direct testimony of 215 consumer witnesses, 205 of which were admitted into the record.<sup>5</sup> Most of the consumer witnesses challenged IDT's charges for January, February or March 2014. See Joint Petition at Exh. A, ¶ 15. Of the 205 consumer testimonies moved into the record, approximately 129 of the testimonies included an averment that the IDT sales representatives had guaranteed some level of savings, and the witnesses did not receive those savings. See Joint Petition at Exh. A, ¶ 16. For example, when asked to describe the sales contacts that she had with IDT's sales representative when she signed up for the service, Ms. Betty Fowler testified, "They were going to save me half on my electr[ic]." See Consumer Testimony of Betty Fowler at 50. She further testified, "They said I [was] guarantee[d] a big savings." Id. at 51. Yet, despite these promises, Ms. Fowler testified that she received, "[h]igh [b]ills in Jan. [and] Feb. 2014." Id. at 50. Mr. Steven Faude also testified, "I.D.T. Energy signed me on by door-to-door [marketing] with teaser rates on the

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<sup>5</sup> This total includes the 125 consumer testimonies and exhibits moved into the record at hearings on February 17-20, 2015, and the additional 80 consumer testimonies that are sought to be moved into the record by Motion and Stipulation filed contemporaneously with the Joint Petition. The direct testimony of Intervenor Ferrare is not included in this total.

promise of lower electrical usage pricing. By March 2014, I owed a lot of money for electricity. See Consumer Testimony of Steven Faude at 9. Mr. Faude further testified that he never received the promised savings. See id. at 9. Ms. Marilyn Wuebker also testified that IDT said that its price would “always be less than PPL’s charges.” See Consumer Testimony of Marilyn Wuebker at 491. Yet, Ms. Wuebker testified that her bill “jumped from around \$300 a month (which was high) to \$537 in Jan. [and] \$824 in Feb.” Id. at 490.

Additionally, of the 205 consumer testimonies moved into the record, approximately 13 of the testimonies included an averment that an IDT representative switched the consumer’s account without obtaining his or her consent. Id. at 17. For example, Ms. Angel Burd testified, “I only spoke with [IDT]. I never agreed to have them on my bill. I told them, yes, it sounded like a good idea. Save money, obviously that’s always a good idea. But I wanted to know what the fine print was. They were supposed to send me some documents to look over and read and sign and send back if interested, and they never sent me anything. So I never realized that they were on my bill.” See Transcript at 509-510; see also Consumer Testimony of Angel Burd at 1001. Ms. Holly Dixon also testified, “Somehow we got switched from Penelec to IDT. We never signed anything for this ... We never signed up for any services.” See Consumer Testimony of Joshua & Holly Dixon at 741.

In the Settlement, IDT has agreed to provide refunds of at least \$6,577,000 (Refund Pool). Joint Petition at ¶ 38. Of the total sum, IDT has already voluntarily provided \$4,177,000 in cash refunds directly to customers. Id. Refunds will be provided to all customers in these groups that were on variable rate plans in January, February or March 2014 based on the individual customer’s usage, price charged, refund amounts already received directly from IDT. Joint Petition at ¶ 38(a). The refund determinations will be designed so as to fully utilize the

Refund Pool after accounting for any administration fees not otherwise paid by IDT pursuant to this Settlement. Id. Additionally, the Joint Petition provides that IDT will honor all commitments to customers enrolled in IDT's promotional programs who meet the eligibility requirements whether or not the customer has received a refund. Joint Petition at ¶ 38(b).

The Joint Complainants will retain a third-party Administrator to administer the distribution of refunds. Joint Petition at ¶ 39(a). The first \$75,000 of costs and expenses of the Administrator of the Refund Pool will be paid by IDT and any costs and expenses exceeding \$75,000 will be paid out of the Refund Pool. Id. The Company will deposit the full amount of the Refund Pool within five days of Joint Complainants identifying to IDT the Administrator retained. Joint Petition at ¶ 39(b). IDT will fully and timely cooperate with Joint Complainants and the Administrator by providing all customer information necessary to calculate each customer's refund amount. Joint Petition at ¶ 39(c). The Settlement Administrator will use best efforts to distribute funds from the Refund Pool within 180 days of the Commission's final order and will provide monthly reports of funds distributed to Joint Complainants, IDT and designated Commission staff. Joint Petition at ¶ 39(d).

IDT will also provide an additional refund method to customers enrolled with the Company prior to the date of this Settlement that do not receive or accept an offer of funds from the Refund Pool. Joint Petition at ¶ 40. Customers may contact the Company directly with complaints and requests for refunds, and IDT shall use its best efforts to negotiate an agreement pursuant to which the customer will agree to accept a refund in exchange for a release of any claims or causes of action the customer may have against the Company. Joint Petition at ¶ 40(a)-(c). IDT will provide quarterly reports to Joint Complainants and designated Commission staff

for one year after the Commission's final order setting forth the names of complainants, the general nature of the complaints, and the disposition thereof. Joint Petition at ¶ 40(e).

Additionally, the Joint Petition provides that IDT shall pay a civil penalty in the amount of \$25,000 and make a total contribution of \$75,000 to the EDCs' hardship funds in proportion to the number of IDT customers in the EDC's territory to the total amount of IDT customers in Pennsylvania as of January 1, 2014. See Joint Petition at ¶¶ 42-43. For the reasons discussed below, Joint Complainants submit that the refund, civil penalty, and contribution amounts are appropriate, especially in light of the other terms and conditions outlined in the Joint Petition.

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

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

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

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

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

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

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

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

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

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

See 52 Pa. Code § 69.1201(b).

With regard to the first Rossi Factor, Joint Complainants submit that the allegations, *inter alia*, that IDT did not provide the savings or benefits promised to customers by its salespeople; IDT's claims in its Welcome Letters and advertising documents were deceptive and created a likelihood of confusion and misunderstanding for IDT's customers; IDT failed to provide accurate rate information; and IDT's prices charged in early 2014 did not conform to its variable rate pricing provision in its Disclosure Statement are of a serious nature. See 52 Pa. Code § 69.1201(c)(1). This Commission has made it clear that it will not tolerate unlawful activity that

threatens to harm Pennsylvania's consumers and thereby the burgeoning retail electricity market in Pennsylvania. See Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff v. MXenergy Electric Inc., Docket No. M-2012-2201861, Order at 5 (May 3, 2012). "When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty." See 52 Pa. Code § 69.1201(c)(1).

With regard to the second Rossi Factor, Joint Complainants submit that the resulting consequences of IDT'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). Many consumer witnesses testified that they suffered financial difficulties after receiving IDT's charges. See Joint Petition at Exh. A, ¶ 22. Specifically, approximately 17 of the testimonies included an averment that the consumer received a Shut-Off Notice from his or her EDC after receiving IDT's charges. Id. For example Ms. Teresa Hagg testified, "My electric provider sent a shut off notice, and I was forced to pay." See Consumer Testimony of Teresa Hagg at 173.

Additionally, approximately 48 of the testimonies included an averment that the consumer entered into a payment plan or paid off the charges over several months. See Joint Petition at Exh. A, ¶ 22. For example, Ms. Jennifer Baker testified, "I had to call West Penn Power [and] make payment arrangements to pay the bills [and] I'm still paying on these bills now." See Consumer Testimony of Jennifer Baker at 791. Additionally, Mr. Larry Irvin testified, "I contacted Penelec and told them I could not pay [my] Jan. - Feb. 2014 bill. They put me on a payment schedule which I am still paying." See Consumer Testimony of Larry Irvin at 911.

Moreover, approximately 16 of the testimonies included an averment that the consumer otherwise had general financial hardships due to IDT's charges. See Joint Petition at Exh. A, ¶ 22. For example, Ms. Lisa Wilson testified, "Paid my bill. We struggled but we paid it." See Consumer Testimony of Lisa Wilson at 1051.

Approximately 2 of the testimonies included an averment that the consumer had to borrow money to pay IDT's charges. See Joint Petition at Exh. A, ¶ 22. See Joint Petition at Exh. A, ¶ 22. For example, Ms. Mary McGuire testified, "I had to borrow money to pay this \$100 bill so I would not be removed from CAP program. I am on SSI so could not afford this at all!" See Consumer Testimony of Mary McGuire at 1039. Additionally, Ms. Mary Jo Bulisco testified, "Well, I've had to get 3 loans to pay these bills." See Consumer Testimony of Mary Jo Bulisco at 600. (Emphasis in original).

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

\$25,000 is the appropriate civil penalty amount, in light of the other comprehensive relief provided in the Joint Petition.

The fourth Rossi Factor<sup>6</sup> is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Prior to the Settlement, IDT voluntarily provided \$4,177,000 in cash refunds directly to customers. The Settlement provides for additional refunds to IDT's customers that were allegedly affected by the violations asserted in the Joint Complaint. Thus, Joint Complainants submit that the refunds and contributions to EDCs' hardship funds are reasonable, appropriate, and in the public interest. Additionally, as detailed *infra*, IDT has also agreed to injunctive relief that will result in modifications to its business practices, and Joint Complainants submit that these modifications will help to prevent the conduct alleged in the Joint Complaint from occurring in the future.

The fifth Rossi Factor is the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). Joint Complainants alleged that as of May 5, 2014, the OCA had received approximately 539 contacts from IDT customers regarding variable rates, and as of June 4, 2014, BCP had received approximately 1,917 contacts from IDT customers regarding variable rates. See Joint Complaint at ¶¶ 17-18; see also Joint Petition at Exh. A, ¶ 3. 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 47 or 23% were filed against IDT. 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

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<sup>6</sup> Joint Complainants submit that the third Rossi Factor pertains only to the evaluation of litigated cases, and therefore, it does not apply to this Settlement. See 69 Pa. Code § 1201(c)(3).

LEXIS 55, \*9-10 (March 19, 1999). Hence, Joint Complainants submit that the majority, if not all, of IDT's customers on variable rate plans in early 2014 were affected by IDT's alleged actions. Joint Complainants submit that the number of customers who were impacted by the Company's conduct as alleged in the Joint Complaint is significant. Accordingly, Joint Complainants submit that the refunds, the \$25,000 civil penalty, and the \$75,000 contribution to the EDCs' hardship funds are reasonable and in the public interest when considered along with the injunctive relief outlined in the Joint Petition.

The sixth Rossi Factor is the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). "An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty." *Id.* Joint Complainants submit that the Company's compliance history poses no barrier to approval of the proposed Settlement. Additionally, as discussed in Section C, *infra*, Joint Complainants submit that the injunctive terms of the Settlement will help to ensure compliance with regulatory standards.

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

The eighth Rossi Factor is the amount of the civil penalty necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). Joint Complainants submit that the Settlement comprehensively addresses their allegations in the Joint Complaint. The civil penalty along with the contributions to the EDCs' hardship funds, the refunds to customers and the injunctive relief

in the form of modifications to IDT's business practices outlined in the Settlement are sufficient to deter similar future conduct.

The ninth Rossi Factor is past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). Joint Complainants submit that the scope of the conduct complained of in this proceeding is unique and unlike other complaint proceedings against EGSs that this Commission has decided. This Commission, however, has approved settlements involving EGSs that involve refunds, civil penalties and injunctive relief. See e.g. Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Energy Services Provider, Inc. d/b/a Pennsylvania Gas & Electric And U.S. Gas & Electric, Inc. d/b/a Pennsylvania Gas & Electric, Docket No. M-2013-2325122, Order (Oct. 2, 2014) (The Commission approved a Settlement that required PaG&E to pay a civil penalty, refunds to its customers affected by the conduct complained of, and implement revisions to its operating procedures); see also Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. IDT Energy, Inc., Docket No. 2013-2314312, Opinion and Order (entered October 17, 2013) (The Commission approved a Settlement that required IDT to make modifications to its practices relating to its training and supervision of its sales agents and handling of customer complaints). Joint Complainants submit that the Settlement is comprehensive *vis a vis* the allegations in the Joint Complaint and is therefore, reasonable and in the public interest.

The tenth Rossi Factor to consider is other "relevant factors." 52 Pa. Code § 69.1201(c)(10). Joint Complainants submit that it has been over a year since IDT's alleged actions and omissions bringing rise to the Joint Complaint. Pursuant to the remaining litigation schedule adopted at the Further Prehearing Conference, 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 IDT's customers will receive refunds, and the customers will receive them much sooner. Additionally, the Settlement saves costs and resources of the parties and Commission.

Joint Complainants submit that based on the foregoing Rossi Factor analysis, the refund, civil penalty, and contribution to EDCs' hardship funds provisions in the Settlement are reasonable and in the public interest. The refunds that IDT provided directly to customers combined with the Refund Pool will help restore the financial losses incurred by IDT's consumers that were alleged to have been charged extraordinarily high prices in early 2014. Additionally, IDT will provide an additional refund method for customers that are not offered or do not accept a refund from the Net Refund Pool. The Settlement will provide refunds to customers and do so sooner than a fully litigated proceeding. The civil penalty is appropriate to deter similar future conduct, and the contribution to EDCs' hardship funds will assist customers in need with payment of their electric bills. Further, Joint Complainants submit that the robust injunctive relief in the Settlement, discussed *infra*, will help protect IDT's current and future customers and will better inform customers of the products and services provided by IDT.

**C. Modifications to Business Practices. (Joint Petition at ¶¶ 44-51)**

As stated above, the Joint Complaint includes seven separate counts, as follows: I) misleading and deceptive promises of savings; II) misleading and deceptive welcome letter and advertisements; III) slamming; IV) lack of good faith handling of complaints; V) failing to provide accurate pricing information; VI) prices nonconforming to disclosure statement; and VII) failure to comply with the TRA.

In support of the allegations in the Joint Complaint, Joint Complainants served the written, direct testimony of 215 customer witnesses, 205 of which were admitted into the record. As stated above, of the 205 consumer testimonies moved into the record, approximately 13 of the testimonies included an averment that an IDT representative switched the consumer's account without obtaining his or her consent. See Joint Petition at Exh. A, ¶ 17. Of the 205 consumer testimonies moved into the record, approximately 72 of the testimonies included an averment that the consumers experienced difficulties when they attempted to contact IDT to complain about their charges or that their complaints were mishandled by IDT. Id. at ¶ 18. For example, Ms. Patricia Wyland testified, "When I told them I didn't want them any more they hung up on me." See Consumer Testimony of Patricia Wyland at 121. Furthermore, Mr. Matthew Fiasco testified, "I was not able to contact IDT. After 2 weeks of trying I contacted the Atty-Gen office." See Consumer Testimony of Matthew W. Fiasco at 207. Mr. Kenneth Brown also testified, "And I contacted them several times and no phone call back, something was wrong, as a business what would be [their] reason for not calling me back for 3 months?" See Consumer Testimony of Kenneth Brown at 920. Additionally, Ms. April Ferguson testified, "I called daily for 11 days (straight). I also sent an email. No response from email and 'All circuits busy' for every phone call. I put phone on speaker for 30+ min at a time with no one ever answering." See Consumer Testimony of April Ferguson at 609.

Furthermore, of the 205 consumer testimonies moved into the record, approximately 63 of the testimonies included an averment that the consumer never received a disclosure statement from IDT. See Joint Petition at Exh. A, ¶ 20. For example, regarding the Disclosure Statement, Mr. Steven Smith testified, "never received paper copy[;] had to say yes to terms over phone." See Consumer Testimony of Steven Smith at 84. Additionally, Ms. Joy Coleman testified, "Did

not receive [the Disclosure Statement] although told I would receive a package – This never arrived.” See Consumer Testimony of Joy Coleman at 525. Mr. Jerry Hafner also testified “We got no disclosure until we got the extremely high bill.” See Consumer Testimony of Jerry Hafner at 782 (switched in 2012).

Additionally, of the 205 consumer testimonies moved into the record, approximately 44 of the testimonies included an averment that the consumer was confused by IDT’s salesperson’s explanation of the rate IDT would charge and/or believed IDT would charge a fixed rate. See Joint Petition at Exh. A, ¶ 21. For example, Mr. Dean Bankert testified, “We were giv[en] a promised rate of \$0.1019. That it would be set for a year.” See Consumer Testimony of Dean Bankert at 660-61. Additionally, Ms. Geneva Davis testified, “The EGS salesperson “said this would put extra money in my pocket every month. I would be locked into this KW amount.” See Consumer Testimony of Geneva Davis at 249.

The Settlement includes comprehensive injunctive relief that requires IDT to implement various modifications to its business practices to address the allegations in the Joint Complaint. See Joint Petition at ¶¶ 44-51. Specifically, the required modifications to business practices are as follows:

- Product offering: IDT will offer only fixed rate products of at least six-month durations for twenty-one months beginning on a date mutually agreeable to IDT and the Joint Complainants, but no later than 10 days following the final approval of this Settlement. See Joint Petition at ¶ 44(a). Further, IDT will not charge customers cancellation or termination fees for variable rate products when such products are offered in accordance with the Product Offering provision of the Settlement. See Joint Petition at ¶ 44(b).

- Marketing: IDT specifically commits to complying with all Pennsylvania laws and Commission regulations, Orders and policies. See Joint Petition at ¶ 45(a). Further, IDT commits that the Company and its agents, employees and representatives shall not make misrepresentations to residential or small business customers. See Joint Petition at ¶ 45(b). To that end, the Settlement provides specific restrictions regarding representations to consumers about savings as compared to an applicable PTC; use of the terms “risk free,” “competitive,” “guaranteed,” “trial period,” “introductory rate,” and “special programs;” and representations about the PTC being a variable rate or how an EDC purchases electricity. See Joint Petition at ¶¶ 45(c)-(g). Additionally, IDT 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 or a person purporting to be authorized to act on behalf of the Customer of Record. See Joint Petition at ¶ 45(h). The Settlement also imposes requirements regarding IDT’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 IDT, his or her electric bill will contain IDT’s charges for generation as well as delivery charges from his or her electricity; and for variable rates, when permitted under the Settlement, that the price the customer will pay under the variable rate contract can change at any time and there is no limit on how high the price can go; and if IDT makes a representation to a consumer that they may cancel their contract at any time, IDT must state that it may take several days to switch suppliers. See Joint Petition at ¶¶ 45(i)-(l). The Settlement also contains requirements for the contents of IDT’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 ¶¶ 45(n)-(r). Finally, the Settlement contains specific requirements regarding IDT's advertising to consumers. See Joint Petition at ¶¶ 45(s)-(t).

- Third party verifications (TPVs): The Settlement contains specific requirements for IDT'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 ¶¶ 46(a)-(b). Further, the Settlement requires that all TPVs be performed outside the presence of the IDT 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 ¶ 46(c). Finally, the Settlement prohibits IDT salespeople from prompting consumers' responses to TPV questions or instructing consumers in the manner in which to answer TPV questions. See Joint Petition at ¶ 46(d)
- Disclosure statement: Specifically with regard to IDT's Disclosure Statement, the Settlement requires that within ten days of the Commission's final order, the Company provide to BCP and OCA its current Disclosure Statement and Schumer Box drafted pursuant to the Commission's Final-Omitted Rulemaking and provide any subsequently amended Disclosure Statements to the OCA and the Commission for a period of five years. See Joint Petition at 47-47(a). Further, the Company will include specific language in its Disclosure Statement and if possible, Schumer Box regarding IDT's variable rate products and cancellation/early termination fees. See Joint Petition at ¶ 47(b). The Settlement also provides for specific restrictions if IDT represents to consumers in the Company's variable rate programs that the price IDT

- will charge will be “market-based” or set on “market conditions.” See Joint Petition at ¶ 47(c). Finally, the Settlement requires IDT to notify its current customers on variable rate programs about the availability of a fixed rate with IDT and direct the customers to review IDT’s updated Disclosure Statement. See Joint Petition at ¶ 47(d).
- Training: The Settlement requires that IDT implement a new training program for its sales and customer service representatives and provide a description of the new training plan to BCP, OCA and the Commission within 60 days of the Commission’s final order and then meet with BCP, OCA and designated Commission staff to review and discuss the training. See Joint Petition at ¶¶ 48(a)-(b). The Settlement requires IDT’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, Order and policies and specifically cover requirements related to door-to-door sales. See Joint Petition at ¶ 48(c). The new training program must also warn IDT’s sales and customer service representatives that deceptive sales practices will not be tolerated IDT’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 ¶ 48(c)(4)-(5). The Settlement requires that IDT implement the provisions of the Settlement in a timely manner, provide initial training of its sales and customer service representatives in the new training program and subsequent refresher training on at least a quarterly basis and require individual marketers to successfully complete the training program. See Joint Petition at ¶¶ 48(d)-(g).

- Compliance monitoring: The Settlement contains requirements regarding the recording and reviewing of communications with customers. See Joint Petition at ¶¶ 49(a)-(e). The Settlement also contains requirements regarding IDT's investigation into non-complaint sales calls or substantiated consumer complaints about IDT sales representatives and IDT's remedial action for identified non-compliant sales calls or violations of the Settlement, Pennsylvania laws or Commission regulations, Orders or policies. See Joint Petition at ¶¶ 49(e)(6)-(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 five years, IDT 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 ¶¶ 50-50(b).
- Customer service: The Settlement requires that IDT to 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 ¶ 51(a). IDT 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 ¶ 51(b). Additionally, the Settlement requires IDT 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 ¶ 5(c). If IDT experiences a period of high

call volumes in which it does not comply with the provisions of the Joint Petition, IDT will provide a report to the Commission and the Joint Complainants. Joint Petition at ¶ (d).

Joint Complainants submit that IDT's agreement to refrain from selling variable rate products in Pennsylvania for a period of 21 months is appropriate, reasonable, and in the public interest. This provision of the Settlement will help to deter similar conduct as alleged in the Joint Complaint from occurring in the future. Additionally, this moratorium will give IDT the opportunity to implement the necessary modifications to its business practices as well as the training, as outlined in the Settlement, should the Company determine to resume selling variable rate products.

Additionally, Joint Complainants submit that the modifications to IDT's marketing practices and Disclosure Statement are designed to provide accurate information to customers in a clear, direct and understandable manner. For instance, modifications to IDT'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 IDT's agents, employees and representatives and in the Company's Disclosure Statement.

Joint Complainants also submit that the modifications to IDT'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 IDT'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 IDT offers, which will lead to a better understanding by customers of the products that IDT offers.

The compliance monitoring requirements of the Settlement are designed to ensure that IDT comprehensively monitors its Pennsylvania sales agents and that IDT 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 IDT's compliance with the Settlement, Pennsylvania law and Commission regulations, Orders and policies.

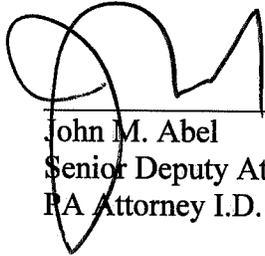
The customer service requirements in the Settlement are designed to ensure that IDT's customers receive prompt access to IDT's customer service representatives and prompt and accurate replies to inquiries. Further, the customer service requirements in the Settlement are designed to ensure IDT's compliance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

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

### III. CONCLUSION

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

Respectfully submitted,



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Commonwealth of Pennsylvania, by Attorney  
General KATHLEEN G. KANE, Through the  
Bureau of Consumer Protection,  
and  
TANYA J. McCloskey, Acting Consumer  
Advocate,

Complainants,

v.

IDT ENERGY, INC.,

Respondent

Docket No. C-2014- 2427657

**STATEMENT IN SUPPORT OF SETTLEMENT OF IDT ENERGY, INC.**

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, Respondent, IDT Energy, Inc. (“IDT” or the “Company”), by its undersigned attorneys, submits this statement in support of the Settlement Agreement which is being filed in the above-captioned matter (the “Settlement”). For the reasons set forth below, the Settlement is reasonable and in the public interest, and should be approved by the Pennsylvania Public Utility Commission (“Commission”).

**I. INTRODUCTION**

This Settlement provides for a fair, reasonable and expeditious resolution of a very complicated and highly contested proceeding that stemmed from the well-publicized electricity generation supply rate increases during the “Polar Vortex” crisis of early 2014. As explained in IDT’s Answer and New Matter, the high rates experienced by Pennsylvania retail electricity customers during early 2014 were caused by dramatic, unprecedented, and sustained spikes in

wholesale electricity prices in the energy markets administered by PJM Interconnection, LLC (“PJM”).<sup>1</sup>

During the periods up to and including the Polar Vortex, IDT provided its Pennsylvania customers with electricity generation supply solely at a variable rate with no long-term contracts, no deposits, and no termination fees. To serve the load of its customers, IDT procured wholesale electricity from the PJM marketplace.<sup>2</sup> All of IDT’s customer enrollments that resulted from a telemarketing call or a door-to-door solicitation were verified by a strict Third-Party Verification (“TPV”) process, administered by an independent company and in compliance with 52 Pa. Code § 111.7.<sup>3</sup> All newly enrolled customers were mailed a copy of IDT’s Pennsylvania Disclosure Statement, which clearly and unequivocally stated that customers would be charged a market-based variable rate for electricity generation supply, that the rate may be higher or lower than the EDC’s rate in any given month, and that the price has no ceiling.<sup>4</sup> IDT’s Disclosure Statement also made it clear that customers could terminate their enrollment at any time, with no cancellation fee.

Throughout its history, IDT’s retail prices have always been based on the wholesale PJM market prices, and IDT’s disclosure statement specifically referenced the PJM clearing-house as the primary market factor that determined its price. IDT is able to document that prior to the Polar Vortex, its variable-price offerings and accompanying cash-back promotions provided tens of thousands of customers with real savings compared to utility prices-to-compare.

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<sup>1</sup> IDT New Matter, at ¶ 2.

<sup>2</sup> IDT New Matter, at ¶ 13.

<sup>3</sup> IDT New Matter at ¶ 16.

<sup>4</sup> IDT New Matter, at ¶ 14. IDT’s records reflect that every one of the 208 consumer witnesses in this case was mailed a welcome packet that contained IDT’s written disclosure statement, via First-Class U.S. Mail. According to IDT’s records, only 3 customers’ welcome packets were returned as undeliverable, following which corrections were made and the welcome packets were re-mailed. None of the other 205 welcome packets were returned by the Postal Service.

Unfortunately, during the Polar Vortex months, those PJM market prices spiked dramatically, and the retail prices paid by customers on variable rates with many suppliers escalated as well. No one in the industry – including suppliers, utilities and regulators - could have foreseen the unprecedented and anomalous wholesale electricity prices spikes that occurred in early 2014 in the PJM territories. But all stakeholders learned valuable lessons from the Polar Vortex, and many of those lessons are reflected in the voluntary business modifications that IDT has agreed to undertake under the Settlement.

It has been widely acknowledged that in early 2014, wholesale prices for hourly energy supply in the day ahead, and particularly the real time markets, increased exponentially in response to a combination of sustained cold weather. New records were set for winter electricity use in Pennsylvania and throughout the service area of PJM. During this period, PJM recorded 8 of the top 10 highest hourly usage periods ever observed. This high demand, in combination with particularly high forced outage rates for a number of generators, produced record high costs in the PJM-administered energy markets.”<sup>5</sup> It has also been acknowledged that high bills received by customers in January and February 2014 appear to reflect the wholesale energy market volatility resulting from the very cold weather that the region endured over those two months. The cold weather contributed to and increased, on some days, record-breaking use of natural gas and electricity in the region. As consumer usage spiked on these days, so did wholesale market prices of gas and electricity.<sup>6</sup> Average wholesale day-ahead LMP prices for Pennsylvania in January 2014 were estimated at \$148/MWh, versus \$44/MWh in December 2013. Estimated energy uplift charges, which are energy-related charges billed to suppliers in

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<sup>5</sup> IDT New Matter, at ¶ 3. See, e.g., *Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134 (Order entered February 20, 2014)

<sup>6</sup> IDT New Matter, at ¶ 4. See Joint Motion of Vice Chairman John F. Coleman, Jr. and Commissioner James H. Cawley, *Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134 (February 20, 2014)

addition to LMP costs, were estimated at \$631 million in the month of January 2014, which is equivalent to a full year of uplift charges for the period 2010-2012. Average forced outage rates for electric generators were reported as 20%, or 38GW, on January 7, 2014.<sup>7</sup> Retail electric rates that occurred in Pennsylvania during the winter of 2014 were the direct result of unprecedented price spikes in the wholesale electricity markets.<sup>8</sup> Spot market wholesale electricity prices at PJM exceeded \$300 per MWh for sustained periods of time in January, and for several days exceeded \$400 per MWh.<sup>9</sup> These wholesale prices were simply unprecedented.<sup>10</sup>

Upon recognizing the impact that the Polar Vortex was having on its customers, IDT quickly took action. Like many other suppliers, EDCs, the Office of Consumer Advocate, the Pennsylvania Attorney General, and the Pennsylvania Public Utility Commission, IDT experienced a dramatic increase in customer call volumes in connection with the wholesale and retail electricity price increases in early 2014 caused by the unprecedented Polar Vortex phenomenon. Prior to February, 2014, IDT's call center handled approximately 10,000 calls per month, with an average customer hold time of less than one minute per caller. In February 2014, IDT's call center handled over 37,000 customer calls, and in March 2014, IDT's call center handled over 46,000 calls.

In response to the dramatic increase in customer calls in February 2014, IDT contracted with an independent customer service center, which provided IDT with an additional 30

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<sup>7</sup> *Id.* and IDT New Matter, at ¶ 5.

<sup>8</sup> *Id.* and IDT New Matter, at ¶ 6.

<sup>9</sup> See April 29, 2014 Testimony of Pennsylvania Public Utility Commission Chairman Robert Powelson before the Pennsylvania Senate Consumer Protection and Professional Licensure Committee

<sup>10</sup> IDT New Matter, at ¶ 6.

temporary customer service representatives to answer customer calls as well as to place follow up calls to customers who had left voice mail messages and/or email messages with IDT.<sup>11</sup>

IDT representatives were in continual contact with PA PUC staff throughout the crisis to apprise the staff of call volumes and IDT's overall response to the situation. IDT also reached out to EDCs and the OCA to request that they direct any customer concerns about rate increases directly to IDT. IDT also issued multiple public announcements through various print and broadcast media outlets to inform Pennsylvania customers to contact IDT directly if they had concerns about their bills.

Even though IDT's disclosure statements placed no ceiling on the variable rates that were permitted to be charged to retail customers, and even though IDT was required to pay the full amount of the dramatically increased wholesale electricity prices, IDT quickly recognized that it was important to provide rate relief to customers who were impacted by the spike in prices. Accordingly, IDT voluntarily issued rate adjustments to thousands of customers who were affected by the unprecedented electricity prices in the winter of 2014.<sup>12</sup>

With respect to the 208 customer-witnesses whose testimony was moved into the record in this case, all of the complaints filed by those customers and contacts from those customers to IDT's customer service center stemmed from the high electric generation supply rates that appeared on electric bills that they received in February and/or March 2014. With rare exceptions, none of the customer-witnesses had ever filed a complaint against IDT or expressed concern to IDT about their enrollment or rates prior to 2014. Of the 208 witnesses whose testimony was admitted into the record in this case, approximately 50% were customers of IDT for 12 or more billing cycles before they contacted IDT or filed a complaint about their rates in

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<sup>11</sup> IDT New Matter, at ¶ 25.

<sup>12</sup> IDT New Matter, at ¶ 26.

early 2014. IDT's records reflect that 160 of the 208 witnesses (76.5%) contacted IDT's customer service center by telephone or email following the receipt of bills that reflected the higher Polar Vortex rates. IDT provided goodwill rate adjustments and refunds to 163 of the 208 (78%) customer-witnesses after the Polar Vortex initially caused their rates to increase and before their testimony was served in this proceeding. The Settlement Agreement recognizes that IDT, all told, has issued refunds totaling approximately \$4,177,000 to affected Pennsylvania customers, and importantly, this Settlement implements a program for providing significant additional relief to customers who were impacted by the unusually high electricity prices in early 2014.

A review of the pleadings and other filings by the parties demonstrates that this proceeding implicates a number of complex legal issues (several of which had never been addressed by the Commission previously) and a wide range of fact-intensive allegations and defenses thereto. Throughout the course of this proceeding, the parties have exchanged voluminous amounts of discovery and submitted numerous complex pleadings and other filings to the Commission, including Preliminary Objections and Answers thereto, Pre-hearing Conference Memoranda, Petitions for Interlocutory Review and supporting Briefs, Answers to Petitions for Interlocutory Review and supporting Briefs, Motions to Compel and Answers thereto, and Memoranda of Law. The parties also participated in a four-day evidentiary hearing for the purpose of cross-examining customer-witnesses and admitting testimony and exhibits into the record. The Joint Complainants served testimony which addressed IDT's sales and marketing practices, its pricing history, and its response to the temporarily high volume of customer contacts and complaints received in the months following the Polar Vortex. Had this case proceeded, IDT was prepared to challenge the qualifications, assumptions, opinions, and

conclusions of the Joint Complainants' non-consumer witnesses through cross-examination and through its own Rebuttal Experts.

Pursuant to the Procedural Schedule established for the case, multiple additional rounds of testimony and several days of further hearings were scheduled, followed by multiple rounds of Briefs. It is likely that if this proceeding was fully litigated, it would have resulted in a record of tens of thousands of pages, and it is highly likely that Exceptions to the Recommended Decision would have been filed by one or more parties to the proceeding.

As evidenced by the various filings made by the parties to this proceeding, there was considerable disagreement amongst the parties over the legal and factual issues raised by the Joint Complaint. Notwithstanding those disagreements, and in accordance with the Commission's policy of encouraging settlements, IDT and the Joint Complainants held a series of settlement discussions over the course of several months in order to craft a Settlement that is reasonable and in the public interest. Those discussions culminated in the Settlement Agreement that is being filed herewith.

The Settlement fully resolves the Joint Complaint brought by the OCA and OAG. The Settlement represents a compromise of the many complex issues presented by the Joint Complaint, and results in considerable financial relief to Pennsylvania electricity customers. The Settlement also outlines detailed modifications to sales, marketing, and customer service practices to address the concerns of the Joint Complainants going forward.

In addition to recognizing that IDT voluntarily issued refunds totaling \$4,177,000 to its Pennsylvania retail electricity customers in the months following the Polar Vortex, the Settlement confirms that IDT will provide an additional \$2,400,000 in refunds that will be distributed to Pennsylvania retail electricity customers who were on variable rates in January,

February, or March 2014. In addition, IDT has agreed to pay a significant portion of the costs of administering the refunds; a \$100,000 contribution to EDC hardship funds; and a civil penalty of \$25,000 to the General Fund. The Settlement also confirms IDT's agreement to make certain modifications to its electricity product offerings and business practices, including refraining from marketing a variable rate electricity product in the Commonwealth for 21 months and making modifications to its disclosure statement, sales agent training program, third-party verification procedures, complaint handling process, and sales compliance monitoring.

## **II. THE SETTLEMENT IS IN THE PUBLIC INTEREST AND SHOULD BE APPROVED BY THE COMMISSION**

It is the Commission's policy to encourage settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case, and they also 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). 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); *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).

The Company submits that the Settlement is in the public interest because it is a complete and final resolution of this proceeding, effectively addresses the issues that were the subject of the Joint Complaint, avoids the time and expense of litigation and possible appeals, and provides immediate, concrete benefits to IDT's current and former customers that would otherwise be unavailable in the near term. IDT further submits that approval of this Settlement is consistent with the factors and standards for evaluating litigated and settled proceedings, as articulated in *Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company*, Docket No. C-0092409 (Final Order entered February 10, 2000) and codified in the Commission's Policy Statement at 52 Pa. Code § 69.1201.

The ten factors of the Policy Statement, as applied to this Settlement, are addressed below:

1. The first factor to be considered under the Policy Statement is whether the alleged actions were of a serious nature, such as willful fraud or misrepresentation, or were merely

administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). The actions alleged in the Joint Complaint are serious in nature, as they involved alleged misrepresentations by sales representatives, non-conformance of customer prices to the terms of the Company's disclosure statement, and misleading marketing materials.

2. The second factor to be considered under the Policy Statement is whether the resulting consequences of the actions were of a serious nature. 52 Pa. Code § 69.1201(c)(2). The Joint Complaint did not allege that any actions resulted in personal injuries or property damage. The consequences alleged in the Joint Complaint include financial harm to consumers (in the form of higher charges for electricity generation supply) and damage to the retail electricity market in Pennsylvania, both of which are serious issues. These alleged consequences stemmed from a discrete period of time (January – March 2014), during which many Pennsylvania customers received higher electricity bills. The impact of higher electricity bills was serious for many customers, as were the consequences of higher prices on the retail electricity market in Pennsylvania. The perceived integrity and competitiveness of suppliers' retail service offerings were adversely impacted, which may deter widespread customer participation in the competitive retail electricity market. The Settlement includes terms that address both of these serious consequences. First, the Settlement provides for the issuance of refunds totaling \$6,577,000 to customers of IDT who were on variable rate plans for electricity generation supply in January, February, or March 2014 to remedy the consequences that were alleged in the Joint Complaint. The settlement acknowledges that IDT previously distributed refunds totaling \$4,177,000 to customers who were on variable rate plans in January, February, or March 2014, and under the terms of the Settlement, the Company will distribute an additional \$2,400,000 in refunds to customers who were on variable rate plans in January, February, or

March 2014. Under the Settlement, IDT will also pay a \$25,000 civil penalty and contribute \$100,000 to the EDC's hardship funds to assist customers with the payment of their electricity bills. Furthermore, the Settlement provides a mechanism for any customer that does not receive or accept an offer of funds from the Refund Pool to contact the Company directly with any complaint and request for a refund. Therefore, the Settlement is a significant continuation of IDT's program of providing rate relief to customers who were affected by higher electricity prices in early 2014, and any financial harm to customers will have been remedied by the Company's actions, both prior to and pursuant to the Settlement. With respect to the harm to the integrity of the retail electricity market in Pennsylvania, as alleged in the Joint Complaint, the Company has agreed to numerous modifications to the Company's business practices, including a temporary moratorium on the marketing of variable rate electricity plans, that are meant to address the consequences alleged in the Joint Complaint. The modifications agreed upon by IDT and the Joint Complainants include a wide range of changes to the language of the Company's disclosure statement and marketing materials, its sales agent training program, its third-party verification processes, and its customer service and complaint handling processes. The Settlement also includes ongoing compliance and reporting requirements to allow the implementation of the modifications to be verified.

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

4. The fourth factor to be considered under the Policy Statement is whether the Respondent has made efforts to change its practices and procedures to prevent similar conduct in

the future. 52 Pa. Code § 69.1201(c)(4). As discussed in the Company's Answer and New Matter, IDT began taking actions in response to the increased volume of customer complaints beginning in February 2014. In response to the dramatic increase in customer calls in February 2014, IDT contracted with an independent customer service center, which provided IDT with an additional 30 temporary customer service representatives to answer customer calls as well as to place follow up calls to customers who had left voice mail messages and/or email messages with IDT. The Settlement Agreement includes a continued commitment to provide for overflow call centers in times of unusually high customer call volumes. IDT also began offering a fixed rate electricity product in Pennsylvania in mid-2014, in response to the outpouring of customer concern with variable rates in the aftermath of the Polar Vortex, and IDT will continue to offer fixed rate electricity products. Most importantly, beginning in February 2014, IDT voluntarily issued rate adjustments to thousands of customers who were affected by the unprecedented electricity prices in the winter of 2014. As set forth in the Settlement Agreement, IDT has issued refunds totaling approximately \$4,177,000 to affected Pennsylvania customers to ameliorate the impact of higher electricity prices that were charged during the period in question. The Settlement Agreement outlines additional steps that the Company has agreed to take to modify internal practices and procedures to address the conduct alleged in the Joint Complaint. The Company has agreed to substantial changes in its marketing practices, disclosure statements, and third-party verification procedures in order to address the alleged conduct and to avoid similar incidents in the future. (Settlement, at pages 14-31). In addition, the Company has agreed not to offer variable rate plans for 21 months. (Settlement, at page 14). The Settlement also includes ongoing compliance and reporting requirements to allow the implementation of the modifications to be verified.

5. The fifth factor to be considered under the Policy Statement relates to the number of customers affected by the Company's actions and the duration of its violations. 52 Pa. Code § 69.1201(c)(5). The Joint Complaint stemmed from 47 Formal Complaints filed against IDT at the Commission, 1917 customer complaints filed against IDT with the OAG, and 539 customer contacts to the OCA regarding IDT's variable rate increase during the "Polar Vortex" crisis of early 2014. *See* Complaint, at paragraphs 17-19. Under the terms of the Settlement, all IDT customers who were on variable rate plans in January, February, or March 2014 will be eligible for refunds from the Refund Pool, and those who choose not to participate in the Refund Pool distributions will have alternative methods to seek rate adjustments and/or refunds. As such, the Settlement's terms directly address all of the customers alleged to have been affected. Furthermore, under the Settlement, IDT will contribute \$100,000 to the EDC's hardship funds, which benefit all low-income consumers in the EDCs' territories, not solely the customers of IDT.

6. The sixth factor to be considered under the Policy Statement is the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). IDT has a satisfactory compliance history with the Public Utility Code and the Commission's regulations, and has never been found to be in violation of the Public Utility Code or the Commission's regulations. IDT previously agreed to a civil penalty of \$39,000 to resolve an informal investigation by the Bureau of Investigation and Enforcement in 2013, related to twenty-one BCS informal complaints filed against IDT between 2010 and 2012, but no finding of violation was made against IDT. *See Pa. PUC v. IDT Energy, Inc.*, Docket No. 2013-2314312 (Order entered October 17, 2013).

7. The seventh factor to be considered under the Policy Statement relates to whether the Respondent cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7).

IDT fully cooperated with the Joint Complainants both prior to and during the pendency of this proceeding, including providing significant amounts of information and data both formally and informally during litigation and settlement discussions. IDT also notes that it made a concerted effort to fairly and efficiently satisfy all customer formal and informal complaints that were filed against it in the aftermath of the Polar Vortex, and all but two of the formal complaints were resolved via the filing of a Certificate of Satisfaction.

8. The eighth factor to be considered is the amount of the civil penalty necessary to deter future violations as well as past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(8). With respect to this factor, IDT submits that the totality of the payments made by IDT should be taken into consideration, and the total amount of payments made pursuant to the Settlement Agreement are clearly sufficient to deter future violations. As stated above, prior to entering into the Agreement, IDT voluntarily provided \$4,177,000 in cash refunds to customers. Pursuant to the Settlement, the Company has agreed to pay an additional \$2,400,000 in refunds plus up to \$75,000 for the costs administering the Restitution Pool, a \$100,000 contribution to the EDC hardship funds, and a voluntary civil penalty of \$25,000. Furthermore, the amounts to be paid by IDT are substantially similar to the amounts to be paid by Energy Service Providers, Inc. d/b/a/ Pennsylvania Gas & Electric in connection with the settlement of a Joint Complaint involving very similar allegations and customers who were impacted during the identical time frames. *See Commonwealth of Pennsylvania and Office of Consumer Advocate v. Energy Service Providers, Inc. d/b/a Pennsylvania Gas & Electric*, Docket No. C-2014-242-7656 (Initial Decision issued June 8, 2015) (“PaG&E”). As such, IDT submits that the total amount of refund payments, civil penalty, and hardship contributions to be made by IDT constitute a reasonable and appropriate amount to resolve this proceeding.

9. The ninth factor to be considered under the Policy Statement relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). To IDT's knowledge, the Commission has not issued a final decision involving similar allegations against an EGS, but as set forth above, the Initial Decision in the *PaG&E* proceeding recommended approval of a settlement that was very similar in terms of financial payment and modifications to business practices. Accordingly, the Company submits that approval of the Settlement Agreement is reasonable and appropriate, and consistent with the Initial Decision issued in *PaG&E*.

10. The tenth factor to consider is "other relevant factors." 52 Pa. Code § 69.1201(c)(10). It goes without saying that all settlements avoid the time, expense, and uncertainty of litigation, which is why the Commission generally encourages settlements as being in the public interest. Approval of the Settlement in the present case is especially beneficial to the public interest because of the unique and complex issues involved, the amount of time that would be required to litigate the case to conclusion, the considerable uncertainty over the outcome because of the number of issues of first impression, and the substantial amount of immediate customer refunds to be issued as a result of the settlement. As evidenced by the pleadings and other filings made throughout the course of this proceeding, there was considerable disagreement amongst the parties over the legal and factual issues raised by the Joint Complaint. Even though the parties have actively litigated the case for over a year, a considerable amount of resources would need to be devoted to continuing the litigation to conclusion. It is likely that no final Commission Order would be issued in this case until mid-2016 at the earliest, and because of the unique issues in the proceeding, it is also likely that any Final Commission Order would be appealed, at least in part, by one or more of the parties, which would further delay the ultimate resolution of the case. Even if the Commission were to find in

favor of the Joint Complainants, it is unclear whether the Commission would or could order refunds to the number of customers who will receive refunds under this Settlement, and even if the Commission were to order IDT to issues refunds to some pool of IDT's present or former customers, such payments may not have been issued for years. By contrast, the Settlement immediately and comprehensively resolves all of the allegations made in the Joint Complaint, establishes a framework to immediately provide refunds to all customers of IDT who were affected by the higher prices in January – March 2014, and outlines detailed modifications to business practices to implement lessons learned from the Polar Vortex crisis of early 2014. The Settlement thus provides immediate, concrete benefits to the public that would otherwise be unavailable in the near term.

In summary, IDT respectfully submits that an evaluation of the Settlement Agreement under the factors and standards enunciated in the Commission's Policy Statement justifies expeditious approval of the Settlement without modification. The Settlement allows the highly contested allegations of the Joint Complaint to be resolved with no finding of wrongdoing or violation, but provides for significant payments to customers and business modifications that are commensurate with the nature of the allegations and the number of customer affected (as stated in the Joint Complaint), while avoiding the significant time, expense, and uncertainty of continued litigation. For these reasons, approval of the Settlement Agreement is reasonable and in the public interest.

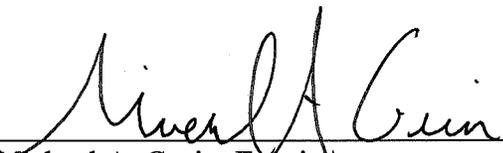
### III. CONCLUSION

IDT respectfully submits that the Settlement of the above-captioned matter is in the public interest and should be approved and, therefore, respectfully requests that the Commission expeditiously approve the Settlement without modification.

Respectfully submitted,

STEVENS & LEE

DATED: August 4, 2015

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Commonwealth of Pennsylvania, by Attorney</b>	:	
<b>General Kathleen G. Kane, Through the Bureau</b>	:	
<b>Of Consumer Protection</b>	:	
	:	
<b>And</b>	:	
	:	
<b>Tanya J. McCloskey, Acting Consumer</b>	:	
<b>Advocate</b>	:	<b>Docket No. C-2014-2427657</b>
<b>Complainants</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>IDT Energy, Inc.</b>	:	
	:	
<b>Respondent</b>	:	

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

**Introduction**

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

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

submits this statement in support of the *Settlement*.

### **The Settlement**

The *Settlement* sets forth a comprehensive list of issues that were resolved through the negotiation process. The refunds and injunctive relief provided by the settlement were of particular significance to the OSBA when it concluded that the *Settlement* was in the best interests of IDT's small business customers. During the evidentiary hearings held February 17-20, 2015 with the Administrative Law Judges, the consumer testimony and accompanying exhibits of 125 consumers sponsored by the Joint Complainant's were moved into the record. The Joint Complainants filed for the admission of the testimony and exhibits of an additional 81 consumers via stipulation along with the Joint Petition for Settlement. While IDT has not admitted to any wrongdoing with the admission of the consumer testimony, the introduction of the testimony is critical for the purpose of providing substantial evidence in the record.

The consumer testimonies which were admitted into the record include averments that IDT's customers, including small business customers, had been guaranteed savings which did not materialize, were misled by written communications with IDT such as the Disclosure Statement and Welcome Letter, were switched without authorization, and were not informed about whether they would be paying fixed or variable rates. Further, customers testified that they experienced difficulties when they attempted the contact IDT to complain about their charges, that their complaints were mishandled by IDT, and that they suffered financial difficulties after receiving IDT's charges.

#### **1. Refunds**

As part of the Settlement, IDT has agreed to pay the sum of \$6,577,000.00 which will be designated as a Refund Pool. The Refund Pool will take into account prior cash refunds provided to customers by the Company. The Office of Attorney General ("OAG") and Office

of Consumer Advocate (“OCA”) will determine the amount of the refund for all eligible IDT customers, including small business customers who were on variable rate plans in January, February or March of 2014, based on the customer’s usage, price charged, and offset by any refund amounts already received directly from IDT.

A third-party Administrator to be retained by OAG and OCA oversee the Refund Pool but IDT will bear the burden of the costs and expenses relating to the Refund Pool up to \$75,000. Any funds remaining in the Refund Pool after the issuance of the calculated refunds will be provided to the EDC’s hardship funds as allocated by the ratio of IDT’s customers within the EDC’s service territory. Further, any unclaimed refunds remaining in the Refund Pool will be forwarded to the Pennsylvania Treasury Department Unclaimed Property Division and thereby preserved for those customers entitled to a refund.<sup>1</sup>

## **2. Injunctive Relief**

### **Limited Product Offerings for a period of 21 months**

As part of the Settlement, IDT has agreed not to accept any new Pennsylvania customers for a period of 21 months except for fixed products in limited circumstances. Any fixed products offered by IDT to new customers during that 21 month period will be no less than a 6 month fixed rate product. Additionally, if after the expiration of the 21 month period, IDT offers variable rate products to consumers in the Commonwealth, the Company has agreed not to charge Pennsylvania consumers, including small business consumers, cancellation or termination fees for the Company’s variable rate product offerings.<sup>2</sup>

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<sup>1</sup> Joint Petition for Settlement, pp 11-12.

<sup>2</sup> Joint Petition for Settlement, p. 15.

**Conclusion**

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

Respectfully submitted,



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Dated: August 4, 2015