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July 10, 2014

**VIA ELECTRONIC FILING**

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

**RE: Commonwealth of Pennsylvania, by Attorney General Kathleen Kane, Through the  
Bureau of Consumer Protection and Tanva J. McCloskey, Acting Consumer  
Advocate v. IDT Energy, Inc.**  
**Docket No. C-2014-2427657**

Dear Secretary Chiavetta:

Enclosed for filing please find the Preliminary Objections of IDT Energy, Inc in the above referenced matter. Copies of the Preliminary Objections have served in accordance with the attached certificate of service. Please feel free to contact me if you have any questions or concerns.

Best Regards,

STEVENS & LEE

  
Michael A. Grum

Encl.

cc: Certificate of Service

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

COMMONWEALTH OF PENNSYLVANIA, by  
Attorney General KATHLEEN G. KANE,  
Through the Bureau of Consumer Protection

And

Docket No. C-2014- 2427657

TANYA J. McCLOSKEY, Acting Consumer  
Advocate

Complainants  
v.

IDT ENERGY, INC.

Respondent

**NOTICE TO PLEAD**

**To: John Abel, Esq. Counsel for Commonwealth of Pennsylvania, and Candis Tunilo, Esq., Counsel for The Office of Consumer Advocate**

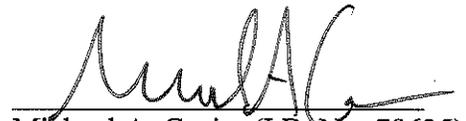
You are hereby notified to file a written response to the attached Preliminary Objections of IDT Energy, Inc. within ten (10) days from the date of service of this notice. If you do not file a written response denying the enclosed Preliminary Objections within ten (10) days of service, the facts set forth by IDT Energy, Inc. may be deemed to be true, thereby requiring no other proof, and judgment may be entered against you. All pleadings, such as responses to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

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

You must also serve a copy of your response on the undersigned counsel for IDT Energy, Inc. Failure to respond to these Preliminary Objections could result in the dismissal of your case.

STEVENS & LEE

DATE: July 10, 2014



Michael A. Gruin, (I.D. No. 78625)

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Fax (610) 988-0852

COUNSEL FOR IDT ENERGY, INC.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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COMMONWEALTH OF PENNSYLVANIA, by  
Attorney General KATHLEEN G. KANE,  
Through the Bureau of Consumer Protection

And

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IDT ENERGY, INC.

Respondent

---

Docket No. C-2014- 2427657

**PRELIMINARY OBJECTIONS OF RESPONDENT,  
IDT ENERGY, INC.**

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Pursuant to 52 Pa Code 52 Pa. Code § 5.101, IDT Energy, Inc. (“Respondent” or “IDT”), by and through its attorneys Stevens & Lee, P.C hereby files these Preliminary Objections requesting partial dismissal of the Formal Complaint (“Complaint”) filed by the Commonwealth of Pennsylvania, by Attorney General Kathleen Kane through the Bureau of Consumer Protection (“Attorney General”) and Tanya J. McCloskey, Acting Consumer Advocate (“OCA”) (collectively, “Complainants”). As set forth below, the Complaint should be partially dismissed as legally insufficient and/or for lack of jurisdiction, in that some of the relief sought by the Complaint cannot be granted by the Commission as a matter of law. In support thereof, IDT avers as follows:

**I. INTRODUCTION**

1. On June 20, 2014 IDT was served with a notice of the Complaint filed by the Complainants. A copy of the Complaint is attached hereto as Exhibit 1 and incorporated herein by reference.

2. The Complaint indicates that it is being filed pursuant to the Public Utility Code, 66 Pa.C.S.A. Ch. 28, the Pennsylvania Public Utility Commission's regulations, 52 Pa. Code Ch. 54, 56, and 111, the Unfair Trade Practices and Consumer Protection Law (73 P.S. § 201-1, et seq.) ("UTPCPL") and the Telemarketer Registration Act (73 P.S. § 2241, et seq.) ("TRA").

3. The Complaint includes seven (7) separate counts, and includes nine (9) separate requests for relief.

4. The Commission's Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections. See, 52 Pa. Code § 5.101.

5. The grounds for preliminary objections, as set forth in 52 Pa.Code § 5.101(a), are as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding

6. IDT's Preliminary Objections request the partial dismissal of the Formal Complaint for legal insufficiency under 52 Pa. Code § 5.101(a)(4), and/or for lack of jurisdiction under 52 Pa. Code § 5.101(a)(1).

7. As set forth below, the Preliminary Objections seek outright dismissal of Count VI of the Complaint. While Count VI is labeled "Prices Not Conforming to Disclosure

Statement”, the averments of Count VI do not set forth any averments which would lead to a conclusion that IDT’s prices did not conform to its disclosure statement. Rather, Count VI alleges that IDT’s prices in early 2014 “were not reflective of the cost to serve residential customers.” It is well settled that the Commission does not have the authority to regulate EGS prices. Therefore, even if it were true that “IDT’s prices were not reflective of its costs to serve customers” as OCA alleges (an allegation that IDT strongly denies), such pricing would not be a violation of the Public Utility Code or any of the Commission’s regulations or Orders.

8. These Preliminary Objections also seek outright dismissal of Count VII of the Complaint. Count VII alleges that IDT violated the TRA by not providing written contracts to customers in connection with telephone sales. The Complaint fails to recognize the clear provision in the TRA (73 PS. 2245(d)(1)) which expressly exempts sales that are regulated by other laws from this requirement. The OCA’s complaint, on its face, acknowledges in multiple places that sales by EGSs are regulated by the Commission. The Commission’s regulations regarding telemarketing sales of electricity generation supply at 52 Pa. Code § 111.10 (c) do not require EGSs to obtain a customer signature on a contract, but rather require the EGS to send the customer a written disclosure statement, which IDT does in all cases, and the Commission’s regulations at 52 Pa. Code § 111.7 authorize alternative means of verifying customer authorization to transfer their accounts. Therefore, there is no genuine issue of law on this issue, and this claim should be dismissed.

9. These Preliminary Objections also request dismissal of the Complaint’s request for an Order of restitution by IDT. The Public Utility Code clearly does not provide the Commission with the authority to order restitution by an EGS, and to the extent the Complaint requests an order of restitution pursuant to the UTPCPL, such an order is not within the

Commission's jurisdiction or authority because it is well-settled that the Commission lacks jurisdiction over claims under the UTPCPL.

10. IDT is also filing an Answer and New Matter in response to the Complaint, simultaneously with the filing of these Preliminary Objections.

## II. STANDARDS FOR RESOLVING PRELIMINARY OBJECTIONS

11. Pursuant to 52 Pa. Code § 5.101(a)(4), a formal complaint may be dismissed for legal insufficiency.

12. In order to be legally sufficient, a complaint must set forth "an act done or omitted to be done by a person subject to the jurisdiction of the Commission, in violation, or claimed violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission" 52 Pa.Code § 5.21(a).

13. The provision at 52 Pa.Code § 5.101(a)(4) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa.C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 557 (Pa. Cmwlth. 1989); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n*, 540 A.2d 1006 (Pa. Cmwlth. 1988); *White Oak Borough Authority v. Pa. Pub. Util. Comm'n*, 103 A.2d 502 (Pa. Super. 1954).

14. 52 Pa.Code § 5.101(a)(4) is comparable to Pa.R.C.P. 1028(a)(4), regarding "legal insufficiency of a pleading (demurrer)."

15. The principles applied in ruling upon a demurrer are well-settled. A preliminary objection seeking dismissal of a complaint, in whole or in part, will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 486 Pa. 536, 406 A.2d 1020 (1979). The moving party may not rely

on its own factual assertions, but must accept for the purpose of disposition of the motion, all well-pleaded material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commonwealth of Pa.*, 507 Pa. 360, 490 A.2d 402 (1985). Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that the factual allegations of the complaint are true. *Id.* The motion will be granted only if the moving party prevails as a matter of law. *Rok v. Flaherty*, 106 Pa.Cmwlth. 570, 527 A.2d 211 (1987). Any doubt must be resolved in favor of the non-moving party. *Dept. of Auditor General, et al. v. State Employees' Retirement System, et al.*, 836 A.2d 1053 (Pa.Cmwlth. 2003).

### III. Preliminary Objections

**First Preliminary Objection: Count VI of the Complaint should be dismissed pursuant to Pa. Code § 5.101(a)(4) (Legal Insufficiency) and stricken pursuant to 52 Pa. Code § 5.101(a)(2) (Inclusion of Impertinent Material)**

16. Count VI of the Complaint is labeled “Prices Not Conforming to Disclosure Statement”, but the averments of Count VI do not set forth any averments which would lead to a conclusion that IDT’s prices did not conform to its disclosure statement.

17. Rather, Count VI alleges that IDT’s prices in early 2014 “were not reflective of the cost to serve residential customers.” See Paragraph 65 of the Complaint.

18. IDT, as an EGS, is not a public utility that is subject to the Commission’s regulation of utilities, except in limited circumstances. *Delmarva Power & Light Co. v. Pa. Pub. Util. Comm’n*, 870 A.2d 901 (Pa. 2005) (*Delmarva*).

19. It is well settled that the Commission has no authority to regulate electricity generation prices offered by EGSs. See 66 Pa.C.S. § 2806(a).

20. While the Electricity Generation Customer Choice and Competition Act provides the Commission with authority to regulate EGSs for licensing and similar purposes, it clearly

mandates that the Commission has no authority to regulate electricity generation prices offered by EGSs. See 66 Pa.C.S. § 2806(a).

21. The Commission has recognized that “This is as clear a mandate from the General Assembly as any government agency could hope to receive. There is no equivocation – all Pennsylvania electric customers shall have the ability to choose their electric generation supplier, and the Commission does not have any authority over the generation of electricity, which necessarily includes the specific price charged to end-user customers.”<sup>1</sup>

22. Because IDT is not a public utility except for the limited purposes of 66 Pa.C.S. §§ 2809 and 2810, and because the Commission does not have the authority to regulate EGS rates, the Commission may not regulate the prices that IDT charges for electric generation service.

23. The Commission has repeatedly acknowledged that it has no statutory authority to limit the prices charged by EGSs. See *Petition of PECO Energy Company for Approval of its Default Service Plan*, Docket No. P-2012-2283641 (Order entered March 6, 2014). And the Commission has recognized that “the rates consumers pay in the retail electric market are governed by the terms of their contract with their supplier”. *Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134 (Order entered February 20, 2014).

24. Based on the above-referenced authority, even if it were true that “IDT’s prices were not reflective of its costs to serve customers” as OCA alleges (an allegation that IDT strongly denies), such pricing would not be a violation of the Public Utility Code or any of the Commission’s regulations or Orders.

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<sup>1</sup> See Joint Statement of Chairman Robert F. Powelson and Commissioner Pamela A. Witmer *Petition of PECO Energy Company for Approval of its Default Service Plan*, Docket No. P-2012-2283641 (Order entered March 6, 2014).

25. Furthermore, while the heading of Count VI purports to allege that IDT's prices do not conform to its disclosure statement, the Complaint includes no averments that would allow the Commission to make such a conclusion.

26. Paragraph 53 of the Complaint includes relevant excerpts from IDT's disclosure statement, including the following verbatim passages:

- "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", and
- "There is no ceiling price."

27. The Complaint includes no allegations upon which the Commission could rely to find that IDT's prices did not conform to the above-referenced terms of the disclosure statement, or any other aspect of the disclosure statement.

28. For the reasons set forth above, IDT respectfully requests dismissal of Count VI of the Complaint on the grounds of legal insufficiency pursuant to 52 Pa. Code § 5.101(a)(4), in that it fails to state a claim for which relief can be granted.

29. Furthermore, as set forth above, Count VI of the Complaint is clearly and inappropriately seeking Commission review of the prices electricity generation supply prices charged by IDT, notwithstanding the misleading Count heading. In the interests of judicial economy, the Commission should foreclose this attempt to seek Commission review of EGS pricing, and order that Count VI be stricken as impertinent pursuant to 52 Pa. Code § 5.101(a)(2).

**Second Preliminary Objection: Count VII of the Complaint should be dismissed pursuant to Pa. Code § 5.101(a)(4) (Legal Insufficiency)**

30. Count VII of the Complaint alleges that IDT violated the TRA by not providing written contracts to customers in connection with telephone sales and obtaining signatures from customers on such contracts.

31. This Count should be dismissed as a matter of law. Even if the OCA's allegation that IDT failed to provide such contracts and failed to obtain such signatures is considered to be true, such failure would not be a violation of the TRA.

32. The Complaint fails to recognize the clear provision in the TRA (73 PS. 2245(d)(1)) which expressly states that

*(d) "A signed, written contract is not needed if any of the following apply:*

*(1) the contractual sale is regulated under other laws of this Commonwealth."*

33. Sales of electricity generation supply are obviously regulated by the Commission pursuant to the Electricity Generation Customer Choice and Competition Act (66 Pa.C.S.A. § 2801, et. seq.). In fact, the OCA's complaint, on its face, acknowledges in multiple places that sales by EGSs are regulated by the Commission. See Paragraphs 8, 9, 27, 28, 29, 30, 36, 43, 54, 55, and 56 of the Complaint.

34. The Commission has had regulations in place for years regarding the standards for changing a customer's electricity generation supplier. See 52 Pa. Code § 57.171 et seq.

35. Furthermore, the Commission's regulations regarding telemarketing sales of electricity generation supply at 52 Pa. Code § 111.10 (c) do not require EGSs to obtain a customer signature on a contract, but rather require the EGS to send the customer a written disclosure statement, which IDT does in all cases, and the Commission's regulations at 52 Pa.

Code § 111.7 authorize alternative means of verifying customer authorization to transfer their accounts.

36. Because the TRA contains an express exclusion from the written contract requirement for contractual sales that are regulated under other laws of the Commonwealth, and because the Complaint acknowledges that EGS sales are regulated by the Commission pursuant to the Electricity Generation Customer Choice and Competition Act, Count VII of the Complaint fails to state a claim for which relief can be granted and therefore should be dismissed pursuant to 52 Pa. Code § 5.101(a)(4).

**Third Preliminary Objection: The Complaint's request for restitution should be dismissed pursuant to Pa. Code § 5.101(a)(4) (Legal Insufficiency)**

37. Subparagraph C of the Complaint's request for relief asks the Commission to "Order Respondent to provide appropriate restitution including without limitation refunding all charges to its customers that were over and above the Price to Compare in the customer's respective service territories from January, 2014 through the date of resolution of this matter, as well as any late, cancellation and/or termination fees and/or such other penalties charged to consumers as a result of the Respondent's charges and consumers' leaving Respondent to obtain generation services elsewhere."

38. The Commission clearly has no authority to order EGSs to provide restitution to customers.

39. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

40. The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

41. IDT, as an EGS, is not a public utility subject to Commission regulation of utilities, except in limited circumstances. *Delmarva Power & Light Co. v. Pa. Pub. Util. Comm'n*, 870 A.2d 901 (Pa. 2005) (*Delmarva*).

42. While the Electricity Generation Customer Choice and Competition Act provides the Commission with authority to regulate EGSs for licensing and similar purposes, it clearly mandates that the Commission has no authority to regulate electricity generation prices offered by EGSs. See 66 Pa.C.S. § 2806(a).

43. The Commission has recognized that “This is as clear a mandate from the General Assembly as any government agency could hope to receive. There is no equivocation – all Pennsylvania electric customers shall have the ability to choose their electric generation supplier, and the Commission does not have any authority over the generation of electricity, which necessarily includes the specific price charged to end-user customers.”<sup>2</sup>

44. Because IDT is not a public utility except for the limited purposes of 66 Pa.C.S. §§ 2809 and 2810, and because the Commission does not have the authority to regulate EGS rates, the Commission may not regulate the prices that IDT charges for electric generation service.

45. Since the Commission lacks the authority to regulate rates charged for electric generation service, it also lacks the authority to order restitution as requested by the Complaint.

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<sup>2</sup> See Joint Statement of Chairman Robert F. Powelson and Commissioner Pamela A. Witmer *Petition of PECO Energy Company for Approval of its Default Service Plan*, Docket No. P-2012-2283641 (Order entered March 6, 2014).

46. Furthermore, even if the Commission did have such authority, the measure of restitution proposed by the Complaint (i.e. refunding all charges in excess of the Price to Compare to all of IDT's customers) has no justification in law or fact, and completely ignores the realities of a deregulated, competitive electricity supply market place.

47. As stated by the Commission "electric generation suppliers must be able to accurately price their products to be able to cover the costs of generation supply as well as other additional costs incurred in offering service. Electric Distribution Companies ("EDCs") like PECO have no such need. ....Therefore, the fluctuations in PECO's PTC often bear no rational relationship to changes in wholesale electricity market prices..."<sup>3</sup>

48. Furthermore, to the extent the Complaint requests an order of restitution pursuant to the UTPCPL, such an order is not within the Commission's jurisdiction or authority. It is well-settled that the Commission lacks jurisdiction over claims under the UTPCPL. See *Mid-Atlantic Power Supply Association v. PECO Energy Company*, Docket No. P-00981615, 1999 Pa PUC Lexis 30 (entered May 19, 1999), and *Pettko v. Pennsylvania-American Water Company*, 39 A.3d 473 (Pa. Cmwlth. 2012), appeal denied, 616 Pa. 670, 51 A.3d 840 (2012).

49. Accordingly, the Complaint's request for an Order of restitution must be dismissed pursuant to 52 Pa. Code § 5.101(a)(4) for legal insufficiency.

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<sup>3</sup> *Id.*

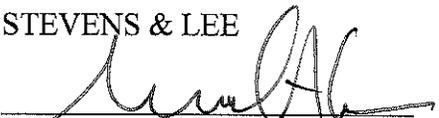
**REQUEST FOR RELIEF**

WHEREFORE, for all of the reasons stated herein, Respondent IDT Energy, Inc. respectfully requests that your Honorable Commission enter and Order:

- Dismissing Count VI of the Complaint, with prejudice,
- Striking Count VI of the Complaint as impertinent,
- Dismissing Count VII of the Complaint, with prejudice, and
- Denying the Complaint's request for an Order to provide restitution, with prejudice.

Respectfully submitted,

STEVENS & LEE



Michael A. Gruin, (I.D. No. 78625)

17 N. 2<sup>nd</sup> St., 16<sup>th</sup> Fl

Harrisburg, PA 17101

Tel. (717) 255-7365

Fax (610) 988-0852

COUNSEL FOR IDT ENERGY, INC.

DATE: July 10, 2014

**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. :

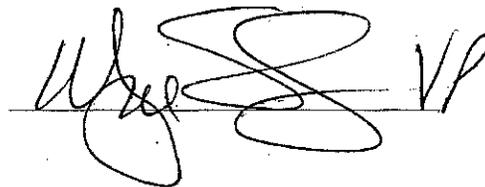
IDT ENERGY, INC. :

Respondent :

**VERIFICATION**

I, Wayne Stoughton, holding the title of Vice President Customer Service, Regulatory Compliance with IDT Energy, Inc. verify that the factual allegations contained in the foregoing Preliminary Objections are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.

7/9/2014  
Date

 VP

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**JOINT COMPLAINT**

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



## PRELIMINARY STATEMENT

1. This Joint Complaint is brought in the public's interest to address multiple violations of Pennsylvania law and Pennsylvania Public Utility Commission (Commission) orders and regulations, whereby consumers were misled and deceived as to the price they would pay for their electricity, all to their harm and detriment.

## PARTIES

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

Candis A. Tunilo  
Assistant Consumer Advocate  
Kristine E. Robinson  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923

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

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

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

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

6. IDT, Energy Inc. (Respondent) 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) (Licensing Order).

7. Respondent is a wholly owned subsidiary of IDT Capital, Inc., which is a wholly owned subsidiary of IDT Corporation, a member of the New York Stock Exchange, trading under the symbol "IDT."

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

9. Respondent provides electric generation supplier (EGS) services to residential customers, and as such, it must comply with applicable residential service regulations in Chapters 54 and 56 of the Commission's regulations. See 52 Pa. Code Ch. 54 and 56. See also

Licensing Order at 2-3. Respondent must also comply with Chapter 111 of the Commission's regulations. See 52 Pa. Code § 111.1.

10. Additionally, Respondent must abide by all applicable federal and state laws and Commission regulations, procedures and orders and ensure that its employees, representatives, agents and independent contractors do so as well. See Licensing Order at 3.

11. Respondent offers variable rate electric generation service to residential customers throughout Pennsylvania.

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

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

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

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

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

17. Of the referenced 2,434 contacts, approximately 539 or 22% were from customers of Respondent. Of the referenced 539 total contacts, written information was collected from approximately 23 customers.

18. From February 27, 2014 to June 4, 2014, the Attorney General received approximately 39,607 telephone calls and 7,503 consumer complaints related to variable rates charged by EGSs. Of the 7,503 consumer complaints, 1,917 or nearly 26% were against Respondent.

19. Upon information and belief, from January 1, 2014 to April 21, 2014, approximately 500 Formal Complaints were filed at the Commission by customers regarding variable rates charged by EGSs. Additionally, upon information and belief, approximately 6,500 informal complaints and nearly 10,000 inquiries were made by consumers to the Commission regarding variable rates charged by EGSs. Of the approximately 203 Formal Complaints reviewed by the OCA to date, approximately 47 or 23% were filed against Respondent.

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

20. The foregoing paragraphs are incorporated herein.

21. Of the referenced 1,917 consumer complaints against Respondent received by the Attorney General, 165 or nearly 9% of the complainants indicated that they understood that their rate would always be lower than or equal to the Price to Compare (PTC) or that Respondent would always save them money over the PTC. These complainants then received bills for generation service from Respondent that were at least two or three times more than the PTC.

22. Of the referenced 1,917 consumer complaints against Respondent received by the Attorney General, 78 complainants indicated that they believed that their rate would always remain competitive with the PTC. These complainants then received bills for generation service from Respondent that were at least two or three times more than the PTC.

23. Of the referenced 1,917 consumer complaints against Respondent received by the Attorney General, 31 complainants indicated that they believed that the Respondent would

provide them a guaranteed rate. These complainants then received bills for generation service from Respondent that were at least two or three times more than the PTC.

24. Of the referenced 23 customers from which written information was collected by the OCA, 7 or approximately 30% stated that Respondent's salespeople promised guaranteed savings over the PTC as inducement for complainants to switch to Respondent. These complainants then received bills for generation service from Respondent that were at least two or three times more than the PTC.

25. Of the referenced 23 consumers from which written information was collected by the OCA, 4 or approximately 17% stated that Respondent's salespeople represented to the consumers that they were required to switch from their Electric Distribution Companies (EDCs) to an alternative supplier and used this deception to induce the consumers to switch to Respondent.

26. Of the referenced 1,917 consumer complaints against Respondent received by the Attorney General, 35 complainants indicated that the Respondent's salespeople represented to the consumers that they were required to switch from their EDCs to an alternative supplier and used this deception to induce the consumers to switch to Respondent.

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

28. The Commission's regulations require EGSs to train its agents on, *inter alia*:

- Responsible and ethical sales practices and
- The EGS's disclosure statement.

See 52 Pa. Code § 111.5(a).

29. The Commission's regulations require EGSs to monitor telephonic and door-to-door marketing activities to ensure that their agents are providing accurate and complete information and complying with applicable rules and regulations. See 52 Pa. Code § 111.5(e).

30. The Commission's regulations require compliance with the Unfair Trade Practices and Consumer Protection Law (Consumer Protection Law), 73 P.S. § 201-1 *et seq.* See 52 Pa. Code §§ 54.43(f) and 111.12(d)(1).

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

- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
- Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;
- Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he does not have;
- Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; and
- Engaging in any other fraudulent or deceptive conduct which creates likelihood of confusion or of misunderstanding.

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

32. It is averred, upon information and belief, that employees, agents and/or representatives of Respondent have engaged in and continue to engage in activities that are

fraudulent, deceptive and/or in violation of the Commission's regulations and orders and the Consumer Protection Law by:

- a. Salespeople promising savings that may not, and for many customers did not, materialize and
- b. Salespeople deceiving consumers by claiming that consumers must switch to an alternative supplier.

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

#### **COUNT II – MISLEADING AND DECEPTIVE WELCOME LETTER AND ADVERTISEMENTS**

34. The foregoing paragraphs are incorporated herein.

35. In its Welcome Letters to customers and Advertising Documents, Respondent makes statements such as:

- “Our goal is simple – to reduce your annual energy expenses;”
- “We pass savings along to our customers by shopping for the best rates;”
- “Try our service RISK FREE;”
- “Take advantage of our special money-saving offer;”
- “We work in cooperation with your local utility company;”
- “NO contracts;” and
- “Take advantage of competitive rates now and continue to benefit when rates fall.”

See Respondent Welcome Letter and Advertising Documents attached hereto as Appendix A.

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

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

- Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of good or services;
- Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;
- Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he does not have;
- Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; and
- Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

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

38. The Joint Complainants aver that the Respondent's claims in its Welcome Letters to customers and Advertising Documents represent benefits of its services that Respondent did not provide to its customers and EDC sponsorship that it does not have in violation of the Consumer Protection Law.

39. The Joint Complainants aver that the Respondent's claims in its Welcome Letters and Advertising Documents were and are deceptive, which created and continues to create a

likelihood of confusion and misunderstanding for the Respondent's customers in violation of the Consumer Protection Law.

### **COUNT III - SLAMMING**

40. The foregoing paragraphs are incorporated herein.

41. Of the referenced 1,917 consumer complaints against Respondent received by the Attorney General, 147 or nearly 8% of the complainants indicated that they did not consent to switch to Respondent.

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

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

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

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

### **COUNT IV - LACK OF GOOD FAITH HANDLING OF COMPLAINTS**

46. The foregoing paragraphs are incorporated herein.

47. Of the referenced 23 customers from which written information was collected by the OCA, 14 or approximately 61% stated that when they attempted to contact Respondent about the variable rate charges on their bills, they could not get through to the Respondent on the telephone and/or their messages left for the Respondent went unanswered.

48. Of the referenced 44 Formal Complaints filed at the Commission against Respondent reviewed by the OCA to date, at least 26 or 59% of the complainants averred that when they attempted to contact Respondent about the variable rate charges on their bills, they could not get through to the Respondent on the telephone and/or their messages left for the Respondent went unanswered.

49. The Commission's regulations require EGSs to utilize good faith, honesty and fair dealing with residential customers. See 52 Pa. Code § 56.1(a). See also Licensing Order at 2.

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

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

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

52. The foregoing paragraphs are incorporated herein.

53. The Disclosure Statement of Respondent states as follows regarding variable pricing:

**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.

The Disclosure Statement is attached hereto as Appendix B.

54. The Commission’s regulations require that variable pricing terms include the conditions of variability and the limits on price variability. See 52 Pa. Code § 54.5(c). The variable pricing terms of Respondent fail to adequately state the conditions of variability and identify appropriate limits on price variability in violation of the Commission’s regulation.

55. The Commission’s regulations require that EGSs “provide accurate information about their electric generation services using plain language and common terms in communications with consumers.” See 52 Pa. Code § 54.43(1). Additionally, EGSs must provide information to consumers “in a format that enables customers to compare the various electric generation services offered and the prices charged for each type of service.” Id.

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

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

58. Upon information and belief, although Respondent’s Disclosure Statement states that customers may call the Respondent “for current variable pricing rates,” the Respondent will

not provide the rate that a customer will be charged on his next bill if he calls and requests such information.

59. It is believed and therefore, averred that Respondent has violated and continues to violate the Commission's regulations and the Consumer Protection Law by failing to provide pricing information requested by its customers in accordance with the Respondent's Disclosure Statement.

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

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

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

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

63. The foregoing paragraphs are incorporated herein.

64. Upon information and belief, Respondent charged its variable rate customers prices at least as high as \$0.34 per kWh for electricity.

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

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

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

**COUNT VII – FAILURE TO COMPLY WITH THE TELEMARKETER  
REGISTRATION ACT**

68. The foregoing paragraphs are incorporated herein.

69. Of the referenced 1,917 consumer complaints against Respondent received by the Attorney General, at least 299 or approximately 16% of the complainants indicated that their service with Respondent was initiated by a telemarketing call from Respondent.

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

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

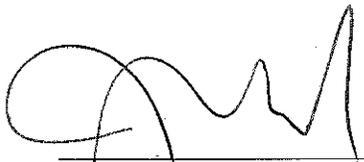
72. Additionally, the Telemarketer Registration Act requires the Respondent to provide consumers with a contract that contains, *inter alia*, the following:

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

See 73 P.S. § 2245(c).

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

Respectfully submitted,



---

John M. Abel  
Senior Deputy Attorney General  
PA Attorney I.D. 47313

Margarita Tulman  
Deputy Attorney General  
PA Attorney I.D. 313514

Bureau of Consumer Protection  
Office of Attorney General  
15<sup>th</sup> Floor, Strawberry Square  
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T: (717) 787-9707  
F: (717) 705-3795  
jabel@attorneygeneral.gov  
mtulman@attorneygeneral.gov

Counsel for:

Kathleen G. Kane, Attorney General  
Bureau of Consumer Protection

DATE:

6-20-14



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Candis A. Tunilo  
PA Attorney I.D. 89891

Kristine E. Robinson  
PA Attorney I.D. 316479  
Assistant Consumer Advocates

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5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
T: (717) 783-5048  
F: (717) 783-7152  
ctunilo@paoca.org  
krobinson@paoca.org

Counsel for:

Tanya J. McCloskey  
Acting Consumer Advocate

# APPENDIX A



**You have the power to choose and save!  
 Try IDT Energy™ Service RISK FREE!**

**Up to 2 FREE MONTHS**  
 of ELECTRIC\* when you sign up today!

Dear [Redacted]

Positive changes in the energy market have made it possible for companies to compete for your energy business. IDT Energy can help you benefit by giving you the power to choose your home's electric and natural gas supplier. We work in cooperation with your local utility company to provide the safe, reliable energy you depend on.

**Our goal is simple – to reduce your annual energy expenses.**

When you enroll in IDT Energy™ Service, your utility will continue to deliver your electric and natural gas, read your meter, bill you, provide customer support and respond to service calls. IDT Energy takes care of the rest – we shop the wholesale energy market in an effort to reduce your annual energy expenses.

**All it takes is a 5-minute phone call to get started.  
 Call 1-888-405-5505 (Monday – Friday from 8:30AM – 8:30PM)  
 or visit [www.ClickIDTEnergy.com](http://www.ClickIDTEnergy.com) now!**

In recent years, more than 1,000,000 of your neighbors in New York, New Jersey and Pennsylvania have enrolled with IDT Energy. Join today and start enjoying all the benefits of enrollment.

**Try IDT Energy™ Service RISK FREE and enjoy the convenience of:**

- No contracts or cancellation fees
- No upfront fees or deposits
- No interruptions to initiate service
- No special service calls to switch
- Plus, we proudly keep jobs in the US with customer care, sales and administrative teams located in the states we serve

**If you are not completely satisfied, you may cancel at any time.**

**Get 2 FREE MONTHS of ELECTRIC\* when you enroll!**

Over the next 12 months, IDT Energy expects to issue over \$1,500,000 to our customers in the form of rebates for offers like this! **Call now at 1-888-405-5505, Monday – Friday from 8:30AM – 8:30PM or visit [www.ClickIDTEnergy.com](http://www.ClickIDTEnergy.com) to take advantage of our money-saving offer.**

Sincerely,

Anne L. Wilson  
 Executive VP of Marketing, IDT Energy, Inc.

PS: Concerned about your environment? Ask about our affordable solutions for clean-renewable energy.

**IDT Energy gives you the power to choose!**  
 Please have your utility bill and account number ready.  
**Call 1-888-405-5505 (Monday – Friday from 8:30AM – 8:30PM)  
 or visit [www.ClickIDTEnergy.com](http://www.ClickIDTEnergy.com)!**

\*Offer only available to customers switching their electric supply to IDT Energy for the first time. The first month free (not to exceed \$75) and twelfth month free (not to exceed \$75) will each be paid in the form of an automatic rebate. Actual rebate amount will vary based on your electric usage during the rebate term. First month free rebate paid after month three. Twelfth month rebate paid after month fifteen. Customer must remain active service in good standing at the time each rebate is paid.

## Choose your home's electric and natural gas supplier, and save!

- **Our goal is simple — to reduce your annual energy expenses.**

Here's how we do it: Now, thanks to deregulation in the energy market, companies can compete for your energy business. Unlike some fixed rate suppliers, IDT Energy continues to shop the wholesale energy market throughout the year as energy prices rise and fall. We pass savings along to our customers by shopping for the best rates.

- **The difference between energy supply and delivery.**

Your energy service is broken up into two parts: supply and delivery. In the past, electric and natural gas prices were state-regulated, and the local utilities provided both supply and delivery. Now, thanks to deregulation of the energy markets, you have the freedom to choose your supplier, while retaining your current utility company to deliver your energy. This freedom of choice gives you the power to lower your energy bill by shopping for the best rates.

- **Switching is easy.**

Simply locate your current utility bill and account number, then call the toll-free number on the front or visit us online. It only takes a few minutes and there are no interruptions to initiate service.

- **We're concerned about our environment too.**

Our energy demands are impacting our environment, health and national security. Clean and renewable alternatives minimize that impact and encourage conservation and energy independence. We also offer affordable "green" solutions for your home that are derived from wind, running water and the sun — all sources that protect the environment in which we live.

## Try our service RISK FREE!

There is no obligation. There are no contracts, no deposits, no sign up or early termination fees. **Take advantage of our special money-saving offer and if you are not completely satisfied, you may cancel at any time with no penalty.**

IDT Energy is licensed to supply electric and natural gas by the New York Public Service Commission (PSC), the New Jersey Board of Public Utilities (BPU) and the Pennsylvania Public Utility Commission (PUC).

IDT Energy, Inc is a division of publicly traded Genie Energy, LLC (NYSE: GNE)



**THIS INCREDIBLE OFFER HAS BEEN EXTENDED!**  
**Guaranteed rates below the utility for 2 months**



More than 1,000,000 of your neighbors in PA, NY and NJ have enrolled with IDT Energy.

Our goal is simple - to reduce your annual energy expenses.

Try us risk-free and get -

- Rates guaranteed below the utility for 2 months
- Month 3 FREE\*
- Competitive variable rates thereafter
- An additional BONUS month FREE\*



Please have your Met-Ed bill and Customer Number ready (it starts with "080").

**Call 877.437.1144 (M-F 8:30am to 8:30pm) or visit [www.MetEdSaves.com](http://www.MetEdSaves.com) now!**

\* See other side for details

# SWITCHING IS EASY -- Try IDT Energy® Service Today!

We are one of the largest independent energy suppliers in the Northeast. We offer:

- NO contracts or cancellation fees
- NO up-front fees or deposits
- NO interruptions to initiate service
- NO special service calls to switch
- PLUS we proudly keep jobs in the US with customer care, sales and administrative teams located in the states we serve!



Electric prices rise and fall. We shop the wholesale energy market in an effort to reduce your annual energy costs. Take advantage of competitive rates now and continue to benefit when rates fall.

**We can serve your natural gas supply needs too!**

Try us risk free. If you are not completely satisfied, you can cancel at any time with no penalty.

Please have your Met-Ed bill and Customer Number ready (it starts with "080").

**Call 877.437.1144 (M-F 8:30am to 8:30pm) or visit [www.MetEdSaves.com](http://www.MetEdSaves.com) now!**

\*This exclusive offer is available to customers switching their electric supply to IDT Energy for the first time. Introductory rates are guaranteed below the utility rate for the first two months of active service. Then, the third month free (not to exceed \$75) and twelfth month free (not to exceed \$75) will each be paid in the form of an automatic rebate. Actual rebate amount will vary based on actual electric usage during the rebate term. Third month rebate to be paid in month six and twelfth month rebate to be paid in month fifteen. Customer must retain active service in good standing when the rebate is paid. To take advantage of this offer, you must enroll by 12/31/2012.

## APPENDIX B



# APPENDIX C

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AFFIDAVIT  
OF  
STEVEN L. ESTOMIN, Ph.D.

JUNE 19, 2014

---

**EXETER**

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

## AFFIDAVIT

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

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

**AFFIDAVIT**

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

Steven Estomin  
Steven L. Estomin

Subscribed and sworn to before me on this 19 day of June 2014

Alvin M Adams  
Notary Public

My Commission Expires: 2/2015

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**VERIFICATION**

I, Tanya J. McCloskey, Acting Consumer Advocate, hereby state that the facts set forth above in this Joint Complaint are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

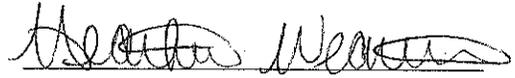
  
\_\_\_\_\_  
Signature

6/20/14  
\_\_\_\_\_  
Date

## VERIFICATION

I, Heather M. Weaver, Consumer Protection Agent for the Office of Attorney General, Bureau of Consumer Protection, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that the Pennsylvania Office of Attorney General's Bureau of Consumer Protection expects to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 6-20-14



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

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

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

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

**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

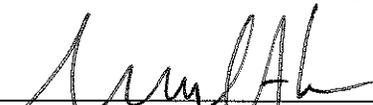
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the enclosed Preliminary Objections upon the parties listed below, in accordance with the requirements of § 1.54 (relating to service by a party)

**VIA ELECTRONIC MAIL AND FIRST CLASS US MAIL**

<p>Candis A. Tunilo, Esq. Kristine Robinson, Esq. Office of Consumer Advocate 555 Walnut Street Forum Place, 5<sup>th</sup> Floor Harrisburg, PA17101</p>	<p>Sharon Webb, Esq. Office of Small Business Advocate 300 North 2nd Street - #1102 Harrisburg, PA 17101</p>
<p>John M. Abel, Esq. Senior Deputy Attorney General Margarita Tulman, Esq. Deputy Attorney General Bureau of Consumer Protection Office of Attorney General 15<sup>th</sup> Floor Strawberry Square Harrisburg, PA 17120</p>	<p>Johnnie Simms, Esq. Bureau of Investigation &amp; Enforcement Pennsylvania Public Utility Commission Commonwealth Keystone Building 400 North Street Harrisburg, PA 17120</p>

July 10, 2014

  
\_\_\_\_\_  
Michael A. Grupp, Esq.