

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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September 8, 2014

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 of the Office of Attorney General and Office of Consumer Advocate for Interlocutory Review and Answer to Material Questions, in the above-referenced proceeding.

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

Respectfully Submitted,

A handwritten signature in cursive script that reads "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

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Pursuant to Section 5.302 of the Pennsylvania Public Utility Commission (Commission) regulations, 52 Pa. Code § 5.302, the Office of Consumer Advocate and the Office of Attorney General (hereinafter Joint Complainants) request that the Commission grant review of and answer the following questions in the affirmative:

- 1) Does the Commission have authority and jurisdiction to determine whether a violation of the Telemarketer Registration Act (TRA) has occurred when considering whether the Commission's regulations—which require compliance with the TRA—have been violated?
- 2) Does the Commission have the authority and jurisdiction to determine whether the prices charged to customers by an electric generation supplier (EGS) conform to the EGS disclosure statement regarding pricing?
- 3) Does the Commission have the authority and jurisdiction to order equitable remedies including restitution?

In support of this request, the Joint Complainants submit as follows:

On June 20, 2014, the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane through the Bureau of Consumer Protection (BCP) and the Acting Consumer Advocate Tanya J. McCloskey (OCA) 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, and Pennsylvania law. The Joint Complaint included seven counts and alleges that IDT Energy Inc. (IDT) violated Pennsylvania law and Commission regulations and Orders. Specifically, the seven Counts in the Joint Complaint are: (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.

On July 10, 2014, IDT filed Preliminary Objections, as well as an Answer and New Matter. IDT's Preliminary Objections argued that three of the seven Counts in the Joint Complainants' Joint Complaint should be dismissed for lack of Commission jurisdiction and/or legal insufficiency of a pleading. On July 21, 2014, Joint Complainants filed an Answer to Preliminary Objections. The Joint Complainants asserted that IDT's Preliminary Objections are unsupported. The Joint Complainants argued that it is clear and

free from doubt that the Complaint is legally sufficient and sought that the Commission make determinations pursuant to the Commission's powers and jurisdiction. The Joint Complainants requested that IDT's Preliminary Objections be overruled. On July 30, 2014, the Joint Complainants filed an Answer to New Matter.

By Order dated August 20, 2014, Administrative Law Judges (ALJ) Elizabeth Barnes and Joel H. Cheskis granted in part and denied in part IDT's Preliminary Objections.¹ 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.²

Based on these findings, the ALJs struck Count VI (Prices Nonconforming to Disclosure Statement) in its entirety and struck in part Count VII (Failure to Comply with the Telemarketer Registration Act) to the extent that this Count considers the TRA. Joint Complainants seek review of the Order to the extent it granted Preliminary Objections and has limited the scope of the Joint Complaint.

The OCA submits that review of these material questions is necessary to ensure that all legal claims within the Commission's authority and jurisdiction can be properly pursued in the proceeding below. The ALJs' Order has improperly limited the Commission's jurisdiction and authority to consider various claims which will restrict the development of the evidentiary record. If the Joint Complainants are not able to properly pursue their legal claims, significant prejudice and harm to the Joint Complainants and to the interests of the consumers that they represent will result. It is in the public interest and consumer interest to allow the development of an accurate and complete factual record for Commission review.

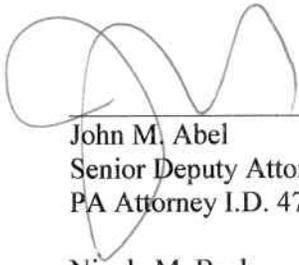
¹ The ALJs issued Orders on Preliminary Objections in four of the Joint Complaints filed by the OCA and BCP at Docket Nos. C-2014-2427655 (Blue Pilot), C-2014-2427659 (Respond Power, LLC), C-2014-2427656 (IDT Energy, Inc.), and C-2014-2427656 (Pa. Gas & Electric). The OCA will be filing a Petition for Interlocutory Review and Answer to Material Questions in each case. The OCA would note that though similar, the four Orders do not reach the same conclusions as to several counts so the material questions vary for each case. The Petitioners will address these differences in their Briefs in Support.

² The Petitioners note that the ALJs did not preclude claims pursuant to the Unfair Trade Practices and Consumer Protection Law in this proceeding but did in the other three proceedings in which the Petitioners filed Petitions for Interlocutory Review and Answer to Material Questions.

Further, resolving these issues now will expedite the conduct of this proceeding and the other proceedings brought by the Joint Complainants. The ALJs' Order may create confusion as to the permissible scope of the proceeding. If the proceeding is improperly limited, it may result in the need to re-litigate matters before the Commission or file an appeal with the Commonwealth Court. Such a process does not promote judicial economy, especially in this instance where the Commission's regulations and case law do not support the ruling of the ALJs.

WHEREFORE, the Joint Complainants respectfully request that the Commission undertake interlocutory review of the August 20, 2014 Order, answer the material questions in the affirmative, and direct that all Counts of the Joint Complainant proceed to hearing.

Respectfully Submitted,



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DATED: September 8, 2014

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CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Joint Petition of the Office of Attorney General and Office of Consumer Advocate for Interlocutory Review and Answer to Material Questions, in the manner and upon the persons listed below:

Dated this 8th day of September 2014.

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