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September 8, 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 Tanya J. McCloskey, Acting Consumer Advocate v. IDT Energy, Inc.**  
**Docket No. C-2014-2427657**

Dear Secretary Chiavetta:

Enclosed for filing please find IDT Energy, Inc.'s Petition for Interlocutory Review and Answer to Material Question the above-referenced matter. Copies of the Petition have been 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. Gruin

Encl.

cc: Certificate of Service  
Administrative Law Judges Joel Cheskis and Elizabeth Barnes (via email and US Mail)

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A PROFESSIONAL CORPORATION

**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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**PETITION FOR REVIEW AND ANSWER TO MATERIAL QUESTION**

Pursuant to 52 Pa. Code §5.302, IDT Energy, Inc. (“IDT”) hereby Petitions the Pennsylvania Public Utility Commission (“Commission”) for Interlocutory Review and Answer to a Material Question which has arisen in the above-captioned matter. For the reasons set forth below, interlocutory review should be granted because it will expedite the conduct of this proceeding and will prevent substantial prejudice to IDT.

**MATERIAL QUESTION FOR REVIEW**

**Does the Commission have the authority under Section 1312 of the Public Utility Code to order electric generation suppliers to issue refunds to customers?**

**Suggested Answer:** No. Section 1312 of the Public Utility Code<sup>1</sup> states that:

“If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment. In making a determination under this section, the commission need not find that the rate complained of was extortionate or oppressive.” (Emphasis added).

Section 1312 clearly does not apply to electric generation suppliers (“EGSs”), as EGSs are explicitly excluded from the definition of “public utilities” by 66 Pa. C.S.A. § 102 except with

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<sup>1</sup> 66 Pa.C.S.A. § 1312

respect to 66 Pa. C.S.A. § 2809 (relating to requirements for electric generation suppliers) and 66 Pa. C.S.A. § 2810 (relating to revenue neutral reconciliation). See also *Delmarva Power & Light Co. v. Pa. Pub. Util. Comm'n*, 870 A.2d 901 (Pa. 2005) ("*Delmarva*").

### **COMPELLING REASONS FOR INTERLOCUTORY REVIEW**

This Petition is filed as a result of an Order issued on August 20, 2014 in this matter, which granted in part and denied in part the Preliminary Objections filed by IDT in response to the Joint Complaint of the Office of Consumer Advocate ("OCA") and the Commonwealth of Pennsylvania ("Commonwealth"). The August 20<sup>th</sup> Order on IDT's Preliminary Objections held that the Commission does not have the authority to order IDT to provide restitution to customers, but went on to hold that the Commission does have the authority to order IDT to provide refunds to customers under 66 Pa. C.S.A. § 1312, if appropriate. IDT seeks interlocutory review of this finding from the August 20th Order on IDT's Preliminary Objections.

A determination regarding the scope of the relief which is within the Commission's authority to order will greatly expedite the conduct of the proceeding, and therefore, Commission review and answer of the Material Question is necessary and appropriate under 52 Pa. Code § 5.302(a). The authority of the Commission to order IDT to issue refunds is a core jurisdictional issue that goes to the heart of a major component of the proceeding, i.e., the possible relief available to the Joint Complainants, and the possible liability exposure to IDT, in the event that violations of the Public Utility Code and the Commission's regulations are proven.

It is well settled that the Commission may not exceed its jurisdiction and must act within it. *City of Pittsburgh v. Pa. Pub. Util. Comm'n.*, 43 A.2d 348 (Pa. Super 1945). The finding that Section 1312 applies to EGSs represents a dramatic expansion of the Commission's jurisdiction that runs directly contrary the Pennsylvania Supreme Court's holding in *Delmarva*. Defining the proper scope of the Commission's jurisdiction and the relief available for the violations alleged by

the Joint Complainants is critically important, and will impact nearly every aspect of this proceeding. As such, clear guidance from the Commission on the scope on the applicability of Section 1312 to EGSs is crucial at this stage of the proceeding. Such guidance will resolve uncertainty for all parties to the case, establish the proper scope of discovery and testimony, prevent recurring discovery disputes, prevent disputes over the relevancy of testimony, and allow the parties to prepare appropriate testimony addressing only the issues that are squarely within the Commission's jurisdiction to resolve. Determination of this issue will also increase the possibility of a settlement of this proceeding, as all parties will have a clear understanding of the extent of the relief that can be ordered by the Commission.

No party will be prejudiced by the Commission's interlocutory review of this issue, as all parties will benefit from clear guidance from the Commission on this fundamental jurisdictional issue at this early stage of the proceeding. Conversely, IDT will be prejudiced if the Commission declines to answer the Material Question, as IDT would be forced to expend considerable resources to litigate the issue of the appropriateness of refunds in this proceeding, before ultimately being able to seek appellate review of the issue at the conclusion of this proceeding

WHEREFORE, for the foregoing reasons, IDT Energy, Inc. respectfully requests Interlocutory Review and Answer to the Material Question as set forth above.

Respectfully Submitted,



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(717) 255-7365  
Attorneys for IDT Energy, Inc.

Dated: September 8, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the enclosed Petition for Interlocutory Review and Answer to a Material Question 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**

Candis A. Tunilo, Esq. Kristine Robinson, Esq. Office of Consumer Advocate 555 Walnut Street Forum Place, 5 <sup>th</sup> Floor Harrisburg, PA 17101	Sharon Webb, Esq. Office of Small Business Advocate 300 North 2nd Street - #1102 Harrisburg, PA 17101
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	Wayne Scott, Esq. Michael Swindler, Esq. Stephanie Wimer, Esq. Bureau of Investigation & Enforcement Pennsylvania Public Utility Commission Commonwealth Keystone Building 400 North Street Harrisburg, PA 17120

September 8, 2014



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Michael A. Gruin, Esq.