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September 18, 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 IDT Energy, Inc.'s Brief in Support of its Petition for Interlocutory Review and Answer to Material Question in the above-referenced matter. Copies of the Brief 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)
Cheryl Walker-Davis, Director, Office of Special Assistants

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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	:	

**BRIEF OF IDT ENERGY, INC. IN SUPPORT OF ITS
PETITION FOR INTERLOCUTORY REVIEW AND ANSWER TO MATERIAL
QUESTION**

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Attorneys for IDT Energy, Inc.

Dated: September 18, 2014

PRELIMINARY STATEMENT

Pursuant to 52 Pa. Code §5.302, IDT Energy, Inc. (“IDT”) hereby submits this Brief in Support of its September 8, 2014 Petition for Interlocutory Review and Answer to a Material Question (“Petition”). For the reasons set forth below, IDT requests that the Pennsylvania Public Utility Commission (“Commission”) issue an Order which answers the Material Question in the negative, and confirms that Section 1312 of the Public Utility Code (“Section 1312”) does not provide the Commission with the authority to order Electric Generation Suppliers (“EGSs”) to issue refunds to customers.

I. INTRODUCTION AND STATEMENT OF THE CASE

On June 20, 2014, the Office of Attorney General (“OAG”) and Office of Consumer Advocate (“OCA”) (collectively, “Joint Complainants” or “OAG/OCA”) filed their Joint Complaint (“Complaint”) against IDT. The factual foundation for the Complaint was derived 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 (of which 23 were written), all of which related to IDT’s variable electric generation supply prices during the well-documented Polar Vortex crisis.¹ *See* Complaint, at paragraphs 17-19.

The Complaint against IDT represents an effort by the OAG and OCA to retroactively expand the regulatory scheme applicable to Electric Generation Suppliers (“EGSs”) in order to assign liability to variable price EGSs for the Polar Vortex wholesale pricing crisis of early 2014. In furtherance of that goal, the Complaint asserted several extremely expansive and novel

¹ In its February 20, 2014 Order regarding the *Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134, the Commission noted that “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 Interconnection, LLC (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.”

interpretations of the applicable law and Commission's regulations, including that EGSs are required to obtain signed customer contracts for all sales made via telephone, that the Commission has the authority to retroactively determine the appropriateness of EGS prices on a "cost of service" basis, and that the Commission has the authority to adjudicate claims against EGSs under the Unfair Trade Practices and Consumer Protection Law ("UTPCPL"). For relief, the Complaint sought, *inter alia*, revocation of IDT's license, restitution payments to IDT's customers equal to the difference between prices that IDT charged and the utility Price to Compare, civil penalties, and injunctive relief. With respect to restitution, the Complaint requested 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."²

On July 10, 2014, IDT filed its Answer and New Matter and Preliminary Objections to the Complaint, in which it vigorously denied the Complaint's allegations of "slamming," "deception," "bad faith," and other unfair trade practices. IDT's Answer explained that the customer complaints underlying the OAG/OCA Complaint were not filed because of some simultaneous systematic wrongdoing by IDT, but rather were the product of a simultaneous price event that affected the entire industry. IDT's Answer also clarified that 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 dramatically increased wholesale electricity prices, IDT voluntarily issued price adjustments totaling approximately \$4,000,000 to thousands of customers who were affected by the unprecedented electricity prices in the winter of 2014.³

² See Complaint, Request for Relief, Paragraph C.

³ See IDT New Matter, at paragraph 26.

IDT's Preliminary Objections sought, *inter alia*, dismissal of the Complaint's claims for restitution on the grounds of legal insufficiency because the Commission lacks the statutory authority to order the equitable relief of restitution, either under the Unfair Trade Practices Consumer Protection Law ("UTPCPL") or otherwise.⁴ IDT's Preliminary Objection also argued that 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.

By Order issued on August 20, 2014 ("Preliminary Objections Order"), the presiding ALJs partially granted IDT's Preliminary Objection on the restitution issue, holding that the Commission does not have the authority to impose restitution on an unwilling party. However, the Preliminary Objections Order went on to hold that Section 1312 of the Public Utility Code⁵ provides the Commission with authority to direct IDT to issue refunds to customers.⁶ On September 8, 2014, IDT filed its Petition for Interlocutory Review and Answer to a Material Question to request review of this holding from the Preliminary Objections Order.

II. MATERIAL QUESTION AND SUGGESTED ANSWER

"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 Code⁷ 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

⁴ See IDT's Preliminary Objections, at paragraphs 37-49, citing *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).

⁵ 66 Pa.C.S.A. § 1312

⁶ Preliminary Objections Order, at pp. 15-16

⁷ 66 Pa.C.S.A. § 1312

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 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*”).

III. LEGAL STANDARD FOR INTERLOCUTORY REVIEW

The standards for interlocutory review of a material question are set forth in the Commission's Regulations at 52 Pa. Code §§ 5.302 and 5.303. Section 5.302(a) requires that the petitioner state “the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding.” The pertinent consideration is whether interlocutory review is necessary in order to prevent substantial prejudice - that is, that the alleged error, and any prejudice flowing therefrom, could not be satisfactorily cured during the normal Commission review process.⁸ Pursuant to 52 Pa. Code § 5.303(a), in reviewing a request for interlocutory review, the Commission has the authority to:

- (1) Continue, revoke or grant a stay of proceedings if necessary to protect the substantial rights of the parties,
- (2) Determine that the petition was improper and return the matter to the presiding officer,
- (3) Decline to answer the question, or
- (4) Answer the question.

⁸ *Joint Application of Bell Atlantic Corporation and GTE Corporation*, Docket Nos. A-310200F0002, et al. (Order entered June 10, 1999); *Pa. PUC v. Frontier Communications of Pennsylvania Inc.*, Docket No. R-00984411 (Order entered February 11, 1999); *Pa. PUC v. C.S. Water and Sewer Associates*, 74 Pa. P.U.C. 716 (1991); *Re Knights Limousine Service, Inc.*, 59 Pa. P.U.C. 538 (1985).

IV. ARGUMENT

A. Commission Review of the Material Question Will Prevent Substantial Prejudice and Expedite the Conduct of the Proceeding

Clear Commission guidance on whether Section 1312 is applicable to EGSs will prevent substantial prejudice to IDT and every other Electric Generation Supplier operating in Pennsylvania and will greatly expedite the conduct of this 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 determine the appropriateness of IDT's retail electric generation supply prices and/or order IDT to issue refunds to customers is a core jurisdictional issue that will have a dramatic impact on the scope of this proceeding. In order to compel refunds under Section 1312, the Commission must first determine whether a public utility's rates are unjust or unreasonable, or otherwise unlawful.⁹ Therefore, if it is determined that EGSs are "public utilities" for purposes of Section 1312, such that the Commission can order EGSs to provide refunds to customers, it would essentially convert this proceeding into a rate proceeding. This would obviously drastically expand the scope of the proceeding far beyond the scope of the original Joint Complaint. The Commission knows fully well what rate proceedings can involve – dozens of witnesses, reams of wide-ranging discovery, days of hearings, and great expense to the parties involved. If the Commission declines to answer the Material Question at this time, and then ultimately holds that Section 1312 does not apply to EGSs once the final Order in this case is issued sometime in late 2015, the damage to IDT will be irreversible. IDT - a non-utility electric generation supplier that is not subject to cost of service regulation - will have been forced to litigate a costly, lengthy, and invasive rate proceeding on the basis of a finding that is clearly

⁹ See 66 Pa.C.S.A § 1312 (a)

erroneous (as set forth more fully below). Such a dramatic expansion of the scope of the proceeding, far beyond the scope of the original Complaint, on the basis of such a clearly erroneous finding, certainly constitutes substantial prejudice to IDT.

Allowing the ALJs' Section 1312 ruling to stand until the conclusion of this proceeding will also be prejudicial to other EGSs operating in Pennsylvania. The ALJs' finding that Section 1312 applies to EGS was simply unprecedented. Never before has the Commission or any ALJ made such a finding. If the Commission declines to review the Material Question and allows the ALJs' ruling to remain intact, it will essentially mean that every EGS in Pennsylvania could be the target of complaints alleging that their "rates" were unreasonable, and seeking refunds for all of their affected customers. Those EGSs will have been unwittingly exposed to a new regulatory regime, without any due process rights or even the benefit of a Commission rulemaking to be forewarned of the rule change. These EGSs will certainly be prejudiced if the Commission declines to answer the Material Question now. In light of the chaos and disruption to the competitive market that would ensue if the ALJs' 1312 ruling is allowed to remain intact until the conclusion of this proceeding, the Commission should act now to reverse what is clearly an erroneous ruling.

Commission guidance on whether Section 1312 is applicable to the present proceeding will also expedite the conduct of this proceeding. Commission guidance on this question will determine if the proceeding will be used to examine the appropriateness of IDT's prices, or whether the scope of the proceeding will be limited to determining whether IDT violated the Commission's regulations regarding sales and marketing practices. If the Commission declines to answer the Material Question, this issue will remain unresolved and contested throughout the course of the proceeding. Because the 1312 ruling represents such a dramatic expansion of the proceeding, uncertainty over its correctness will create controversy in nearly every aspect of this

proceeding. Clear Commission guidance on the applicability of Section 1312 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.

For the reasons set forth above, IDT respectfully requests that the Commission exercise its discretion to review the Material Question. And for the reasons set forth below, IDT requests the Commission to answer the Material Question in the negative and determine that Section 1312 is not applicable to Electric Generation Suppliers.

B. Section 1312 Is Not Applicable to Electric Generation Suppliers

There truly can be no doubt that Section 1312 does not apply to EGSs. The power and authority exercised by an administrative commission must fall within the strict and exact limits of the statutory provisions under which it operates because such tribunals are extra judicial.¹⁰ It is well settled that the Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly as contained in the Public Utility Code.¹¹

When interpreting provisions of the Public Utility Code, and the language of the statute is clear and unambiguous, a court need go no further to discern the legislature's intent.¹² Section 1312 is clear and unambiguous, and it simply does not provide the Commission with the authority to order EGSs to provide refunds to customers. Rather, Section 1312 only provides the Commission with the authority to order a "public utility" to issue refunds to customers, only in the context of a "proceeding involving rates", and only if the Commission determines "that any rate received by the public utility was unjust or unreasonable, or was in violation of any regulation or

¹⁰ *Process Gas Consumers Group v. Pennsylvania Public Utility Commission*, 511 Pa. 88, 511 A.2d 1315 (1986).

¹¹ *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).

¹² *Elite Industries v. Public Utility Commission*, 574 A.2d 476, 832 A.2d 428.

order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility.”(emphasis added)¹³ Both of the emphasized terms – “public utility” and “rate” – are crucial for analyzing whether Section 1312 is applicable to EGSs.

The General Assembly has defined both “public utility” and “rate” in Section 102 of the Public Utility Code¹⁴. Section 102 explicitly states that the term “public utility” does not include “Electric generation supplier companies, except for the limited purposes as described in sections 2809 (relating to requirements for electric generation suppliers) and 2810 (relating to revenue neutral reconciliation)”. Section 102’s definition of “rate” is expressly limited to charges made by a public utility or contract carrier. As such, a plain reading of the unambiguous language of Section 1312, and the Public Utility Code’s definitions of the key terms therein, can only result in the conclusion that Section 1312 is not applicable to EGSs. Section 1312 only provides the Commission with the authority to order “public utilities” to provide refunds to customers, and the Public Utility Code expressly excludes EGSs from the definition of “public utility”. Section 1312 only provides the Commission with the authority to order refunds to customer if a “rate” was unjust, unreasonable, or in violation of a Commission Order, regulation or a utility tariff, and the Public Utility Code does not include EGS charges in the definition of “rate”.

Any doubts regarding the extent to which EGSs are “public utilities” under the Public Utility Code were removed by the Pennsylvania Supreme Court’s 2005 decision in the case of *Delmarva Power & Light Co. v. Pa. Pub. Util. Comm’n*, 870 A.2d 901 (Pa. 2005) (“*Delmarva*”). In that case, the Court analyzed whether EGSs were “public utilities” for purposes of Section 510 of the Code, which authorizes the Commission to issue assessments to public utilities for regulatory expenses. The Court noted that, “Based on this unambiguous language, it is clear that the General Assembly did not intend for EGSs to be characterized as public utilities for most

¹³ 66 Pa.C.S.A. § 1312

¹⁴ 66 Pa.C.S.A. § 102

purposes.”¹⁵ The Court noted that the General Assembly made an exception to this rule by permitting EGSs to be deemed public utilities for “the limited purposes” described in sections 2809 and 2810. But in holding that EGSs were not “public utilities” for purposes of Section 510, the Court found it persuasive that the General Assembly did not state that EGSs could be deemed public utilities for purposes of section 510, and therefore the Court concluded that the General Assembly did not intend for EGSs to be considered public utilities for purposes of section 510 assessments.

The same logic must apply to Section 1312. In carving out limited circumstances for which EGSs can be considered public utilities, the General Assembly plainly did not state that EGSs were deemed public utilities for purposes of Section 1312. The General Assembly expressly enacted two exceptions to the Public Utility Code’s exclusion of EGSs from the definition of “public utilities”, but the General Assembly chose not to enact a similar exception for Section 1312. As the *Delmarva* Court noted, 1 Pa.C.S.A § 1924 mandates that exceptions expressed in a statute shall be construed to exclude all others.¹⁶ Applying this basic rule of statutory interpretation, EGSs cannot be considered “public utilities” for purposes of Section 1312. They can only be considered public utilities for purposes of the two sections expressly referenced by the General Assembly – Sections 2809 and 2810.

The Joint Complainants in this case may argue that EGSs are deemed to be public utilities for the limited purpose of Section 2809 of the Code, and that this limited exception somehow permits an order of refunds under Section 1312. Putting aside the fact that such an argument would directly contradict the plain language of Section 102 and the Court’s holding in *Delmarva*, the argument must also fail because Section 2809 says nothing about granting the Commission the

¹⁵ *Delmarva*, at 910, citing *Bethlehem Steel Corp. v. Public Utility Comm’n*, 552 Pa. 134, 713 A.2d 1110, 1112 (1998); and *Independent Oil and Gas Assoc. v. Public Utility Comm’n*, 789 A.2d 851, 855 (Pa. Commw. 2002).

¹⁶ *Id.*, citing *Kmonk-Sullivan v. State Farm Mut. Auto. Ins. Co.*, 567 Pa. 514, 788 A.2d 955, 962 (2001) (“An exception expressly provided in a statute is a strong indication that the legislature did not intend to exclude unexpressed items.”).

authority to order refunds. Furthermore, even if EGSs were deemed to be “public utilities” for purposes of Section 1312, refunds would still not be permissible under Section 1312 because refunds are only permitted in the context of a “proceeding involving rates” after a finding that the utility’s rates were unjust or unlawful.

This proceeding clearly is not a “proceeding involving rates”, and the ALJs’ finding that Section 1312 allows the Commission to order EGSs to provide refunds runs afoul of the well-settled principle that the Commission does not have the authority to regulate EGS pricing. Section 1312 contains a condition precedent before the Commission may order refunds; that is, the Commission must first determine that a “rate” was unlawful, unreasonable, or in violation of a Commission Order or utility tariff. This necessarily would require an investigation into the appropriateness of a rate, and it is well settled that the Commission has no authority to investigate the appropriateness of EGS rates. While the Electricity Generation Customer Choice and Competition Act (“Choice Act”)¹⁷ provides the Commission with authority to regulate EGSs for licensing and similar purposes, it mandates that the Commission has no authority to regulate electricity generation prices offered by EGSs. See 66 Pa.C.S. § 2806(a). The Commission has reiterated this principle time and again. *See, e.g., Petition of PECO Energy Company for Approval of its Default Service Plan*, Docket No. P-2012-2283641 (Order entered March 6, 2014), *Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134 (Order entered February 20, 2014), and *Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause*, Docket No. M-2013-2362961 (Order entered November 14, 2013). In discussing the Choice Act’s prohibition on the regulation of electricity generation prices, 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

¹⁷ 66 Pa.C.S.A. 2801, et. seq.

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.”¹⁸

Section 1312 was enacted in 1978, long before the Choice Act was enacted, and it is evident that the refund framework outlined in Section 1312 was intended solely for rate-regulated utilities, and not EGSs. In addition to the references to “public utilities”, “rates”, “rate proceedings” and “tariffs”, Section 1312 makes any finding of “unlawful collection” of a rate the basis for a refund to “all patrons subject to the same rate of the utility” going back four years. This framework was obviously crafted for scenarios involving monopoly utilities, static tariffed rates and defined customer bases. The framework is completely disconnected from, and unworkable for, a fluid competitive free-market with constantly changing prices and customer bases such as the electric generation marketplace after the Choice Act. This is just one of many reasons why Section 1312 has never been applied to EGSs, and instead has only been invoked to order rate-regulated utilities to refund overcharges to customers in the context of a rate proceeding which found overearning by the utility.¹⁹

In finding that Section 1312 gives the Commission the jurisdiction to order IDT to issue refunds, the ALJs ignored the clear language of Section 1312, clear principles of statutory interpretation and Commission statutory jurisdiction, the clear holding of the Supreme Court in *Delmarva*, and the clear limits on the Commission’s authority to regulate EGS prices. In fact, the Preliminary Objections Order included no legal basis whatsoever for the finding that Section 1312 provides the Commission with the authority to order EGSs to provide refunds to customers. Instead, the Order’s sole justification for this finding was that “to hold otherwise would be

¹⁸ 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).

¹⁹ See, e.g. *Duquesne Light Co. v. Pennsylvania Public Utility Commission*, 543 A.2d 196, 117 Pa. Cmwlth. 28 (Cmwlth 1988)

contrary to the public interest” and that if the Commission were not allowed to direct EGSs to issue refunds under Section 1312, it would “lose its ability to regulate EGSs for other purposes essential to the public interest, such as adherence to the Commission’s telemarketing regulations and issuing civil penalties.”²⁰ In addition to being a legally insufficient basis for extending the applicability of 1312 to EGSs in direct contravention of the language of the Public Utility Code, this justification is simply factually incorrect.

The lack of authority to order refunds under Section 1312 certainly does not leave the Commission “powerless” to regulate EGS conduct. To the contrary, the Commission has a wide range of robust tools available to regulate EGSs and ensure compliance with its regulations, and the Commission has not hesitated to utilize those tools. The Commission obviously has licensing authority over EGSs pursuant to the Choice Act and its regulations, and has the ability to impose conditions on EGSs both prior to and after licensing. The Commission has utilized this authority to impose a wide range of conditions, including additional reporting requirements, monitoring, and marketing restrictions on EGSs, on its own volition during the licensing process²¹, and after licensure in response to customer complaints.²² The Commission’s regulations at 52 Pa. Code § 54.42 permit the Commission to impose fines on a supplier and suspend or revoke the supplier’s license for any violation of the Commission’s regulations or the Public Utility Code. Section 3301 of the Public Utility Code²³ permits the Commission to impose civil penalties on any public utility or any other person or corporation subject to the Public Utility Code for violation of the Public Utility Code or Order or regulation of the Commission, in an amount up to \$1,000 per day per violation. The Commission has utilized this authority to impose civil penalties on numerous

²⁰ Preliminary Objections Order, at pp. 15-16.

²¹ See, e.g., *Application of SFE Energy Pennsylvania, Inc. d/b/a SFE or SFE Energy for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier of Retail Electric Power*, Docket No. A-2013-2353576 (Order entered August 15, 2013)

²² See, e.g., *Towne v. Great American Power, LLC*, Docket No. C-2012-2307991 (Order entered September 26, 2013)

²³ 66 Pa.C.S.A. § 3301

EGSs, both as a result of litigated complaints and settlements of informal investigations.²⁴ With all of these enforcement tools available to the Commission, the absence of 1312 refund authority has not and will not render the Commission powerless to regulate EGS activity and ensure compliance with its regulations.

V. CONCLUSION

For foregoing reasons, IDT Energy, Inc. respectfully requests that the Commission exercise its discretion to review the Material Question, and issue an Order which confirms that Section 1312 of the Public Utility Code does not provide the Commission with the authority to order Electric Generation Suppliers to issue refunds to customers.

Respectfully Submitted,



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Dated: September 18, 2014

²⁴ See, e.g., *Towne v. Great American Power, LLC*, Docket No. C-2012-2307991 (Order entered September 26, 2013); *Pennsylvania Public Utility Commission, Law Bureau Prosecutory Staff v. MXenergy Electric Inc.* Docket No. M-2012-2201861 (Order entered August 29, 2013); *Public Utility Commission Bureau of Investigation and Enforcement v. AP Gas & Electric (PA) LLC*, Docket No. M-2013-2311811 (order entered October 12, 2013); *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric U.S. Gas & Electric, Inc. d/b/a Pennsylvania Gas & Electric*, Docket No. M-2013-2325122, (Order entered June 4, 2014); *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. ResCom Energy LLC*, Docket No. M-2013-2320112 (Order Entered June 20, 2014).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the enclosed Brief in Support of 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

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September 18, 2014



Michael A. Gruin, Esq.