

**STEVENS & LEE**  
**LAWYERS & CONSULTANTS**

17 North Second Street  
16th Floor  
Harrisburg, PA 17101  
www.stevenslee.com

Direct Dial: (717) 255-7365  
Email: mag@stevenslee.com

November 26, 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 Motion for Continuance of Evidentiary Hearings in the above-referenced matter. Copies of the Motion 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)

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster • Scranton  
Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION



which will greatly impact the scope and parameters of the proceeding.

2. Counsel for the Joint Complainants have authorized counsel for IDT to represent that they do not oppose this request for a continuance, noting that they do not adopt the contents of the Motion. The Bureau of Investigation and Enforcement has indicated through counsel that it does not oppose the request for a continuance. As of the filing of this Motion, IDT has not been able to confirm the position of Office of Small Business Advocate's ("OSBA") on the request for a continuance, but will inform the ALJs of the OSBA's position as soon as possible.

## **II. BACKGROUND**

3. On June 20, 2014, the Office of Consumer Advocate ("OCA") and Office of Attorney General ("OAG") filed their Joint Complaint ("Complaint") against IDT. The factual foundation for the Complaint was derived from 47 Formal Complaints filed against IDT at the Pennsylvania Public Utility Commission ("Commission"), 1917 customer complaints filed against IDT with the OAG, and 539 customer contacts to the OCA (of which 23 were written) regarding IDT's variable rate increase during the Polar Vortex crisis.

4. On July 10th, 2014 IDT filed its Answer and New Matter and Preliminary Objections to the Complaint. IDT's Preliminary Objections sought dismissal of Count VI (Prices Not Conforming to Disclosure Statement) and Count VII (Failure to Comply with Telemarketer Registration Act), as well as a dismissal of the Complaint's claims for restitution. IDT's Answer and New Matter included a number of affirmative defenses, including that the Commission does not have jurisdiction to adjudicate claims under the Unfair Trade Practices and Consumer Protection Law and that the Complaint is barred in whole or in part by 66 Pa.C.S.A §§ 701 and 703.

5. By Order issued on August 20, 2014 ("Preliminary Objections Order"), the presiding ALJs granted in part and denied in part IDT's Preliminary Objections. On September 8, 2014,

both IDT and the Joint Complainants filed Petitions for Interlocutory Review and Answer to a Material Question to request review of certain aspects of the Preliminary Objections Order.

6. The parties' Petitions for Interlocutory Review are still awaiting disposition by the Commission.

7. On August 25, 2014, an Initial Prehearing Conference was convened at which various procedural issues were discussed.

8. Following the Initial Prehearing Conference, Procedural Order #2 was issued establishing 1) that the Joint Complainants would submit written direct testimony of consumer witnesses they intend to present in this proceeding by Friday, October 31, 2014; 2) that evidentiary hearings for purposes of admitting the written direct testimony of the consumer witnesses subject to cross examination and timely objections would be held on December 8-12, 2014; and 3) that a Further Prehearing Conference would be held in this matter on December 30, 2014.

9. On October 8, 2014, the Joint Complainants provided IDT with a list of potential customer witnesses.

10. On October 31, 2014, the Joint Complainants pre-served the written direct testimony of 215 consumer witnesses. Also on October 31, 2014, an informal, off-the-record conference call was held amongst the parties and the Presiding Officers regarding various procedural matters.

11. On November 3, 2014, Procedural Order #3 was issued in the proceeding. In that Order, IDT was directed to indicate to the Presiding Officers and the parties no later than November 24, 2014 which customers it intends to cross-examine. IDT was also instructed to disseminate copies of all exhibits that it intends to utilize at the hearings not later than December 4, 2014. The Order also established a deadline of December 1, 2014 for the filing of Motions to Strike any of the consumer testimony.

12. On November 3, 2014, in response to IDT's Request for Production of Documents -Set IV, the OAG provided IDT with an encrypted CD-Rom containing the original customer complaints filed with the Office of Attorney General's Bureau of Consumer Protection by 213 of the 215 customer witnesses, along with other relevant material related to the OAG and OCA's communications with those customers.

13. Due to the form of encryption used by the OAG, and the volume of material, IDT was not able to access the relevant material related to the customer witnesses until November 10, 2014.

14. The witness testimony and other relevant material provided by the OAG comprise over 3800 pages.

15. In the fifteen days since accessing the materials related to the OCA/OAG's 215 consumer witnesses, IDT has worked diligently to print the electronic documentation provided by the OAG related to the customer witnesses, compare that documentation to the customers' testimony and to IDT's own records related to those customers, identify missing materials and coordinate the obtaining of same, identify documents that would be used as cross-examination exhibits, listen to third-party verification call recordings related to the witnesses, analyze the need for cross-examination of the 215 witnesses, prepare for cross-examination of each of these witnesses, and prepare to distribute cross-examination exhibits to the parties, the ALJs and to the customer witnesses in advance of the December 8<sup>th</sup> hearings.

16. In addition, during this same period, IDT has been working diligently to respond to the OCA/OAG's discovery requests related to these same customer witnesses by gathering and providing, *inter alia*, account histories, copies of customer correspondence, contracts, Customer Service Representative notes and memos, and sales and third-party verification call recordings, that concern, refer, or relate to the consumers identified.

17. On November 24, 2014, based on IDT's review of the voluminous material accessed only fourteen days previously, IDT provided the parties and the Presiding Officers with notice that it intended to cross-examine 214 of the 215 customer witnesses, and that IDT would continue its review and confer with the Joint Complainants to determine if cross-examination could be waived on additional witnesses.

18. On November 25, 2014, the Joint Complainants filed a Memorandum of Law Regarding the Admission of Pattern and Practice Evidence, to which IDT intends to respond.

### **III. ARGUMENT**

19. Section 1.15(b) (52 Pa. Code § 1.15(b) of the Commissions regulations states that:

“requests for continuance of hearings or for extension of time in which to perform an act required or allowed to be done at or within a specified time by this title or by order of the Commission or the presiding officer, shall be by motion in writing, timely filed with the Commission, stating the facts on which the application rests, except that during the course of a proceeding, the requests may be made by oral motion in the hearing before the Commission or the presiding officer. Only for good cause shown will requests for continuance be considered. The requests for a continuance should be filed at least 5 days prior to the hearing date.”

20. Good cause exists to grant IDT's request for continuance, in light of the volume of material that was only recently exchanged between the parties, the number of customer witnesses proposed by the Joint Complainants, and the short time frame afforded to IDT to prepare adequately for cross examination.

21. IDT and its counsel have worked, and continue to work, diligently to prepare for the scheduled December 8-12, 2014 hearings. Such preparation requires the investigation and analysis of all of the allegations asserted by each of the 215 customers in the Customer Direct Testimony provided to IDT on October 31, 2014, as well as the analysis of the background information related to each witness, which was provided to IDT in accessible form

on November 10, 2014.

22. This investigation and analysis involves, *inter alia*, reviewing each of the 215 handwritten testimonies to identify the precise nature of the allegations contained therein (if any), reviewing the original customer complaints filed with the OAG and associated documents and correspondence, reviewing IDT's records to match the named witness with the account information for the relevant service address, retrieving the company records related to each witnesses' service history with IDT, retrieving and listening to the third-party verification recordings related to the witness' enrollment with IDT, and retrieving and reviewing IDT's records related to previous BCS informal complaints filed by the witnesses.

23. In addition to the investigation and analysis of each witnesses' testimony, IDT's preparation also includes transcribing each third-party verification call recording that will be entered into the record, and copying and disseminating copies of cross-examination exhibits for each of the 215 witnesses, to the witnesses themselves and the parties.

24. It has become apparent to IDT that it needs substantially more time to complete the investigation and analysis of each of the customer's testimony and associated background material, to adequately prepare for the possible cross-examination of each witness, and to fulfill the logistical obligations associated with transcribing third party verification recordings and disseminating hearing exhibits to witnesses and the parties.

25. Because the Joint Complainants are seeking extensive sanctions against IDT, up to and including revocation of IDT's electric generation supplier license, due process considerations mandate that IDT be afforded adequate time to prepare its defense.

26. It should be noted that IDT remains amenable to waiving cross-examination of certain witnesses upon completing its analysis of the testimony and associated background, contingent upon reaching agreement with the other parties to stipulate cross-examination exhibits and/or

third-party verification recordings into the record.

27. In order to have productive discussions regarding the waiver of cross-examination and the stipulation of exhibits into the record, both IDT and the Joint Complainants will need to complete their analysis of the testimony and the background materials for each witness, which the parties have only recently exchanged.

28. As of the date of the filing of this Motion, the parties have not had the opportunity to confer regarding the waiver of cross-examination and the associated stipulations of exhibits into the record, which discussions are expected to be lengthy. As such, were the hearings to proceed as scheduled, IDT would have no choice but to require the appearance of 214 of the 215 witnesses.

29. A continuance will provide the parties with time to complete the review of the recently exchanged background materials for each witness, and confer regarding the withdrawal of certain testimony, the waiver of cross-examination, and the stipulation of exhibits into the record. This, in turn, will allow the hearings to be conducted in a much more orderly and efficient manner, and will likely greatly reduce the amount of time and resources that all parties and the ALJs will need to devote to the hearings.

30. A continuance will also allow the parties to devote time to continuing settlement discussions. The parties initiated settlement discussions in September 2014 to explore the possibility of settlement, and have continued such discussions in parallel to the litigation of this matter. The parties' ability to continue settlement discussions has been limited since the service of the consumer testimony, as the parties have focused their resources on synthesizing, analyzing and disseminating the massive amounts of records related to customer witnesses and preparing for the upcoming evidentiary hearings.

31. A continuance will allow the parties to focus substantially more time and resources to

settlement discussions in the near term, which will greatly increase the prospects of a full settlement of the proceeding prior to the hearing phases of the proceedings.

32. Furthermore, a continuance will allow additional time for the Commission to act on the Petitions for Interlocutory Review that remain outstanding. Commission action on those Petitions will likely expedite the conduct of hearings, by clarifying the scope of Commission authority over various allegations of the Joint Complainants.

33. For these reasons, IDT proposes to continue the evidentiary hearings for the presentation of the customer direct testimony until early February 2015, subject to the availability of the ALJs and the parties. IDT also proposes that the deadlines for motions to strike and dissemination of hearing exhibits be extended until dates closer to the rescheduled evidentiary hearing dates, and will confer with the parties to establish proposed extended deadlines for each.

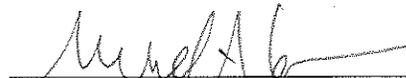
### **III. CONCLUSION**

For all of the foregoing reasons, IDT respectfully requests the presiding Administrative Law Judges enter an ORDER which

- a. Grants IDT's Motion for Continuance;
- b. Cancels the evidentiary hearings currently scheduled for December 8-12, 2014, and reschedules the hearings for February, 2015, with specific dates to be determined based on the availabilities of the parties and the ALJs;
- c. Directs the parties to confer regarding the establishment of new deadlines for the dissemination of hearing exhibits and Motions to Strike, and regarding other such procedures that would allow for the efficient presentation of the customer direct testimony; and
- d. Grants such other relief as may be just and appropriate.

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: November 26, 2014

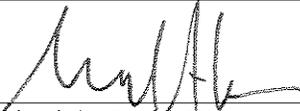
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the enclosed Motion for Continuance 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, PA17101	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

November 26, 2014

  
\_\_\_\_\_  
Michael A. Grum, Esq.