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January 23, 2015

**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 the Further Pre-Hearing Conference Memorandum of IDT Energy, Inc. in the above-referenced matter. Copies of the Memorandum 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. Guin

Encl.

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

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**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                                       | : | Docket No. C-2014- 2427657 |
|   | : |                            |
| TANYA J. McCLOSKEY, Acting Consumer       | : |                            |
| Advocate                                  | : |                            |
|   | : |                            |
| Complainants                              | : |                            |
| v.  | : |                            |
|   | : |                            |
| IDT ENERGY, INC.                          | : |                            |
|   | : |                            |
| Respondent                                | : |                            |

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**FURTHER PREHEARING CONFERENCE MEMORANDUM OF  
IDT ENERGY, INC.**

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In accordance with 52 Pa. Code § 5.222 and the January 9, 2015 Further Prehearing Conference Order issued by Administrative Law Judges Joel Cheskis and Elizabeth Barnes, Respondent IDT Energy, Inc. (“IDT”), respectfully submits its Prehearing Conference Memorandum in the above-captioned matter.

**I. BACKGROUND AND OVERVIEW OF ISSUES FOR RESOLUTION**

IDT incorporates by reference the Background and Overview of Issues for Resolution set forth in its August 19, 2014 Prehearing Conference Memorandum.

By Order issued on August 20, 2014 (“Preliminary Objections Order”), the presiding ALJs granted, in part, IDT’s Preliminary Objections, and dismissed Count VI of the Complaint in its entirety. In doing so, the ALJs noted that Count VI is titled “Prices Nonconforming to Disclosure Statement”, but the gravamen of Count VI is clearly the rate at which IDT charged its variable rate customers, not conformance of those rates with the variable rate pricing provisions in the Disclosure Statement or billing practices, and that there is no other averment in Count VI

regarding the Disclosure Statement.<sup>1</sup> The Preliminary Objections Order also partially dismissed Count VII of the Complaint, and confirmed that the Commission did not have the authority to award the equitable relief of “restitution”.<sup>2</sup>

Both IDT and the OCA/OAG filed Petitions for Interlocutory Review and Answer to Material Question(s), on September 8, 2014, to seek Commission review of certain aspects of the Preliminary Objections Order. Since the Initial Prehearing Conference in this matter, the Commission issued an Opinion and Order on the two Petitions for Interlocutory Review of Material Questions (“Material Question Order”). The Material Question Order held that:

- (1) The Commission does not have authority and jurisdiction to determine whether a violation of the Telemarketer Registration Act (“TRA”) has occurred, but the Commission does have authority jurisdiction and authority to determine whether IDT has violated Section 111.10 of the Commission’s Regulations (52 Pa. Code § 111.10);
- (2) The Commission does not have traditional ratemaking authority over competitive electric generation suppliers and does not regulate competitive supply rates, but the Commission has jurisdiction and authority to determine whether IDT billed customers in accordance with its Disclosure Statement, pursuant to over Sections 54.4(a) and 54.5(a) of the Commission’s Regulations (52 Pa. Code §§ 54.4(a), 54.5(a)); and
- (3) The Commission does not have authority to order “equitable” remedies including restitution, and Section 1312 of the Public Utility Code does not provide the Commission with the requisite authority to direct Electric Generation Suppliers to issue refunds to customers. But the Commission held that it does have authority to order EGS billing adjustments for an over bill of supply charges pursuant to 66 Pa. C.S. § 501.

On October 31, 2014, the Joint Complainants pre-served the written direct testimony of approximately 215 customer witnesses. On November 25, 2014, the Joint Complainants filed a Memorandum of Law regarding the Admission of Pattern and Practice Evidence, and on

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<sup>1</sup> See Preliminary Objections Order, at pp. 5-8

<sup>2</sup> The Presiding Officers have also determined that the Commission lacks the jurisdiction to adjudicate claims under the Unfair Trade Practices and Consumer Protection Law (73 P.S. § 201-1, et seq.) (“UTPCPL”), in the August 20, 2014 Orders in the parallel OCA/OAG complaints against Blue Pilot Energy at Docket No. C-2014-2427655 and Energy Service Providers Inc. at Docket No. C-2014-2427656, which findings were subsequently affirmed by the Commission in both of those cases.

December 10, 2014, IDT filed its Reply Memorandum of Law Regarding the Admission of Pattern and Practice Evidence.

The parties have exchanged multiple rounds of discovery to date.

Based on its review of the customer testimony and discover served to date, IDT continues to believe that no further prosecution of this Complaint is warranted and as that all Counts of the Complaint should be dismissed.

## **II. SPECIFIC ISSUES TO BE ADDRESSED AT THE FURTHER PREHEARING CONFERENCE**

### **A. Status of Count VI of the Complaint (“Prices Not Conforming to Disclosure Statement”)**

**IDT’s Position:** While the Material Question Order held that the Commission has the jurisdiction and authority to determine whether IDT billed customers in accordance with its Disclosure Statement, pursuant to 52 Pa. Code §§ 54.4(a),54.5(a), this does not change the fact that the ALJ’s struck Count VI of the Complaint and the accompanying Affidavit for a separate reason. The ALJs noted that “The gravamen of Count VI is clearly the rate at which IDT charged its variable rate customers, not conformance of those rates with the variable rate pricing provisions in the Disclosure Statement or billing practices. There is no other averment in Count VI regarding the Disclosure Statement.... Nor does the attached Affidavit provided in support of Count VI mention the Disclosure Statement.” The ALJs concluded that the Commission lacks jurisdiction to hear any such arguments, because the concept of “cost to serve,” is irrelevant to EGS pricing.

### **B. Issues Related to the Hearings for the Admission of Customer Testimony**

1. Waiver of Cross-Examination – IDT expects that it will waive cross-examination of 30-40 of the proposed witnesses, if the Joint Complainants are agreeable to the admittance of certain cross-exhibits into the record in conjunction the admission of those customers’ testimony. IDT will discuss this issue with the Joint Complainants and identify its final list of witnesses to be crossed no later than February 2, 2015.
2. Use of IDT Account Statements during Cross-Examination – IDT intends to utilize customer account statements during the cross-examination of some of the customer witnesses. Since these customers will be available for cross-examination only once, and because IDT may want to ask questions about the witnesses’ historical usage and rates, it is appropriate for the customers to have their account records during this cross-examination rather than have IDT submit

the account histories with IDT's testimony. It is also appropriate to have these accounts statements linked to the customer written testimony for record clarity and efficiency. IDT proposes to have these statements authenticated by a Company witness a later date, but to have these statements admitted into the record in conjunction with the relevant customer testimony to allow for a clearer record.

3. Confidentiality of Customer Testimony and Exhibits - Many of IDT's cross-examination exhibits, and much of the cross-examination, will include confidential customer information such as account numbers, telephone numbers, consumption history, billing amounts, health information, and/or family information. IDT intends to mark all exhibits that contain confidential information with a Confidential stamp. IDT's position is that the entire customer hearings should be conducted on a Confidential record, and that only counsel of record and consultants/experts/Company personnel who have executed the Appendix A to Protective Order should be permitted to attend the hearings.
4. Timing of Moving Customer Testimony Into the Record - IDT proposes to delay formally moving the customer testimony into the record until such time as IDT's Rebuttal Testimony is moved into the record.
5. Use of Third-Party Verification Call Recordings - IDT's cross-examination may include playing the Third-Party Verification ("TPV") call recordings for the testifying witness in some instances. All such recordings have been provided to the Joint Complainants. If IDT intends to play a TPV during the hearing, IDT will provide a transcription of the TPV to allow the parties, presiding ALJs, and the Court Reporter to better follow the recorded conversation. However, the official record of the TPV will be captured by the Court Reporter.

### **III. PROPOSED LITIGATION SCHEDULE**

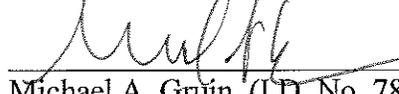
IDT is generally agreeable to the litigation schedule proposed by the Joint Complainants, subject to confirming the availability of IDT's witnesses.

### **IV. SETTLEMENT**

The parties have also held two in-person settlement conferences, as well as several telephonic settlement discussions. IDT remains open to continuing settlement discussions.

Respectfully submitted,

STEVENS & LEE

A handwritten signature in black ink, appearing to read "Michael A. Grün", written over a horizontal line.

Michael A. Grün, (I.D. No. 78625)

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COUNSEL FOR IDT ENERGY, INC.

DATE: January 23, 2015

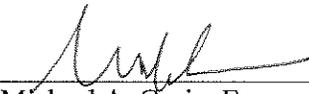
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the enclosed Prehearing Conference Memorandum 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.<br>Kristine Robinson, Esq.<br>Office of Consumer Advocate<br>555 Walnut Street<br>Forum Place, 5 <sup>th</sup> Floor<br>Harrisburg, PA17101  | Sharon Webb, Esq.<br>Office of Small Business Advocate<br>300 North 2nd Street - #1102<br>Harrisburg, PA 17101  |
| John M. Abel, Esq.<br>Senior Deputy Attorney General<br>Margarita Tulman, Esq.<br>Deputy Attorney General<br>Bureau of Consumer Protection<br>Office of Attorney General<br>15 <sup>th</sup> Floor<br>Strawberry Square<br>Harrisburg, PA 17120 | Wayne Scott, Esq.<br>Michael Swindler, Esq.<br>Stephanie Wimer, Esq.<br>Bureau of Investigation & Enforcement<br>Pennsylvania Public Utility Commission<br>Commonwealth Keystone Building<br>400 North Street<br>Harrisburg, PA 17120 |

January 23, 2015

  
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Michael A. Gruin, Esq.