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March 9, 2015

VIA ELECTRONIC FILING

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Stephen Kiback, Jr. v. IDT Energy, Inc.
Docket No. C-2014-2409676

Dear Secretary Chiavetta:

Enclosed for filing please find the Exceptions of IDT Energy, Inc. to the Initial Decision in the above-referenced matter. A copy of this document has been served upon the parties of record in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Sincerely,

STEVENS & LEE



Michael A. Gruin

Enclosure

cc: Certificate of Service
Administrative Law Judge Joel Cheskis, via First Class U.S. Mail
Cheryl Walker-Davis, Director, Office of Special Assistants, via First Class U.S. Mail (hardcopy and Word version on CD-Rom)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

STEPHEN KIBACK JR.	:	
Complainant	:	
	:	
v.	:	Docket No. C-2014-2409676
	:	
IDT ENERGY, INC.	:	
	:	
Respondent	:	

**EXCEPTIONS OF
IDT ENERGY, INC.**

I. INTRODUCTION

Pursuant to 52 Pa Code § 5.533, IDT Energy, Inc. (“IDT”) hereby files its Exceptions to the Initial Decision (“I.D.”) of the Administrative Law Judge (“ALJ”) in the above-referenced matter. As set forth below, the I.D. makes several errors of law and is clearly not supported by substantial evidence, and accordingly should be rejected by the Commission.

The I.D.’s central findings are based solely on a vague and contradictory recollection of an oral sales call, by an individual who admittedly did not fully participate in the enrollment in question, and who raised no concerns whatsoever until 30 months after his enrollment, when his electric generation supply price surged as a result of the Polar Vortex. Based solely on this sparse and highly questionable recollection of the Complainant Stephen Kiback, the I.D. erroneously found that IDT violated the Commission’s regulations in two separate respects, thirty-two months apart.

- First, the I.D. found that in July of 2011 IDT’s sales agent violated Section 111.10(a)(3) of the Commission’s regulations because the agent “failed to disclose truthfully and in a clear and conspicuous manner the total cost to

purchase, receive, or use” electric generation supply, in violation of the Federal Telemarketing Sales Rule (“TSR”) at 16 C.F.R. §310.3(a)(1)(i-ii).¹ I.D., p. 11.

This finding was based solely on the conclusion that “the IDT sales agent told Mr. Kiback that he would be charged 10% less than the PPL rate but that was not always the case. “ I.D, p. 11. As set forth below, this finding is not supported by substantial evidence, and it is actually directly contradicted by other evidence presented by Mr. Kiback that was given no weight by the ALJ.

- Second, the I.D. found that IDT violated Section 54.4 of the Commission’s regulations in 2014, when IDT billed Mr. Kiback a price that differed from the price that the sales agent allegedly promised Mr. Kiback back in 2011. This finding was made even though IDT’s written disclosure statement clearly and unequivocally explained that IDT’s rate was a variable rate that varies from month to month based on market conditions, that the price could be higher or lower than the utility’s rate in any given month, and that there is no ceiling to the rate. Tr. 32 and IDT Ex. 2. In other words, even though IDT billed Mr. Kiback in full accordance with the terms of its disclosure statement, the ALJ found that IDT violated Section 54.4 because IDT did not bill Mr. Kiback in accordance with a nebulous and vaguely recollected “promise” by a sales agent three years previously.

As a sanction for IDT’s purported violations, the I.D. recommends the maximum daily civil penalty amount permitted by the Public Utility Code, for two separate occurrences. Those two occurrences were described as IDT’s billings to Mr. Kiback in January and February 2014

¹ The Commission regulation cited in the I.D. – 52 Pa. Code § 111.10 – actually was not implemented until August 2012 - a year *after* Mr. Kiback’s enrollment – but the Commission’s Interim Guidelines in effect in 2011 included the same reference to 16 CFR § 310 that was later adopted in the regulation.

which reflected a price that was higher than PPL's price for electric generation supply. So while the Commission has made it clear that it does not have the authority to regulate an EGS's prices, the I.D. seeks to do just that – i.e., the I.D. would impose a civil penalty because of the price that an EGS charged to a customer, even though that price was in full accordance with the EGS's disclosure statement.

The Commission should recognize that Mr. Kiback filed his Complaint against IDT because of the price that he was charged for electric generation supply in early 2014, not because of any purported violation of the Commission's regulations related to his enrollment. Mr. Kiback himself admitted this on the record.² It is well-settled that the Commission has the authority to sanction suppliers for sales practices that violate the Commission's regulations, but does not have the authority to regulate a supplier's prices.³ At its heart, the I.D. seeks to sanction IDT for the prices it charged to Mr. Kiback in early 2014, which was the basis for Mr. Kiback's complaint. To get to that unlawful result, the I.D. reaches back over three years to adopt a very strained and myopic interpretation of the events surrounding Mr. Kiback's enrollment, and purports to find a marketing violation from 2011 based on the scantest of evidence. But when the totality of the evidence in the record is given the appropriate weight and placed in the proper context, it cannot be said that the finding of a violation by IDT is supported by substantial evidence, and therefore the I.D. should be reversed by the Commission.

II. FACTUAL BACKGROUND

Mr. Kiback enrolled with IDT for electric generation supply in 2011 after receiving one or more telemarketing sales calls from electric generation suppliers ("EGSs"). Tr. 15. Mr.

² See Tr. 7, 12

³ See, e.g. *Nadav v. Respond Power, LLC*, Docket No. C-2014-2429159 (Order entered December 19, 2014), *CRH Catering Company, Inc. v. Blue Pilot Energy, LLC*, Docket Nos. C-2014-2415277 et al. (Order entered February 24, 2015)

Kiback's account was enrolled with IDT on July 5, 2011, based on a third-party verification ("TPV") recording that was completed by female individual who indicated that she was authorized to enroll the account. Tr. 42.

Mr. Kiback's account was enrolled with IDT for a variable price. Tr. 30. At the time that Mr. Kiback's account was enrolled, IDT only offered a variable-priced, month-to-month electricity generation supply product in Pennsylvania, and all of IDT's sales materials, disclosure statements, scripts, training, and TPVs were formulated for a variable price product. Tr. 30. After the telephonic enrollment, Mr. Kiback was mailed an IDT disclosure statement with a welcome letter via First Class U.S. Mail, which explained how IDT's variable price would be established. Tr. 31. IDT's disclosure statement stated:

"IDT Energy offers a variable price for all electric generation sold under this agreement. The price for electric generation sold is established on an approximately monthly basis based upon electric generation market pricing as furnished by PJM clearing house, transportation or transmission, and other market and business price related factors. This price may be higher or lower than the EDC's price in any given month. There is no ceiling price." IDT Ex. 2.

IDT's disclosure statement also notified customers that they may cancel their enrollment with IDT at any time with no fee or cancellation penalty. IDT Ex. 2. Mr. Kiback acknowledged receiving the IDT welcome letter, and IDT has no record of the welcome letter being returned as undeliverable. Tr. 12, 31.

Mr. Kiback began receiving electric generation supply from IDT on August 18, 2011. IDT Ex. 1 and Tr. 29. IDT's charges appeared on Mr. Kiback's PPL bill each month, along with PPL's price to compare. Tr. 17 and Complaint.

As reflected on Mr. Kiback's account history, the rate that IDT charged Mr. Kiback for electric generation supply varied each month during his entire enrollment. IDT Ex. 1. During the

2011-2013 timeframe, the price that IDT charged Mr. Kiback ranged from a low of \$.0687/kWh to a high of \$.1088/kWh, and the price only exceeded \$.10/kWh in 3 out of those 28 months.

IDT Ex. 1. Mr. Kiback acknowledged that he looked at IDT's charges on his PPL bill every month when he paid the bill. Tr. 17. Mr. Kiback also acknowledged that he did not contact IDT to complain about his rates in 2011, 2012, or 2013. Tr. 18, 33-34.

The rate that IDT charged Mr. Kiback rose drastically during the bill period ending on February 19, 2014, due to the wholesale price of electricity escalating dramatically as a result of the Polar Vortex. Tr. 38 and IDT Ex. 1. Mr. Kiback testified that this was the reason for his complaint. Tr. 7, 12. On February 26, 2014, Mr. Kiback's wife contacted IDT to express concern about the IDT charges that appeared on her bill, and IDT offered her a partial refund. On March 3, 2014 she contacted IDT again to indicate that she had enrolled with another supplier, and as a result Mr. Kiback's IDT service ended on March 19, 2014, Tr. 35. All told, Mr. Kiback was a customer of IDT's for 31 billing cycles from August 2011 to March 2014. IDT Ex. 1 and Tr. 33.

On or about March 3, 2014, Mr. Kiback filed his Formal Complaint against IDT. In order to try to satisfy Mr. Kiback's concerns, IDT issued him goodwill refunds totaling \$208.11, which Mr. Kiback acknowledged receiving. Tr. 7, 36.

Mr. Kiback's Complaint is one of many filed by customers who experienced temporary retail electric price spikes in the wake of the Polar Vortex episode of early 2014. The Commission explained this episode as follows:

"During the month of January 2014, wholesale prices for hourly energy supply in the day ahead and 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.

As a result of these high PJM energy market prices, many electric generation suppliers (EGSs) serving Pennsylvania customers with variable-priced retail supply contracts needed to increase their retail prices to customers in order to recover the higher wholesale electric energy costs they incurred in January 2014. In many cases, EGSs voluntarily absorbed losses during this period in order to maintain long term contractual relationships with their customers.....Due to the foregoing events as well as higher than usual energy use due to prolonged cold weather, some Pennsylvania retail electric customers received very high electric bills in amounts two to three times (and even higher) than what they would normally be billed during this time of year.”

Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Product, Docket No. M-2014-2406134, Order entered March 4, 2014 (“Variable Rate Order”).

III. PROCEDURAL HISTORY

IDT was served with Mr. Kiback’s Formal Complaint on March 12, 2014. The Complaint alleged that the rate that IDT charged Mr. Kiback for generation and transmission rose from \$.0919 per kWh to \$0.279 per kWh. The Complaint also alleged that when Mr. Kiback agreed to switch to IDT, he was told that he would save 10% over PP&L’s rate.

The Complaint acknowledges that the Complainant did save money on his electricity supply for his first month of service from IDT, but then alleges that the Complainant’s electric generation supply rate then rose. The Complaint also includes allegations about the length of time that it took to switch back to PPL for electric generation service after he requested to terminate his IDT service. For relief, Mr. Kiback asked the Commission to order IDT to pay him back the money that he was overcharged in previous months and reduce his current bill. The Complaint also included copies of Mr. Kiback’s PPL electric utility bills.

On April 25, 2014, IDT filed an Answer to the Complaint. In its Answer, IDT acknowledged that the Complainant’s charges from IDT increased due to the well-publicized large increases in wholesale electricity costs during January and February 2014. IDT’s Answer

also stated that IDT had offered to retroactively apply a rate adjustment to Mr. Kiback's usage for the periods impacted by the wholesale price spikes, and had contacted the Complainant to offer him a goodwill credit adjustment to his bill, as the Company has done with other similarly situated customers to help ameliorate the impact of wholesale energy price increases caused by the extreme cold weather in early 2014.

On July 29, 2014, IDT filed a Motion for Summary Judgment, which argued that when the Complaint was viewed in the light most favorable to Mr. Kiback, IDT was entitled to judgment as a matter of law. On August 21, 2014, the Office of Consumer Advocate ("OCA") filed a Notice of Intervention and Public Statement formally intervening into this matter. Also on August 21, 2014, the OCA filed an Answer in response to IDT's Motion for Summary Judgment. In its Answer, the OCA argued that Mr. Kiback raised questions concerning the marketing and billing conduct of IDT as a licensed electric generation supplier ("EGS"). By Order dated September 2, 2014, IDT's Motion for Summary Judgment was denied.

An evidentiary hearing was held in this matter on October 27, 2014. Mr. Kiback appeared *pro se* and testified on his own behalf. IDT presented the testimony of one witness who sponsored two exhibits that were admitted into the record. Counsel for the OCA also participated in the hearing.

On February 17, 2015, the Initial Decision was issued. The Initial Decision sustained Mr. Kiback's Complaint and recommended imposing a \$2,000 civil penalty on IDT for violating the Commission's regulations regarding telemarketing and bill format. In addition, the Initial Decision directed IDT to issue a refund to Mr. Kiback.

For the reasons set forth below, IDT's respectfully requests that the Commission reject and reverse the Initial Decision.

IV. EXCEPTIONS

Exception No. 1:

The Initial Decision's Findings are Not Supported by Substantial Evidence

As set forth above, the I.D. concluded that IDT committed two violations of the Commission's regulations, as follows:

1) IDT's sales agent committed a violation of the Commission's telemarketing regulation in July of 2011, by failing to truthfully disclose the total cost to purchase electric generation service, and

2) IDT committed a violation of the Commission's regulation regarding bill format in January and February 2014, by charging a price that differed from the prices marketed by the sales agent.

See I.D., page 13 and Conclusions of Law 15-16. Both of these purported violations stem solely from an alleged statement made to Mr. Kiback in July of 2011 by IDT's sales agent, i.e., a promise that IDT would charge him a rate lower than PPL's rate. I.D. p. 10 and Findings of Fact 6 and 8. This alleged "promise" is the key factual finding of the I.D., and controls every other aspect of the decision.

While the I.D. treats this alleged oral promise as a well-established certainty, a fair review of the record reveals that this is far from the truth. The sole basis for this crucial factual finding was the very vague and sparse testimony by Mr. Kiback about his recollection – three years after the fact - of an oral sales discussion that ultimately led to his enrollment.⁴ The I.D. asserts that IDT did not present any testimony to rebut Mr. Kiback's testimony, so therefore Mr. Kiback satisfied his burden of proof simply by making the assertion that the sales agent made the aforementioned pricing promise. Respectfully, the ALJ's analysis is flawed, and it fails to

⁴ Mr. Kiback testified that he received more than one telemarketing sales call, but it is unclear whether all of those sales calls involved IDT or whether some of the calls were from agents of other suppliers.

consider a number of factors which greatly undermine the credibility of Mr. Kiback's testimony and which justify a reversal of the I.D.

A. Mr. Kiback's Sparse, Vague and Contradictory Testimony Is Not Sufficient to Meet His Burden of Proof.

The testimony that forms the singular foundation for the I.D.'s key factual finding is remarkably sparse and is not corroborated in any way, as the hearing transcript reveals. The reality is that Mr. Kiback provided almost no testimony about the oral sales presentation that led to his enrollment, and the little testimony that he did provide was unclear and contradictory. He testified about the sales call as follows:

“Well, they called a couple of times. It wasn't only once. They more or less made it sound good; that they **could** be 10% lower than PP&L, which you did at the beginning, and then it just kept going up”. Tr. 15 (emphasis added).

Mr. Kiback then contradicted himself and acknowledged that in fact IDT's price did not “just keep going up”, but actually went both up and down from month to month, as reflected on his account history. Tr. 10, 15 and IDT Ex. 1. Other than the vague statement about the sales presentation “sounding good” and that the price “could be lower” than PPL, Mr. Kiback provided no details of the sales call whatsoever. The foregoing passage, indented above, is the full extent of Mr. Kiback's description of the sales call. Mr. Kiback offered no testimony about the specific words that were used by the sales agent; he could not specify how many sales conversations purportedly took place, or when they took place, or whether the same sales agent participated in all of the conversations, or the name of the sales agent, or the gender of the sales agent (he referred to the agent as “they”), or anything else about the call. Mr. Kiback did not reference any notes about the sales conversation, or any independent corroboration of the sales

call. Notably, at one point Mr. Kiback said he was told his price “*could*” be below PPL’s,⁵ and at another time he said he was told his price “*would*” be below PPL’s⁶, but again he did not provide any specific details or verbiage from the sales presentation to corroborate either interpretation. Yet based on this incredibly sparse, vague and contradictory testimony about a sales call that took place over three years earlier, the ALJ erroneously found that Mr. Kiback had submitted sufficient evidence to prove that IDT violated the Federal Telemarketing Sales Rule and the Commission’s regulations.

As the party seeking relief from the Commission, Mr. Kiback bears the burden of proving his claim by substantial evidence. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950). The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984). Mere bald assertions, personal opinions, or perceptions do not constitute evidence. *McCauley v. Pennsylvania Electric*

⁵ Tr. 15, line 7

⁶ Tr. 15, line 19

Company, 2014 WL 1390779 (Pa.P.U.C.); *MidAtlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000).

As set forth above, Mr. Kiback testified that the sales agent told him that his price “could be 10% lower than PPL’s”. The I.D. fails to explain how a statement that a variable price “could” be lower than the EDC’s price constitutes a marketing violation. This statement by IDT’s sales agent was absolutely correct and fully in accordance with IDT’s disclosure statement, which states that the variable price could be higher or lower than the utility’s rate in any given month. See IDT Ex. 2. Under the ALJ’s reasoning, a supplier would be sanctioned for accurately describing the price parameters outlined in the disclosure statement, which is an absurd result. Furthermore, even a statement that IDT’s price “would” be lower than the utility would not constitute a violation if the IDT sales agent was offering Mr. Kiback a promotional rate for a period of 1-2 months, which IDT historically has done. See Tr. 33. It is not unreasonable, nor is it false advertising or unethical business practices, for a supplier to offer a low introductory rate to entice new customers while charging customers a different rate that had increased following the expiration of the introductory rate. See *MacLuckie v. Palmco Energy Pennsylvania, LLC*, Docket No. C-2014-2402558 (Initial Decision issued June 16, 2014).

The point is that the exact words that were spoken by the sales agent are of paramount importance if the Commission is to determine that an oral sales presentation violated the Commission’s regulations. If a supplier is to be found in violation of the Commission’s regulations based solely on an oral sales discussion, the Commission needs to have precise and reliable evidence of the content of that discussion. As set forth above, Mr. Kiback provided almost no details of the sales call that resulted in his enrollment with IDT, so it is impossible for the Commission to conclude that there is substantial evidence in the record to prove a violation

of any kind by IDT based solely on that sales call. While Mr. Kiback's vague allegation may have been sufficient to overcome a summary judgment motion, it is not sufficient to meet his burden of proving a violation by substantial evidence. Assertions, regardless of how honest or strong, cannot form the basis of a finding in his favor. Assertions, personal opinions or perceptions do not constitute factual evidence. See *Bennett v. UGI Central Penn Gas, Inc.*, Docket No. F-2013-2396611 (Initial Decision issued April 10, 2014, Final Order entered May 29, 2014).

The I.D. relies heavily on the *Yaglidereliler v. Blue Pilot Energy, LLC* case (Docket No, C-2014, 2413732, Order entered January 6, 2015) to support its conclusion that Mr. Kiback's allegations regarding oral sales representations were sufficient to prove his case. See I.D., pp. 11-12. But the *Yaglidereliler* case involved the question of whether a complaint included enough allegations to overcome a summary judgment motion, and held that the complainant should be given the opportunity to present a case because the complaint involved allegations of marketing improprieties. It did not rule on whether sufficient proof had been provided to establish an improper sales presentation. Obviously, the standards for resolving motions for summary judgment are much different than the standards for resolving a case on the merits. In resolving motions for summary judgment, the Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortgage Co. of Pa. v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Mertz v. Lakatos*, 381 A.2d 497 (Pa. Cmwlth. 1976). And all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Thomson Coal Co. v. Pike Coal Co.*, 412 A.2d 466 (Pa. 1979). By contrast, in order to prove that a violation has occurred, a complainant must establish facts by a preponderance of the evidence, and the decision of the Commission must be

supported by substantial evidence, without viewing the evidence only in the light most favorable to the complainant or giving the complainant the benefit of all reasonable inferences. See *Selling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950), and 2 Pa.C.S. § 704.

The *Yaglidereliler* decision is also distinguishable because in that case, the customer brought his complaint only four months after enrolling with his supplier, so presumably the sales presentation was somewhat fresh in his mind.⁷ Mr. Kiback, on the other hand, did not file a complaint until 30 months after his enrollment with IDT.

B. The Reliability of Mr. Kiback's Testimony is Doubtful Based on the Length of Time Between His Enrollment and His Complaint

The sheer length of time that passed between Mr. Kiback's enrollment and the filing of his Complaint calls into question the accuracy of his memory of the exact words that were used during the sales call. The notion that memory fades with the passage of time needs no demonstration,⁸ and any individual would be hard pressed to remember the precise words used in a telephone conversation from three years prior. Furthermore, Mr. Kiback's allegation that he believed he was receiving a guaranteed price is directly contradicted by Mr. Kiback's own actions, or more specifically, *his inaction*, following his enrollment. Mr. Kiback was enrolled with IDT for **30 months** before he filed his complaint. During this entire time, IDT's charges were plainly reflected on Mr. Kiback's PPL utility bill along with PPL's price to compare, and Mr. Kiback testified that he looked at IDT's charges every month. Tr. 17. Yet, despite reviewing IDT's charges every month, Mr. Kiback never contacted IDT with any concerns about his IDT service or billings in 2011, 2012, or 2013. Tr. 33-34. This is a fatal inconsistency in Mr.

⁷ See Blue Pilot Motion for Summary Judgment filed May 27, 2014, *Yaglidereliler. V. Blue Pilot Energy, LLC* (Docket No, C-2014, 2413732)

⁸ *Van Hine v. Department of State of Com.* 856 A.2d 204 (Pa.Cmwth.,2004). See also *Com. v. Milliken* 450 Pa. 310, 300 A.2d 78 Pa. 1973. ("It is of course only too well-recognized that the 'passage of time' inevitably causes 'memories . . . (to) fade.'", citing *Dickey v. Florida*, 398 U.S. 30, 42, 90 S.Ct. 1564, 1571, 26 L.Ed.2d 26 (1970) (Justice Brennan, concurring).

Kiback's testimony. On the one hand, he says he was promised a guaranteed fixed rate (Tr. p. 17), then moments later he testified that he saw IDT's rates changing every month, but he did not take any action for 30 months. The fact that Mr. Kiback only contacted IDT to complain about his bill in February 2014 demonstrates that Mr. Kiback's complaint is about his rates – not his enrollment, which also explains why Mr. Kiback provided almost no details about his enrollment when he testified.

C. Mr. Kiback Was Not the Individual That Completed the Third-Party Verification

Another critical error in the I.D. is that it fails to properly account for the fact that Mr. Kiback – the sole witness upon whose testimony the finding of violation rests - *was not even the individual that completed the telephonic enrollment process with IDT.*

IDT's witness testified that according to the third-party verification ("TPV") recording used to complete the enrollment of Mr. Kiback's account, a female completed the enrollment after indicating that she was authorized to conduct the switch. Tr. 42. Mr. Kiback stated that this person was his girlfriend (Tr. 22), but the woman who later called to terminate service with IDT in 2014 identified herself as Mr. Kiback's wife. See I.D. pp. 5-6 (Findings of Fact 23 and 32). The I.D.'s finding of a violation is based on sales representations purportedly made to Mr. Kiback, but evidence in the record demonstrates that Mr. Kiback did not complete the TPV. This casts serious doubt on Mr. Kiback's testimony about the sales call, because it is unclear whether he in fact did participate in the sales call that immediately preceded the TPV that effectuated the enrollment. Mr. Kiback seems to deny that his girlfriend/wife completed the enrollment (Tr. 22), but it is clear from the third party verification recording that she did, which also undermines his credibility. At a minimum, the fact that Mr. Kiback did not complete the TPV cast serious doubt on the reliability of his memory, the reasonableness of his beliefs about

the sales offer, the accuracy of his testimony, and the timing, nature, and actual recipient of the oral sales representations that resulted in the enrollment.

D. Mr. Kiback's Testimony Contains Other Inconsistencies Which Cast Doubt On Its Reliability

Mr. Kiback's testimony contains other inconsistencies and puzzling statements that raise doubts about his credibility and the reliability of his testimony. Mr. Kiback repeatedly backed away from his own testimony, and demonstrated a general inclination to make bald assertions without any support. Initially, Mr. Kiback testified that his rate from IDT started low and then "always went up"⁹, but then he acknowledged that IDT's rate in fact went both up and down during the period that he was enrolled.¹⁰ After initially describing his complaint as being about his bills "continually going up with no limit", he then stated that he only became concerned with IDT's rate in February 2014. Tr. 12, 18. Mr. Kiback's testimony about the correspondence he received from IDT was also muddled and inconsistent. For instance, Mr. Kiback alleges that a letter that he received from IDT referenced a 10% savings over PPL, but he never produced this letter and later acknowledged that he did not have such a letter in his possession. Tr. 16-17. His testimony on this point was then rebutted by IDT's witness, who testified that IDT only offered a variable rate and that its disclosure statement clearly indicated that the price could be higher or lower than the EDC's price in any given month. Tr. 30. Mr. Kiback also referenced a mysterious second letter that he received from IDT informing him that his rate would be going up, but he then retracted that assertion, saying "I can't see where I have it in a letter. I won't deny that". Tr. 12-13. In the end, Mr. Kiback was unable to produce any copies of correspondence or testify about the contents of any correspondence with any reliability or specificity.

⁹ Tr. 8

¹⁰ Tr. 10, 15

In summary, Mr. Kiback's testimony is much too vague, uncertain and contradictory to provide the basis for finding of a violation. While the I.D. selectively points to a few words in the testimony to make a finding of a violation, the entirety of evidence tells a different story. Mr. Kiback was obviously upset about the rate that he and other customers were charged in January and February of 2014, as indicated by his opening statement. It is evident Mr. Kiback filed a complaint about his rate, and did not intend to complain about the specifics of the sales call that led to his enrollment, nor was he prepared to do so at the hearing. This was reflected in the lack of clarity and contradictory nature of his statements. While the ALJ chose to interpret Mr. Kiback's bald and contradictory assertions as establishing that IDT's sales agent made untruthful promises, a more fair reading of the evidence is as follows:

- Either Mr. Kiback or his girlfriend/wife received a sales call from a sales agent who worked on behalf of IDT. Tr. 14-15, 29.
- IDT provides its sales agents with detailed scripts to explain its promotions and it is made clear to every agent that they should not guarantee that a customer will realize savings by switching to IDT beyond any promotional offer period. Tr. 33.
- The agent informed Mr. Kiback or his wife/girlfriend that IDT's rate "could" be 10% lower than PPL's as Mr. Kiback stated in his own words, (Tr. 15), and/or the agent offered a promotional rate under which the rate would be 10% below PPL's for up to two months, as IDT had historically done (Tr. 33).
- While Mr. Kiback may have participated in the sales call at some point, he did not complete the enrollment, but rather his girlfriend/wife completed it. Tr. 29.
- Mr. Kiback then received a welcome letter and disclosure statement from IDT which specifically stated that he would receive a variable rate that could be higher or lower than his EDC's rate in any given month. IDT Ex. 2 and Tr. 29-30.
- Mr. Kiback clearly saw IDT's charges and rates on his PPL bill every month, and Mr. Kiback had no issue with IDT's rates and made no complaint about his price for 30 consecutive billing cycles during 2011, 2012 and 2013. Tr. 17.
- Mr. Kiback then received his February 2014 bill, and was upset about IDT's price, which was considerably higher due to the Polar Vortex. Then – and only

then – did Mr. Kiback feel there was a basis to file a complaint against IDT. Tr. 12.

- Upon receiving Mr. Kiback’s complaint, IDT offered to provide him with a goodwill refund that would have the effect of paying nearly the entire supply portion of his February 2014 bill, but Mr. Kiback refused the refund. Tr. 35-36.

The version of the events outlined above is fully supported by the record, and does not in any way justify the finding of a violation by IDT. The I.D. fails to recognize the uncertainty, vagueness, and gaps in Mr. Kiback’s testimony, and instead relies on a few words in the testimony – words of questionable reliability that are contradicted elsewhere in the testimony – as the sole basis for a violation by IDT. For these reasons, the Commission should reject the Initial Decision as being unsupported by substantial evidence.

Exception No. 2

The Initial Decision Conflicts With Commission Policy And Precedent

One of the most troubling aspects of the I.D. is the extent to which, if upheld, the decision would completely undermine the Commission’s carefully crafted rules governing customer enrollment with EGSs. The Commission’s regulatory regime for the competitive electric supply market places a duty on customers to raise concerns about their enrollment in a timely manner. For instance, the Commission’s regulations provide customers with a 3-day right of rescission following the receipt of the supplier’s disclosure statement. 52 Pa. Code §§ 54.5(d) and 111.11, which implicitly presumes that three days is a sufficient amount of time for customer to review a disclosure statement and determine if they want to move forward with their enrollment. The Commission’s regulation at 52 Pa. Code § 57.177(b) absolves a customer from the responsibility for paying an EGS’s charges in cases of unauthorized enrollment, but only if the customer’s dispute has been filed within the first two billing periods after the customer should reasonably have known of a change of the EGS. *See also, Rulemaking Order*

Establishing Standards for Changing a Customer's Electric Supplier, Docket No. L-00970121 (Order entered February 27, 1998). In establishing this rule, the Commission noted the two months provides a customer with a reasonable amount of time to recognize the change in their EGS. *Id.*, at p. 6. In a similar vein, the Commission's regulations require EGSs to maintain a record of a verification of a customer's enrollment with an EGS not forever, but for a period of six billing cycles, to enable compliance with the Commission's customer dispute regulations. See 52 Pa. Code § 57.177 and *Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers*, Docket No. M-2010-2185981 (Order entered November 4, 2010). If the Commission expected that slamming or marketing-related disputes could be pursued years after the initial enrollment, the Commission would have required third-party verification recordings to be maintained for a much longer period of time.

These rules for rescission, slamming disputes, and maintenance of TPVs place a burden on customers to review their bills and disclosure statements and raise any concerns about their enrollment in a reasonably timely manner. These rules also reinforce the fundamental principle that the rates that consumers pay in the retail electric market are not governed by recollections of sales calls, but rather are governed by the terms of their contract with their EGS. See also, *Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134 (Order entered March 4, 2014). The Commission never intended for the terms of service to be determined based on recollections of sales calls years after the fact. Consumers must be aware of the terms of service they agree to when entering into a contract for energy services, just as they would do for any other contract

they would agree to. The Commission has affirmed that it is important for consumers to carefully review the terms of their contracts, including conditions of variability.¹¹

To be clear – IDT believes strongly that deceptive marketing practices should not be tolerated. But while marketing violations are clearly unacceptable, not every instance of customer dissatisfaction means that a marketing violation occurred. As the Commission has stated, “consumers do bear some responsibility to make choices that are appropriate for their individual circumstances.” *William Towne v. Great American Power, LLC*, Docket No. C-2012-2307991, Opinion and Order (entered October 18, 2013) at 22. To that end, the Commission has rejected customer allegations about sales promises differing from disclosure statements, even in cases where the customer filed a Complaint as quickly as four months after the alleged promise took place. See e.g., *Dawes v. Pennsylvania Gas & Electric*, Docket No. F-2013-2361655 (Initial Decision issued January 14, 2014, Final Order entered February 27, 2014). See also *Hoke v. Ambit Energy*, (Docket No. C-2013-2357863, Initial Decision issued November 31, 2013, Final Order entered January 16, 2014). Mr. Kiback, of course, did not raise any concerns with his enrollment until 30 months after the sales call took place, despite having unlimited opportunities to rescind or cancel his contract in the interim.

In order for the competitive electricity market to function, a supplier’s written contract terms must be given binding force and effect. A disclosure statement’s language has meaning, and it should not be permitted to be disregarded or altered by parol evidence by either the customer or the supplier, especially 30 months after the fact. Verbal discussions between a sales agent and a prospective customer always have the potential for misunderstanding, particularly in

¹¹ *Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers*. Docket No. L-2014-2409385 (Order entered April 3, 2014)

the case of sales discussions for electric generation supply involving terminology and jargon that may be unfamiliar to customers. This is why the Commission requires written disclosure statements and a right of rescission after receipt of the disclosure statement– to ensure that there is no dispute as to the terms of the service and to allow the customer to cancel the enrollment if the customer is not comfortable with all of the terms.

The I.D. opines that IDT could have simply provided the testimony of the sales agent to rebut Mr. Kiback’s testimony, and IDT’s failure to do so resulted in the finding of violation I.D., p. 12. With all due respect, it is simply not realistic to expect a supplier to track down a former independent telemarketing sales representative who makes numerous sales calls each day, and have that agent testify about the details of one particular sales call from over three years ago in order to justify billings that were completely in accordance with a disclosure statement. Again, the intent of the regulations is to avoid these kinds of “he said-she said” disputes by requiring written disclosure statements with the right of rescission.

The I.D. determined that Mr. Kiback believed he had a guaranteed fixed rate that would be lower than PPL’s rate (I.D. p. 4), but the I.D. did not evaluate whether such a belief was legitimate or reasonable. The fact that Mr. Kiback did not object to his billing in any way for 30 months clearly undermines the credibility of his assertion that he believed he would receive a guaranteed fixed rate. In this case Mr. Kiback enrolled with IDT in July of 2011, and was provided with a disclosure statement setting forth in plain language that he was enrolling for a variable rate that could be higher or lower than the EDC’s rate in any given month, and that he could cancel his enrollment at any time with no penalty.¹² He testified that he saw the IDT

¹² Mr. Kiback appeared to assert that he did not receive a disclosure statement, but he confirmed that he did receive a letter from IDT after his enrollment. IDT’s witness also testified that if an IDT disclosure statement is not delivered to a customer, it is returned to IDT as undelivered, and then IDT researches the reasons why it was not delivered, corrects any deficiencies, and mails the customer another copy of the disclosure statement. Tr. 29-31

charges on his bill, and had the ability to compare those charges to PPL's price to compare. Mr. Kiback had ample opportunity to raise concerns about his enrollment while the events of the enrollment were still fresh in his mind. If he truly believed that he was promised a guaranteed price, why did he not rescind the contract after reading the plain language in the disclosure statement? Or why did he not contact IDT or file a complaint after seeing that his prices were in fact varying from month to month? Or why did he simply not cancel his IDT service, which he was entitled to do at any time with no penalty? Instead he took no action whatsoever....until the Polar Vortex episode caused his bill to spike. Only after receiving his bill in February 2014 did he complain, by which time his enrollment was a distant memory. The only reasonable conclusion from these facts is that Mr. Kiback was generally satisfied with his billing and believed it was in accordance with his understanding of his enrollment, and that his complaint was truly just about the rate he received, as IDT's witness testified. (Tr. 37). Finding a sales or telemarketing violation under these circumstances would effectively relieve customers of any duty to review their disclosure statements or monitor their bills, and place suppliers in a position where they are completely at the mercy of the whims and memories of customers.

The I.D. in this case would set such a low bar for invalidating the terms of a written disclosure statement that disclosure statements would be rendered meaningless. The I.D. states that the "conversation between the customer and sales agent is critical for the development of a proper market"¹³ for competitive electric generation supply, which is true. But then the I.D. goes too far by elevating oral sales representations over the written terms of the disclosure statement,

IDT has no record of the disclosure statement that was mailed to Mr. Kiback being returned as undeliverable. Tr. 31 Under Pennsylvania law, Mr. Kiback is presumed to have received IDT's disclosure statement. The mailing of a document in the ordinary course of business creates a rebuttable presumption that the document was in fact received. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 444 A.2d 658 (Pa. Super. 1982). See also 52 Pa. Code § 111.11(c)

¹³ I.D. p. 11

and essentially holding that the disclosure statement has no part in the analysis of whether a sales violation occurred (I.D., pp 12-13 “Nor is it sufficient to negate a violation of the Commission’s telemarketing regulations that Mr. Kiback subsequently sent a disclosure statement and had right to rescind the contract.”). Under the I.D.’s analysis, every single EGS enrollment conducted by a sales agent could be invalidated at any time, even years after the fact. No matter how clearly a disclosure statement described a supplier’s pricing terms, a customer could simply state that he understood the terms to be different based on a vaguely recollected sales call from years earlier. The disclosure statement would be completely nullified, because under the I.D.’s analysis, the receipt of a disclosure statement with a right of rescission is not sufficient to rebut a customer’s real or imagined allegations regarding the sales call, and the supplier would be exposed to severe penalties. This vision for the competitive supply market is simply unsustainable, as suppliers would have no certainty regarding the price they were authorized to charge or the effectiveness of their disclosure statement, and suppliers would be constantly exposed to complaints and violations any time their price went up or their competitors’ prices went down. This would be the case for both fixed and variable priced contracts – because fixed priced contracts can also cause dissatisfaction when market prices and PTCs fall.

If customers are permitted to claim years after their enrollment that the oral statements of a sales agent differed from the express terms of the supplier’s disclosure statement, and that such oral statements controlled the terms of their enrollment, the entire competitive electricity market in Pennsylvania will be thrown into disarray. Suppliers could be subjected to complaints or claims for refunds whenever a customer identified a competitive price that beat their current supplier’s price, because a customer could simply allege that the sales agent promised the customer a different price when they first enrolled. The Commission can prevent this outcome

by rejecting the Initial Decision and reiterating the principles that disclosure statements control the terms of a customer's enrollment and that customers have a duty to bring allegations of improper sales activities in a timely manner so they can be evaluated with reliability and due process.

Exception No. 3

The Facts and Circumstances Of This Case Do Not Warrant a Violation, A Civil Penalty or a Refund Order.

The I.D.'s analysis of the purported violations and recommended remedies is deeply flawed and illogical, and reflects an unjust pre-disposition to find a violation where none exists. Based on an alleged oral representation by one salesperson, vaguely described and likely not untruthful in any way, the I.D. found that IDT violated two separate Commission regulations, 32 months apart. One of those violations is a purported violation of the Federal Telemarketer Sales Rule ("TSR") that was never pled by the either Complainant or the OCA, based on testimony that was elicited after the statute of limitations on TSR claims had expired.¹⁴ The I.D.'s other violation strangely finds that IDT acted improperly by failing to honor the same sales promise that the ALJ had already previously concluded was improper. The I.D.'s rationale for finding a violation is circular and illogical, and not justified by the facts of the case.

IDT Billed Mr. Kiback In Full Accordance With The Terms Of Its Written Disclosure Statement, And Should Not Be Penalized For Doing So

Mr. Kiback's was provided with IDT's standard disclosure statement after his telephonic enrollment. IDT welcome letters are sent with the disclosure statement in all cases. Tr. 31. Mr. Kiback acknowledged receiving the IDT welcome letter, and IDT has no record of the welcome letter being returned as undeliverable. Tr. 12, 31. IDT's witness also testified that if an IDT disclosure statement is not delivered to a customer, it is returned to IDT as undelivered, and then

¹⁴ Actions for violations of the TSR are subject to a three-year statute of limitations. See 15 U.S.C. section 57b(d)

IDT researches the reasons why it was not delivered, corrects any deficiencies, and mails the customer another copy of the disclosure statement. Tr. 29-31. Under Pennsylvania law, Mr. Kiback is presumed to have received IDT's disclosure statement.¹⁵

The IDT disclosure statement provided to Mr. Kiback clearly and unequivocally stated that the rate that he would be charged could vary from month to month based on market factors and could be higher or lower than the EDC rate in any given month, with no ceiling:

“IDT Energy offers a variable price for all electric generation sold under this agreement. The price for electric generation sold is established on an approximately monthly basis based upon electric generation market pricing as furnished by PJM clearing house, transportation or transmission, and other market and business price related factors. This price may be higher or lower than the EDC's price in any given month. There is no ceiling price.” IDT Ex. 2.

IDT billed Mr. Kiback in full accordance with this pricing description. As reflected on Mr. Kiback's account history, the rate that IDT charged Mr. Kiback for electric generation supply varied nearly each month during his entire enrollment. IDT Ex. 1. During the 2011-2013 timeframe, the price that IDT charged Mr. Kiback ranged from a low of \$.0687/kWh to a high of \$.1088/kWh, and the price only exceeded \$.10/kWh in 3 out of those 28 months. IDT Ex. 1. Then, unfortunately, Mr. Kiback's price increased dramatically during the January-February 2014 billing cycle, due to the well-documented, unprecedented PJM wholesale market irregularities caused by the Polar Vortex. In short, IDT's billings to Mr. Kiback reflected underlying market conditions, **just as IDT's disclosure statement said they would.**

Despite the fact that IDT billed Mr. Kiback in exact accordance with the pricing terms explained in the disclosure statement, the I.D. found that IDT violated Section 54.4 of the

¹⁵ The mailing of a document in the ordinary course of business creates a rebuttable presumption that the document was in fact received. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 444 A.2d 658 (Pa. Super. 1982). See also 52 Pa. Code § 111.11(c)

Commission's regulations, which states that "EGS bills must reflect the marketed prices and the agreed upon prices in the disclosure statement." To reach the conclusion that IDT committed a violation of Section 54.4, the ALJ found that IDT's bills for January 2014 and February 2014 "did not reflect the marketed prices" because the price on the bills differed from the price promised by the sales agent.¹⁶ This is a completely circular and illogical holding, because the I.D. had previously found that same alleged promise was a violation of the Commission's marketing regulations in its own right. In other words, the I.D. finds that the agent's sales promise was improper, but then sanctions IDT for not billing in accordance with that improper promise.

The I.D.'s holdings regarding the violations must be mutually exclusive. Either IDT's agent marketed the price incorrectly or IDT did not bill the customer properly, but not both. If it is found that IDT's agent made an improper statement, IDT cannot then be found to have billed improperly for not billing in accordance with that improper statement if IDT billed in accordance with its disclosure statement (which IDT did). Likewise, if it is found that the agent accurately described IDT's rate (that the rate could be below the EDC's or that Mr. Kiback was being offered a 1-2 month promotional offer) then IDT cannot be found to be in violation at all.

The I.D.'s calculation of a proposed civil penalty continues its improper and unlawful reasoning. The I.D. proposes two maximum \$1000 penalties – one for each month that Mr. Kiback was charged more than the PPL rate. I.D. p. 17. This calculation is erroneous and unjust. If the violation in question is the agent's alleged misrepresentation of the pricing terms, that violation occurred once, in July 2011, and the civil penalty analysis should focus on the actions of that one agent that clearly deviated from IDT's training and policies. By leaping forward nearly three years to calculate civil penalties based on billings in 2014, the I.D. essentially would

¹⁶ I.D. p. 13

be sanctioning IDT for the prices it charged. This of course would be improper, because the Commission has repeatedly held that it does not have the jurisdiction to regulate EGS prices.

The Polar Vortex episode was upsetting to say the least, and hopefully it is never repeated again. But that does not make it appropriate to go through legal and factual contortions to justify penalizing a supplier for the rates it charged and ordering a refund to a customer. The circular reasoning that the I.D. employs results from trying to turn a case that is solely about rates into a case about marketing violations, and then attempting to order a refund based on those marketing violations. Because IDT billed Mr. Kiback in full compliance with its disclosure statement, a violation of Section 54.4 should be off the table, and the only violation possible, based on the facts alleged, is violation of Commission's marketing regulations if sufficient proof is submitted to establish such a violation. The evidence presented clearly does not support any such finding of a violation for the reasons set forth above, and it certainly does not justify a civil penalty.

In any event, the entire exercise of trying to decipher cryptic and contradictory statements from three years ago should be considered moot in this case. IDT voluntarily provided Mr. Kiback with a refund to ameliorate the price increase caused by the Polar Vortex, and remains willing to honor that refund. This goodwill gesture on the part of IDT does not in any way allow for a conclusion that the prices that IDT charged were improper or unlawful, or that a refund is justified or should be ordered by the Commission in this case. In *Commonwealth of Pennsylvania, by Attorney General, Kathleen G. Kane, through the Bureau of Consumer Protection and Tanya J. McCloskey, Acting Consumer Advocate v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Order entered December 18, 2014), the Commission held that it lacked the authority, pursuant to 66 Pa.C.S. § 1312, to direct EGSs to refund charges for electric generation supply service, but had the authority to order refunds to customers in certain situations to carry

out the consumer protections in the Electric Competition Act. First, the Commission noted that, pursuant to 52 Pa.Code § 57.177(b), it could direct an EGS to refund charges when a customer has been switched to an EGS without the customer's consent. Second, the Commission stated that it had the authority, pursuant to 66 Pa.C.S. § 501, to order a credit or refund when an EGS overbills a customer by failing to bill a customer in accordance with its disclosure statement. The Commission noted that "the authority to order EGS billing adjustments, including refunds, under the appropriate circumstances, helps ensure that EGSs comply with the Commission's Regulations and bill customers in accordance with their disclosure statement" (emphasis added). In this case, IDT has demonstrated that it has billed Mr. Kiback in accordance with its disclosure statement, so there is no basis for ordering a refund.

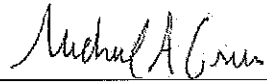
The Commission in *Yaglidereliler* held that customers should be given an opportunity to flesh out allegations about sales promises. But those customers still have the burden of proof, and if they fail to prove a sales violation, their complaint should be dismissed for lack of evidence. If all their testimony does is confirm that their complaint is just about rates, their complaint should be dismissed for lack of jurisdiction. Rather than establishing terrible precedent that would undermine the entire competitive supply market, solely on the basis of vague allegations of sales agent statements that are far from certain, the Commission should view this case for what it truly is – a complaint about a temporary one-month price spike that was addressed by the issuance of a goodwill refund to the customer - and dismiss the Complaint.

CONCLUSION

For the reasons set forth above, IDT Energy respectfully requests that the Commission enter an Order which rejects the Initial Decision in its entirety and dismisses the Complaint, with prejudice.

Respectfully submitted,

STEVENS & LEE



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COUNSEL FOR
IDT ENERGY, INC.

DATE: March 9, 2015

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

STEPHEN KIBACK JR.	:	
Complainant	:	
	:	
v.	:	Docket No. C-2014-2409676
	:	
IDT ENERGY, INC.	:	
	:	
Respondent	:	

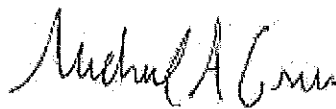
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Exceptions the party listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

VIA First Class U.S. Mail

Stephen Kiback, Jr.
407 Clinton St.
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Hobart Webster, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Floor
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Michael A. Gruin

DATED: March 9, 2015