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December 18, 2015

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

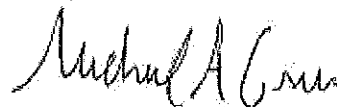
**RE: Commonwealth of Pennsylvania, by Attorney General Kathleen Kane, Through the
Bureau of Consumer Protection and Tanya J. McCloskey, Acting Consumer
Advocate v. IDT Energy, Inc.**
Docket No. C-2014-2427657

Dear Secretary Chiavetta:

Enclosed for filing please find the Reply Exceptions of IDT Energy, Inc. in the above-referenced matter. Copies of these Reply Exceptions 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)
RA-OSA@pa.gov

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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

TANYA J. McCLOSKEY, Acting Consumer
Advocate

Complainants

v.

IDT ENERGY, INC.

Respondent

Docket No. C-2014-2427657

**REPLY OF IDT ENERGY, INC. TO EXCEPTIONS OF
INTERVENER ANTHONY FERRARE**

Pursuant to 52 Pa Code § 5.535, IDT Energy, Inc. (“IDT”) hereby files this Reply to the Exceptions filed by Intervener Anthony Ferrare, to the November 19, 2015 Initial Decision (“I.D.”) in the above-captioned matter. For the reasons set forth below, the Pennsylvania Public Utility Commission (“Commission”) should deny Mr. Ferrare’s Exceptions and adopt the Initial Decision without modification.

I. INTRODUCTION AND SUMMARY OF REPLY TO EXCEPTIONS

The I.D. in this matter was issued on November 19, 2015. The I.D. recommends the approval by the Commission, without modification, of a Joint Petition for Settlement (“Settlement Petition”) filed by IDT, the Office of Consumer Advocate (“OCA”), and the Office of Attorney General (“OAG”). The OCA and OAG shall be collectively referred to herein as the “Joint Complainants”. The Settlement Petition was accompanied by a Joint Stipulation of Facts

and Conclusions of Law, and Statements in Support of the Settlement from the Joint Complainants, IDT, and the Office of Small Business Advocate (“OSBA”). The Joint Complainants and IDT also filed a Joint Motion for Admission of Testimony and Exhibits on August 4, 2015, seeking the admission into the record of certain consumer witness testimonies and accompanying exhibits.

The I.D. recommends approval of the Settlement Petition in its entirety without modification. On December 3, 2015, Mr. Ferrare filed four Exceptions to the I.D. For the reasons set forth below, each of Mr. Ferrare’s Exceptions should be denied, and the Initial Decision approving the Settlement Petition should be upheld and adopted in its entirety. Mr. Ferrare’s Exceptions fail to point to any evidence or legal authority to rebut the ALJ’s careful and well-reasoned finding that approval of the Settlement Petition is in the public interest under the Commission’s standards for evaluating settlements. Mr. Ferrare’s Exceptions are improper on multiple levels, and should be given little weight.

First, Mr. Ferrare’s Exceptions continue his attempts to advocate on behalf of other consumers in this proceeding, even though the Order granting his intervention made it clear that he had no standing to advocate on behalf of consumers other than himself.¹ In opposing the Settlement, Mr. Ferrare’s Exceptions fails to even nominally address how or why he personally would be negatively affected by the approval of the Settlement. The Exceptions contain no assertions of facts that are specific to Mr. Ferrare in any way, and it is clear that the Exceptions were written from the perspective of Mr. Ferrare’s class action attorneys rather than Mr. Ferrare himself.

¹ See May 1, 2015 Interim Order, granting Mr. Ferrare’s Petition to Intervene, but expressly stating that he was not permitted to represent the interests of other individuals.

Secondly, Mr. Ferrare's opposition to the Settlement is based in large part on the mistaken conclusion that IDT was found to have committed a wrongdoing. Obviously, this is not the case. The Joint Petition, the Joint Stipulation of Facts, and the parties' Statements in Support make it very clear that IDT did not admit to any wrongdoing by entering into the Settlement, and that the Settlement represents the compromise of a very complex set of circumstances.

Finally, Mr. Ferrare's Exceptions contains numerous misstatements of law regarding the Commission's authority to approve settlement agreements that include voluntary refunds, its jurisdiction over matters involving EGSs, and the OCA's ability to represent the interests of consumers in matters before the Commission. The ALJs rejected these same arguments in the Initial Decision approving the Settlement, and Mr. Ferrare's Exceptions provide no additional authority or argument which would justify overturning the ALJs' findings.

II. REPLY EXCEPTIONS

A. Reply to Exception No. 1 – The Commission Has the Authority to Approve a Settlement Under Which Customers Must Sign General Releases in Order to Receive Refunds from the Refund Pool

Mr. Ferrare argues that the ALJs erred in permitting the parties to include a provision in the Settlement Agreement "requiring the Company's customers to sign general releases to receive refunds from the Settlement Fund as it is beyond the jurisdiction and practice of the PUC to adjudicate and/or interfere with private causes of action such as breach of contract." Ferrare Exceptions, at p. 2. Similar to his other jurisdictional arguments, Mr. Ferrare's argument on this point is misguided and erroneous.

The Commission clearly does have the authority to approve settlements that include the issuance of voluntary refunds in exchange for the execution of a general release. For instance,

the Commission approved a settlement between the Commission and Verizon Pennsylvania, Inc. (“Verizon”), under which Verizon agreed to pay restitution to customers affected by Verizon’s failure to lift their “local service freeze”, provided that the customers agreed in writing to release and forever discharge Verizon from any and all claims related to the lifting of the local service freeze. *Pennsylvania Public Utility Commission v. Verizon Pennsylvania, Inc.*, Docket No. M-0021592 (Order issued January 25, 2002).

In arguing for disapproval of the Settlement, Mr. Ferrare incorrectly characterizes the Settlement as *requiring* consumers to waive private causes of action against the Company. Ferrare Exceptions, at p. 3. In making this argument, Mr. Ferrare intentionally mischaracterizes the Settlement’s actual provisions regarding the issuance of refunds to customers. Under the clear terms of the Settlement, customers are given options to seek rate adjustments or refunds. First, they can choose to receive a refund from the Refund Pool, under the oversight of the OCA and OAG, in exchange for the execution of a general release. If they decline to participate in the refund pool, customers still have the right to seek a refund directly from the Company and file a formal Complaint with the Commission if they are not satisfied with the Company’s response to their refund request. See Settlement Petition, at ¶ 40. In short, the Settlement provides customers with options, and nothing in the Settlement “forces” customers to waive their private causes of action against IDT as Mr. Ferrare alleges.

Mr. Ferrare’s first Exception also makes the erroneous argument that because the Commission does not have jurisdiction over private causes of action against EGSs, the Commission is precluded from approving a settlement that includes a general release provision. See Ferrare Exceptions, at p. 5. Mr. Ferrare’s argument on this point is based on the same factual fallacy as his other arguments in Exception No. 1. Simply put, the Joint Settlement does

not ask the Commission to limit any individuals' cause of action against IDT. If the Commission approves the Settlement, neither Mr. Ferrare nor any other customer would have their private cause of action limited. Rather, the Joint Petitioners are asking the Commission to approve a detailed settlement that includes a voluntary refund procedure, under which specified customers will be given the opportunity to participate in a refund pool administered by the OCA and OAG. The Joint Complainants and IDT agreed to a number of rules related to the administration of that refund pool, one of which is the requirement to execute a general release in order to participate in the refund pool. But no customer – including Mr. Ferrare - is compelled in any way to participate in the refund pool or execute a general release, and the Settlement clarifies that customers who choose not to participate in the refund pool are able to pursue an alternative method to obtain a refund.

While the Settlement's refund procedures may not comport with Mr. Ferrare and his class-action lawyers' particular wishes, Mr. Ferrare fails to provide any reasons why those refund procedures are not in the public interest. Furthermore, he ignores the many clear and well-articulated public interest benefits of the Settlement's refund provisions. For instance, he fails to recognize the public interest benefits of making refunds available to all customers of IDT who were on variable rates in January, February, and March, 2014, notwithstanding the fact that IDT admits to no wrongdoing and notwithstanding the unique, complex, and contested issues involved in this proceeding. He fails to recognize that the refund mechanism provides for calculation of appropriate refunds by the OCA and OAG based on each customer's unique circumstances. He fails to recognize the public interest benefits of providing customers with an alternative method for seeking refunds should they decline to participate in the refund pool. And he fails to recognize the public interest benefits of the Settlement's expeditious timeline for

providing the refunds to customers within 180 days of the Commission's approval of the Settlement, which is much sooner than if refunds would be directed as a result of full litigation. Other than his misguided "lack of jurisdiction" argument that mischaracterizes the Settlement's actual terms, Mr. Ferrare has provided no reasons why the Settlement's refund provisions are not in the public interest. Accordingly, his objections to the Settlement's refund pool provisions should be rejected.

For the reasons set forth above, IDT respectfully requests that the Commission reject Mr. Ferrare's Exception No. 1 and approve the I.D. in its entirety.

B. Reply To Exception No. 2 - The Commission Clearly Has The Authority To Approve a Settlement Under Which A Regulated Entity Voluntarily Agrees To Issue Refunds To Customers

Mr. Ferrare argues that the ALJs erred in finding that the Commission "has the authority to order and/or permit electric generation suppliers, such as the company, to refund moneys related to rate disputes as such actions are clearly beyond the scope of the PUC's authority". Ferrare Exceptions, at p. 6. In addition to being legally flawed, this argument by Mr. Ferrare is hypocritical and exposes the true intention behind Mr. Ferrare's objections to the Settlement – which is to scuttle the Settlement in order to selfishly preserve the financial value of his speculative class action lawsuit, to the detriment of customers who would otherwise have the opportunity to receive refunds under the Settlement Agreement. While holding himself out as an advocate for the public interest, Mr. Ferrare is challenging the Commission's jurisdiction to approve a Settlement under which all of IDT's customers who were on variable rates in January, February and March 2014 would be immediately eligible to participate in a Refund Pool of \$2,400,000. This cynical advocacy by Mr. Ferrare should negatively color the Commission's consideration of the entirety of his Exceptions and his overall opposition to the Settlement.

Mr. Ferrare's argument on this point is badly flawed, because it focuses on the Commission's authority to order an EGS to issue a refund to customers, whereas the relevant inquiry is whether the Commission has the ability to approve a Settlement under which an EGS voluntarily agrees to issues refunds to customers. The Commission has already confirmed in this proceeding that "nothing precludes an EGS from agreeing to issue refunds as part of a settlement of a Commission proceeding arising pursuant to the Code". See the *Order on Material Question* issued on December 18, 2014 in this proceeding, at p. 16, citing, *Pa. PUC Bureau of Investigation and Enforcement v. Public Power, LLC*, Docket No. C-2012-2257858 (Opinion and Order entered December 19, 2013). This finding is the law of the case, and is binding on the parties, including Mr. Ferrare.² As such, Mr. Ferrare's argument that the Commission lacks the authority to approve the Settlement must be rejected.

While Mr. Ferrare's argument in Exception No. 2 is quite disjointed and difficult to follow, he appears to be arguing that the Commission's lack of jurisdiction over EGSs prices somehow precludes the Commission from exercising any jurisdiction over complaints against EGSs that in any way implicate refunds. He characterizes this proceeding as being a "rate dispute", and then relies on Section 1312 of the Public Utility Code to argue that the PUC does not have authority to order a refund in rate disputes involving EGSs. Ferrare Exceptions, at p. 8. First, this proceeding clearly is not a "proceeding involving rates", rather, it is a proceeding alleging violations of the Public Utility Code and the Commission's regulations. The Commission, of course, has the jurisdiction to approve Settlements of proceedings involving

² Section 316 of the Public Utility Code, 66 Pa. C.S. § 316, provides in pertinent part:

Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and **shall remain conclusive upon all parties affected thereby**, unless set aside, annulled or modified on judicial review (emphasis added).

allegations of violations of the Code and its regulations, and routinely does so. Second, Mr. Ferrare disingenuously attempts to stretch the holding of the *Delmarva*³ decision to an illogical extreme, when he asserts that “the PUC lacks the jurisdiction and authority to order and/or permit an EGS to issue refunds related to rate disputes.” Ferrare Exceptions, at p. 8 (emphasis added). While *Delmarva* makes it clear that EGSs are deemed to be public utilities only for the limited purposes described in sections 2809 and 2810 of the Public Utility Code, nothing in the *Delmarva* opinion can reasonably be interpreted as forbidding EGSs from voluntarily issuing refunds to customers in order to resolve their concerns or disputes. Mr. Ferrare’s argument on this point is meritless and must be rejected.

For the reasons set forth above, IDT respectfully requests that the Commission reject Mr. Ferrare’s Exception No. 2 and approve the I.D. in its entirety.

C. Reply to Exception No. 3 - The Joint Complainants and IDT Have Demonstrated That The Settlement Is In the Public Interest and Should Be Approved

In his third Exception, Mr. Ferrare argues that the Settlement is “grossly insufficient compared to the actual damages caused by the Company and the number of Pennsylvania consumers the Company harmed.” Ferrare Exceptions. at p. 10. There are multiple problems with Mr. Ferrare’s argument on this point, as set forth below.

1. Mr. Ferrare’s Exception No. 3 improperly relies on information that is not in the record

Mr. Ferrare’s argument about the sufficiency of the refund pool relies almost entirely on piecemeal information and assumptions that are not part of the record in this proceeding and therefore should not be considered in evaluating the settlement. It is axiomatic that Commission

³ *Delmarva Power & Light Co. v. Pa. PUC*, 870 A.2d 901 (Pa. 2005) (“*Delmarva*”)

determinations must be supported by substantial evidence of record, and it is not appropriate for Exceptions to reference information which is not in the record. In evaluating the Settlement, the Commission must only consider the evidence that is in the record in this case. If information is not in the record, it cannot be considered by the Commission in evaluating a Settlement. *See, e.g., Pennsylvania Public Utility Commission, et al. v. Equitable Gas Company*, Docket Nos. R-2009-2088072, C-2009-2091475, C-2009-2098330 and C-2009-2100312 (Order entered December 21, 2009), and *In re Pennsylvania-American Water- Company*, 95 Pa. P.U.C. 86 (Order entered February 13, 2001) (wherein the Commission upheld the Initial Decision of ALJ Cocheres in which he struck extra-record references from a Protestant's brief).

The record in this case is limited to 1) the Joint Stipulation of Facts in Support of the Settlement; 2) the materials from the February 17-20, 2015 evidentiary hearings, including the Consumer Direct Testimonies and exhibits that were moved into the record at that time; and 3) the additional Consumer Testimonies and accompanying Exhibits that the Joint Complainants and IDT moved to admit by Joint Motion on August 4, 2015. The Commission's regulations at 52 Pa. Code § 5.553(c) require that exceptions must incorporate, by reference and citation, relevant portions of the record. Mr. Ferrare's Exception No. 3 does not reference the record in the case, but instead references various pieces of extraneous data about IDT's customer base and pricing that was taken from "testimony" that is clearly not in the record. The "testimony" referenced by Mr. Ferrare in his Exceptions was never authenticated and never offered for admission into the record. Because the data referenced in Mr. Ferrare's Exception No. 3 is clearly not in the record in this proceeding, it should not be considered in evaluating the Settlement.

Not only is the “testimony” referenced by Mr. Ferrare not part of the record in this case, Pennsylvania Rule of Evidence 802 and the Commission’s regulations would have prohibited its admission had Mr. Ferrare attempted to admit it. Unauthenticated written statements such as the “testimonies” referenced by Mr. Ferrare in his Exception No. 3 constitute inadmissible hearsay. The “testimonies” referenced by Mr. Ferrare are written statements, other than those made by declarants while testifying at trial, that ostensibly are being offered to prove the truth of the matters asserted therein. As such, they fall squarely within the definition of hearsay under Pennsylvania Rule of Evidence 801.

Under the Commission’s regulations, written testimony such as that referenced by Mr. Ferrare in his Exception No. 3 is subject to the same rules of admissibility and cross-examination of the sponsoring witness as if it were presented orally in the usual manner. 52 Pa. Code § 5.412. In Commission hearings, the author of the prepared testimony must authenticate the testimony as a witness with knowledge of the authenticity of the document pursuant to P.R.E. 901(b)(1). The “testimony” referenced by Mr. Ferrare was never authenticated by a witness, and never subject to cross-examination. As noted in the Joint Stipulation of Facts submitted with the Settlement Petition, had this proceeding not settled, IDT would have challenged the accuracy of the statements, opinions and conclusions of Joint Complainants’ witnesses through cross-examination, cross-examination exhibits, and rebuttal testimony. See Joint Stipulation of Facts, at ¶ 27. This case settled prior to the dates for service of IDT’s Rebuttal Testimony, and prior to the evidentiary hearings at which the Joint Complainant’s witnesses would have been cross-examined. As a result, the Joint Complainants’ witnesses’ testimony was never moved for admission into the record in this case. There is simply no precedent for the Commission, in the context of evaluating a Settlement, to consider of passages from unauthenticated pre-served

testimony by witnesses who were not subject to cross-examination, when the parties agreed not to move the testimony into the record and when no other party was provided the opportunity to file Rebuttal Testimony in response to that testimony. Accordingly, the data referenced in Mr. Ferrare's third Exception must be disregarded in its entirety.

2. Mr. Ferrare's Exception No. 3 is based on flawed assumptions of wrongdoing by IDT and overlooks many important public interest benefits.

Even if the extra-record data referenced in Mr. Ferrare's Exceptions is appropriate to consider (which it is not), there are multiple additional problems with Mr. Ferrare's analysis. Mr. Ferrare's argument is flawed because it wrongly interprets the Settlement as involving a finding of wrongdoing and liability against IDT, and it overlooks many important factors when evaluating the size of the refund pool.

Mr. Ferrare's Exception No. 3 is predicated on the false premise that a finding of liability has been made against IDT. Using piece-meal information from unauthenticated statements that are not in the record, Mr. Ferrare purports to calculate an amount of "over-charges" by IDT, and then compares those "over-charges" to the size of the Refund Pool. Mr. Ferrare's conclusion that "over-charges" occurred is merely an unsubstantiated opinion that is contradicted by the evidence of record. The fact is that no finding of liability has been made against IDT. The Settlement Petition and Joint Stipulation of Facts both explicitly state that the Settlement's provisions should not be construed as an admission of any liability by IDT. Settlement Petition, at ¶ 37 and Stipulation of Facts, at p. 1. Mr. Ferrare ignores the fact that the retail electricity prices charged in January and February 2014 reflected the wholesale energy market volatility resulting from the very cold weather that the region endured over those two months. This

volatility was unforeseen by all industry participants, and completely unprecedented, as summarized in IDT's Statement in Support of the Settlement, at pp. 3-5. Mr. Ferrare also ignores the fact that IDT's disclosure statements placed no ceiling on the variable rates that were permitted to be charged to retail customers, but even though IDT was required to pay the full amount of the dramatically increased wholesale electricity prices, IDT voluntarily issued rate adjustments to thousands of customers who were affected by the unprecedented electricity prices in the winter of 2014 long before this proceeding was initiated. See IDT Statement in Support, at p. 5. In fact, of the 208 witnesses whose testimonies were admitted into the record in this case, IDT provided goodwill rate adjustments and refunds to 163 of them (78%) after the Polar Vortex initially caused their rates to increase, and before their testimony was served in this proceeding. IDT Statement in Support, at p. 6.

Mr. Ferrare's dismissal of the refund pool as "insufficient" also fails to recognize that the Settlement represents a compromise of the many complex issues presented by the Joint Complaint, while still providing considerable financial relief to Pennsylvania electricity customers. The Settlement is a compromise of a very complex and disputed claim, yet it ensures that every customer who was on a variable rate plan in January – March 2014 will be eligible for immediate refunds and will have an alternative method for seeking rate adjustments and refunds should they choose not to participate in the refund pool. By contrast, if the Settlement is rejected, it is unclear whether the Commission would or could order refunds to the number of customers who will receive refunds under this Settlement. Furthermore, even if the Commission were to order IDT to issue refunds to some pool of IDT's present or former customers, such payments may not have been issued for years if this case was fully litigated.

Furthermore, while Mr. Ferrare's Exceptions cite to a handful of incomplete data points, his mathematical analysis omits the fact that not all customers were impacted by the higher than normal rates in early 2014. Mr. Ferrare's Exception No. 3 also glosses over the fact that participation in the Refund Pool is completely voluntary, and that customers who choose not to participate in the Refund Pool will have an alternative method to seek rate adjustments or refunds. See Joint Petition, paragraph 40. As such, his assessment of the proportion of the Refund Pool to the relief available to customers is simply wrong, because it is certainly possible that some number of customers will either choose not to participate in the Refund Pool, or utilize an alternative method to seek a rate adjustment if they deem it appropriate.

3. The evidence of record demonstrates that approval of the Settlement is in the public interest.

It is the Commission's policy to encourage settlements, and the Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 5.231 and 52 Pa. Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a "burden of proof" standard, as is utilized for contested matters. *Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Opinion and Order entered July 14, 2011). The Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. Pub. Util. Comm'n LBPS v. PPL Utilities Corporation*, M-2009-2058182 (Opinion and Order entered November 23, 2009); *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, M-00031768 (Opinion and Order entered January 7, 2004); 52 Pa. Code § 69.1201; *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996); *Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates*, 74 Pa. PUC 767 (1991).

In evaluating the Settlement, it is appropriate to rely only upon the information that is actually in the record in this case. IDT and the Joint Complainants have provided substantial evidence and extensive discussion in their Statements in Support demonstrating why the Settlement is in the public interest and should be approved. In doing so, the Joint Complainants and IDT thoroughly addressed each of the ten factors for evaluating litigated and settled proceedings, as articulated in *Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company*, Docket No. C-0092409 (Final Order entered February 10, 2000) (“*Rosi*”) and codified in the Commission’s Policy Statement at 52 Pa. Code § 69.1201. The ALJs carefully analyzed the Settlement by applying each of the *Rosi* factors, and after addressing Mr. Ferrare’s arguments in opposition, the ALJs correctly concluded that approval of the Settlement was in the public interest. Mr. Ferrare’s Exceptions contain no mention of the *Rosi* factors, and instead simply attempt to argue – again using piecemeal, extra-record evidence – that the refund pool established by the Settlement is somehow insufficient. Mr. Ferrare’s Exceptions regarding the sufficiency of the Refund Pool provide no basis for rejecting the ALJ’s approval of the Settlement.

The fact that the Settlement does not recite the precise number of customers alleged to have been affected is not a basis for rejecting the Settlement. As indicated in the Settlement Petition, the Joint Complainants and IDT disagreed regarding the allegations in the Joint Complaint and IDT does not admit to any wrongdoing by participating in the Settlement. Yet, despite their disagreement on the allegations, the Joint Petitioners crafted a wide-ranging and thorough compromise of a very complex case that will make rate relief available to all IDT customers who were on variable rates during the January – March 2014 time frame. In addition to being very broad in scope, the Settlement’s Refund Pool mechanism is very individualized in

implementation. Under the Settlement, the OCA and OAG will determine the specific refund amount to be offered to each customer based on several factors. Settlement Petition, at ¶ 39. IDT provided significant amounts of information and data to the OCA and OAG, both formally during litigation and informally during settlement discussions, and under the Settlement IDT is obligated to provide the OCA and OAG with all the customer information needed to calculate each customer's refund amount. Settlement Petition, at ¶ 39.

Mr. Ferrare's argument essentially boils down to questioning the judgment of the OCA and OAG regarding the size and administration of the Refund Pool in the context of a compromise. Respectfully, as an Intervener whose involvement in this proceeding is strictly limited to representing his own interests, Mr. Ferrare is in no position to question the OCA and OAG's exercise of judgment in carrying out their statutory duties. For the reasons set forth above, IDT respectfully requests that the Commission reject Mr. Ferrare's Exception No. 3 and approve the I.D. in its entirety.

D. Reply to Exception No. 4: Mr. Ferrare's Arguments Regarding Customers Who Have Not Filed Complaints with The Commission Provide No Basis to Reject the Settlement

Mr. Ferrare argues that "the Proposed Settlement should be denied as the PUC and the Office of Consumer Advocate do not have jurisdiction over or authority to represent, respectively, consumers who have not filed complaints with the PUC against EGSs which are corporations and not public utilities." Ferrare Exceptions, at p. 13. This argument should be summarily rejected.

First, this argument by Mr. Ferrare appears to be made on behalf of other customers of EGSs, rather than on behalf of Mr. Ferrare himself, and as such Mr. Ferrare has no standing to make this argument. When the ALJs granted Mr. Ferrare's late intervention in the proceeding, it

was made clear that he would not be permitted to represent the interests of other customers. See May 1, 2015 Order granting Mr. Ferrare's intervention. With this argument regarding the Commission's jurisdiction over customers who have not filed complaints, and the ability of the OCA to represent customers who have not filed complaints, Mr. Ferrare is clearly attempting to advocate the interests of customers other than himself. As such, his argument on this point fails due to lack of standing and should be rejected.

Secondly, Mr. Ferrare continues to misconstrue this proceeding as a "rate dispute" and misinterpret the Public Utility Code and the holding in *Delmarva*. This is not a rate dispute, but rather a formal complaint proceeding alleging violations of the Commission's regulations regarding, *inter alia*, marketing and billing practices. Under Section 102 of the Public Utility Code (66 Pa.C.S. §102), EGSs are considered public utilities for the limited purposes described in sections 2809 (relating to requirements for electric generation suppliers) and 2810 (relating to revenue neutral reconciliation) of the Public Utility Code. In *Delmarva*, the Pennsylvania Supreme Court clarified that EGSs were not considered public utilities for purposes of Section 510 of the Public Utility Code (related to annual assessments). Relying on *Delmarva*, the Commission in its *Material Question Order* determined that Section 1312 of the Public Utility Code does not apply to EGSs, but that finding does not mean that the Commission has no jurisdiction over this proceeding. The *Delmarva* decision contains no foundation for limiting the Commission's jurisdiction to the extent that Mr. Ferrare asserts, and the ALJ's correctly rejected Mr. Ferrare's argument regarding the Commission's jurisdiction and the OCA's standing in complaint proceedings involving EGSs.

Mr. Ferrare's remaining argument in his fourth Exception incorporates his previous argument that the Settlement Petition should be rejected because the Commission does not have

jurisdiction or authority over the private causes of action of parties. As set forth above, Commission authority over private causes of action is not needed in order to approve the Settlement. Even if it was found that Commission does not have jurisdiction over private breach of contract claims, the Commission clearly does have the authority to approve settlements that include the issuance of voluntary refunds in exchange for the execution of a general release.

For the reasons set forth above, IDT respectfully requests that the Commission reject Mr. Ferrare's Exception No. 4 and approve the I.D. in its entirety.

III. CONCLUSION

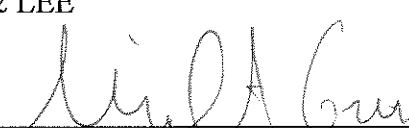
For all of the foregoing reasons, as well as the reasons set forth in the Settlement Petition and IDT's Statement in Support, IDT respectfully requests that the Commission issue an Order which:

- 1) Dismisses Mr. Ferrare's Exceptions;
- 2) Adopts the Initial Decision of Administrative Law Judges Elizabeth H. Barnes and Joel H. Cheskis, issued on November 19, 2015; and
- 3) Approves the Joint Petition for Approval of Settlement submitted by the Joint Complainants and IDT on August 4, 2015;

Respectfully submitted,

STEVENS & LEE

By: _____


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COUNSEL FOR IDT ENERGY, INC.

Date: December 18, 2015

