

**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, :  
 :  
v. :  
 :  
IDT Energy, Inc. :

C-2014-2427657

**INITIAL DECISION**

Before  
Elizabeth H. Barnes  
Administrative Law Judge

Joel H. Cheskis  
Administrative Law Judge



	<b>h.</b>	<b>Eighth Rosi factor – amount of penalty necessary to deter future violations</b> .....	58
	<b>i.</b>	<b>Ninth Rosi factor – past Commission decisions in similar cases</b>	59
	<b>j.</b>	<b>Tenth Rosi factor – other relevant factors</b> .....	60
V.		CONCLUSION.....	63
VI.		CONCLUSIONS OF LAW .....	64
VII.		ORDER .....	68

## I. INTRODUCTION

This Decision approves a Joint Petition for Approval of Settlement (settlement) filed on August 4, 2015, resolving a formal Complaint filed by the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, and Tanya J. McCloskey, Acting Consumer Advocate, against an electric generation supplier (EGS). The Complaint averred that the EGS, among other things, engaged in misleading and deceptive practices, switched customers without their consent and failed to provide accurate pricing information. The settlement requires the EGS to 1) pay \$2,400,000 in refunds to customers in addition to \$4,177,000 in refunds already provided by the Company, 2) pay \$25,000 in a civil penalty, 3) contribute \$75,000 to electric distribution companies' (EDCs) hardship funds and 4) make numerous modifications to its business practices. The settlement is adopted in its entirety and without modification because it is in the public interest and supported by substantial evidence.

## II. HISTORY OF THE PROCEEDING

On June 20, 2014, the Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane, through the Bureau of Consumer Protection (OAG), and Tanya J. McCloskey, Acting Consumer Advocate (OCA) (collectively referred to as "the Joint Complainants") filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against IDT Energy, Inc. (IDT or "the Company"), at Docket Number C-2014-2427657. The Joint Complainants averred that they had received numerous contacts and complaints from consumers related to variable rates charged by IDT, including approximately 47 formal complaints filed by consumers at the Commission. The Joint Complainants further averred that IDT used a variety of marketing and advertising mediums to solicit residential customers for its variable rate plan. As a result, the Joint Complainants averred seven separate counts against IDT, including, but not limited to, making misleading and deceptive promises of savings, slamming, lack of good faith handling of complaints and failing to provide accurate pricing information. The Joint Complainants made several requests for relief, including providing restitution and prohibiting deceptive practices in the future. The Joint Complainants provided several attachments to their Complaint.

On July 10, 2014, IDT filed an Answer and New Matter in response to the Complaint. In its Answer, IDT admitted or denied the various averments made by the Joint Complainants. In particular, IDT specifically denied that its employees, agents and/or representatives have engaged or continue to engage in activities that are fraudulent, deceptive or in violation of the Commission's regulations and orders or the Unfair Trade Practices/Consumer Protection Law. IDT also denied that it switched customers without their consent or that it failed in any aspect of its customer service.

In its New Matter, which was accompanied by a Notice to Plead, IDT averred, among other things, that customers received high bills in January and February of 2014 because of volatility in the wholesale energy market resulting from the very cold weather that resulted in record breaking use of natural gas and electricity. IDT further noted that the Company has only ever offered a variable rate product for electric generation supply with no long-term contract, no deposits and no termination fees. IDT provided additional averments and concluded by requesting that the Complaint be dismissed with prejudice.

Also on July 10, 2014, IDT filed Preliminary Objections in response to the Complaint. In its Preliminary Objections, which was also accompanied by a Notice to Plead, IDT argued that three of the seven counts averred in the Complaint should be dismissed or stricken with prejudice, and the request for an Order providing restitution should be denied, because they are legally insufficient or include impertinent material.

Also on July 10, 2014, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance, Notice of Intervention and Public Statement in this proceeding.

On July 21, 2014, the Joint Complainants filed an Answer to IDT's Preliminary Objections. In their Answer, the Joint Complainants argued that IDT's Preliminary Objections are unsupported and should be overruled. The Joint Complainants argued that it is clear and free from doubt that the Complaint is legally sufficient and contains pertinent material and that the Joint Complainants seek Commission determinations pursuant to its powers and jurisdiction. The Joint

Complainants also argued that the Commission may order restitution in this matter. The Joint Complainants included an attachment to their Answer in support of their positions.

On July 30, 2014, the Joint Complainants filed an Answer to IDT's New Matter. In their Answer, the Joint Complainants denied acknowledging that the rates as high as those charged by IDT in early 2014 were the result of the wholesale electric prices or that such high prices absolve IDT of the alleged excessive charges to customers or alleged illegal marketing, and other, practices. The Joint Complainants also denied IDT's other material averments that supported IDT's positions. More specifically, the Joint Complainants averred that the Commission has the authority to order monetary and equitable relief and has done so in other instances. The Joint Complainants concluded that the Preliminary Objections should be overruled and judgment should be entered against IDT in response to the Complaint.

Also on July 30, 2014, the Commission issued a Prehearing Conference Notice establishing an Initial Prehearing Conference in this matter for Monday, August 25, 2014 at 11:30 a.m. in Hearing Room 1 of the Commonwealth Keystone Building in Harrisburg and assigning us as Presiding Officers.

On July 31, 2014, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Intervention in this proceeding.

On August 20, 2014, an Order Granting in Part and Denying in Part Preliminary Objections was issued. One count of the complaint was stricken because the Commission lacks authority to regulate IDT's prices and one count of the complaint was stricken in part because the Commission lacks authority to hear cases brought under the Telemarketing Registration Act (TRA). All other counts were allowed to proceed to a hearing.

The Initial Prehearing Conference was held on August 25, 2014, as scheduled. Following the Initial Prehearing Conference, Prehearing Order #2 was issued memorializing, among other things, the procedure for admission of pre-served consumer testimony into the record of this

proceeding in an efficient an expeditious manner subject to timely objections and cross-examination during hearings to be held December 8-12, 2014.

On September 3, 2014, an Order Granting Motion for Protective Order was issued.

On September 8, 2014, the Joint Complainants and IDT separately filed Petitions for Interlocutory Review and Answer to Material Question with the Commission regarding various issues decided in the August 20, 2014 Order Granting in Part and Denying in Part Preliminary Objections. On September 18, 2014, both parties filed briefs opposing the Petition for Interlocutory Review filed by the other party.

On October 31, 2014, the Joint Complainants served written, direct testimony of 215 consumer witnesses comprising 1,068 pages and accompanied by signed verifications from each witness.

On November 26, 2014, IDT filed an unopposed Motion for Continuance of Evidentiary Hearings scheduled for December 8-12, 2014. That Motion was granted via Order dated December 9, 2014 that rescheduled the hearings for February 17-20, 2015.

On December 18, 2014, the Commission issued an Order in response to the Petitions for Interlocutory Review and Answer to Material Question filed by both the Joint Complainants and IDT. The Commission determined, *inter alia*, that 1) the Commission can direct an EGS to provide refunds to customers in certain circumstances, 2) the Commission does not have jurisdiction over the Unfair Trade Practices/Consumer Protection Law (UTP/CPL) or the TRA but can enforce its own regulations prohibiting deceptive practices and regarding telemarketing, 3) the Commission does have jurisdiction to determine whether EGS billed prices reflect the EGS's disclosure statement and 4) the Commission cannot order equitable remedies including restitution but can order an EGS to credit or adjust for an overbill. *See, Commonwealth of Pennsylvania, et al. v. IDT Energy, Inc.*, Docket Number C-2014-2427657 (Opinion and Order entered Dec. 18, 2014) (December 18<sup>th</sup> Order).

On January 27, 2015, a Further Prehearing Conference was held wherein the remaining litigation schedule was established, including dates for service of expert and other witness testimonies and hearings for cross examination.

Hearings for the admission of consumer direct testimony into the record and cross examination were held on February 17-20, 2015, as scheduled. The pre-served written direct testimony of 125 consumer witnesses were admitted into the record during the hearing, along with various cross examination and redirect exhibits.

On April 8, 2015, Anthony Ferrare, a former customer of IDT, filed a Petition to Intervene. On April 28, 2015, both IDT and the Joint Complainants filed answers to the Petition opposing Mr. Ferrare's intervention for various reasons. By Order dated May 1, 2015, Mr. Ferrare's Petition to Intervene was granted, noting, in particular, that Mr. Ferrare was not permitted to represent the interests of "all others similarly situated," as he requested in his Petition. Pursuant to the agreed upon schedule modification, Mr. Ferrare pre-served written, direct testimony on May 27, 2015.

Pursuant to the schedule agreed to during the Further Prehearing Conference, the Joint Complainants pre-served written, direct testimony of their expert witnesses on April 30, 2015.

On July 2, 2015, a conference call was held between the Presiding Officers and the parties. During that call, the Joint Complainants and IDT indicated that a settlement in principle had been reached and requested that the litigation schedule be suspended. At that time, I&E indicated it would neither support nor oppose the settlement; OSBA indicated it had not determined its position on the settlement; and, counsel for Mr. Ferrare indicated that he could not determine whether to join or oppose the settlement until he had received additional information from IDT.

On July 13, 2015, a second conference call was held between the Presiding Officers and the parties. During that call, counsel for Mr. Ferrare indicated that he was still unable to take a position on the settlement as his expert continued to review information provided by IDT and the OCA. The parties were instructed to submit the settlement and accompanying Statements in

Support of the Settlement, along with any Stipulations of Facts and Conclusions of Law in support of the settlement, by August 4, 2015. Mr. Ferrare was given 20 days from the date the settlement was filed to submit an *Amicus Curiae* brief expressing such opposition. Parties in support of the settlement were given 10 days from the submission of Mr. Ferrare's brief to file a reply brief.

On July 31, 2015, Mr. Ferrare filed a Motion to Compel seeking an Order compelling IDT to respond to informal discovery exchanged as part of Mr. Ferrare's evaluation of the settlement to determine whether he would join or oppose the settlement. On August 7, 2015, an Order Granting Motion to Compel was issued directing IDT to provide Mr. Ferrare the information he informally requested so he could evaluate the settlement.

On August 4, 2015, the Joint Complainants, IDT and OSBA ("settling parties") submitted a Joint Petition for Approval of Settlement. Attached to the settlement was a Stipulation of Facts in Support of the Settlement and Conclusions of Law along with a Statement in Support of the Settlement submitted by each of the settling parties. The settlement indicated that I&E neither joins nor opposes the settlement and that Mr. Ferrare will be opposing the settlement while discovery responses obtained from IDT are being reviewed.

Also accompanying the settlement was a Motion for Admission of Testimony and Exhibits that was submitted by IDT and the Joint Complainants. The Motion sought the admission of a stipulation whereby an additional 80 consumer witnesses' pre-served written direct testimonies and accompanying exhibits would be admitted into the record of this proceeding. No answers were received in response to this Motion. As a result, the Motion will be granted and the stipulation and accompanying consumer witnesses' pre-served written direct testimonies will be admitted into the record as part of this Decision.

On August 26, 2015, Mr. Ferrare filed an *Amicus Curiae* brief opposing the settlement. In his brief, Mr. Ferrare provided several arguments in support of his position that the settlement should be rejected because it is not in the public interest. As discussed further below, Mr. Ferrare argued that the Commission lacks authority to order an EGS to refund money related to rate disputes or to allow the settling parties to require that a general release of claims be signed in

order to receive money from the proposed refund pool. Mr. Ferrare also argued that the Joint Complainants lack authority to represent consumers who have not filed complaints against IDT and that the total refund pool is insufficient. Finally, Mr. Ferrare argued that the confidential designation should be removed from certain information that was alleged to be confidential. Mr. Ferrare filed an Amended *Amicus Curiae* brief on September 1, 2015 correcting redactions to the proprietary version of the brief.

On September 8, 2015, IDT and the Joint Complainants filed separate briefs in reply to Mr. Ferrare's *Amicus Curiae* brief. In its reply brief, IDT argued the settling parties have demonstrated that the settlement is in the public interest and should be approved. IDT contends that the Commission has the authority to approve a settlement under which a regulated entity voluntarily agrees to issue refunds to customers, even when the customer is required to sign a general release in order to receive the refund. IDT further argued that Mr. Ferrare's other arguments should be rejected because they are based upon information that is not in the record. Finally, IDT opposed Mr. Ferrare's request to remove the confidential designation on certain information.

In their reply to Mr. Ferrare's *Amicus Curiae* brief, the Joint Complainants also argued that Mr. Ferrare's arguments should be rejected. The Joint Complainants argued that an analysis of the Rosi factors, *infra*, that are used to determine whether a settlement is in the public interest supports adopting the settlement. The Joint Complainants further argued that the settlement is well supported in law in every respect, noting that the Commission has jurisdiction to order or permit an EGS to refund money relating to rate disputes, even when the customer must sign a general release to receive the refund. The Joint Complainants also argued that the OCA has authority to represent consumers of EGSs and that the confidential designations are in accord with the Protective Order governing this proceeding.

Also on September 8, 2015, IDT filed a Motion to Strike portions of Mr. Ferrare's *Amicus Curiae* brief seeking to have stricken portions of Mr. Ferrare's brief that include hearsay and non-record evidence. Mr. Ferrare filed an Answer to IDT's Motion to Strike on September 15, 2015.

On September 16, 2015, an Order Denying Request to Remove Confidential Designation was issued which severed Mr. Ferrare's request to remove the designation of certain information as confidential from disposition of the settlement. In doing so, the Order determined that IDT's arguments in favor of maintaining the confidential designation outweigh Mr. Ferrare's arguments for having such designations removed. Similarly, on September 21, 2015, an Order Denying Motion to Strike filed by IDT was issued. In doing so, the Order determined that, although there were technical deficiencies in the *Amicus Curiae* brief filed by Mr. Ferrare, in general, those arguments would not be stricken given the public import associated with this case.

The record in this case closed on September 21, 2015, the date the Order Denying Motion to Strike was issued. This matter is ripe for a decision. For the reasons discussed below, we hereby approve the settlement in its entirety without modification because it is in the public interest and supported by substantial evidence.

### III. FINDINGS OF FACT

1. Joint Complainant Kathleen G. Kane, Attorney General, is the chief law officer of the Commonwealth of Pennsylvania and is authorized to initiate and maintain this action pursuant to Article IV § 4.1 of the Pennsylvania Constitution and the Commonwealth Attorneys Act, 71 P.S. § 732-204. Settlement at 2.

2. Joint Complainant Tanya J. McCloskey, is the Acting Consumer Advocate who is authorized by law to represent the interests of utility consumers before the Commission pursuant to 71 P.S. § 309-1, *et seq.* Settlement at 2.

3. The Respondent in this case is IDT Energy, Inc., a Delaware corporation licensed to supply electric generation service to residential and commercial customers throughout Pennsylvania by Order entered January 15, 2010 at Docket No. A-2009-2134623.

4. On October 31, 2014, Joint Complainants served the written, direct testimony of 215 consumer witnesses comprising 1,068 pages. Settlement at 5.

5. Hearings admitting consumer written, direct testimony into the record subject to cross-examination and timely objections was held February 17-20, 2015 wherein 125 consumers' testimony was admitted into the record along with various cross examination exhibits and redirect exhibits. Settlement at 8.

6. On August 4, 2015, the settling parties submitted a Joint Petition for Approval of Settlement seeking to resolve the various issues amongst the settling parties.

7. Attached to the settlement was a Stipulation of Facts in Support of the Settlement and Conclusions of Law seeking the admission of a stipulation whereby an additional 80 consumer witnesses' pre-served written direct testimonies and accompanying exhibits would be admitted into the record of this proceeding.

8. The consumer testimonies include the witnesses' signed verifications that the facts set forth in their statements were true and correct to the best of their knowledge, information and belief. The statements were verified subject to the penalties of Section 4904 of the Crimes Code, 18 Pa.C.S. §4904, relating to unsworn falsification to authorities. Stipulation at 4.

9. All customers who testified at the evidentiary hearings held February 17-20, 2015 testified under oath. Stipulation at 4.

10. Most of the consumer testimonies complain about IDT's charges for electric generation service provided during the period January through March 2014. Stipulation at 4.

11. Of the 205 consumer testimonies moved into the record, approximately 129 of the testimonies included averments that the IDT sales representatives had guaranteed some level of savings, and the witnesses did not receive those savings. Stipulation at 4.

12. Of the 205 consumer testimonies moved into the record, approximately 13 of the testimonies included an averment that an IDT representative switched the consumer's account without obtaining his or her consent. Stipulation at 5.

13. Of the 205 consumer testimonies moved into the record, approximately 72 of the testimonies included averments that the consumers experienced difficulties when they attempted to contact IDT to complain about their charges or that their complaints were mishandled by IDT. Stipulation at 5.

14. Of the 205 consumer testimonies moved into the record, approximately 22 of the testimonies included an averment that IDT offered little or no relief of the charges about which the consumers complained and approximately 60 of the testimonies included an acknowledgement that the consumer received a refund amount from IDT. Stipulation at 5.

15. Of the 205 consumer testimonies moved into the record, approximately 63 of the testimonies included an averment that the consumer never received a disclosure statement from IDT. Stipulation at 5.

16. Of the 205 consumer testimonies moved into the record, approximately 44 of the testimonies included an averment that the consumer was confused by the IDT salesperson's explanation of the rate IDT would charge and/or believed IDT would charge a fixed rate. Stipulation at 5.

17. Many consumer witnesses testified that they suffered financial difficulties after receiving IDT's charges. Stipulation at 5-6.

18. Approximately 17 of the testimonies included an averment that the consumer received a Shut-Off Notice from his or her EDC after receiving IDT's charges. Stipulation at 5-6.

19. Approximately 48 of the testimonies included an averment that the consumer entered into a payment plan or paid off the charges over several months. Stipulation at 5-6.

20. Approximately 16 of the testimonies included an averment that the consumer otherwise had general financial hardships due to IDT's charges. Stipulation at 5-6.

21. Approximately 2 of the testimonies included an averment that the consumer had to borrow money to pay IDT's charges. Stipulation at 5-6.

22. Had a settlement not been reached, IDT was prepared to submit rebuttal testimony and accompanying exhibits which responded to the assertions contained in the consumer testimonies. Stipulation at 6.

23. On April 30, 2015, in accordance with the procedural schedules in this proceeding, Joint Complainants served the direct testimonies of Barbara R. Alexander, Steven L. Estomin and Ashley E. Everette and the direct testimony of OAG investigator Heather R. Troutman (Non-Consumer Testimony) in support of the Joint Complaint. Stipulation at 6.

24. Barbara R. Alexander has been a consumer affairs consultant since 1996, after nearly ten years as the Director of the Consumer Assistance Division of the Maine Public Utilities Commission and three years as the Superintendent of Consumer Credit Protection for the Maine Department of Business Regulation. Stipulation at 6, n. 3.

25. Steven L. Estomin is a senior economist and principal of Exeter Associates, Inc. with B.A., M.A. and Ph.D. degrees in economics from the University of Maryland. Dr. Estomin specializes, *inter alia*, in power supply procurement, utility load forecasting, regulatory policy and issues of competition. Stipulation at 6, n. 4.

26. Ashley E. Everette is a regulatory analyst at the Office of Consumer Advocate with a Bachelor's degree in economics and a Master's degree in business administration from the University of Illinois. Stipulation at 6, n. 5.

27. IDT was prepared to rebut this testimony, and had settlement not been reached, IDT would have served rebuttal testimony and accompanying exhibits. Stipulation at 6.

28. Had settlement not been reached and litigation proceeded, Joint Complainants would have served surrebuttal testimonies and exhibits. Stipulation at 6.

29. The parties stipulate that if a settlement had not been reached, Joint Complainants would have relied on the expert witness testimonies and exhibits, along with the consumer testimonies and exhibits, to prove the allegations in their Joint Complaint, and 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 and otherwise vigorously defended this action. Stipulation at 6-7.

30. The Stipulation of Facts submitted with the settlement is neither an admission of wrongdoing nor liability by IDT. Stipulation at 7.

#### IV. DISCUSSION

##### A. Legal Standard

In this case, the signatory parties submitted a settlement of all issues. Commission policy promotes settlements. 52 Pa.Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 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) (Lancaster). 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 November 23, 2009); Pa. Pub. Util. Comm’n v. Philadelphia Gas Works, M-00031768 (Opinion and Order January 7, 2004); 52 Pa. Code § 69.1201; Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996) (Warner); Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

Decisions 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, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlt. 1984).

Section 69.1201 of the Commission's regulations provides a Policy Statement regarding factors and standards to be used when evaluating litigated and settled proceedings. 52 Pa.Code § 69.1201. The Policy Statement notes that "these factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest." 52 Pa.Code § 69.1201(a). The Policy Statement notes that "when applied in settled cases, these factors and standards will not be applied in as strict a fashion as in a litigated proceeding. The parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa.Code § 69.1201(b). These factors and standards are as follows:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent

similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa.Code § 69.1201(c); *see also*, Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company, Docket No. C-0092409 (Final Order entered February 10, 2000) (“Rosi factors”).

## **B. Terms of Settlement**

The settling parties have submitted a comprehensive settlement. The Settlement proposes three forms of relief including: 1) refunds, 2) civil penalty and contributions to EDCs' hardship funds, and 3) modifications to business practices. The settlement terms in pertinent part, with the original paragraph numbers maintained, are as follows:

### **A. Refunds.**

38. Refund Pool – Upon the effective date of the Commission's final order in this proceeding, the Company agrees to pay the total sum of \$6,577,000

in refunds (hereinafter “Refund Pool”), which will take into account prior cash refunds provided to customers by the Company. Prior to settlement, the Company voluntarily provided \$4,177,000 in cash refunds to customers. Therefore, the net Refund Pool amount due upon the effective date of the Commission’s final order in this proceeding is \$2,400,000.

a. Refunds shall be provided to IDT customers on variable rate plans and billed for usage in January, February or March 2014. The OAG and OCA shall determine the refund amount to offer eligible IDT customers based on the individual customer’s usage, price charged and refund amounts already received directly from IDT. The refund determinations will be designed so as to fully utilize the Refund Pool after accounting for any administration fees not otherwise paid by IDT pursuant to this Settlement.

b. IDT shall honor all commitments to customers enrolled in IDT’s promotional programs, including but not limited to IDT’s one month free program, two months free program and discount dining card promotion, who meet the eligibility requirements whether or not the customer has received a refund.

39. Administration of Refund Pool

a. OAG and OCA shall retain, with the concurrence of the Company, a third-party Administrator of the Refund Pool to administer the distribution of refunds referenced in Paragraph 38. The first \$75,000 of costs and expenses of the Administrator of the Refund Pool shall be paid by IDT. If the costs and expenses of the Administrator exceed \$75,000, any such costs and expenses in amounts that exceed \$75,000, shall be paid out of the Refund Pool.

b. IDT shall deposit the net Refund Pool amount due identified above with the Administrator within five business days after OAG and OCA identify to IDT the Administrator retained.

c. IDT shall fully and timely cooperate with OAG, OCA and the Administrator by providing all residential and small business customer information necessary to calculate each customer’s refund amount. Such information shall include, but not be limited to, customer billing rates, usage and addresses.

d. The Settlement Administrator shall use best efforts to distribute funds from the Refund Pool within one hundred and eighty (180) days of the Commission’s final order in this proceeding. The Settlement Administrator shall provide monthly reports to OCA, OAG, IDT, and designated Commission staff of funds distributed that include at a minimum, the customer’s name and other available identifying information, the amount of funds dispersed to each customer and the period for which the funds were dispersed.

e. If any funds remain in the Refund Pool, they shall be provided to EDCs' hardship funds and allocated by the ratio of the Company's customers in the EDC's territory to the total amount of Company customers in Pennsylvania as of January 1, 2014.

f. Any unclaimed funds from the Refund Pool shall be forwarded to the Pennsylvania Department of the Treasury pursuant to unclaimed property requirements for the customer(s) entitled to the refund.

40. Additional Refund Method -- Any customer of the Company that was enrolled with the Company prior to the date of this Settlement that does not receive or accept an offer of funds from the Refund Pool pursuant to ¶¶ 38(a) and 39(d) hereof shall be entitled to seek a refund as follows:

a. The customer may contact the Company directly with complaints and request for a refund.

b. The Company shall use its best efforts to investigate the customer's complaint.

c. The Company shall use its best efforts to negotiate an agreement pursuant to which the customer will agree to accept a refund from the Company in exchange for the release of any claims or causes of action that the customer has or may have against the Company.

d. If the customer is not satisfied with the Company's investigation and/or the Company's settlement offer, the customer may file a formal complaint with the Pennsylvania Public Utility Commission.

e. For one year after the Commission's final order in this proceeding, the Company shall provide quarterly reports to the OAG, OCA and designated Commission staff, setting forth the names of the complainants, the general nature of the complaints, and the disposition thereof.

41. Release -- No customer shall be paid any funds from the Refund Pool without executing a "Release of Claims" pursuant to which the customer agrees, in exchange for payment of the funds, to release, acquit, and forever discharge the Company and all of its current and former officers, shareholders, and employees from any and all claims related to the conduct alleged in the Joint Complaint over which the Commission has jurisdiction, including but not limited to, claims regarding the Company's prices not conforming to its Disclosure Statement or marketing statements.

B. Penalty and Contribution to EDC Hardship Funds.

42. IDT shall pay a civil penalty in the amount of \$25,000 to the General Fund. IDT shall not claim a tax deduction for the \$25,000 civil penalty.

43. IDT shall make a contribution of \$75,000 to the EDCs' hardship funds. The contribution shall be allocated by the ratio of IDT customers in the EDC's territory to the total amount of IDT customers in Pennsylvania as of January 1, 2014.

C. Modifications to Business Practices. In addition to complying with all Commission regulations, Orders and policies, IDT shall implement the following modifications to its business practices in Pennsylvania and with respect to Pennsylvania customers<sup>1</sup>:

44. Product Offering:

a. For a period of 21 months beginning on a date mutually agreeable to IDT and the Joint Complainants, but not later than 10 days following the final approval of this Settlement Agreement by the Commission, IDT will not sell variable rate electricity products in Pennsylvania and will offer only fixed rate products pursuant to which the customer's price is fixed for six months or longer. This restriction will not apply to IDT's plans with existing customers.

b. If IDT offers variable rate products to consumers in the Commonwealth, after the time period set forth in Paragraph 44(a) above, IDT agrees that it will not charge Pennsylvania customers cancellation or termination fees for the Company's variable rate products.

45. Marketing:

a. IDT shall comply with all Pennsylvania laws, including the Public Utility Code, 66 Pa. C.S. § 101 *et seq.*, the Consumer Protection Law, 73 P.S. § 201-1, *et seq.*, the TRA, 73 P.S. § 2241, *et seq.* and other applicable laws, as well as Commission regulations, Orders and policies.

b. IDT commits that the Company, its agents, employees and representatives shall not make misrepresentations to residential or small business consumers.

c. IDT, its agents, employees and representatives shall not make representations, either directly or by implication, about savings that

---

<sup>1</sup> To the extent that the modifications to business practices described herein reference compliance with statutes, Commission regulations, Orders and policies, such references are not to be interpreted as an acknowledgement that IDT did not previously comply with such statutes, Commission regulations, Orders or policies.

consumers may realize by switching to IDT except when comparing the rate offered by IDT to the customer's current Price to Compare (PTC), or any published future PTC or when referencing an explicit, affirmative guaranteed savings program. If the IDT agent, employee or representative compares the rate offered by IDT to the customer's current PTC or a published PTC, the IDT agent, employee or representative shall also provide the term that the referenced PTC will be in effect to the consumer and inform the consumer that savings beyond that period are not guaranteed.

d. If IDT offers variable rate products to residential or small business consumers in the Commonwealth, after the time period set forth in Paragraph 44(a) above, IDT, its agents, employees and representatives shall refrain from using terms in their variable rate marketing campaigns, such as "risk free," "competitive," "guaranteed," or any other terminology that represents, explicitly or by implication, that the price offered will be lower than the EDC's Price to Compare, except when referencing an explicit, affirmative guaranteed savings program.

e. If IDT offers variable rate products to consumers in the Commonwealth, after the time period set forth in Paragraph 44(a) above, IDT, its agents, employees and representatives shall refrain from using terms in their variable rate marketing campaigns, such as "trial period" or "introductory rate," without a clear and conspicuous disclosure of the material terms and conditions thereof, including and without limitation to, a full description of the price that will be charged after the expiration of that introductory or trial period, the circumstances under which the consumer can cancel, and the consequences of cancellation.

f. IDT, its agents, employees and representatives shall not make representations, either directly or by implication, about "special programs" for which a Pennsylvania consumer qualifies, unless IDT provides documentation to the consumer explaining in detail the "special program," including but not limited to the parameters of the program, term of the program and eligibility requirements for acceptance into the program.

g. (1) Except as set forth herein, IDT, its agents, employees and representatives shall not make representations, either directly or by implication, about the Price to Compare increasing or the Price to Compare being a variable rate; notwithstanding the foregoing, nothing herein shall prohibit IDT, its agents, employees and representatives from making truthful statements about the current level of the EDC's Price to Compare (PTC) or future PTC if that information is publically available. If an IDT agent, employee or representative identifies the current PTC or a published future PTC, the IDT agent, employee or representative shall also provide the term that the referenced PTC will be in effect; and

(2) IDT, its agents, employees and representatives shall not make any representations whatsoever about how a consumer's utility purchases electricity.

h. IDT specifically commits to complying with 52 Pa. Code §§ 57.175 and shall not enter into a sales agreement or change the commodity provider for any consumer that is not personally accepted by the EDC Customer of Record or by a person purporting to be authorized to act on behalf of the Customer of Record. IDT Third Party Verifications shall require affirmative representation by the person consenting to the change that the person is either the EDC Customer of Record or has been authorized by the Customer of Record to act on behalf of the Customer of Record; otherwise, IDT shall not proceed with the switch.

i. IDT specifically commits that its sales representatives will comply with the provisions of 52 Pa. Code §§ 111.9 and 111.10. Every communication by an IDT sales representative with a potential customer shall begin with the sales representative stating:

My name is [Sales Representative's Name]. I am calling on behalf of IDT Energy, Inc. IDT can provide you with your electricity. I do not work for or represent your electric utility.

j. The IDT salesperson shall explain that if the consumer switches to IDT, his or her electric bill will contain IDT's charges for generation as well as delivery charges from his or her electric utility.

k. If IDT offers variable rate products to residential or small business consumers in the Commonwealth, after the time period set forth in Paragraph 44(a) above, the IDT salesperson must state the following during any variable rate sales contacts:

After \_\_\_ month(s) [if Introductory Price period is applicable], the price you pay under this variable rate contract can change every month. This is not a fixed rate contract. Variable means the price can go up or down. There is no limit on how high the price can go.

l. During a variable rate sales contact or on any variable rate advertising, if IDT makes a representation to the residential or small business consumer that they may cancel their contract at any time, IDT must also state that cancellations will be handled promptly, but it may take several days to switch suppliers.

m. If IDT offers a guaranteed rate for a certain time period, IDT is prohibited from stating that it has no term plans.

n. Regarding all in-person sales solicitations, the IDT salesperson shall provide the Disclosure Statement before presenting a contract to the residential or small business consumer and inform the consumer that the document sets out his or her rights and obligations.

o. IDT shall comply with the applicable Commission regulations for the provision of a disclosure statement and contract summary to newly enrolled customers, including but not limited to 52 Pa. Code § 111.11. IDT shall retain records in accordance with the Commission's requirements, including but not limited to confirmations of mailing of disclosure statements to newly enrolled customers, which shall include at a minimum the date that the Disclosure Statement and Welcome documents were deposited with U.S.P.S. (or such other mail delivery service as the Company may employ) and the customer name and address stated on the envelope containing the documents.

p. IDT, its agents, employees and representatives shall deposit with the United States Postal Service (or such other mail delivery service the Company may employ) its Disclosure Statement and Welcome documents by the end of the next business day after a telemarketing sales contact that resulted in the sale.

q. The Disclosure Statement shall contain at least the following information:

1. The terms of the product.
2. A detailed description of the product, which shall match the oral description given in the telemarketing solicitation. This description may be satisfied with appropriate use of the Schumer box.

r. Regarding online enrollments, within 90 days after approval of the Settlement, IDT shall revise its website to clearly and conspicuously display its Disclosure Statement and all contract terms and conditions as one or multiple unavoidable separate screens, which require the consumer to scroll to the end of the document and click a button indicating he or she has reviewed the documents and agrees to the terms and conditions, during the electronic customer enrollment process. IDT shall require new customers to click a screen button acknowledging that they have reviewed the terms and conditions. IDT shall offer a screen prompt enabling the consumer to print the terms and conditions.

s. In all advertising to residential or small business consumers, IDT shall include a clear and conspicuous display of IDT's brand identification information and clear and conspicuous notice that IDT is independent of the consumer's electric utility, but not formally name the electric utility. Further, IDT shall include clear and conspicuous language that the consumer is not required to switch to an alternate generation supplier, but if the

consumer chooses to switch, he or she will continue to receive one bill from his or her electric utility and the bill will reflect IDT’s generation charges, unless IDT is providing direct billing.

t. In all of the Company’s variable rate product marketing materials that offer terms of service for acceptance by residential and small business consumers and Welcome documents to consumers that have enrolled in variable rate products with IDT, the Company shall provide a statement of the average price per kWh, as required by 52 Pa. Code § 54.7(b)(2). The Company shall use 24 months of price data to calculate the average price per kWh. If the Company offers variable rate products after the time period specified in Paragraph 44(a) above, the Company shall also provide a statement of the total impact of the Company’s average price under the program for the levels of monthly usage of 500 kWh, 1,000 kWh and 2,000 kWh. The information would be organized as follows:

Monthly usage	500 kWh	1,000 kWh	2,000 kWh
IDT Average price	\$xxx	\$xxx	\$xxx

This information shall also be conveyed to the residential or small business consumer during the sales contact.

46. Third Party Verifications:

a. For live Third Party Verifications (“TPVs”), the Company representative shall provide the following explanation, in a slow and audible manner, to residential and small business consumers prior to beginning the TPV process:

You are going to hear a series of questions to confirm your understanding of the agreement. If the representative speaks too quickly, please interrupt and tell the representative to speak more slowly. If you do not understand a question, please interrupt and say that you do not understand the question. If you have a question of your own, please interrupt and ask your question.

b. IDT shall add the following questions to all TPVs, whether via live agent or an Interactive Voice Response system:

- What is your name? (live agent only)
- What is your address? (live agent only)
- Do you understand that IDT is not your electric utility?

- Do you understand that you are not required to switch to IDT in order to continue receiving electric service?
- Does your name appear on the electric bill?

If the consumer answers that his or her name does not appear on the electric bill, the TPV representative shall request that the consumer verify that he or she is authorized by the person whose name is on the bill to consent to changes in electric generation service for the account.

If the consumer answers that he or she is the customer of record or authorized to act on behalf of the customer of record and the sales solicitation is for a variable rate product, IDT shall also add the following questions to the TPV:

- Do you understand that you are agreeing to a variable rate that changes on a month-to-month basis?
- Do you understand that a variable rate can go up as well as go down?
- Do you understand that there is no cap on the price? (If IDT's product in fact has no cap)

c. IDT shall fully comply with the Commission's regulations for third-party verifications, including but not limited to 52 Pa. Code § 111.7 and agrees that all TPVs will be performed outside the physical presence of the IDT sales representative. The IDT in-person sales representative shall leave the premises during the TPV in accordance with the Commission's regulations.

d. IDT sales representatives shall not prompt consumers' responses to TPV questions or instruct the consumers as to the manner in which to respond to TPV questions. If the sales representative interrupts the TPV in this manner, the TPV shall immediately be terminated and the sale shall not be consummated unless a new TPV is initiated and successfully completed.

47. Disclosure Statement: Within 10 business days of the Commission's final Order in this proceeding, IDT shall provide to OAG and OCA its current Disclosure Statement and Schumer Box, drafted pursuant to the Commission's Final-Omitted Rulemaking at Docket No. L-2014-2409385.

a. Further, IDT shall provide to the OCA and the Commission any subsequently amended Disclosure Statements for use in the Commonwealth for the period of five years.

b. In addition to adhering to the Commission's regulations, Orders and policies regarding the requirements for disclosure statements, term and conditions, and marketing materials, if IDT offers variable rate products pursuant to Paragraph 44(a) above, IDT shall:

1. Include the following language in at least 12-point bold font in the “Price Structure” section of the Company’s Disclosure Statement and, if possible, the Schumer Box for all variable rate products:

[For variable rate programs:] After \_\_\_ month(s) [if Introductory Price period is applicable], the price you pay under this variable rate contract can change every month. This is not a fixed rate contract. Variable means the price can go up or down. There is no limit on how high the price can go.

[For fixed rate programs with ETFs:] You may cancel this contract at any time upon 30 days’ notice to IDT, for which you may be separately billed an early termination fee of \$\_\_\_.

2. Under the heading “Cancellation/Early Termination Fees” of the Disclosure Statement, IDT shall state the following in at least 12-point bold font:

You may cancel this contract at any time without an early termination fee. All cancellations will be handled promptly, but it may take several days to switch suppliers.

c. IDT shall not state or represent to customers in the Company’s variable rate programs that the price IDT will charge will be “market-based” or set on “market conditions” unless IDT also provides a specific explanation by means of a formula, or other explanation immediately following such representation in a manner readily understandable for the customers that specifies with particularity what such “market” may consist of, some representation of what components of the price fluctuate with that market and publicly available sources of information for such market factors so that a customer can calculate the price and any applicable charges in terms of dollars and cents or cents per kWh.

d. The parties agree that the Disclosure Statement language stated in Paragraph 47(b) above is not a change in contract terms pursuant to 52 Pa. Code § 54.10. IDT, however, will notify all of its customers enrolled in variable rate programs as of the date of the execution of the Settlement of the Company’s fixed rate product offer identified in Paragraph 44(a) above, and direct customers to review the updated Disclosure Statement online or via hard copy. IDT shall provide the website to view the Disclosure Statement online and a telephone number that customers may call to request a hard copy. These notifications may be provided to customers using on-bill messages and shall begin on the first billing cycle following the execution of the Settlement for which the EDCs will permit such messaging.

e. Customers who choose to switch to a fixed rate plan will be charged no fee for switching to the fixed rate plan. The Customer’s choice to

switch to a fixed rate plan would become effective immediately upon contacting IDT to request the switch.

f. IDT's website will be updated regularly to indicate IDT's current fixed price offering in each EDC territory.

48. Training: IDT shall ensure that its training program for internal and external sales representatives meets the requirements of this section.

a. Within 60 days of the Commission's final Order in this matter, IDT shall provide to the Commission, OAG and OCA a detailed description of the training IDT will implement.

b. After a 30-day review period, the Company will meet with OAG, OCA and designated Commission staff to review and discuss the training.

c. IDT's training materials for its sales representatives and customer service representatives will accurately and comprehensively cover the following:

1. The applicable requirements of the Public Utility Code and the Commission's regulations, Orders and policies regarding marketing and billing practices for EGSs;

2. The applicable requirements of the Consumer Protection Law and TRA, including both prohibited practices and affirmative requirements;

3. The applicable requirements of the Commission's regulations regarding door-to-door sales and other applicable state and federal law, with particular emphasis on the following:

i. As soon as possible and prior to describing any products or services offered for sale by IDT, a sales representative shall:

A. Produce identification, to be visible at all times thereafter, which prominently displays the full name of the marketing representative, displays a photograph of the marketing representative and depicts the legitimate trade name and logo of IDT; and provides IDT's telephone number for inquires, verification and complaints.

B. Identify the reason for the visit and state that IDT is an independent energy marketer, and identify himself or herself as a representative of IDT; explain that he or she does not represent the distribution utility; and explain the purpose of the solicitation.

C. Offer a business card or other material that lists the agent's name, identification number and title, and IDT's name and contact information, including telephone number.

ii. During the sales presentation, the marketing representative must also state that if the customer purchases electricity from IDT, that the customer's utility will continue to deliver their energy and will respond to any leaks or emergencies.

iii. The representative will provide the customer with written information regarding IDT's products and services immediately upon request, which shall include IDT's name and telephone number for inquiries, verification and complaints. Any written materials, including contracts, sales agreements, and marketing materials, must be provided to the customer in the same language utilized to solicit the customer.

iv. Where it is apparent that the customer's language skills are insufficient to allow the customer to understand and respond to the information conveyed by the marketing representative or where the customer or another third party informs the marketing representative of this circumstance, the marketing representative shall terminate contact with the customer in accordance with 52 Pa. Code § 111.9.

v. The marketing representative shall leave the premises of a customer when requested to do so by the customer or the owner or occupant of the premises.

4. An express warning that deceptive sales practices will not be tolerated by IDT's management;

5. An express warning and material description of the remedial steps that will be taken against any sales representatives and customer service representatives that violate any term of this Settlement or otherwise engage in improper sales practices; and

6. A description of the quality assurance, monitoring, auditing and reporting practices IDT maintains to identify and prevent improper sales practices.

d. The training, at a minimum, shall include the following:

1. Initial training and subsequent refresher training on at least a quarterly basis for all IDT internal sales representatives and customer service representatives and third-party sales agents in the modifications listed in this Settlement Agreement and the implementation thereof;

2. Initial training and subsequent refresher training on at least a quarterly basis for all IDT internal sales representatives and third-party sales agents in Pennsylvania laws applicable to IDT, including but not limited to the Public Utility Code, the Consumer Protection Law and the TRA; and

3. Initial training and subsequent refresher training on at least a quarterly basis for all IDT internal sales representatives and third-party sales agents on current Pennsylvania Public Utility Commission regulations, policies and Orders.

e. IDT shall implement and conduct the training and ensure that its internal sales representatives and third-party sales agents comply with the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.

f. Individual marketers retained by IDT shall be required to successfully complete IDT's training program. Each trainee shall be required to sign a form acknowledging that he or she has received and understands the information provided in IDT's training materials before marketing to and enrolling customers on behalf of IDT.

g. IDT specifically commits to the best of its ability, to implement the provisions of this Settlement in a timely manner. Additionally, until the provisions in this Settlement are fully implemented, IDT commits to abiding by the spirit of the Settlement in its marketing and billing practices in the Commonwealth.

49. Compliance Monitoring: IDT shall increase internal quality control efforts to include at least the following:

a. IDT shall record all telephonic communications between Pennsylvania customers and IDT's customer service representatives.

b. IDT shall require its telemarketers to record all communications with residential and small business consumers in Pennsylvania that result in a sale.

c. IDT shall maintain such recordings in accordance with the Commission's requirements.

d. IDT shall implement a provision in its contracts with telemarketers to require the telemarketers to provide recordings of the entire sales presentation to each consumer to IDT within ten business days of the sale.

e. IDT shall, on a monthly basis, review a random sample of calls recorded pursuant to the prior paragraph from each of IDT's agents and

third-party contractors in order to evaluate the sales practices employed and ensure that the sales practices comply with this Settlement Agreement, the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.

1. The sample shall include no fewer than three sales for each sales representative conducting sales solicitations for IDT to Pennsylvania customers.

2. Whenever such sample reveals one or more non-compliant sales calls by an agent, third-party contractor or sales representative, IDT shall investigate whether any of the Pennsylvania consumers enrolled by the agent, third-party contractor or sales representative were subjected to sales practices that violated this Settlement Agreement, the Public Utility Code, the Consumer Protection Law, the TRA, or Commission regulations, Orders and policies.

3. Such investigation, at a minimum, shall include a review of the sales calls and call notes for the ten Pennsylvania consumers enrolled before the call in question and the ten Pennsylvania consumers enrolled after the call in question.

4. If IDT identifies additional non-compliant sales calls, IDT shall implement remedial steps as described in Paragraph 49(e)(7) below.

5. Additionally, IDT shall offer to any residential or small business consumer subjected to the non-compliant sales practices a refund equal to the difference between the price charged by IDT and the consumer's applicable Price to Compare for the period in which the consumer was a customer as a result of the non-compliant sales practice. Such refund shall be paid to the consumer within ten business days.

6. Any substantiated consumer complaint about a IDT sales representative or other information indicating that a IDT sales representative has violated any term of this Settlement Agreement or otherwise engaged in improper sales practices shall trigger an investigation by IDT into whether any of the other IDT customers enrolled by that sales representative were subjected to sales practices that violated the terms of this Settlement Agreement or were otherwise improper.

i. Such investigation shall, at a minimum, include examination of customer enrollment records, sales service call notes for the ten Pennsylvania consumers enrolled by the sales representative immediate prior to and subsequent to the enrollment that triggered the investigation.

7. In the event IDT determines that a sales representative has violated any terms of this Settlement Agreement, the Public Utility Code, the Consumer Protection Law, the TRA, or Commission regulations, Orders and policies or otherwise engaged in improper sales practices, IDT shall take prompt remedial actions, which at a minimum shall include:

i. For the first violation, provide additional training and re-training;

ii. For two violations in a six-month period, suspend the sales representative for a period of no fewer than 3 days; and

iii. For any violations in excess of two within a six-month period, disqualify the sales representative for one week, and for external sales representatives, IDT will have the representative removed from its account.

8. IDT specifically commits, to the best of its ability, to implement the provisions of this Settlement in a timely manner. Additionally, until the provisions in this Settlement are fully implemented, IDT commits to abiding by the spirit of the Settlement in its marketing and billing practices in the Commonwealth.

50. Reporting: Within 30 days of implementation of the training and compliance monitoring described above and quarterly thereafter for a period of five years, IDT shall provide to the Commission and OCA:

a. An explanation of all internal audits and investigations performed during the reporting period, including a detailed description of the amount of calls reviewed pursuant to Paragraph 49(e) of this Settlement and including a description of the audit(s) or investigation(s) performed as well as the results thereof and

b. The reports, as required by 52 Pa. Code §§ 56.151 and 56.152, of all customer complaints and disputes received by IDT during the reporting period.

51. Customer Service:

a. IDT shall employ regulatory personnel whose duties include, at a minimum:

1. Compliance with Chapter 56 of the Commission's regulations, including but not limited to, prompt investigation of all customer complaints, providing the customer with information necessary to make an informed judgment and issue a report to the customer within 30 days;

2. Resolution of customer complaints fairly and expeditiously; and

3. Training customer service representatives in accurately recording the reason for a customer's call in a customer contact log and ensuring compliance with the training described in this Settlement Agreement.

b. IDT shall at all times maintain a staff of customer service representatives necessary to:

1. Within normal business hours, provide consumers with reasonably timely access to a "live" customer service representative, whether the consumer seeks such access via telephone and/or e-mail. Reasonably timely access shall mean that the average hold times for consumers calling the Company shall be no more than 10 minutes, and consumer emails shall be answered within 24 hours unless sent on weekends or holidays in which case shall be responded to within 24 hours of the first business day following the weekend or holiday;

2. Provide a timely response to any voice mail messages left on its customer service toll-free number outside of normal business hours, but not, later than 24 hours after the message was left, unless the message is left on a weekend or holiday in which case shall be responded to within 24 hours of the first business day following the weekend or holiday;

3. Provide for the check of its voice mail message system at the beginning of each day's normal business hours;

4. Use reasonable measures to prevent its voice mail customer service message system from becoming "full" such that consumers cannot leave a voice mail message; and

5. Respond to all inquiries made by letter within five business days of receipt of said letter.

c. IDT shall develop and implement an action plan for handling periods of high call volumes. Such action plan will, at a minimum:

1. Provide for the answering of overflow calls to IDT's system by additional customer service staff or temporary services;

2. Provide a detailed description for use by all such staff or temporary services answering calls regarding inputting of the nature of customer calls;

3. Provide clear and consistent information to all such staff or temporary services answering calls to convey to customers with the same or similar issues; and

4. Provide clear and consistent information to all such staff or temporary services answering calls regarding relief that will be provided by IDT to convey to customers.

d. If IDT experiences a period of high call volumes in which it could not and did not comply with the provisions of this Settlement Agreement, IDT shall within 30 days provide to the Commission, OAG and OCA a report of the occurrence, an explanation of underlying reasons for the occurrence and a description of all remedial measures implemented by IDT.

Settlement at 11-32.

The settlement is conditioned upon additional terms and conditions typically found in most settlements presented to the Commission for approval. For example, the settlement is conditioned upon the Commission's approval of the terms and conditions without modification and the parties reserve the right to withdraw from the settlement if any of its terms are modified. Id. at 33. The parties also reserved their right to continue litigation if the Commission does not approve the settlement and note that the settlement is made without any admission against, or prejudice to, any position which any settling party may adopt in subsequent litigation. Id. The settlement also does not preclude the parties from taking other positions in other proceedings involving EGS marketing and billing practices. Id. at 34. Finally, the parties waive their right to file exceptions if the settlement is adopted without modification. Id.

## C. **Public Interest**

In the settlement, the settling parties averred that the settlement is in the public interest and should be approved without modification because it was reached after an extensive investigation into IDT's marketing and billing practices, including formal and informal discovery, as well as the admission of the direct testimony of 215 consumers and service of the testimonies of the Joint Complainants' expert witnesses. The settlement further states that the settlement is in the public interest because the agreed-upon provisions regarding refunds and modifications to business practices contained in the settlement will provide reasonable relief for IDT's current and former customers who were affected as alleged in the Joint Complaint. The parties also discussed in their respective Statements in Support of the Settlement why they believe the settlement is in the public interest.

### 1. **Positions of the parties**

#### a. **Joint Complainants**

In their Statement in Support of the Settlement, the Joint Complainants provided extensive discussion of the various provisions of the settlement in support of their position that the Joint Petition is in the public interest and should be adopted without modification. In particular, the Joint Complainants noted that the settlement addresses the numerous complex issues raised in this case and, taken as a whole, constitutes a reasonable compromise. The Joint Complainants noted the importance of the matters at issue to Pennsylvania consumers and to the retail market and that full and accurate information and disclosures to consumers, as well as fair and transparent marketing and billing practices, are of paramount importance both to consumer protections and the continued development of a retail choice market.

More specifically, the Joint Complainants noted in their Statement in Support that the settlement is in the public interest and should be approved without modification because a total of \$6,577,000 in refunds will be provided to customers that were on a variable rate plan in January, February or March 2014 based on usage, prices charged and any refund already received. The Joint

Complainants noted that the refund pool will assist affected customers in restoring some of their financial losses incurred as a result of IDT's alleged conduct. The Joint Complainants also noted the use of a third-party administrator to administer the funds and the \$25,000 civil penalty and \$75,000 contribution to the EDCs' hardship funds as being in the public interest. The Joint Complainants also addressed the ten Rosi factors in support of their position that the settlement should be adopted without modification stating that the scope of conduct complained of in this proceeding is unique and unlike other complaint proceedings against EGSs that this Commission has decided. The Joint Complainants noted that the settlement will provide refunds to customers sooner than if the case was fully litigated and that the civil penalty will deter future similar conduct.

The Joint Complainants also discussed the numerous modifications to business practices contained in the settlement. The Joint Complainants referenced the testimony of several consumer witnesses as they relate to the modifications to business practices, specifically noting the changes to the product offering, IDT's marketing practices, the use of third party verifications, IDT's disclosure statement, training of sales and customer service representatives, implementation of various reporting requirements and improvements to IDT's customer service operations, all as reasons why the settlement is in the public interest. The Joint Complainants specifically noted that IDT has agreed to refrain from selling variable rate products in Pennsylvania for a period of 21 months as being appropriate, reasonable and in the public interest.

b. IDT Energy, Inc.

In its Statement in Support of the Settlement, IDT indicated that the settlement should be approved because it provides a fair, reasonable and expeditious resolution of a very complicated and highly contested proceeding stemming from the polar vortex crisis of early 2014. IDT noted that the settlement recognizes that the Company has issued refunds totaling approximately \$4,177,000 to affected Pennsylvania customers and that the settlement provides for significant additional relief. IDT noted the parties have exchanged voluminous amounts of discovery and submitted numerous complex pleadings and participated in a four-day hearing for the purpose of cross-examining customer-witnesses. IDT noted that the Joint Complainants have already served testimony and it was preparing to submit the testimony of its own experts in

response. IDT noted that it has agreed to pay a significant portion of the costs of administering the refunds, plus a \$75,000 contribution to EDC hardship funds and a civil penalty of \$25,000 to the General Fund. IDT noted that the contribution to hardship funds will benefit all low-income customers throughout EDC's service territory, not solely customers of IDT. IDT added that the settlement confirms IDT's agreement to make modifications to its product offering and business practices, including refraining from offering a variable rate product in Pennsylvania for 21 months.

In addition, IDT argued that the settlement is in the public interest and should be approved without modification because the settlement is consistent with the Rosi factors. IDT discussed each of the factors as they relate to the settlement, noting again the significant rate relief provided to customers and modifications to business practices required in the settlement. IDT noted that the settlement includes ongoing compliance and reporting requirements to allow the implementation of the modifications to be verified. IDT noted as well that the settlement is especially beneficial because of the unique and complex issues involved, the amount of time required to litigate the case to conclusion, the considerable uncertainty over the outcome because of the number of issues of first impression and the substantial amount of immediate customer refunds to be issued as a result of the settlement. Finally, IDT argued that the settlement is reasonable and in the public interest because it avoids the significant time, expense and uncertainty of continued litigation.

c. Bureau of Investigation and Enforcement

I&E did not file a Statement in Support of the settlement. I&E neither joins nor opposes the settlement.

d. Office of Small Business Advocate

In its Statement in Support, the OSBA states the settlement is in the public interest and should be adopted without modification, noting the comprehensive list of issues that were resolved through the negotiation process. OSBA noted that the refunds and modifications to business practices provided by the settlement were of particular significance to OSBA when it

concluded that the settlement was in the best interest of IDT's small business customers. OSBA also noted the customer witness testimony submitted into the record as being critical for the purpose of providing substantial evidence in the record. OSBA also noted the use of a third-party administrator to oversee the refund pool, the distribution of remaining refunds to EDC's hardship funds and IDT's agreement to not accept any new Pennsylvania customers for a period of 21 months except for fixed products in limited circumstances as reasons why it believes the settlement is in the public interest and should be approved in its entirety.

e. Anthony Ferrare

In his *Amicus Curiae* brief, intervenor Anthony Ferrare raises several objections to the settlement. Initially, Mr. Ferrare argued that the settlement should be rejected because it is not in the public interest. In making this argument, Mr. Ferrare addressed the Rosi factors, noting in particular that, IDT should be prohibited from offering variable rate electricity plans in Pennsylvania indefinitely. Mr. Ferrare also takes issue with the fact that the number of customers affected and the duration of the violation have been treated as confidential in this proceeding and that, if that information was made public, "the public would be justifiably outraged" because the settlement is a "windfall for the Company enabling it to buy off its obviously larger liability, by forcing customers to sign releases, for literally pennies on the dollar." Mr. Ferrare also argued that the settlement is not in the public interest because IDT's compliance history includes a recent settlement of other allegations brought against the Company. Mr. Ferrare also argued that the \$25,000 civil penalty is not a sufficient deterrent and cites to its other arguments as "relevant factors" to be considered when discussing Rosi.

In addition to addressing the Rosi factors, Mr. Ferrare argued in his *Amicus Curiae* brief that the settlement should be rejected and is not in the public interest because the Commission lacks the authority to order and/or permit an EGS such as IDT to refund moneys relating to rate disputes as such actions are clearly beyond the scope of the Commission's authority. Mr. Ferrare next argued the Commission lacks authority to order and/or permit the parties to require IDT's customers to sign a general release of claims against the Company in order to receive money from the proposed settlement fund as the Commission clearly does not have jurisdiction or authority over

private breach of contract claims related to rate disputes. Mr. Ferrare also argued that the settlement should be rejected because the Commission and the OCA lack jurisdiction over and authority to represent consumers who have not filed complaints with the Commission against an EGS because EGSs are corporations, not public utilities. Mr. Ferrare also reiterated his position that the settlement should be rejected because his experts, as well as the OCA's experts determined that the monetary damages resulting from the excessive rates charged by IDT were higher than the \$6,577,000 IDT has agreed to pay in the settlement.<sup>2</sup>

Mr. Ferrare concluded his *Amicus Curiae* brief by reiterating his position that the settlement should be rejected.

#### **D. Disposition**

As an initial matter, we note that, as the settlement substantially resembles the settlements issued in prior cases involving similar issues and similar parties, Commonwealth of Pennsylvania, et al. v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas and Electric, Docket Number C-2014-2427656 (Initial Decision dated June 8, 2015) (PaG&E) and Commonwealth of Pennsylvania, et al. v. HIKO Energy, LLC, Docket Number C-2014-2427652 (Initial Decision dated August 21, 2015) (HIKO), so too does our disposition of the settlement resemble our prior decisions in those similar cases.

Additionally, we infer from this settlement that the settling parties admit jurisdiction of this Commission over the subject matter and over the parties for the purpose of approving, modifying, and enforcing the terms of this settlement. 66 Pa.C.S. §§ 701, 2809.

---

<sup>2</sup> Mr. Ferrare also argued in his *Amicus Curiae* brief that the confidential designation should be removed from certain information provided in this case. This issue was severed from disposition of the settlement and addressed in an Order Denying Request to Remove Confidential Designation issued on September 16, 2015 to promote clarity and efficiency in this Decision.

1. Refund Pool

With regard to the first aspect of the settlement, refunds, we find these provisions in the settlement to be in the public interest and support adopting the settlement without modification. The settlement provides that, upon the effective date of the Commission's final order in this proceeding, IDT agrees to pay the total sum of \$6,577,000 in refunds, which will take into account the \$4,177,000 in refunds previously provided to IDT customers, resulting in a net refund amount due of \$2,400,000. The refunds will be provided to IDT customers on variable rate plans and billed for usage in January, February or March 2014 based on an amount for each customer determined by the Joint Complainants. The settlement also provides that a third-party administrator will be retained to administer the pool with the first \$75,000 in costs and expenses of the administrator to be paid by IDT and any additional costs or expenses being paid from the refund pool. The administrator is required to use best efforts to distribute funds from the pool within 180 days of the Commission's final order in this proceeding with monthly reports provided to the Joint Complainants, IDT and designated Commission staff. The settlement provides that any remaining funds be distributed to EDC's hardship funds allocated by the ratio of the Company's customers in the EDC's territory to total amount of IDT customers in Pennsylvania as of January 1, 2014. Unclaimed refunds will be forwarded to the Pennsylvania Department of Treasury pursuant to the unclaimed property requirements.

The settlement further provides an additional refund method for any customer of the Company that was enrolled with the Company prior to the settlement that does not receive or accept an offer of refunds from the refund pool. Finally, the settlement requires that no customer shall be paid any refunds without executing a release of claims pursuant to which the customer agrees, in exchange for the payment of funds, to release, acquit and forever discharge IDT from any and all claims related to the conduct alleged in the Joint Complaint over which the Commission has jurisdiction.

Mr. Ferrare argued in his *Amicus Curiae* brief that the settlement should be rejected because the Commission lacks authority to order and/or permit EGSs such as IDT to refund money relating to rate disputes because such actions are beyond the scope of the Commission's authority.

Ferrare Brief at 12-14. Mr. Ferrare also specifically argued that the Commission lacks authority to order and/or permit the settling parties to require IDT's customers to sign a general release of claims against IDT in order to receive a refund because the Commission does not have jurisdiction or authority over private breach of contract claims related to rate disputes. Id. at 14-17. In making these arguments, Mr. Ferrare argued, among other things, that the Commission lacks authority under Section 1312 of the Public Utility Code to force an EGS to issue a refund. Id. at 13-14, *citing*, 66 Pa.C.S. § 1312 and Delmarva Power & Light Co. v. Commonwealth, 582 Pa. 338, 353, 870 A.2d 901, 910 (2005) (Delmarva). With regard to the release of claims, Mr. Ferrare also argued that the Commission lacks regulatory authority over an EGSs' rates and it likewise lacks the authority to force consumers to waive private causes of action against IDT. Id. at 16.

In response to Mr. Ferrare's argument, IDT argued the Commission has the authority to approve a settlement under which a regulated entity voluntarily agrees to issue refunds to customers, including when customers must sign general releases in order to receive the refund. IDT Reply Brief at 18-21. In making these arguments, IDT argued that Mr. Ferrare fails to distinguish between the Commission's authority to order refunds and the Commission's ability to approve a settlement where the EGS voluntarily agrees to issue refunds. Id. at 18-19. IDT also notes Commission precedent where general releases were allowed as part of receiving a refund. Id. at 20 (citation omitted). Additionally, the Joint Complainants cited to December 18<sup>th</sup> Order, *supra*, as support for its position that the Commission has jurisdiction to order or permit EGSs to refund moneys relating to rate disputes. Joint Complainants' Reply Brief at 15-16. The Joint Complainants cited to Commission precedent to support their argument that the provision requiring customers who accept a refund to sign a general release is not a basis to reject or modify the settlement. Id. at 16-17 (citations omitted). The Joint Complainants specifically noted that we approved this same provision in the PaG&E case, *supra*.

We find the refund provisions of the settlement to be in the public interest and adopt them without modification. In particular, we reject Mr. Ferrare's arguments that the settlement should be rejected because of the refund provisions.

The refund provisions in the settlement are consistent with recent Commission precedent. For example, in response to a Petition for Interlocutory Review filed in this proceeding questioning, among other things, whether the Commission has authority under Section 1312 of the Public Utility Code to order EGSs to issue refunds to customers, the Commission relied on its plenary authority under Section 501 of the Public Utility Code to direct an EGS to issue a credit or refund for an over bill. December 18<sup>th</sup> Order at 17, *citing*, 66 Pa.C.S. § 501 (“in addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders or otherwise, all and singular, the provisions of this part, and the full intent thereof”). The Commission noted that its “powers have been interpreted broadly to include both the express powers conferred by the Code and those implied powers necessarily implicit in the Code” and stated:

Directing a billing adjustment for an EGS over bill of supply charges is within the Commission’s Section 501 powers to carry out the consumer protections in the Electric Competition Act that are applicable to competitive electricity generation supply service. These consumer protections include the Section 2809(b) requirement that EGSs comply with the Commission’s regulations, including the Chapter 54 billing and disclosure regulations.

Id. The Commission concluded that “ordering EGS billing adjustments for an over bill of supply charges is fully consistent with the policy objectives of the Electric Competition Act as well.” Id. at 18.

Recently, in Stephen Kiback, Jr. v. IDT Energy, Inc., Docket No. C-2014-2409676 (Opinion and Order entered August 20, 2015) (Kiback), the Commission held that its plenary authority under Section 501(a) of the Public Utility Code includes directing an EGS to issue a credit or refund for an overbill in violation of 52 Pa.Code § 54.4(a) and a violation of the Commission’s Interim Guidelines, Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers, Docket No. M-2010-2185981 (Order entered November 5, 2010). The Commission found substantial evidence supported a decision that Section 54.4(a) and these Interim Guidelines had been violated; accordingly, a civil penalty in the amount of \$2,000 and

refunds in the amount of the difference between the price billed and the EDC's price to compare in effect for the months of January through February, 2014, were warranted. Id. at 35.

Finding the refund provisions in the settlement to be in the public interest and within the Commission's authority is also consistent with an Initial Decision in Herp v. Respond Power, LLC, Docket No. C-2014-2413756 (Initial Decision dated December 17, 2014) (Herp), wherein the Administrative Law Judge acknowledged and exercised the Commission's authority under Section 501 of the Public Utility Code, in directing an EGS found to be in violation of regulations similar to the ones alleged in the instant Joint Complaint to refund Mr. Herp the difference between the rate he was charged by the EGS, and the price to compare rate that he would have been charged by his default service provider, West Penn Power, during the months of January – April, 2014. The Herp decision also directed the EGS pay a \$10,000 civil penalty for violations, but neither revoked nor suspended the EGS's license given this was one of the first fully litigated variable rate complaints against the EGS at the Commission. The Commission has not rendered a final decision in the Herp case.

Similarly, on October 2, 2014, the Commission approved a settlement agreement between I&E and Energy Services Providers, Inc. d/b/a Pennsylvania Gas and Electric involving allegations pertaining to the unauthorized switching of commercial electric and natural gas accounts to receive supply service provided by PaG&E. See, Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas and Electric and U.S. Gas and Electric d/b/a Pennsylvania Gas and Electric, Docket No. M-2013-2325122 (Order entered October 2, 2014) (October, 2014 Order). In that decision, PaG&E paid a \$150,200 civil penalty, and refunded the entire electric generation or natural gas supply portion of the bill for the period of time the ten customers with 108 slammed accounts were served by PaG&E. Id. at 3. The Commission ordered the Company to directly issue the refunds on the 108 slammed accounts, rather than through a third-party administrator. The Company issued refunds in excess of \$67,000 in that case. Id. at 5.

We find the refund pool established in the settlement to be consistent with the IDT Order, Kiback, Herp and the October, 2014 Order, as well as other Commission precedent. This is

particularly true given the fact that more than 100 IDT customers testified in this proceeding that they did not receive the level of savings guaranteed by the IDT sales representative. *See, Finding of Fact 11, supra.* Furthermore, the refund pool is consistent with the refund pools we approved in the PaG&E case and the HIKO case by Initial Decisions dated June 8, 2015 and August 21, 2015, respectively. The PaG&E case, for example, provided for PaG&E to pay approximately \$6 million into a refund pool to be administered by a third-party administrator, selected by Joint Complainants but paid for by PaG&E up to a capped amount of \$100,000 in administrative fees. Exceptions to the PaG&E decision are currently pending before the Commission.

With this authority to direct refunds, and in light of the fact that the Joint Complainants are statutory advocates for consumers in Pennsylvania, we infer from this settlement that Joint Complainants have the legal authority to issue a request for proposals (RFP) or request for qualifications (RFQ) and to hire an independent third-party Administrator, which would collect and distribute the fund monies. This would give the affected consumers financial relief.

Similar to the OCA and OAG, the Commission, as a governmental agency, has issued RFPs and RFQs to hire third-party administrators pursuant to various regulatory provisions in the past. *See, Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. M-00051865, Request for Qualifications For Alternative Energy Credit Program Administrator, April 12, 2006. Alternative Energy Portfolio Standards Act of 2004, 73 P.S. §§ 1648.1-1648.8; *see also, Establishment of a Pennsylvania Universal Service Fund*, M-00001337 (Order entered April 18, 2000); 52 Pa.Code §§ 63.161, *et seq.* Thus, in the interest of assisting the OAG and OCA to obtain relief on behalf of consumers who it is alleged were financially distressed by violations of various Commission regulations, we approve this term of the settlement as it appears to be mutually advantageous to the Commission and the OAG and OCA to expedite the issuance of refunds and other relief to customers in Pennsylvania.

As a result, we find the refund provisions contained in the settlement to be in the public interest and should be adopted without modification because many customers who complained about IDT's service during January, February and March 2014 will be afforded some financial relief from IDT in the form of refunds. In particular, the Joint Complainants noted in their

Joint Complaint that, beginning in February, 2014, the OCA began receiving approximately 2,434 calls and written correspondence from residential customers on variable rate plans with EGSs regarding the level of electric generation charge on their bills and that approximately 539, or 22%, were customers of IDT. Similarly, the OAG received approximately 39,607 telephone calls and 7,503 consumer complaints related to variable rates charged by EGSs. Approximately 1,917, or 26%, of consumer complaints were against IDT. The Joint Complainants averred that hundreds of these customers complained that they were guaranteed a rate or were promised savings over the EDC's price to compare. The Joint Complainants averred various Commission regulations that IDT's actions allegedly violated and, for relief, sought, among other things, that IDT be directed to "provide appropriate restitution including without limitation refunding all charges to its customers that were over and above the price to compare in the customers' respective service territories from January 1, 2014 through the date of resolution of this matter, as well as any late payment, cancellation and/or termination fees and/or other such penalties charged to consumers as a result of [IDT's] charges." The refund provisions in the settlement address these averments.

We reject Mr. Ferrare's arguments to the contrary. As noted above, there is significant Commission precedent supporting the position that the Commission has authority to direct an EGS to provide a refund to a customer for an overcharge. IDT Order, Kiback, Herp, October, 2014 Order, supra. Whereas Mr. Ferrare relies on Section 1312 of the Public Utility Code and Delmarva, the more appropriate focus is on Section 501 of the Public Utility Code and the IDT Order entered in this case in December, 2014. Similarly, Commission precedent supports the authority of the Commission to approve a settlement wherein a customer is required to sign a general release before accepting the refund. *See e.g., Pennsylvania Public Utility Commission v. Verizon Pennsylvania, Inc.*, Docket No. M-00021592 (Order entered Jan. 25, 2002).

We also reject Mr. Ferrare's arguments because nothing precludes a party from agreeing to perform under a settlement that which the party may not necessarily be legally obliged to do under law. *See e.g., Pa.P.U.C., Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-2009-205812 (Opinion and Order entered September 10, 2009) (PPL Order) (approving a settlement prohibiting Friday electric service terminations). It is apparent that the settlement benefits consumers while providing the Company with an agreed upon outcome to

this case regarding the status of their EGS license, financial risk, corrective action, and other modifications to business practices.

We also reject Mr. Ferrare's arguments because, as we noted in PaG&E, the decision to sign the release and receive the refund is at the discretion of the customer. Some customers might want the more expedient resolution of accepting a refund from the refund pool and others may wish to seek a resolution in another manner. Although the Commission does not normally require as part of receiving a refund that a general release be signed, we do not seek to delve too deeply into mechanics or functioning of the refund pool, especially in light of the overall benefits provided in the remainder of the settlement. This is a unique complaint and involves a large lump sum refund pool for the benefit of those customers affected by IDT's alleged actions. We are not forcing consumers to take the refund amount provided in this settlement and forgo any other claim. Consumers have the ability to choose and we believe that is in the public interest.

In conclusion, we find the refund pool is in the public interest because those consumers who paid more than they believed that they would be required to pay for electric generation service based on their interactions with IDT will be remunerated for the additional amount they paid above their EDC's price to compare and many will receive the savings they expected. It may not be an amount punitive in nature or compensatory for damage claims resulting from the misconduct, but it financially reimburses the customers a reasonable amount of money.

As we indicated in the PaG&E and HIKO decisions, in order for the market for the competitive provision of electric generation service to flourish in Pennsylvania, consumers must have confidence that the price they are paying is the price they were told they would be paying. While IDT does not expressly admit to any wrongdoing or violations of the Public Utility Code, Commission regulations or orders, and the settlement does not provide that the averments in the Complaint are true, the settlement compensates numerous consumers for amounts they believe they were overcharged and provides a level of assurance to the marketplace that EGSs' actions will be watched and any inappropriate actions will be raised with the Commission. The Commission takes seriously its role in the development of the competitive provision of electric generation service and this settlement is in the public interest because the refund provisions aid in that development.

As such, we find that the refund provisions contained in the settlement agreement are in the public interest and support adopting the settlement in its entirety without modification.

2. Penalty and Contribution to EDC Hardship Funds

With regard to the second aspect of the settlement, civil penalty and contribution to hardship funds, we find these provisions in the settlement to be in the public interest and support adopting the settlement without modification. The settlement provides that IDT shall pay a civil penalty in the amount of \$25,000 to the General Fund and shall not claim a tax deduction for the amount. The settlement further provides that IDT shall make a contribution of \$75,000 to the EDCs' hardship funds and that the contribution shall be allocated by the ratio of IDT customers in the EDCs' territory to the total amount of IDT customers in Pennsylvania as of January 1, 2014.

In his *Amicus Curiae* brief, Mr. Ferrare argued that the \$25,000 civil penalty and the \$75,000 contribution to EDCs' hardship funds are inadequate to deter the Company from engaging in similar conduct in the future. Ferrare Brief at 12-14. Mr. Ferrare argued that the monetary penalty should, therefore, be substantially increased. Id. at 12.

In response to Mr. Ferrare, IDT argued that the total amount of payments to be made by IDT under the settlement is clearly sufficient to deter future violations, noting that the total amounts are substantially similar to those amounts to be paid by PaG&E in connection with the settlement of its case. IDT Reply Brief at 17. Similarly, the Joint Complainants also referenced the PaG&E case and noted that the civil penalty must not be considered in isolation, but that the totality of the monetary provisions together with the relief in the form of modifications to IDT's business practices together are sufficient to deter similar future conduct. Joint Complainants' Reply Brief at 13-14. The Joint Complainants concluded that Mr. Ferrare's assertions that the monetary provisions are insufficient to deter future violations should be rejected. Id. at 14.

We find the refund provisions of the settlement to be in the public interest and adopt them without modification. In particular, we reject Mr. Ferrare's arguments that the settlement

should be rejected because of the refund provisions and note that the issue of deterrent effect of the civil penalty will be discussed further below.

Section 3301 of the Public Utility Code grants the Commission authority to impose civil penalties. This section provides in pertinent part:

**§ 3301. Civil penalties for violation.**

(a) General rule. – If any public utility or any other person or corporation subject to this part, shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect, or refuse to perform any duty enjoined upon it by this part; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the commission, such public utility, person or corporation . . . shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000 to be recovered by an action of assumpsit instituted in the name of the Commonwealth.

66 Pa.C.S. § 3301(a). We find that the provision of the settlement imposing a civil penalty of \$25,000 that IDT cannot claim as a tax deduction is consistent with Section 3301 as well as applicable Commission precedent and is in the public interest.

The Commission, for example, recently found that a civil penalty of \$1,000 for the 108 accounts physically switched to PaG&E without customer consent for a total of \$108,000 was appropriate. October, 2014 Order, supra. This amount was similar to the Commission’s decision in cases involving slamming where \$1,000 civil penalties per account switched were imposed. Pa. Pub. Util. Comm’n v. ACN Energy Inc., Docket No. M-00021618 (April 18, 2000); Pa. Pub. Util. Comm’n, Law Bureau Prosecutory Staff v. MXenergy Electric, Inc., Docket No. M-2012-2201861 (August 29, 2013); Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. Public Power, LLC Docket No. M-2012-2257858 (December 19, 2013) (penalties less than \$1,000 per account were levied for accounts not yet physically switched, but in the process).

Similarly, in Pa. Pub. Util. Comm’n Bureau of Investigation and Enforcement v. IDT Energy, Inc., M-2013-2314312 (Opinion and Order entered October 17, 2013) (IDT 2013

Order), the Commission approved a settlement between I&E and IDT. That case was initiated after an informal investigation which identified thirty-nine violations among twenty-one Bureau of Consumer Services (BCS) complaints between 2010 and 2012. In three instances, an agent or agents of the Company failed to obtain direct oral confirmation or written authorization from the customer to change the EGS, resulting in physically switching the electric generation supplier of those accounts without authorization of the consumer or without proper verification. The Commission directed IDT to pay a civil settlement amount of \$39,000 to the General Fund.

With regard to the provision in the settlement that IDT will make a \$75,000 contribution to the EDCs' hardship funds with the contribution allocated by the ratio of IDT customers in the EDC's territory to the total amount of IDT customers in Pennsylvania as of January 1, 2014, we find this provision of the settlement is also in the public interest and supports adopting the settlement without modification. This is particularly true because of the strain placed on hardship funds and low-income consumers as a result of the increased bills consumers paid during the months at issue in this case. The hardship funds benefit all low-income consumers in the EDCs' territories, not solely the customers of IDT.

This finding is supported by the testimony of consumer witnesses who testified during the hearings in February, 2015 that they suffered financial difficulties after receiving IDT's charges. Finding of Facts 17 - 21, *supra*. Specifically, approximately 17 the consumers testified that they received a Shut-Off Notice from his or her EDC after receiving IDT's charges; approximately 48 of the consumers testified that they entered into a payment plan or paid off the charges over several months; approximately 16 of the consumers testified that they otherwise had general financial hardships due to IDT's charges; and approximately 2 consumers testified that the consumer had to borrow money to pay IDT's charges. Id., *citing*, Stipulation at 5-6. Furthermore, it is likely that a consequence of the actions of IDT as averred in the Complaint caused undue strain on EDC's hardship funds as the demand for financial support increased when the variable rate increased. The \$75,000 provision in the settlement will redress these consequences of IDT's alleged actions.

We also find that it is reasonable, as proposed in the settlement, that the total contribution of \$75,000 be allocated by the ratio of IDT customers in the EDC's territory to the total amount of IDT customers in Pennsylvania to ensure that those EDC hardship funds that were affected the most receive the most benefit from this provision of the settlement. Doing so will best distribute the \$75,000 to the hardship funds that were impacted the most by IDT's actions as alleged in the Complaint.

As a result, we find the \$25,000 civil penalty and the \$75,000 contribution to EDCs' hardship funds to be reasonable and a pragmatic compromise between the parties. These two provisions of the settlement are in the public interest because the Joint Complainants averred in the Complaint numerous violations of Commission regulations that, if proven true, would warrant the imposition of a civil penalty. As such, the Joint Complainants requested in the Complaint that the Commission impose a civil penalty on IDT. In light of the magnitude of the violations averred, a \$25,000 civil penalty, coupled with a \$75,000 contribution to EDC's hardship funds, is reasonable and in the public interest. As discussed further below, the Commission's Policy Statement on factors regarding civil penalties supports the \$25,000 civil penalty. When applying those various factors to the specifics of this settlement, it is clear that a \$25,000 civil penalty is reasonable and in the public interest. For the same reasons as why the settlement overall complies with the factors in the Commission's Policy Statement, so too do the factors in the Commission's Policy Statement support finding that the imposition of the \$25,000 civil penalty is reasonable.

These provisions in the settlement are responsive to the issues raised in the Joint Complaint and constitute a reasonable resolution of those issues. The provisions of the settlement regarding the civil penalty and contribution to EDCs hardship funds are consistent with Commission precedent and will aid in the development of a competitive market for the provision of electric generation service while aiding low income customers. As such, we find that the provisions contained in the settlement agreement requiring IDT to pay a \$25,000 civil penalty to the General Fund and contribute \$75,000 to EDC hardship funds are in the public interest and support adopting the settlement in its entirety without modification.

### 3. Modifications to Business Practices

With regard to the third aspect of the settlement, the modifications to the business practices, we find that these provisions of the settlement are in the public interest and support adopting the settlement without modification. As with the settlements produced in the PaG&E and HIKO proceedings, *supra*, this settlement provides extensive modifications to IDT's business practices. The settlement provides significant detail regarding changes to IDT's product offering, marketing practices, third party verification process, disclosure statement, training of internal and external sales representative, compliance monitoring, reporting requirements and customer service.

In his *Amicus Curiae* brief, Mr. Ferrare's sole criticism of the extensive modifications to business practices contained in the settlement is that IDT should be prohibited from offering variable rate electric plans in Pennsylvania indefinitely, instead of for only 21-months. Ferrare Brief at 7-8. Mr. Ferrare argued that, "this prohibition, if implemented by the Commission, would further serve as a means by which Pennsylvania citizens would be shielded from predatory practices by the Company." Id. at 7.

In response to Mr. Ferrare, IDT argued, among other things, that Mr. Ferrare fails to recognize that the 21-month prohibition on offering a variable rate product was just one of several substantial modifications to business practices that are reflected in the settlement, noting that the 21-month prohibition was meant to work in conjunction with the other modifications contained in the settlement. IDT Reply Brief at 12. IDT also referenced the 18-month moratorium agreed to in the PaG&E case as reason why Mr. Ferrare's argument should be rejected. Id. at 12-13. In their response to Mr. Ferrare, the Joint Complainants also argued that the 21-month moratorium must be considered in light of the settlement as a whole, not piecemeal. Joint Complainants' Reply Brief at 9-10. The Joint Complainants also noted the 18-month moratorium contained in the PaG&E case in support of its position that the settlement is in the public interest. Id. at 10.

We find the modifications to business practices contained in the settlement to be in the public interest and adopt them without modification. In doing so, we reject Mr. Ferrare's

request to modify the settlement so that IDT is prohibited from offering a variable rate product indefinitely.

In the Joint Complaint, the Joint Complainants averred that they received nearly 200 complaints from consumers who indicated that they understood that their rate would always be lower than or equal to the EDC's price to compare or that IDT would always save them money. The Joint Complainants also averred that they received a significant number of complaints from consumers who indicated that IDT would always provide them a guaranteed rate. These averments are supported by the testimony of 129 consumer witnesses who testified that the IDT sales representative had guaranteed some level of savings and the witness did not receive those savings. Finding of Fact 16. In response, the provisions in the settlement require, for example, that IDT's sales agents and representatives do not make representations, either directly or by implication, about savings that consumers may realize by switching to IDT except when comparing the IDT rate offered to the EDC's price to compare. Therefore, this provision in the settlement addresses the issues raised in the Joint Complaint and is supported by substantial record evidence in this proceeding. Furthermore, these provisions of the settlement also would help ensure that IDT is in compliance with Commission regulations that prohibit an EGS from engaging in any fraudulent, deceptive or other unlawful marketing acts. *See e.g.*, 52 Pa.Code § 54.43(f).

Similarly, in the Joint Complaint, the Joint Complainants averred that they received 147 complaints from consumers who indicated that they did not consent to switch their service to IDT. This averment is supported by the testimony of 13 witnesses who indicated that they were switched by an IDT representative without their consent. Finding of Fact 12. In response, there are extensive and detailed provisions in the settlement regarding IDT's third party verification procedures. These provisions require, among other things, that the IDT representatives provide certain explanations in a slow and audible manner to residential and small business customers prior to beginning the third party verification process. The provisions also require that IDT add specific questions to the third party verification process and prohibits IDT sales representatives from prompting customers' responses to the third party verification questions. Therefore, these provisions in the settlement address in great detail the issues raised in the Joint Complaint as demonstrated by the consumer testimony record evidence. These provisions also ensure that IDT

complies with the restriction in the Public Utility Code that seeks to “ensure that an EDC does not change a customer’s electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer’s consent to a change of supplier.” *See*, 66 Pa.C.S. § 2807(d)(1). Likewise, these provisions also ensure that IDT complies with the Commission’s regulations prohibiting the unauthorized switching of a customer’s generation supplier without the customer’s consent. *See*, 52 Pa.Code § 54.42(a)(9).

Likewise, in the Joint Complaint, the Joint Complainants averred that they received numerous complaints from consumers who testified that they could not reach IDT on the telephone or that their messages left for IDT went unanswered when they attempted to contact IDT about the variable rate charges on their bills. These averments are supported by the testimony of 72 consumer witnesses who testified that they experienced difficulties when they attempted to contact IDT to complain about their charges or that their complaints were mishandled by IDT. Finding of Fact 13. There are numerous provisions in the settlement modifying IDT’s customer service practices, including that IDT shall at all times maintain a staff of customer service representatives in a manner that provides consumers with reasonably timely access to a live customer service representative with an average hold time of no more than 10 minutes. The settlement also provides that IDT must provide a timely response to any voice mail messages left on its customer service toll-free number outside of business hours within 24 hours after the message was left. These provisions in the settlement address the issues raised in the Joint Complaint and the evidence presented in the consumer witness testimony and help ensure that IDT will be in compliance with the Commission’s regulations that require EGSs to investigate a dispute, provide the customer with information necessary to make an informed judgment and issue a report to the customer within 30 days after receiving notice of the dispute. *See*, 52 Pa.Code §§ 56.141(a), 56.151 and 56.152.

As a final example, we note that, in the Joint Complaint, the Joint Complainants averred that IDT failed to provide accurate pricing information because consumers could not determine from the disclosure statement the price that they would or could be charged by IDT or how that charge would be calculated by IDT. This averment was supported by the testimony of 63 consumer witnesses who testified that they never received a disclosure statement from IDT. Finding of Fact 15. In response, the settlement provides, among other things, that IDT will adhere

to the Commission's regulations, Orders and policies regarding requirements for disclosure statements. In addition, the settlement requires that, if IDT offers variable rate products, the disclosure statement shall be in at least 12-point bold font and clearly state that the contract may be cancelled at any time without an early termination fee but that it may take several days to switch suppliers. Therefore, these provisions in the settlement address the issues raised in the Joint Complaint and the stipulated testimony regarding disclosure statements.

In contrast, with regard to Mr. Ferrare's argument that IDT should be prohibited from offering variable rate products indefinitely, instead of just during the 21-month moratorium, we find this request to be without merit. Similar to the Decision issued in PaG&E, an indefinite suspension is excessive. When viewed in conjunction with the entire settlement, including the numerous other modifications to business practices, prohibiting IDT from offering a variable rate plan for 21 months is reasonable. In part, this time period allows for the implementation of the modifications to the business practices so that a variable rate plan may be a viable competitive option for some customers in the future. Mr. Ferrare has provided no sufficient argument to warrant an indefinite suspension at this juncture and his argument, therefore, will be rejected.

Furthermore, the modifications to business practices contained in the settlement are consistent with other Commission decisions approving settlements that included modifications to a utility's business practices. In PPL Order, *supra*, the Commission approved a settlement that included, among other things, extensive modifications to customer service representative procedures, call scripts, training and supervision, in addition to the imposition of a civil penalty and contributions to low-income programs. *Id.* at 11-16. Similarly, in Pa.P.U.C., Law Bureau Prosecutory Staff v. UGI Utilities, Inc., Docket No. C-20066664 (Opinion and Order entered Feb. 6, 2009) (UGI Order), the Commission approved a settlement that required procedural revisions and training and education programs, in addition to the payment of a civil penalty, and other related issues. *Id.* at 6-8. The provisions included in the settlement at issue in this proceeding are consistent with these prior Commission decisions.

All of the modifications to business practices provisions in the settlement incorporate various changes to IDT's business practices that address the various issues raised in the

Joint Complaint and support adopting the settlement as being in the public interest without modification. As noted above, the settlement contains various other provisions not discussed herein that also warrant finding that the settlement is in the public interest and should be adopted without modification. The parties should be commended for entering into a comprehensive and extensive settlement. The settlement is in the public interest as filed because it implements significant actions that will allow IDT to be a viable competitor for the provision of electric generation service in Pennsylvania while ensuring numerous protections for consumers. Overall, the settlement incorporates substantial actions that further the policy of the Commonwealth to “permit retail customers to obtain direct access to a competitive generation market,” 66 Pa.C.S. § 2802(3), and should be adopted without modification.

As such, we find that the modifications to business practices contained in the settlement agreement are in the public interest and support adopting the settlement in its entirety without modification.

4. Application of the Policy Statement Factors

As noted above, the Commission has promulgated a Policy Statement that sets forth ten factors (“Rosi factors”) that the Commission will consider in evaluating litigated and settled proceedings and determining whether a fine for violating a Commission order, regulation or statute is appropriate, as well as whether a proposed settlement for violations is reasonable and approval of the settlement agreement is in the public interest. 52 Pa.Code § 69.1201(a). When applied in settled cases, the factors will not be applied in as strict a fashion as in a litigated proceeding. 52 Pa.Code § 69.1201(b). The parties in settled cases will be afforded flexibility in reaching amicable resolutions so long as the settlement is in the public interest. *Id.* The factors in the Policy Statement are applied to both the settlement in general and the civil penalty specifically. A review of the factors articulated in the Policy Statement, as applied to both the settlement and the civil penalty, as well as the various positions of the parties with regard to each of the factors, supports finding that the settlement should be adopted without modification as being in the public interest.

**a. First Rosi factor – whether the conduct was of a serious nature**

With regard to the first Rosi factor, whether the conduct was of a serious nature, all parties are in agreement that the violations alleged in the Joint Complaint were of a serious nature. We agree. These averments include misleading and deceptive promises of savings, misleading and deceptive welcome letters and advertisements, slamming, lack of good faith handling of complaints and failing to provide accurate pricing information, among other things. These are allegations of a serious nature. It has long been the policy of the Commonwealth to promote the competitive provision of electric generation service and various parties, including the General Assembly, the Commission, the public advocates, EDCs, EGSs and others, have expended a substantial amount of resources in making the marketplace successful. Such success requires that no misleading and deceptive promises of savings, among other things, be made that may undermine competition. Certainly, the allegations made in the Complaint do not comprise less egregious conduct, such as an administrative filing or technical errors, which would warrant a lower civil penalty. Rather, the conduct at issue was of a serious nature and warrants adopting the settlement in its entirety without modification, along with the civil penalty included therein, as being in the public interest.

**b. Second Rosi factor - whether the resulting consequences were of a serious nature**

With regard to the second Rosi factor, whether the resulting consequences of the conduct at issue were of a serious nature, again, all parties are in agreement that the resulting consequences of the conduct at issue were of a serious nature. We again agree. As noted above, many consumer witnesses testified that they suffered financial difficulties after receiving IDT's charges. Finding of Facts 17 - 21. Approximately 17 of the testimonies included an averment that the consumer received a Shut-Off Notice from his or her EDC after receiving IDT's charges; approximately 48 of the testimonies included an averment that the consumer entered into a payment plan or paid off the charges over several months; approximately 16 of the testimonies included an averment that the consumer otherwise had general financial hardships due to IDT's charges; and approximately 2 of the testimonies included an averment that the consumer had to borrow money to pay IDT's charges. Id. Such consequences strained family budgets and low-income customer

assistance programs during a time of prolonged extreme cold weather – both of which are serious consequences.

Furthermore, the dollar values, both individually and collectively, are substantial. That is, record evidence demonstrates that some consumers experienced increases in their monthly bills of four or five times the normal amount. Additionally, the total size of the refund pool – \$6,577,000 – supports finding that the resulting consequences were of a serious nature. In addition, the violations averred in the Complaint should be deemed serious because the alleged conduct could adversely impact the integrity of electric competition and potentially deter participation in the retail electric market. The effective development of the competitive provision of electric generation service requires eliminating misleading and deceptive promises, among other things. Given the serious nature of the alleged violations and the resulting consequences, refunds to customers and a contribution to the EDCs’ hardship funds are appropriate, reasonable and in the public interest. The disbursement of refunds to eligible customers will assist these affected customers in restoring some portion of their financial losses incurred as a result of the alleged conduct. The \$75,000 contribution that will be allocated to the EDCs’ hardship funds will assist consumers who have experienced difficulties as a result of high electric bills. As such, we find that the resulting consequences of the conduct at issue were of a serious nature and warrant adopting the settlement in its entirety without modification, along with the civil penalty included therein, as being in the public interest.

**c. Third Rosi factor – whether the conduct was intentional or negligent**

With regard to the third factor, whether the conduct at issue was deemed intentional or negligent, this factor is not relevant here because this factor is only evaluated in litigated proceedings.

**d. Fourth Rosi factor – efforts to modify internal practices and procedures**

With regard to the fourth factor, whether the regulated entity has made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct

in the future, we note the extensive and pervasive modifications to business practices that IDT has agreed to as part of this settlement. These modifications include changes to its product offering, marketing practices, third party verifications, disclosure statement, training of internal and external sales representatives, compliance monitoring, reporting and customer service. The settlement provides extensive detail regarding the modifications required for each of these areas. We also note that, prior to the settlement, IDT provided \$4,177,000 in cash refunds to customers. This is a significant amount that evidences IDT's efforts to address the conduct at issue. These modifications, in conjunction with the other provisions of the settlement warrant a finding that IDT has made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future.

Mr. Ferrare, however, takes issue with the provision in the settlement that prohibits IDT from offering variable rate products for 21 months. In contrast, Mr. Ferrare argues that IDT should be prohibited from offering variable rate electricity plans in Pennsylvania indefinitely. Both IDT and the Joint Complainants opposed Mr. Ferrare's objection. Both IDT and the Joint Complainants note that the 21-month moratorium must be considered when viewing the settlement as a whole, not piecemeal, and when doing so, the settlement should be approved in its entirety without modification. IDT also noted that Pennsylvania law permits EGSs to offer variable rate products. Both IDT and the Joint Complainants noted our approval of the settlement in PaG&E which included an 18-month moratorium on the sale of variable rate products.

We agree with IDT and the Joint Complainants that Mr. Ferrare's objection to the 21-month moratorium on the sale of variable rate products as being too short should be denied. As in the PaG&E case, we accept the term of 21-months as a reasonably negotiated settlement term. The consumer testimony admitted into the record of this proceeding supports a moratorium for some significant length of time and 21-months seems reasonable to allow time for IDT to implement the modifications to its business practices so that a variable rate service may be a competitive option for some customers in the future after those modifications are implemented. This is true when viewing the moratorium in conjunction with the entire settlement and, as IDT noted, variable rate products are permitted under Pennsylvania law and may offer benefits to consumers in certain circumstances. As a result, Mr. Ferrare's objection will be rejected. In

general, the settlement provides several modifications to IDT's practices that support adopting the settlement in its entirety without modification as being in the public interest.

**e. Fifth Rosi factor – Number of customers affected and duration of violation**

With regard to the fifth Rosi factor, the number of customers affected and the duration of the violation, the Joint Complainants averred in the Joint Complaint that they received approximately 2,500 complaints from IDT's customers. Testimony was received from 205 of these customers, subject to cross-examination and timely motions. As such, the number of customers who were impacted by IDT's conduct as alleged in the Joint Complaint is significant. Furthermore, it is reasonable to infer that additional customers, beyond those who complained to the Joint Complainants or testified in this proceeding, were affected by the actions averred in the Joint Complaint. This is true because, for example, if IDT failed to adequately staff its call center, it is likely that more than just those people who wanted to complain to the Company, in fact, were unable to reach the Company to do so. Some consumers may have tried to complain to the Company, were unable to do so and gave up. Additionally, given the allegation that prices failed to conform to the Disclosure Statement, it is likely that more than just those people who were able to complain in fact received prices that failed to conform to the Disclosure Statement. As such, there is sufficient reason to believe that a substantial number of consumers were affected, including many for multiple months during the winter of 2014.

Mr. Ferrare did not contest that the number of customers affected is significant but did object to the number of customers affected being kept proprietary. Mr. Ferrare also argued that the refund amount per number of customers affected is too small and that, therefore, the settlement should be rejected. Both IDT and the Joint Complaints disagree with Mr. Ferrare's objection. IDT argued initially that Mr. Ferrare's argument is based on non-record evidence. Additionally, IDT argued that Mr. Ferrare's argument fails to consider that the settlement is a compromise of a very complex and disputed claim and will afford customers refunds sooner than if the case was fully litigated. IDT added that the fact that the settlement does not recite the precise number of customers alleged to be affected is not a basis for rejecting the settlement. Similarly, the Joint Complainants argued that the settlement, taken as a whole, resolves the allegations in the Joint Complaint, benefits

IDT's past, present and future customers and preserves the ability of those who may choose not to accept offers under the refund pool or who may not be offered a refund from the refund pool to pursue other legal options and, therefore, Mr. Ferrare's argument should be rejected.

We disagree with Mr. Ferrare's objection as well. As we stated in the PaG&E case, it is not necessary to know the precise number of people that were affected by the actions covered in the settlement. The refund pool is substantial and large enough to remunerate those customers who have not yet received a refund from IDT. This issue must also be considered in light of the fact that the settlement is the result of a compromise and carries with it other benefits in addition to refunds. When viewed in total, it is clear that the settlement is reasonable and should be adopted in its entirety without modification as being in the public interest. Mr. Ferrare's arguments to the contrary will be rejected. We further note that we separately addressed Mr. Ferrare's request in his *Amicus Curiae* brief to have the confidential designation removed from certain information. As such, that issue will not be addressed here.

**f. Sixth Rosi factor – compliance history**

With regard to the sixth Rosi factor, IDT's compliance history, we note that, in the IDT 2013 Order, *supra*, the Commission approved a settlement that required IDT to make modifications to its practices relating to its training and supervision of its sales agents and handling of customer complaints. As discussed above, that case was initiated after an informal investigation which identified 39 violations among 21 BCS complaints between 2010 and 2012. In three instances, an agent or agents of the Company failed to obtain direct oral confirmation or written authorization from the customer to change the EGS, resulting in physically switching the electric generation supplier of those accounts without authorization of the consumer or without proper verification. The Commission directed IDT to pay a civil settlement amount of \$39,000 to the Commonwealth General Fund.

As a result, the incidences averred in the Joint Complaint filed in this proceeding do not appear to be "isolated incidents from an otherwise compliant utility." We note as well that the incidents averred in the Joint Complaint occurred after the settlement was reached in the IDT 2013 Order. Mr. Ferrare, therefore, argued that IDT's compliance history forms a barrier to approval of

the settlement, noting that this is the second settlement that IDT has agreed to in less than two years. In response, IDT argued that the settlement that lead to the IDT 2013 Order was reached as a result of compromise and contained no admission of wrongdoing by IDT. IDT also noted that that settlement expressly indicated it would not be admissible in any future proceedings as proof of unlawful and/or improper behavior or as an admission of such on behalf of IDT. Similarly, the Joint Complainants argued, among other things, that IDT's compliance history should not be a barrier to the approval of the settlement for the same reasons: it was reached as a result of a compromise, it did not contain an admission of guilt and it specifically stated it could not be used in any future proceeding as evidence of wrongdoing.

We agree with the Joint Complainants that the IDT 2013 Order should not be a barrier to the approval of the settlement in this case. While there is some concern that this is the second settlement that IDT has entered into within the past two years regarding alleged violations of the Public Utility Code, we consider the extensive and substantial terms of the settlement to alleviate any concerns that IDT may be a serial violator. The terms in the IDT 2013 Order included 39 violations amongst 21 customers and a civil penalty of \$39,000. In this case, although there again is no admission of liability on IDT's part, the Joint Complainants averred they received complaints from 2,500 consumers, over 200 consumers provided testimony on the record and the refunds and other financial terms reach nearly \$7,000,000 in total. Similar to the PaG&E case, whereas the terms of the IDT 2013 Order did not sufficiently deter IDT's behavior, we have reason to believe that the breadth and severity of the terms in the instant settlement will have a deterrent effect. As the Rosi factor recognizes that frequent and recurrent violations by a utility may result in a higher penalty, we believe that the \$6,577,000 in total refunds plus \$25,000 civil penalty and \$75,000 contribution to EDC's hardship funds constitutes that higher penalty. IDT is advised that any further violations will likely warrant increasingly higher penalties up to and including license revocation.

**g. Seventh Rosi factor – cooperation with the Commission investigation**

With regard to the seventh Rosi factor, whether IDT cooperated with the Commission's investigation, we note that this proceeding was initiated by a formal complaint and is

not a Commission investigation. Nonetheless, the Joint Complainants noted that IDT's cooperation in the investigation, in formal and informal discovery and throughout settlement negotiations weigh in favor of approving the settlement. Mr. Ferrare indicated that he was unaware of whether or not the Company has cooperated with the investigation. As this proceeding is not a Commission investigation, this factor is not relevant in determining whether the settlement or civil penalty should be adopted. The ability of settling parties to comprehensively resolve this matter prior to extensive litigation demonstrates a high level of cooperation. The parties should be commended for their level of cooperation in reaching a settlement of these various and complex issues.

**h. Eighth Rosi factor – amount of penalty necessary to deter future violations**

With regard to the eighth Rosi factor, the amount of civil penalty or fine necessary to deter future violations, similar to the PaG&E case, the total refund pool amount of \$6,577,000, coupled with a civil penalty of \$25,000 and a \$75,000 contribution to EDCs' hardship fund and numerous modifications to business practices, are substantial. Although these settlement provisions are substantial in part because of the gravity of the alleged violations, financial penalties of this magnitude, accompanied by the modifications to business practices, are sufficient to deter future violations. In the IDT 2013 Order, IDT paid a \$39,000 civil penalty to resolve the violations alleged in that proceeding. Although IDT had not admitted any wrongdoing in this proceeding, the prior \$39,000 civil penalty was not sufficient to prevent similar allegations being brought against IDT in the Joint Complaint that is the subject of this proceeding. To the extent that a \$39,000 civil penalty was not sufficient to deter future violations, nearly \$7,000,000 in total monetary penalties, along with other provisions in this case, should be sufficient to deter future violations.

Mr. Ferrare has argued, however, that the provisions in the settlement are inadequate to deter IDT from engaging in similar future conduct, noting the IDT 2013 Order and referring to IDT as a "repeat offender." Mr. Ferrare then calculates the amount of civil penalty per harmed individual to support its position that this factor mitigates against approval of the settlement. In response to Mr. Ferrare, IDT argued that the provisions of the settlement are sufficient to deter future violations and argued that the total amount of refund payments, civil penalty and hardship contributions constitute a reasonable and appropriate amount to resolve this proceeding. In their

response to Mr. Ferrare, the Joint Complainants noted that the decision in PaG&E did not look at the civil penalty amount in isolation but the totality of the monetary provisions, including the refund pool, the cost of administration, and the contributions to the EDCs' hardship funds.

As we did in the PaG&E case, we reject the argument that the civil penalty in this settlement is insufficient to deter future violations. Although the civil penalty constitutes a small fraction of the amount provided in the refund pool, we believe that the provisions of the settlement must be considered as a whole, not piecemeal. When doing so, the settlement as a whole is in the public interest and warrants being adopted without modification. Furthermore, we believe it is better for the majority of the monetary provisions in the settlement to be used for refunds to customers, instead of as a civil penalty that is remitted to the General Fund. The distribution of the monetary provisions of the settlement are appropriately disbursed in a manner that is in the public interest. Mr. Ferrare's arguments to the contrary will be rejected.

**i. Ninth Rosi factor – past Commission decisions in similar cases**

With regard to the ninth Rosi factor, past Commission decisions in similar cases, all parties agree, as do we, that the scope of the conduct in this proceeding is unique and unlike other complaint proceedings against EGSs' this Commission has decided. Although there are a total of six proceedings involving similar parties and similar issues currently pending before the Commission, no final Commission Order has been issued on any of them. This includes the PaG&E decision and the HIKO decision, *supra*, wherein Initial Decisions adopting without modification settlements similar to the settlement in this proceeding were recently released. Those Decisions remain pending before the Commission.

Therefore, there are no past Commission decisions in exact similar situations. Nonetheless, however, the Commission has issued decisions on individual consumer complaint cases wherein issues regarding variable rate program offerings from EGSs have been an issue as a result of the extreme cold weather during the winter of 2014. *See, Kiback, supra*. Similarly, we have cited above various cases that support imposing injunctive relief, ordering refunds and imposing civil penalties, as we have done here, and rely on those cases as past similar decisions that

support approving this settlement in its entirety without modification as being in the public interest. *See e.g., PPL Order, UGI Order, supra.* These decisions support the steps taken in this settlement and recognize the seriousness in which the Commission takes protecting consumers as the market for the competitive provision of electric generation service continues to develop. In that regard, this factor supports adopting the settlement in its entirety without modification as being in the public interest.

**j. Tenth Rosi factor – other relevant factors**

With regard to the tenth factor, other relevant factors, both the Joint Complainants and IDT noted in their Statements in Support of the Settlement that the settlement is in the public interest because customers will receive refunds soon and the settlement saves the costs and resources of the parties and Commission, including the costs of any appeal. We agree. In particular, we note that the allegations complained of in the Joint Complaint occurred nearly two years ago. The settlement is in the public interest in part because it will bring relief in the form of refunds to those customers alleged to be impacted by IDT's actions sooner than if the case were fully litigated. This is important given the substantial record evidence of financial hardship as evidenced by the testimony of numerous consumer witnesses. *See e.g., Finding of Facts 17 - 21.* Additionally, although some pre-served written testimony was submitted in this case, the settlement avoids the cost and expense associated with further litigating this case, including additional pre-served written testimony, hearings, briefs, exceptions and possible appeal. Avoiding these expenses is in the public interest.

Mr. Ferrare, however, made several additional arguments that he claimed were relevant factors in support of his position that the settlement should be rejected. Mr. Ferrare argued that 1) the Commission lacks authority to order and/or permit EGSs, such as IDT, to refund money relating to rate disputes because such actions are beyond the scope of the Commission's authority; 2) the Commission lacks authority to order and/or permit the parties to require IDT's customers to sign general releases of claims against IDT in order to receive money from the refund pool because the Commission does not have authority over private breach of contract claims; 3) the Commission and the OCA lack jurisdiction over and authority to represent consumers who have not filed

complaints with the Commission against EGSs who are corporations and not public utilities; and 4) the monetary damages resulting from IDT's rates are higher than the total refund pool amount.<sup>3</sup>

In response to Mr. Ferrare, both the Joint Complainants and IDT argued in their Reply Briefs that Mr. Ferrare's arguments regarding other relevant factors should be rejected. The Joint Complainants and IDT argued that 1) the Commission has the authority to approve a settlement under which a regulated entity voluntarily agrees to issue refunds to customers, 2) the provision requiring customers who accept a refund offer to sign a general release is within the Commission's authority and not a basis for rejection or modification of the settlement and 3) the Commission and the OCA have the authority to act in their respective capacities in this proceeding. With regard to Mr. Ferrare's argument that the settlement should be rejected because the monetary damages resulting from IDT's rates are higher than the total refund pool amount, IDT argued that this argument should be rejected because it is based on information that is not in the record.

With regard to Mr. Ferrare's argument that the Commission lacks authority to order and/or permit EGSs, such as IDT, to refund money relating to rate disputes because such actions are beyond the scope of the Commission's authority, this argument will be rejected. As noted above, the Commission previously noted its plenary authority under Section 501 of the Public Utility Code to direct an EGS to issue a credit or refund for an over bill. *See, December 18<sup>th</sup> Order* at 17, *citing*, 66 Pa.C.S. § 501 ("in addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders or otherwise, all and singular, the provisions of this part, and the full intent thereof"). The Commission noted that its "powers have been interpreted broadly to include both the express powers conferred by the Code and those implied powers necessarily implicit in the Code" and stated:

Directing a billing adjustment for an EGS over bill of supply charges  
is within the Commission's Section 501 powers to carry out the

---

<sup>3</sup> Mr. Ferrare also argued in his *Amicus Curiae* brief that the confidential designation covering certain record evidence in this case should be removed. This request was denied on September 16, 2015, by an Order Denying Request to Remove Confidential Designation and will not be addressed again here.

consumer protections in the Electric Competition Act that are applicable to competitive electricity generation supply service. These consumer protections include the Section 2809(b) requirement that EGSs comply with the Commission's regulations, including the Chapter 54 billing and disclosure regulations.

Id. The Commission concluded that "ordering EGS billing adjustments for an over bill of supply charges is fully consistent with the policy objectives of the Electric Competition Act as well." Id. at 18; *see also*, Kiback, *supra*. Mr. Ferrare's argument to the contrary will be rejected.

With regard to Mr. Ferrare's argument that the Commission lacks authority to order and/or permit the parties to require IDT's customers to sign general releases of claims against IDT in order to receive money from the refund pool because the Commission does not have authority over private breach of contract claims, we previously rejected this argument in response to Mr. Ferrare's opposition to the refund pool in general, *supra*, and do so by reference again here.

With regard to Mr. Ferrare's argument that the Commission and the OCA lack jurisdiction over and authority to represent consumers who have not filed complaints with the Commission against EGSs who are corporations and not public utilities, this argument will be rejected. In addition to rejecting Mr. Ferrare's argument that the Commission lacks authority to order and/or permit EGSs, such as IDT, to refund money relating to rate disputes because such actions are beyond the scope of the Commission's authority, *supra*, Mr. Ferrare's arguments regarding the OCA's authority will also be rejected. In particular, Mr. Ferrare's argument fails to recognize that EGSs, such as IDT, are considered public utilities for purposes of Section 2809 of the Public Utility Code. Both the Joint Complainants and IDT correctly note that Mr. Ferrare has misinterpreted Delmarva, *supra*, wherein the Pennsylvania Supreme Court held that EGSs are considered to be public utilities for purposes of quality of service, including standards and billing practices for residential utility service. *Citing*, 66 Pa.C.S. § 2809(e) and 52 Pa.Code Ch. 56. These are the precise issues that are the subject of this settlement. As such, the Commission and the OCA have jurisdiction and authority to represent consumers who have not filed complaints with the Commission against EGSs contrary to Mr. Ferrare's argument.

Finally, with regard to Mr. Ferrare's argument that the monetary damages resulting from IDT's rates are higher than the total refund pool amount, we note that, Mr. Ferrare's argument will also be rejected because it fails to consider the settlement as a whole and not in piecemeal fashion. When viewed as a whole the settlement provisions in their entirety are in the public interest and support adopting the settlement without modification. Whereas some provisions of the settlement provide greater benefits than other provisions, we recognize that the settlement is a compromise among the parties regarding many varied and complex issues. Mr. Ferrare's argument that looks solely at the benefits provided by the refund pool as being too low will be rejected.

As a result, all of Mr. Ferrare's "other relevant factors" are without merit and will be rejected. Overall, based on the foregoing analysis of the Rosi factors as applied to this case, we find the refund and contribution to EDCs' hardship funds provisions in the settlement are reasonable and in the public interest. The refunds that IDT previously provided directly to customers combined with the refund pool will help restore the financial losses incurred by IDT's consumers that were alleged to have been charged extraordinarily high prices in early 2014. The settlement will provide refunds to customers and do so sooner than a fully litigated proceeding. The contribution to EDCs' hardship funds will assist customers in need with payment of their electric bills. Further, the extensive modifications to business practices articulated in the settlement also satisfy the Rosi factors because they will help protect IDT's current and possible future customers and will better inform customers of the products and services provided by IDT. Mr. Ferrare's arguments to the contrary are without merit and will be rejected.

## V. CONCLUSION

In conclusion, this Decision adopts the Joint Petition for Approval of Settlement resolving the formal Complaint filed against IDT by the Joint Complainants in its entirety and without modification because doing so is in the public interest and supported by substantial evidence. Commission policy promotes settlement and settlements will be approved if they are in the public interest. *See, Lancaster, Warner, supra.* The settlement is in the public interest because it requires IDT to pay a substantial amount of refunds to customers, contribute to hardship funds and make numerous changes to its business practices. As in the PaG&E and HIKO cases, the parties

here are commended for their efforts in resolving this complex proceeding via a comprehensive and detailed settlement. While various provisions of the settlement provide greater public benefits than other provisions, we recognize that the settlement is a compromise among the parties regarding many varied and complex issues associated with a matter that caused significant public outcry during the winter of 2014. When viewed as a whole, adopting this settlement in its entirety without modification satisfies the standards and factors the Commission considers when evaluating settlements and will promote the continued development of the competitive market for the provision of electric generation service.

## VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa. C.S. §§ 701, 2809.
2. Commission policy promotes settlements. 52 Pa.Code § 5.231.
3. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401.
4. 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).
5. The benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. 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); *citing*, Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996).

6. Decisions of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

7. "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, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth. 1984).

8. Section 69.1201 of the Commission's regulations provides a Policy Statement regarding factors and standards to be used when evaluating litigated and settled proceedings. 52 Pa.Code § 69.1201.

9. The factors in the Policy Statement will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. 52 Pa.Code § 69.1201(a).

10. When applied in settled cases, the factors and standards in the Policy Statement will not be applied in as strict a fashion as in a litigated proceeding but the parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest. 52 Pa.Code § 69.1201(b).

11. The Commission has plenary authority under Section 501 of the Public Utility Code to direct an electric generation supplier to issue a credit or refund for an over bill. Commonwealth of Pa, et al. v. IDT Energy, Inc., Docket No. C-2014-2427657 (Opinion and Order entered Dec. 18, 2014).

12. In addition to any powers expressly enumerated in this part, the Commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its

regulations, orders or otherwise, all and singular, the provisions of this part, and the full intent thereof. 66 Pa.C.S. § 501.

13. The Commission's plenary authority under Section 501(a) of the Code includes directing an EGS to issue a credit or refund for an overbill in violation of 52 Pa. Code § 54.4(a) and a violation of the Commission's Interim Guidelines. Stephen Kiback, Jr. v. IDT Energy, Inc., Docket No. C-2014-2409676, (Opinion and Order entered August 20, 2015); *see also*, Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers, Docket No. M-2010-2185981 (Order entered November 5, 2010).

14. The Commission has approved a settlement agreement involving allegations pertaining to the unauthorized switching of commercial electric and natural gas accounts to receive supply service provided by an electric generation supplier. Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas and Electric and U.S. Gas and Electric d/b/a Pennsylvania Gas and Electric, Docket No. M-2013-2325122 (Order entered October 2, 2014).

15. The Commission, as a governmental agency, has issued requests for proposals and request for qualifications to hire third-party administrators pursuant to various regulatory provisions in the past. Implementation of the Alternative Energy Portfolio Standards Act of 2004, Docket No. M-00051865, Request for Qualifications For Alternative Energy Credit Program Administrator, April 12, 2006; Alternative Energy Portfolio Standards Act of 2004, 73 P.S. §§ 1648.1-1648.8; *see also*, Establishment of a Pennsylvania Universal Service Fund, M-00001337 (Order entered April 18, 2000); 52 Pa.Code §§ 63.161, *et seq.*

16. The Commission has the authority to approve a settlement wherein a customer is required to sign a general release before accepting the refund. *See e.g.*, Pennsylvania Public Utility Commission v. Verizon Pennsylvania, Inc., Docket No. M-00021592 (Order entered Jan. 25, 2002).

17. Nothing precludes a party from agreeing to perform under a settlement that which the party may not necessarily be legally obliged to do under law. *See e.g., Pa.P.U.C., Law Bureau Prosecutory Staff v. PPL Electric Utilities Corporation*, Docket No. M-2009-205812 (Opinion and Order entered September 10, 2009).

18. If any public utility or any other person or corporation subject to this part, shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect, or refuse to perform any duty enjoined upon it by this part; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the commission, such public utility, person or corporation shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000 to be recovered by an action of assumpsit instituted in the name of the Commonwealth. 66 Pa.C.S. § 3301(a).

19. Commission regulations prohibit a licensed EGS from transferring a customer without the customer's consent. 52 Pa.Code § 54.42(a)(9); *see also*, 66 Pa.C.S. § 2807(d)(1).

20. Commission regulations provide standards of conduct and disclosure for electric generation suppliers that make electric generation suppliers responsible for any fraudulent or deceptive or other unlawful marketing or billing acts performed by the electric generation suppliers, its employees, agents or representatives. 52 Pa.Code § 54.43(f).

21. Commission regulations require the use of "good faith, honesty and fair dealings" and require electric generation suppliers to investigate a dispute, including providing the consumer with information necessary to make an informed judgment and issue a report within 30 days. 52 Pa.Code §§ 56.1(a), 56.141(a), 56.151 and 56.152.

22. It is the policy of the Commonwealth to permit retail customers to obtain direct access to a competitive generation market. 66 Pa.C.S. § 2802(3).

23. The Joint Petition for Approval of Settlement submitted in this proceeding on August 4, 2015 should be adopted in its entirety without modification because it is in the public interest and supported by substantial evidence.

## VI. ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Approval of Settlement dated August 4, 2015 and submitted at Docket Number C-2014-2427657 by the Commonwealth of Pennsylvania by Attorney General Kathleen G. Kane, Tanya J. McCloskey, Acting Consumer Advocate, IDT Energy, Inc., and the Office of Small Business Advocate, is hereby approved in its entirety without modification.

2. That the formal Complaint filed by the Commonwealth of Pennsylvania by Attorney General Kathleen G. Kane and Tanya J. McCloskey, Acting Consumer Advocate against IDT Energy, Inc. on June 20, 2014 is hereby marked satisfied.

3. That the Motion for Admission of Testimony and Exhibits submitted on August 4, 2015 is granted and documents referenced therein are admitted into the record of this proceeding.

4. That the settling parties are directed to submit two copies of such documents referenced in Ordering Paragraph 3 to the Secretary's Bureau for inclusion in the official record of this case.

5. That IDT Energy, Inc. shall pay a civil penalty of \$25,000 by sending a certified check or money order payable to the Commonwealth of Pennsylvania, within thirty (30) days from the entry of the Final Commission Order to:

Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

6. That IDT Energy, Inc. is directed to file a sworn certification with the Commission showing its compliance with the term of this settlement regarding a \$75,000 contribution to EDCs' hardship funds within thirty (30) days of the date of entry of the Final Order in this proceeding.

7. That IDT Energy, Inc. shall comply with all directives, conclusions and recommendations in the Joint Petition for Approval of Settlement as approved and adopted in this Initial Decision that are not the subject of individual ordering paragraphs as if they were the subject of specific ordering paragraphs.

8. That this matter be marked closed.

Date: November 19, 2015

\_\_\_\_\_  
/s/  
Elizabeth H. Barnes  
Administrative Law Judge

\_\_\_\_\_  
/s/  
Joel H. Cheskis  
Administrative Law Judge