

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency
Pennsylvania Public Utility Commission

(2) Agency Number: L-2010-2208332

Identification Number: 57-283

IRRC Number: 2915

(3) PA Code Cite: 52 Pa. Code §§ 111.1 – 111.14

(4) Short Title: Marketing and Sales Practices for the Retail Residential Energy Market

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
 Final Regulation
 Final Omitted Regulation

- Emergency Certification Regulation;
 Certification by the Governor
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The regulation is directed at electric generation suppliers (EGSs) and natural gas suppliers (NGSs) and their agents who provide sales and marketing support in the retail residential energy market. The regulation is intended to lessen customer confusion about suppliers and to ensure that the customer's account is not transferred without authorization. Because a supplier is responsible for its agent, topics include agent qualifications and selection, including criminal background investigations; agent training, compensation and discipline; and agent identification and misrepresentation. Other topics relate to supplier/agent-customer interactions, such as the need for customer authorization to transfer an account, and a customer's 3-day right to rescind a contract. Door-to-door marketing and telemarketing are addressed separately.

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(8) State the statutory authority for the regulation. Include specific statutory citation.

Sections 501, 504, 1501, 1504, 2206(b), 2208(b) and (e), 2807(d)(1) and 2809(b) and (e) of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504, 2206(b), 2208(b) and (e), 2807(d)(1) and 2809(b) and (e).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation is not mandated by any federal or state law or court decision.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The regulation is needed to address customer complaints about the marketing and sales practices used by suppliers and their agents. Door-to-door marketing has been of particular concern. The regulation will help to lessen customer confusion about the identity of suppliers and their agents and their relationship, business and operational, with the customer's distribution company. The regulation also reminds suppliers of their liability for the actions of their agents, and that marketing and sales activities need to comply with PUC regulations and orders.

All Pennsylvania residential energy consumers who purchase electric generation or natural gas supply in the retail market will benefit from these regulations.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no specific federal standards that are directed at marketing and sales in the retail market of electric generation or natural gas supply services so the answer to the first question is "no." That said, the regulation is, in fact, consistent with federal law. Section 111.5(a)(1) requires that agents be trained on applicable federal law. See Annex A at p 5. Section 111.10 requires that agents respect the "Do Not Call" Law, *Telemarketing and Consumer Fraud and Abuse Prevention Act*, 15 U.S.C. §§ 6101, *et seq.* and *Telemarketing Sales Rule*, 16 CFR Part 310. See section 111.10 (a)(3) at Annex A, p. 14. Section 111.12 also requires compliance with the Consumer Credit Protection Act (15 U.S.C. §§ 1601 - 1693c) and 12 CFR Part 202 (relating to equal credit opportunity) and the *Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*, 16 CFR Part 429. See Annex A, p. 16.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The regulation establishes best practices and standards to govern marketing and sales activities for Pennsylvania's retail residential energy market. Other states have some of the same requirements, and others appear to be looking to Pennsylvania for guidance. As such, Pennsylvania's ability to compete with other states would not seem to be affected by the regulation.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation will not affect other existing PUC regulations or existing regulations of other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The regulation is based on interim guidelines on marketing and sales practices that were developed by a working group comprised of natural gas and electric utilities, EGSs, NGSs, industry trade organizations, consumers, and the statutory consumer advocates. The group was led by PUC staff assigned to the Office of Competitive Market Oversight. The project was initiated by the electric industry working group on January 7, 2009, based on customer complaints and concerns about particular sales practices being utilized by suppliers. After four months of discussion, the group was expanded to include members of a working group from the natural gas industry in April 2009. After 2 months of additional discussion, the combined working groups met on the final draft guidelines on June 24, 2010.

On July 16, 2010, the Commission issued for public comment the draft interim guidelines on marketing and sales practices for EGSs and NGSs. The *Tentative Order* established a 30-day comment period and a subsequent 15-day reply comment period. The order was served on all EGDCs, NGDCs, EGSs, NGSs, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate and the Energy Association (EAP). It was also posted on the PUC's website, and e-mailed to all of the members of the working groups.

Comments were timely filed by MX Energy (MX), Pennsylvania Energy Marketers Coalition, Pennsylvania Utility Law Project (PULP), PPL Electric Utilities Corporation, Duquesne Light Energy, Direct Energy LLC, Consumer Advisory Council, Retail Energy Marketers Association (RESA), Pennsylvania Independent Oil and Gas Association, Interstate Gas Supply, Inc., Constellation New Energy Inc., National Energy Marketers Association (NEMA), EAP, and Office of Small Business Advocate (OSBA). Joint comments were filed by Office of Consumer Advocate, American Association of Retired Persons (AARP), and Dominion Retail. Reply comments were filed by NEMA, PEMC, PULP, RESA, MX, and Washington Gas Energy Service. Joint reply comments from OCA, AARP and Dominion. After reviewing the comments, the Commission issued its order finalizing the interim guidelines on November 5, 2010.

The proposed regulation was issued on February 14, 2011. The proposed regulations were based on the *Interim Guidelines*. On October 22, 2011, the order and proposed regulations were published in the *Pennsylvania Bulletin*, triggering the start of a 60-day comment period.

Twelve parties filed comments in response to the Proposed Rulemaking Order. Comments were submitted by the Consumer Advisory Council (CAC), Dominion Retail (DES), FirstEnergy Solutions (FES), Interstate Gas Supply (IGS), Met Ed, Penelec, Penn Power and West Penn Power (FirstEnergy), National Energy Marketers Association (NEM), Office of Consumer Advocate and AARP (OCA/AARP), Pennsylvania Coalition Against Domestic Violence (PCADV), Pennsylvania Energy Marketers Coalition (PEMC), Public Utility Law Project (PULP), Retail Energy Supply Association (RESA), and Washington Gas Energy Services (WGES).

On January 20, 2012 the Independent Regulatory Review Commission (IRRC) submitted comments. Additionally, the Office of Attorney General (OAG) reviewed the proposed regulations for form and legality pursuant to the Commonwealth Attorneys Act, 71 P.S. §§ 732-101-732-506.

No small businesses are subject to this regulation.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

As of November 6, 2012, there are 236 EGSs and 122 NGSs operating in Pennsylvania. While some suppliers may already be compliant with the regulation and the best practices contained therein, some suppliers may argue that they will be adversely affected because they may need to make changes in the way they hire, train, compensate and discipline sales and marketing agents. For example, Section 111.4(b) requires that suppliers institute background checks for agents who engage in door-to-door marketing and sales activities.

However, compliance with the best practices set forth in the regulation, which are based largely on common sense, should lessen suppliers' risks of being held legally and financially liable for the actions of its agents. The imputed liability of a supplier for its agent was established in the PUC's licensing regulations at 52 Pa. Code § 54.43(f) for EGSs and § 62.114(e) for NGSs. Thus, the consequences of an agent's action could be the imposition of fines on the supplier, or the suspension or revocation of a supplier's license pursuant to 52 Pa. Code § 54.42 (for EGSs) or § 62.113 (for NGSs).

Distribution companies, *i.e.*, EDCs and NGDCs are also expected to comply with the regulation in regard to the prohibition against sharing information with their affiliated suppliers (section 111.14(b)) and against commenting on a supplier's offer in responding to customer inquiries about a supplier's offer of service (section 111.14 (c)). As distribution companies are already required to observe this prohibition by Code of Conduct provisions at § 54.122 for EDCs, and § 62.142 for NGDCs, distribution companies are not expected to be adversely affected by this regulation.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

NGDCs, EGDCs, EGSs and NGSs will be expected to comply with the regulation.

As of November 6, 2012, there are 236 licensed EGSs and 11 EDCs that will need to comply with the regulation. There are 122 licensed NGSs and 10 NGDCs that will need to comply with the regulation.

No small businesses are subject to this regulation.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

These regulations are intended to facilitate the effective operation of a vigorous, dynamic, yet fair, competitive residential energy market, to the benefit of consumers, EGSs, NGSs, EDCs and NGDCs alike. A competitive energy market can provide a positive experience for all consumers. Suppliers are expected to conduct themselves with these regulations in mind so that their sales and marketing activities do not call into question the fairness and integrity of the competitive market. Anything that damages the reputation of the competitive market harms not only consumers, but also all suppliers participating in the market.

The regulation is a consumer protection regulation. The regulation primarily concerns door-to-door marketing activities and is intended to protect public health and safety, and puts certain safeguards into effect to protect customers in their homes. For example, subsection 111.4(a) and (b) (relating to agent qualifications and standards; criminal background investigations) requires that EGSs and NGSs conduct criminal background checks on their door-to-door sales agents. *See Annex A, p. 4.* The regulation also

helps ensure that door-to-door sales transactions are conducted in good faith while providing the consumer with the information they need to make informed energy choices. Subsection 111.9 (e) (relating to door-to-door sales) protects customers by directing that when an agent engaged in door-to-door sales encounters a person who does not speak the same language, he must terminate contact with the customer. *See* Annex A, pp. 11-13. Subsections 111.9 (g) and (h) respectively direct an agent to leave the customer's premises when asked to do so, and to remove the customer from the supplier's data base to prevent further marketing contacts, and section 111.12 (relating to consumer protection) addresses the information an agent must provide to the potential customer.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulation sets forth best practices for sales and marketing activities. Compliance with these best practices will lessen the chance of customer confusion, will ensure that customers are receiving accurate information, including price, about a supplier's service offers, and should reduce customer complaints received by the PUC, the OCA, the EDCs and the supplier itself. Additionally, compliance with these best practices should lessen a supplier's risk of being held legally and financially liable for the actions of its agents. Finally, the regulation provides clear guidance to the energy industry about ethical conduct and appropriate marketing practices, and should foster customer confidence in the marketplace. These benefits clearly outweigh the cost to the supplier for compliance. The PUC cannot identify any other non-fiscal adverse effect resulting from the regulation that should be taken into account in IRRC's review.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

An estimate of the costs and /or savings associated with compliance with the regulation cannot be made as the costs incurred or savings realized will vary from supplier to supplier. The regulation sets forth best practices and standards on marketing and sales activities, some of which may have already been adopted by some suppliers. In regard to costs, section 111.7 (b)(4) requires a supplier to have a system capable of retrieving the verification information for a customer transaction by customer name and account number. A supplier that has a system that is capable of retrieving verification information by customer name and by account number will incur no costs compared to a supplier that has a system capable of retrieving verification information only by customer account, but not by customer name. A supplier that does not have a system capable of retrieving customer verification information by either customer name or account number will incur the most costs.

Savings also vary among suppliers so that an estimate cannot be made. Again, a supplier that is already complying with these best practices may not see much savings while a supplier who needs to bring its agent selection and training process into compliance with the regulation may realize savings in the form of having a more efficient and well-trained sales force that offsets the costs of compliance.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Except for the Philadelphia Gas Works, which is a NGDC under the Public Utility Code at 66 Pa.C.S. §2212 (relating to city natural gas distribution operations), local governments are not affected by the regulation, and will not incur any costs as a result. For Philadelphia Gas Works, see the above answer at (15) in regard to distribution companies' obligations to use information provided by suppliers only for the purpose for which it was intended.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

State government, namely the PUC, should not incur additional costs as the result of the regulation. The PUC has overseen the quality of customer service since the retail electric generation market opened in January 1, 1997, and the retail natural gas supply market opened in July 1, 1999. The regulation may, in fact, lessen the cost of PUC oversight by reducing customer complaints regarding marketing and sales, particularly as to the identity and affiliation of suppliers and agents. PUC's costs for adjudicating a customer complaint may also be reduced as suppliers will be required to maintain adequate records of the transfer of customer accounts so that complaints about slamming can be expeditiously addressed. *See* section 111.7 (relating to customer authorization to transfer account; transaction; verification; documentation) at Annex A, pp. 7-10.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No additional legal, accounting or consulting services should be required for the implementation of the regulation. There may be additional recordkeeping and paperwork required of those suppliers who do not already have a system capable of accessing customer records to retrieve verification information by customer name and account number. *See* section 111.7 (b)(4)(relating to customer authorization to transfer account; transaction; verification documentation) at Annex A, p. 9. For those that do have such a system, there is no change. The same applies to the requirement that records of complaints be maintained and made retrievable. *See* section 111.13(b) (relating to customer complaints) at Annex A, p. 17.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:	N/A					
Regulated Community	Varies by supplier	Varies by supplier	Varies by supplier	Varies by supplier	Varies by supplier	Varies by supplier
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Costs	Not able to quantify	Not able to quantify	Not able to quantify	Not able to quantify	Not able to quantify	Not able to quantify
REVENUE LOSSES:						
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Not applicable				

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Not applicable; no small businesses are subject to this regulation.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

The regulation is a consumer protection regulation. Most pertinent to this question is section 111.9 that addresses door-to-door marketing activities, and that puts certain safeguards into effect to protect customers in their homes. *See Annex A, pp. 11-13.* For example, Subsection 111.9 (e) protects customers by directing that when an agent engaged in door-to-door sales encounters a person who does not speak the same language, he must terminate contact with the customer. Subsections 111.9 (g) and (h) respectively direct an agent to leave the customer's premises when asked to do so, and to remove the customer from the supplier's data base to prevent further marketing contacts.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The need to develop guidelines and ultimately promulgate regulations on marketing and sales activities was demonstrated by customer complaints when rate caps in PPL territory were lifted at the end of 2009 and supplier activity increased. The major customer concern was agents of suppliers that engaged in door-to-door marketing.

The working group that developed the interim guidelines on marketing and sales activities considered whether door-to-door marketing by EGSs and NGSs should be banned. The working group rejected the ban and instead proposed reasonable standards to regulate the activity. Section 111.9 (Annex A, p. 11-13) along with provisions relating to agent selection, background checks, training, and compensation set forth best practices and standards to regulate door-to-door sales activities and the agents engaged in such activities.

The PUC implicitly adopted the working group's position to regulate rather than ban door-to-door activities in the proposed rulemaking order. However, in a separate statement, PUC Vice Chairman Christy has requested that comments be filed on whether door-to-door sales of electric generation or natural gas supply service should be banned completely.

<http://www.puc.state.pa.us//pcdocs/1121072.pdf>. The comments filed pursuant to this request were carefully considered before the final regulation was adopted to ensure that the provisions related to door-to-door marketing activities will be the least burdensome acceptable alternative for addressing customer concerns.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

Not applicable; no small businesses are subject to this regulation.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

The regulation is not based on data; it was developed in response to customer questions, concerns and complaints about marketing and sales practices employed by electric generation suppliers and natural gas suppliers and their agents. Door-to-door marketing was of particular concern to these customers. The regulation instructs that sales and marketing activities need to comply not only with PUC regulations and orders, but also with applicable federal, state and local law regarding consumer protection. The regulation also reminds suppliers that they are liable for the actions of their agents, and sets forth best practices for selecting and training sales agents. The regulation should help lessen customer confusion about the identity of suppliers and their sales agents, and the suppliers' relationship, business and operational, with the customer's distribution company.

(29) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: _____ N/A _____
- B. The date or dates on which public meetings or hearings will be held: _____ N/A _____
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: _____ N/A _____
- D. The expected effective date of the final-form regulation: Upon publication in the Pa.B. (2nd quarter 2013)
- E. The date by which compliance with the final-form regulation will be required: Upon publication in the Pa.B. (2nd quarter 2013)
- F. The date by which required permits, licenses or other approvals must be obtained: EGSs and NGSs have 90 days after the effective date of the order to obtain criminal history background checks on current sales agents.

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Commission has numerous mechanisms by which to monitor the market and enforce these rules. Consumers, likewise, have a variety of channels by which to report concerns or complaints. The Commission maintains a toll-free complaint hotline (800-692-7380) that is staffed by trained professionals who can respond to questions and/or open informal complaints for consumers. These complaints are investigated by Commission staff that look into the matter and are authorized to write binding informal decisions if needed. Informal complaints can also be submitted electronically via the Commission's website (<http://www.puc.pa.gov>) or in writing via U.S. Mail. Consumers can also file formal complaints in writing by using forms available on the website, and request a hearing before an Administrative Law Judge. Additionally, questions, comments and concerns can be submitted via the Commission's well-publicized electric shopping website (www.papowerswitch.com). Consumers contact their local utility with questions or concerns about the competitive market - contacts that are often shared with Commission staff via routine meetings and conference calls with the utilities. Consumers contact other state agencies, such as the Office of Consumer Advocate and the Office of Attorney General, which in turn communicate with Commission staff. Finally, the Commission hears from local government officials and members of the General Assembly about competitive market concerns in their communities. Given all of these channels that are available for consumers to obtain information and report problems, the Commission is confident that sales and marketing activities in the competitive market can be effectively and thoroughly monitored.

The Commission also has available numerous resources to investigate and enforce any problems that come to its attention via the above-mentioned channels. These resources range from the very informal to formal Commission action that imposes penalties. Informally, Commission staff reviews the informal complaints filed by consumers to identify any customer care or compliance failures. Such failures are brought to the attention of the supplier and corrective action is requested. Commission staff routinely meets with suppliers to discuss their marketing practices and complaints. The Commission, since 2009, has also had an office specifically charged with monitoring the competitive market. OCMO is within the office of the Director of Regulatory Operations, and includes a group of legal, technical and policy staff members from various Commission bureaus to informally address retail market issues. The office is responsible for responding to questions from electric generation suppliers, monitoring issues hindering the development of a competitive retail market and facilitating informal dispute resolution between default service providers and electric generation suppliers. One of OCMO's chief monitoring and oversight venues are monthly conference calls consisting of suppliers, utilities and consumer representatives where any party can raise any market issue for discussion and possible resolution. More information about OCMO and the monthly conference calls are available on the Commission's website.

If these informal mechanisms are insufficient, more formal avenues are available. The PUC's Bureau of Investigation and Enforcement is the Commission's independent prosecutory arm that can initiate informal or formal investigations as needed and can seek penalties for non-compliance, including the suspension and revocation of supplier licenses. The Commission also has a long-standing Memorandum of Understanding (MOU) with the OAG and under this MOU can refer matters that more appropriately fall under the jurisdiction of the OAG. This could include matters that fall under the Pennsylvania Telemarketer Registration Act and the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

With all of these enforcement resources, the Commission is confident that it can effectively act upon information received through a variety of channels and enforce these regulations and gauge their effectiveness.

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(Pursuant to Commonwealth Documents Law)

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BY _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

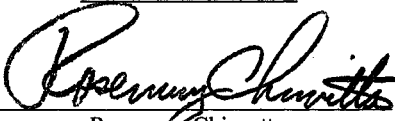
Check if applicable
Copy not approved. Objections attached

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Public Utility Commission
(AGENCY)


DOCUMENT/FISCAL NOTE NO. L-2010-2208332/57-283

DATE OF ADOPTION October 24, 2012

BY 
Rosemary Chiavetta

TITLE Secy
(SECRETARY)

Copy below is hereby approved as to form and legality. Executive or independent Agencies.

BY 
Bohdan R. Pankiw
Chief Counsel

10-24-2012
DATE OF APPROVAL

Check if applicable. No Attorney General approval or objection within 30 days after submission.

L-2010-2208332/57-283
Final Rulemaking
Marketing and Sales Practices
for the Retail Residential Energy Market
52 Pa. Code, Chapter 111

The Pennsylvania Public Utility Commission on October 24, 2012, adopted a final rulemaking order which sets forth regulations on marketing strategies and sales techniques for EGSs and NGSs to ensure fairness and integrity in the competitive market and eliminate confusion on behalf of consumers. The contact persons are Daniel Mumford, BCS, 717-783-1957 (technical) and Patricia Wiedt, Law Bureau, 717-787-5755 (legal).

EXECUTIVE SUMMARY

L-2010-2208332/57-283

Rulemaking Re: Marketing and Sales

Practices for the Retail Residential Energy Market

52 Pa. Code §§ 111.1 – 111.14

The Public Utility Commission's (PUC's) Office of Competitive Market Oversight with industry working groups comprised of gas and electric utilities, suppliers, consumers and other interested parties developed draft interim guidelines on marketing and sales activities for electric generation suppliers (EGSs) and natural gas suppliers (NGSs). The draft guidelines were issued for public comment. After reviewing the comments, the interim guidelines were finalized on November 5, 2010. *See* Docket No. M-2010-2185981. The interim guidelines cover a wide range of topics and recommended best practices for direct (door-to-door) marketing, telemarketing and sales for the retail residential market. These interim guidelines will provide direction to EGSs and NGSs until final regulations are promulgated.

On February 14, 2011, the PUC issued a proposed regulation based on the interim guidelines that are applicable to the retail residential energy market. The proposed regulation, which was directed at EGSs and NGSs and their agents who provide sales and marketing support, was drafted to lessen customer confusion about suppliers and the sales process, and to ensure that a customer's account is not transferred to a supplier without his authorization. Specifically, the proposed regulation covered, *inter alia*, a supplier's liability for its agent; agent qualifications and criminal background investigations; agent training; agent compensation and discipline; and agent identification and misrepresentation. In addition, subjects relating to supplier/agent-customer interactions were addressed: customer authorization to transfer account; customer receipt of disclosure statement and right to rescind contract; consumer protection law; and customer complaints. Door-to-door (direct) marketing and telemarketing, two sales practices fairly new to Pennsylvania's retail energy market, were also addressed.

On October 22, 2011, the order and proposed regulations were published in the *Pennsylvania Bulletin*, triggering the start of a 60-day comment period. Twelve parties filed

comments in response to the Proposed Rulemaking Order. On January 20, 2012 the Independent Regulatory Review Commission (IRRC) submitted comments. Additionally, the Office of Attorney General (OAG) reviewed the proposed regulations for form and legality pursuant to the Commonwealth Attorneys Act, 71 P.S. §§ 732-101–732-506.

After careful consideration of the comments filed, the PUC issued a final rulemaking order on October 24, 2012. The Commission voted 5-0 to approve the rulemaking regarding regulations that cover a wide range of topics and recommend best practices for direct (door-to-door) marketing, telemarketing and sales. The regulations will apply to both EGSs and NGSs and to any entity conducting activities on their behalf. As more EGSs and NGSs enter the state's residential retail electric and natural gas supply markets, the Commission expects suppliers to conduct themselves with the regulations in mind so that their sales and marketing activities do not call into question the fairness and integrity of the competitive market.

Many of the requirements found in the regulation are in the context of door-to-door marketing and are intended to protect public safety. Suppliers are now required to obtain criminal background checks on all of their door-to-door agents. Agents are required to immediately identify themselves to potential customers and to have identification prominently displayed. Additionally, agents are to offer written identification information to the potential customer. Agents are directed to leave immediately upon request of the customer and are to respect an individual's request not to be visited again. The regulation includes the hours that door-to-door sales are permitted; until 7:00 p.m. during the winter months; until 8:00 p.m. during the summer months. The regulation further stipulates that if a local ordinance has stricter timeframes, the local ordinance applies. Suppliers are also obligated to respect all other local ordinances governing door-to-door sales, including registration and licensing requirements where applicable.

Other requirements in the regulations are intended to ensure that potential customers are receiving the information they need to make informed choices about energy providers. This includes requirements addressing agent training and the written information they provide consumers. Suppliers are required to address the consumer in the same language used by the potential consumer. Still other requirements are intended to prevent confusion and misrepresentation. Agents are forbidden from wearing clothing or making statements that infer a

relationship that does not exist with another utility, supplier or government agency. Agents are required to make affirmative statements to consumers making clear who they represent and that they are independent of both the local utility and any other supplier. Suggesting to a consumer that they are “required” to choose a supplier is forbidden. Door-to-door sales and telemarketing sales are supposed to be verified by a process that documents the customer’s understanding and acceptance of the transaction.

There is a section of the regulation that specifically addresses telemarketing. This section reminds suppliers of their obligations under both state and federal telemarketing laws, including respecting the “Do Not Call” lists. Telemarketing agents must also comply with many of the same rules regarding customer information and misrepresentation as a door-to-door agent must comply with; minus those provisions that concern the physical appearance and physical interaction with the customer. Finally, telemarketing sales transactions need to be verified much the same as door-to-door transactions.

The contact persons for this proposed rulemaking are Patricia Wiedt, (717) 787-5755 (legal), and Daniel Mumford, 717-783-1957 (technical).

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held October 24, 2012

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner
James H. Cawley
Pamela A. Witmer

Rulemaking Re: Marketing and Sales
Practices for the Retail Residential Energy Market

Docket No. L-2010-2208332

CORRECTED FINAL RULEMAKING ORDER

BY THE COMMISSION:

Before us for consideration is a final rulemaking order on marketing and sales practices for the retail residential energy market. The regulations set forth herein are based on interim guidelines that were developed on the subject by the Pennsylvania Public Utility Commission's Office of Competitive Market Oversight (OCMO) as a result of meetings held with the working groups, CHARGE (Committee Handling Activities for Retail Growth in Electricity) and SEARCH (Stakeholders Exploring

Avenues to Remove Competitive Hurdles).¹ As was the case with the interim guidelines, the proposed regulations will be applicable to both electric generation suppliers (EGSs) and natural gas suppliers (NGSs). Accordingly, with this order, we issue these final regulations.

DISCUSSION

Background

With the expiration of the last of the remaining electric generation rate caps at the end of 2010, greater numbers of EGSs have entered, and will enter, Pennsylvania's retail electric generation supply market. As a result, consumers are being exposed to unfamiliar marketing strategies and sales techniques. One particular sales technique, direct sales or door-to-door sales, has created confusion for some customers, who contacted this Commission with their concerns. To address these concerns, the OCMO and the CHARGE working groups were assigned the task of developing interim guidelines on marketing and sales activities in the retail electric market.

CHARGE took up the issue of third party marketing and sales support at its January 7, 2010, meeting. CHARGE continued to meet to discuss and review various drafts of the interim guidelines prepared by OCMO staff. The group met on January 22; February 4 and 18; March 4 and 18; April 08 and 29; May 13 and 27; and June 10. During the discussions, CHARGE asked OCMO staff to consider expanding the draft marketing guidelines to include NGS marketers. On April 29, 2010, OCMO circulated the guidelines to SEARCH, seeking feedback from natural gas stakeholders about the feasibility of that suggestion. Joint meetings of CHARGE and SEARCH were held on

¹ CHARGE and SEARCH members included electric distribution companies, natural gas distribution companies, EGSs, NGSs, industry trade organizations, consumers, the Office of Consumer Advocate, and the Office of Small Business Advocate.

May 13, 2010, and on June 7, 2010. On June 24, 2010, the group met on the final OCMO staff draft of the proposed interim guidelines.

On July 16, 2010, the Commission entered a Tentative Order with proposed interim guidelines on marketing and sales practices for EGSs and NGSs. *See Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers*, Docket No. M-2010-2185981, Order entered July 16, 2010 (*Interim Guidelines*). The Tentative Order set forth 17 proposed interim guidelines and established a 30-day comment period and a subsequent 15-day reply comment period. Fifteen comments and seven reply comments were filed. After considering the comments, the Commission issued its final order on the *Interim Guidelines* on November 5, 2010.

Proposed Rulemaking

On February 10, 2011, the Commission issued a Proposed Rulemaking Order with proposed regulations on marketing and sales practices for EGSs and NGSs for comment. *Rulemaking re: Marketing and Sales practices for the Retail Residential Energy Market*, Docket no. L-2010-2208332 (*Proposed Rulemaking Order*). The proposed regulations were based on the *Interim Guidelines*. On October 22, 2011, the order and proposed regulations were published in the *Pennsylvania Bulletin*, triggering the start of a 60-day comment period. Twelve parties filed comments in response to the Proposed Rulemaking Order. Comments were submitted by the Consumer Advisory Council (CAC), Dominion Retail (DES), FirstEnergy Solutions (FES), Interstate Gas Supply (IGS), Met Ed, Penelec, Penn Power and West Penn Power (FirstEnergy), National Energy Marketers Association (NEM), Office of Consumer Advocate and AARP (OCA/AARP), Pennsylvania Coalition Against Domestic Violence (PCADV), Pennsylvania Energy Marketers Coalition (PEMC), Public Utility Law Project (PULP),

Retail Energy Supply Association (RESA), and Washington Gas Energy Services (WGES). On January 20, 2012 the Independent Regulatory Review Commission (IRRC) submitted comments. Additionally, the Office of Attorney General (OAG) reviewed the proposed regulations for form and legality pursuant to the Commonwealth Attorneys Act, 71 P.S. §§ 732-101–732-506. The OAG’s comments and our responses are discussed below where relevant.

§ 111.1. General.

PULP focused its comments on the issue of door-to-door sales and opposes this form of marketing. PULP is in favor of a ban because: door-to-door solicitation will lead to a heightened risk of unfair and deceptive trade practices to the most vulnerable members of the community; these types of marketing practices are contrary to the intent of the Choice Acts because the very nature of the door-to-door sales transaction limits consumer choice to a one-sided “good sales pitch...rather than...a well informed decision” and a ban of such marketing activities would not unduly burden competitive energy suppliers because of the myriad means of communication available to suppliers to inform consumers today. PULP suggests there are numerous ways in which a supplier can inform a customer about its product without reliance upon door-to-door sales and marketing activities, such as direct mailings, television, radio, the Commission’s PAPowerSwitch.com website and OCA’s Residential Electric/Natural Gas Shopping Guide websites. PULP believes that these are sufficient methods of providing consumers with information about a supplier’s price and terms without resorting to door-to-door solicitation.

The PCADV agrees with PULP in its support of a ban of door-to-door sales and marketing activities. PCADV is concerned with the potential safety hazards of allowing door-to-door solicitors into the homes of victims of domestic violence and the possibility of criminal activity by those posing as door-to-door solicitors. PCADV believes that

door-to-door sales “present a particularly unique and troublesome threat to victims of domestic violence and other victims of similarly insidious crime” (PCADV, p. 3.) and that “the only way to truly protect against the unique risks posed to victims of domestic violence and other crimes is to completely prohibit door-to-door sales by electric and gas suppliers.” (PCADV, p.4.) PCADV is also concerned because they believe that victims of domestic violence are “more vulnerable to coercive tactics employed by door-to-door” salesmen and are also vulnerable because many victims struggle to meet basic expenses and it is “difficult for a financially-strapped victim to make an informed decision.” (PCADV, p. 5.) And while PCADV “recognizes and commends the PUC for including safety provisions” it believes the proposed provisions are inadequate and that door-to-door activities are “impossible to effectively monitor.” (PCADV, p. 6.)

The CAC agrees with PULP and PCADV about the likeliness of true customer choice during door-to-door sales and marketing activities, particularly when dealing with vulnerable groups such as the elderly, the infirm, or the uneducated. Absent an outright ban, CAC would limit door-to-door solicitations to those consumers who specifically request such solicitations.

OCA/AARP notes the potential for fraud and customer confusion in door-to-door sales that have been borne out in other states and commends the Commission for its efforts to find a way to allow door-to-door sales while addressing concerns with this sales technique. OCA/AARP suggests language in this section which would require EGSs, NGSs and their agents to comply with all federal, state, and local/municipal laws along with applicable Commission rules, regulations and orders.

IRRC notes that Pennsylvania's Office of Attorney General administers two statutes that regulate subject matter covered by certain sections of this rulemaking: telemarketing and door-to-door sales. The statutes are the Pennsylvania Telemarketer Registration Act (73 P.S. §§ 2241 - 2249) and the Pennsylvania Unfair Trade Practices

and Consumer Protection Law (73 P.S. §§ 201-1 — 201-9.2). IRRC asks that the PUC explain how it will administer and enforce this rulemaking when it identifies or becomes aware of activities that violate the rulemaking and the statutes noted above.

RESOLUTION

We acknowledge the concerns of the parties that object to the use of door-to-door sales to sell energy supply services. It is out of these concerns that we have proposed these new regulations. However, we first note that IRRC is correct that door-to-door sales are already governed by the Unfair Trade Practices and Consumer Protection Law. The Legislature has placed certain safeguards into law through that legislation. Nonetheless, there are additional protective measures we can impose to govern specifically the door-to-door sale of retail power.

We share many of the concerns expressed by the parties. We believe that the way to address these concerns, without unduly restricting the ability of suppliers to use their preferred method of marketing, is through the regulations we have proposed, coupled with consumers' ability to rescind their choices within three days. It is our intent to put safeguards in place to protect public safety and the consumers participating in the market. These regulations will serve to protect the integrity of the entire competitive energy market, which will benefit consumers and suppliers alike.

The Commission has numerous mechanisms by which to monitor the market and enforce these rules. Consumers, likewise, have a variety of channels by which to report concerns or complaints. The Commission maintains a toll-free complaint hotline (800-692-7380) that is staffed by trained professionals who can respond to questions and/or open informal complaints for consumers. These complaints are investigated by Commission staff that look into the matter and are authorized to write binding informal decisions if needed. Informal complaints can also be submitted electronically via the

Commission's website (<http://www.puc.pa.gov>) or in writing via U.S. Mail. Consumers can also file formal complaints in writing by using forms available on the website, and request a hearing before an Administrative Law Judge. Additionally, questions, comments and concerns can be submitted via the Commission's well-publicized electric shopping website (www.papowerswitch.com). Consumers contact their local utility with questions or concerns about the competitive market - contacts that are often shared with Commission staff via routine meetings and conference calls with the utilities. Consumers contact other state agencies, such as the Office of Consumer Advocate and the Office of Attorney General, which in turn communicate with Commission staff. Finally, the Commission hears from local government officials and members of the General Assembly about competitive market concerns in their communities. Given all of these channels that are available for consumers to obtain information and report problems, the Commission is confident that sales and marketing activities in the competitive market can be effectively and thoroughly monitored.

The Commission also has available numerous resources to investigate and enforce any problems that come to its attention via the above-mentioned channels. These resources range from the very informal to formal Commission action that imposes penalties. Informally, Commission staff reviews the informal complaints filed by consumers to identify any customer care or compliance failures. Such failures are brought to the attention of the supplier and corrective action is requested. Commission staff routinely meets with suppliers to discuss their marketing practices and complaints. The Commission, since 2009, has also had an office specifically charged with monitoring the competitive market. OCMO is within the office of the Director of Regulatory Operations, and includes a group of legal, technical and policy staff members from various Commission bureaus to informally address retail market issues. The office is responsible for responding to questions from electric generation suppliers, monitoring issues hindering the development of a competitive retail market and facilitating informal dispute resolution between default service providers and electric generation suppliers.

One of OCMO's chief monitoring and oversight venues are monthly conference calls consisting of suppliers, utilities and consumer representatives where any party can raise any market issue for discussion and possible resolution. More information about OCMO and the monthly conference calls are available on the Commission's website.

If these informal mechanisms are insufficient, more formal avenues are available. The PUC's Bureau of Investigation and Enforcement is the Commission's independent prosecutory arm that can initiate informal or formal investigations as needed and can seek penalties for non-compliance, including the suspension and revocation of supplier licenses. The Commission also has a long-standing Memorandum of Understanding (MOU) with the OAG and under this MOU can refer matters that more appropriately fall under the jurisdiction of the OAG. This could include matters that fall under the Pennsylvania Telemarketer Registration Act and the Pennsylvania Unfair Trade Practices and Consumer Protection Law. A copy of the MOU is attached as Attachment One.

With all of these enforcement resources, the Commission is confident that it can effectively act upon information received through a variety of channels and enforce these regulations. All market participants are put on notice that the Commission will use these resources to aggressively enforce these new regulations in the public interest - to safeguard public safety and ensure fairness for all. We also take this opportunity to remind suppliers of their obligation to respect all federal, state and local laws related to sales and marketing and to note that nothing in these regulations is intended to vacate or supersede any other existing federal, state or local requirement.

§ 111.2. Definitions.

Definition of *Agent*

The Commission specifically solicited comments on the definition of “agent” in the Proposed Rulemaking Order. PCADV, OCA/AARP, and CAC propose the expansion of the term “agent.” PCADV wishes to include all subcontractors, employees, vendors, and representatives not directly contracted by the supplier within the meaning of the term “agent” in order to cover those employees who are hired by marketing firms or other vendors on behalf of the supplier but are not working directly for the supplier. PCADV believes that this would ensure compliance with the confidentiality requirements of 52 Pa. Code §§ 54.8, 54.43 (d) because it would require compliance of those agent subcontractors who may fall outside of these protections. (PCADV, p. 9.) Moreover, PCADV would include within the definition of “agent” a specific confidentiality provision to protect customer information and to require this as a topic for training as well. The PUC should also “completely restrict the sale of customer information by agents.” (PCADV, p. 12.) CAC also believes that consumers must first consent before any of their personal information is released and urges the Commission not to eliminate the need for this consent in the name of creating a “level playing field.” (CAC, p. 9.)

OCA/AARP believes that the definition of “agent” should be broadened to include those situations where a person may conduct marketing or sales activities on behalf of two or more licensed suppliers and in support of this position cite the Connecticut Department of Public Utility Control’s guidelines for Marketing and Sales Practices for Electric Suppliers and Aggregators as an example of a comprehensive definition of the term “agent” consistent with their position².

² *DPUC Review of the Current Status of the Competitive Supplier and Aggregator Market in Connecticut and Marketing Practices and Conduct of Participants in that Market*, Docket No. 10-06-24, Decision (Mar. 16, 2011) (DPUC Guidelines). In the DPUC Guidelines, the term “agent” is defined as follows: “Agent” means any person, whether an employee, representative, independent contractor, broker, marketer, vendor, sales conduit through multi-level marketing, or member of any organization, who (A) has contracted with, or has been directly authorized by, a Supplier or Aggregator to conduct marketing or sales activities or to enroll customers on behalf of the Supplier or Aggregator; or (B) has received compensation, in any form, from a Supplier or Aggregator for any activities relating to the sales or

Rather than expand the definition of “agent,” some parties prefer that the language of the proposed definition be clarified or remain unchanged. RESA suggests that the definition be changed to make clear that the person conducting the marketing/sales for a single supplier is compensated by that supplier and therefore that supplier is responsible for that agent’s actions. Moreover, RESA would include language within the definition which excludes employees of independent organizations which facilitate customer access to suppliers.

NEM opposes the view that compensation should be the determining factor because there are instances when a third party may be compensated but is not engaged in sales or marketing activities (such as providing a price quote to a consumer or the consumer’s consultant); instead, language should be added which would define the agency relationship on the basis of the contractual relationship between the supplier and the person marketing on behalf of that supplier. Consistent with this view, NEM believes that language should be added to the definition of “agent” which would limit liability to the supplier for whom marketing and sales activities were undertaken because the current proposed language covers agents who provide marketing and/or sales support services to more than one supplier.

The PEMC, RESA, and NEM agree that affinity groups such as fraternal organizations, churches, rotary clubs, community groups, and/or retail outlets should be excluded from the definition of “agent” because these groups “may choose to recommend or endorse a supplier to its members, employees, or customers and such reference should not result in the group or organization being considered an agent of the supplier under the [Commission’s] definition.” (PEMC, p. 4.)

marketing of the Supplier or Aggregator’s electric generation services or the referral, enrollment or servicing of customers on behalf of the Supplier or Aggregator[.]

RESA would remove the reference to “marketing service consultant” and “nontraditional marketer” as it relates to gas suppliers. RESA believes that the proposed definition would include some types of entities (such as “affinity partnerships” which are included within the definition of nontraditional marketers and “energy consultants to consumers” which are included within the definition of marketing service consultant). Moreover, RESA argues that because the Commission has initiated a rulemaking to remove the NGS licensing exemption of marketing services consultants and nontraditional marketers³, any reference to these regulatory definitions would be outdated. Lastly, inclusion of these references would create the impression of creating different definitions for agents used by electric suppliers and those used by gas suppliers, (RESA, p. 4.).

DES supports the definition of the term “agent” in the proposed regulations.

IRRC is concerned that the preamble to this section notes that agents that provide marketing and/or sales services to more than one supplier would fall under this definition but that the intent of the PUC in the preamble is not reflected in the definition of this term. IRRC believes that clarity could be improved by amending the definition to more accurately reflect the PUC's intent. Additionally, IRRC requests that the PUC review this definition to make sure it covers all persons who could act as agents, such as subcontractors and the potential for an agent to hire employees or delegate activities to employees.

RESOLUTION

We agree with OCA/AARP and IRRC that the definition of agent should include those representing more than one supplier and that this is more in keeping with our

³ See *Licensing Requirements for Natural Gas Suppliers*, Docket No. L-2011-2266832, Motion of Commissioner Pamela A. Witmer adopted October 14, 2011.

announced intent in the proposed rulemaking order. We also agree with PCADV, OCA/AARP and IRRC that the definition should be expanded to include all “subcontractors, employees, vendors, and representatives not directly contracted by the supplier” who are providing sales and marketing services on behalf of the supplier, as this will provide a more comprehensive description of the individuals covered by the definition and lessen the chance of confusion. We agree with RESA that references to “marketing service consultant” and “nontraditional marketer” should be removed because, as RESA points out, these types of entities are the subject of another pending rulemaking that may make their inclusion in this rulemaking moot. (Even if this ends up not being the case, we believe the inclusion of these two references is superfluous given our rather comprehensive expansion of this definition discussed above.)

We agree with RESA, PEMC and NEM that the status of “affinity groups” such as community and fraternal organizations, churches, etc., that are not affiliated with a supplier, in the context of this definition needs to be discussed. However, we do not think it is necessary to revise the proposed definition to clarify this; we will simply do so by discussing our intent in this order. If a supplier is using an “affinity group” to obtain customers and the individual members of that group are not being reimbursed for the enrollments they obtain, then it is not our intent to treat those individuals as “agents” under this definition. Applying these regulations and requirements (background checks, training, uniforms, identification, etc.) upon the members of such organization(s) is impractical and unnecessary. The expectation is that the members of the affinity group are enrolling members of the same group or individuals with which they have a personal relationship.

However, if the individuals are being compensated for the customers they enroll and if they are approaching individuals outside of a group or personal relationships – including “multi-level marketing” - then these individuals are more accurately described as an “agent” under this definition and these regulations should apply. We acknowledge

that there are many different marketing structures currently in operation and unforeseen structures that could appear in the future. There may be scenarios where the applicability of these definitions and regulations may not always be clear. We ask all market participants to use good faith and reason when confronted with such situations, and to seek the guidance of Commission staff if needed.

While we agree with PCADV and CAC that suppliers and their agents should not sell customer information, we believe that existing regulations at 52 Pa Code § 54.43(d)⁴ are sufficient to address this concern and that it does not have to be added to the definition of agent (See 52 Pa Code § 62.114(3) for the analogous gas industry regulation). We also want to remind everyone of 52 Pa Code § 54.43(f)⁵ that codifies the long-standing PUC policy of holding licensed electric suppliers “responsible for any fraudulent deceptive or other unlawful marketing or billing acts performed by the licensee, its employes [sic], agents or representatives.” (See 52 Pa Code § 62.114(4)(e) for the analogous gas industry regulation).

Definition of *Disclosure Statement*

IRRC notes that Section 4(b)(7) of the Plain Language Consumer Contract Act (73 P.S. § 2204(b)(7)) provides an exclusion for "contracts subject to examination or other supervision by the Pennsylvania Public Utility Commission or by the Federal Energy Regulatory Commission" and asks if contracts between suppliers and a customer are

⁴ (d) A licensee shall maintain the confidentiality of a consumer’s personal information including the name, address and telephone number, and historic payment information, and provide the right of access by the consumer to his own load and billing information.

⁵ (f) A licensee is responsible for any fraudulent deceptive or other unlawful marketing or billing acts performed by the licensee, its employes, agents or representatives. Licensee shall inform consumers of state consumer protection laws that govern the cancellation or rescission of electric generation supply contracts. See section 7 of the Unfair Trade Practices and Consumer Protection Law (73 P. S. § 201-7).

subject to examination or other supervision by the PUC or by FERC. If so, IRRC questions whether the reference to "consumer contract" is appropriate. (IRRC p. 2.)

RESOLUTION

Although we are aware that the Plain Language Consumer Contract Act excludes contracts which are subject to our examination, we have encouraged the use of plain language in our own orders as well as in communications between companies we regulate and their customers. We are relying on the language drafted by the Legislature in the Plain Language Consumer Contract Act for the standard by which we will hold EGSs and those acting on their behalf when contracting with consumers. Moreover, we also should note in response to IRRC, that insofar as these regulations address "retail" sales of energy, they are beyond the jurisdiction of the FERC and are not subject to its review.

Definition of *Door-to-door sales*

PEMC recommends that the definition of "door-to-door sales" refers to residence-only locations which would not include commercial components that include both a residence and a commercial establishment.

IRRC is concerned that the inclusion of the phrase "without prior specific appointment" could negate all of the protections afforded customers by this regulation - if an agent has an appointment with a resident, would that agent have to abide by these regulations? IRRC asks the Commission to clarify this definition to ensure that all customers benefit from the safeguards this regulation is intended to provide. (IRRC p. 2.)

RESOLUTION

We agree with IRRC and will remove the phrase “without prior specific appointment.” The fact that the potential customer scheduled an appointment to meet with an agent should not negate the protections these regulations are intended to provide. We decline to adopt PEMC’s suggestion to exempt residences that may have commercial use attached. While we understand this may complicate a supplier’s solicitation of some commercial entities, we believe that the need to provide these regulatory protections to all residential consumers is the paramount concern. Regardless, the number of mixed residential/commercial premises is relatively small and should not present too much of a burden on suppliers.

Definition of *Sales*

RESA believes that the term “Sales” should be changed to “Sales and Marketing” because the term “sales” involves “the process of assisting the customer in accepting an offer” but the term “marketing” involves making an actual offer to the customer that the customer can accept. These terms are different yet interconnected and including both definitions would clarify that both activities are covered by the regulations.

RESOLUTION

We believe that “sales” and “marketing” are interconnected enough that two different definitions are not necessary. We will instead change the definition of “Sales” to “Sales and Marketing” as to make the definition more comprehensive and to clarify that both activities are covered by the regulations.

Other Suggested Definitions

IRRC notes that there are several terms or phrases used throughout the regulation that are not defined and believes that the clarity of the regulation would be improved if

definitions were provided for: marketing, public event, transaction, transaction document, verification, and verification process. RESA and OCA/AARP also request that the Commission should consider additional definitions within §111.2. (IRRC p. 1.)

“Transaction” & “Verification”- RESA believes that the processes of a customer authorizing the transfer of his/her account to the supplier and the validation of a customer’s intent to transfer his/her account are two distinct steps that should be defined. Neither of these terms is defined in the regulations. By including a definition for each, RESA believes that the Commission would exclude transactions completed without the involvement of an agent from the definition of the verification process. In doing so, the Commission would eliminate the possibility that a customer service representative would be considered an “agent” within the context of the regulations because the CSR is merely assisting the customer rather than marketing a service to the customer.

“Transaction Document”- Because it is a term of art used in Proposed Regulations §111.5(a)(8) and §111.7(b)(5), OCA/AARP believes the term “transaction document” should be defined. OCA/AARP understands the term to mean “contract and enrollment forms” and suggests that a definition be added which defines “transaction document” to mean those “contracts and forms used by an EGS or NGS to enroll a customer for service.”

RESOLUTION

We do not think that it is necessary to add a definition of “marketing” because we are amending the definition of “sales” to include “marketing” (see previous discussion of the definition of “sales”). However, we agree with IRRC’s, OCA/AARP’s and RESA’s suggestions and will add definitions of “public event,” “transaction,” “transaction document,” “verification” and “verification process.” Additionally, we have added a definition of “customer” to avoid possible confusion as to who we are referring to when

we use this term. The definition is based, in part, on an existing definition of “customer” at 66 Pa. C.S.A. § 1403 and is very broad in that it includes all EDC, NGDC, EGS and NGS customers. This also makes it unnecessary to refer to “prospective” or “potential” customers; we will simply refer to “customers.”

§111.3 Supplier liability for its agent.

IGS recommends the addition of a paragraph which would require an agent to be separately licensed for each supplier that it represents and that the specific supplier’s licensing number for whom the agent is working is displayed. This would eliminate the potential for an agent who is engaged in marketing/sales activities for one supplier to cause another represented supplier to incur liability for that agent’s violations of the regulations. (IGS p. 2.) PEMC strongly supports the concept that suppliers should be held responsible for the actions of its agents over whom the supplier has responsibility but recommends the establishment of a Commission procedure for the investigation of alleged acts and the factual determination of a violation before a supplier is held responsible. RESA seeks to revise the regulations to eliminate references to state and federal laws so that it is understood that only those violations which fall within Commission jurisdiction to adjudicate are addressed. RESA also requests Commission flexibility when formulating remedies for violations to ensure that appropriate sanctions are imposed. (RESA p. 6.).

IRRC notes that Subsection (a) requires compliance with "federal, state and municipal laws" but the regulation does not specify which state laws, federal laws or federal regulations apply. IRRC asks if this rulemaking is consistent with all of these laws, regulations and ordinances and also recommends that the rulemaking include specific references to local ordinances, state laws, federal laws or federal regulations in this subsections and subsections 111.3(a), 111.3(c), 111.9(b) and 111.10(a).

IRRC also has some concerns with the procedures that would be used to implement this section. IRRC notes that under Subsection (b), suppliers are "...responsible for fraudulent, deceptive or other unlawful marketing or billing acts performed by its agent." (Emphasis added.) IRRC questions why this section includes a reference to billing – what kind of billing activities would an agent perform? IRRC also believes that including the procedures or a cross-reference to the procedures used to investigate the alleged misconduct would improve the clarity and assist with the implementation of the regulation. Additionally, IRRC asks if suppliers are the only parties that could be subject to fines, or could agents also be fined? (IRRC p. 3.)

OCA/AARP and CAC recommend the adoption of §111.3 without modification.

RESOLUTION

Due to the concerns expressed by RESA and IRRC, we will remove general references to “federal, state and municipal law” in this section and §§ 111.9 and 111.10. We also believe that it is not practical to list all the relevant laws in every instance; but will identify a specific law when appropriate. This in no way indicates that suppliers do not have to respect other federal, state and municipal laws, and as we have previously discussed, these regulations are not intended to supersede or pre-empt any federal, state or municipal law. Also, while the Commission may not have the direct jurisdiction to enforce federal, state and municipal laws, the Commission does have the means to bring any possible violations that we become aware of to the attention of the appropriate authorities. This includes utilizing the Memorandum of Understanding with the Office of Attorney General that we have previously discussed. Also, in response to the concerns expressed by IRRC, we will remove the reference to “billing acts” from paragraph (b) because agents would not be involved with billing customers.

In response to IRRC's questions as to which parties are subject to fines, we point out that the supplier is the entity that the Commission licenses and, therefore, it is the licensed supplier that would be fined. As previously discussed, long-standing practice and existing regulations make clear that suppliers are responsible "for any fraudulent deceptive or other unlawful marketing or billing acts performed by the licensee, its employees [sic], agents or representatives."⁶

The Commission has available numerous informal and formal resources to investigate and enforce any problems that come to its attention. If a concern cannot be addressed informally by Commission staff, matters can be escalated to a more formal level. The Commission's independent prosecutory arm, the Bureau of Investigation and Enforcement (I&E), can initiate informal or formal investigations as needed and can seek penalties for non-compliance, including the suspension and revocation of supplier licenses. See 66 Pa. C.S. §§ 331(a) and 506 and 52 Pa. Code § 3.113. The Public Utility Code at 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code, and the Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities. *Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11) as amended by *Implementation of Act 129 of 2008 Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011). 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission's authority for violations of the Code or Commission regulations or both. Section 3301 further allows for the imposition of a separate fine for each violation and each day's continuance of such violation(s).

⁶ See 52 Pa Code § 54.43(f) for electric; 52 Pa Code § 62.114(4)(e) for gas.

Additionally, the Commission also has a long-standing MOU with the OAG and under this MOU can refer matters that more appropriately fall under the jurisdiction of the OAG. This could include matters that fall under the Pennsylvania Telemarketer Registration Act and the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

As the competitive energy market evolves, additional regulations and enforcement mechanisms may be developed. Given this, and the number and variety of regulations and enforcement avenues already available, as noted above, we decline to reference all of these in the instant regulations. Referencing them also risks communicating the false impression that the Commission is limited to just those regulations and enforcement methods that are referenced.

§ 111.4. Agent qualifications and standards; criminal background investigations.

Some parties believe that the language of this section needs to be strengthened or clarified. NEM and PCADV argue that the phrase “probable health and safety of the public” contained in §111.4 (b) should be modified. NEM believes that the language should comport with federal and state statutory employment guidelines and the screenings should be for convictions that would impact upon and are related to the individual’s ability to engage in these types of sales. (NEM p. 5.) PCADV would include additional language which establishes that specific convictions would bar individuals from engaging in these activities. These acts include, but would not be limited to harassment, stalking, terroristic threats, simple assault, aggravated assault, violation of a Protection from Abuse order, and any sexual-related offenses such as indecent exposure, indecent assault, sexual assault, and rape. In addition, PCADV recommends inclusion of inchoate crimes such as solicitation, attempt, and conspiracy to commit any of the aforementioned crimes as those which would prohibit an individual from engaging in door-to-door sales and marketing activities. PCADV would also require anyone who

applies for a door-to-door sales position to sign an affirmation regarding the existence of a PFA or similar no-contact order and to affirm that they have no pending criminal charges.

OCA/AARP suggests that the phrase “exercise good judgment” in paragraph (a) is not sufficient and that suppliers should be required to “exercise good judgment and follow industry standards” as this provides more direction to suppliers. (OCA/AARP p. 9.) OCA/AARP would also like to return the words “comprehensive” and “possible” back into the regulations consistent with Interim Guideline B (1).⁷ OCA/AARP quotes the Commission’s interim guideline language in support of this position because “door-to-door sales [are] a particularly sensitive issue given the obvious privacy and safety issues. Everyone has a right of security and privacy in the sanctity of one’s home.” Interim guidelines at 15. The Interim Guideline word “possible” should replace the proposed regulation’s use of the word “probable” because the word “possible” is a different standard than “probable” and better reflects the intent of the criminal background check.

CAC supports criminal background checks of all persons who solicit door-to-door, and recommends that persons convicted of any felony or any offense involving sexual abuse or sexual misconduct be prohibited from conducting door-to-door sales.

DES believes that because of the critical nature of their jobs, agents should be required to submit to drug testing to ensure that they are unimpaired when dealing with customers in their homes.

⁷ See *Proposed Interim Guidelines For Marketing And Sales Practices For Electric Generation And Natural Gas Suppliers*, B (1.) (“The suppliers performing door-to-door marketing shall conduct, on all potential door-to-door marketing agents or sales agents, *comprehensive* criminal background checks and screenings necessary to determine if an individual presents a *possible* threat to the health and safety of the public.”)

RESA recommends the substitution of the phrase “ensure that a” for the word “conduct” in §111.4 (a) as it relates to performing criminal background checks so as to eliminate the implication that the background checks were to be done by the supplier only; this change would allow independent vendors to perform background checks and it would mirror the intent of the regulation.

PEMC believes that suppliers have an important obligation to develop standards and qualifications for individuals hired as its agents and this includes criminal background investigations and checking the “Megan’s Law” registry. PEMC also believes that these obligations should apply to independent contractors and vendors that perform door-to-door activities.

IRRC believes that the Subsection (a) requirement that a supplier "exercise good judgment" in developing standards and qualifications for individuals it chooses to hire as its agents is vague and does not establish a binding norm and asks that it either be deleted or amended to state what the Commission considers to be "good judgment."

Concerning criminal background investigations, IRRC has four concerns. First, IRRC requests an explanation of why the Commission believes the regulatory standard of "probable" compared to "possible" is adequate to protect the public health, safety and welfare. Second, will suppliers have to perform a second background investigation on agents that have already been hired and do agents need to report any pending criminal charges or convictions? Third, IRRC notes that a commenter has suggested that the regulation be amended to clarify that other parties can conduct the required background checks on behalf of the supplier. If that is the intent of the Commission, then IRRC recommends that the final-form regulation be amended accordingly. Finally, IRRC notes that a commenter states that a typical background check may not be adequate because it will not provide information such as protection from abuse orders. IRRC asks that the Commission explain how the evaluation of a potential agent's background in the final-

form regulation adequately protects the public's health, safety and welfare.

IRRC notes that under Subsection (c), suppliers must confirm that their independent contractors and vendors have performed criminal background checks on their "employees and agents." IRRC asks why the term "employees" was included in this subsection and is it the Commission's intent to require criminal background checks for all of an independent contractor or vendor's employees?

RESOLUTION

Throughout the working group process that first developed the Interim Guidelines (*Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers*, M-2010-2185981, November 4, 2010) up to this point of finalizing regulations, agent background checks have been extensively discussed and considered. All the parties appear to recognize the paramount importance such checks have in helping safeguard public health and safety. However, as evidenced by the comments, there is still significant divergence of opinion as to what should constitute a sufficient background check and how they should be used.

While we appreciate the comments of the parties on these matters and have given them careful consideration, we of course must be primarily guided by the laws that govern the use of background checks for screening potential employees. In their review of these proposed regulations, the OAG communicated a number of concerns to the Commission. OAG questioned the Commission's legal authority to create a presumption that "a person whose name is listed on the "Megan's Law" registry presents a threat to the health and safety of the public" and questioned whether this presumption was consistent with the necessity to preserve due process rights of prospective employees. While the OAG advised that the regulation could require the supplier to check the "Megan's Law" listing, they suggested that the Commission adopt language similar to

that used in the PUC motor carrier regulation at 52 Pa Code § 31.134(c) (relating to criminal history; disqualification) that would bar a supplier from hiring as a door-to-door agent any person convicted of a felony or misdemeanor to the extent the conviction relates adversely to that person's suitability to provide service safely and legally. OAG believes that the suggested revised language would more closely track the Criminal History Record Information Act (CHRIA) and would make the regulation less vulnerable to a court challenge. Finally, OAG suggested that the regulation be revised to make clear that the requirements apply equally to both new and existing employees.

By memo to the OAG dated July 21, 2011, the Commission's Law Bureau submitted revised proposed language to the OAG and committed to recommending to the Commission the changes OAG insisted upon. As such, we have accepted OAG's suggested changes and have revised this section accordingly. Consistent with OAG's concerns regarding the due process rights of potential and present employees, we are rejecting IRRC's and others' suggestions that we include "possible" threats as opposed to "probable" threats. Based upon the OAG's advice, we believe the regulation goes as far as it legally is able without creating a potential violation of the due process rights of both existing and prospective employees.

We will remove the phrase "exercise good judgment" in paragraph (a) to address IRRC's concerns that the phrase does not establish a binding norm. Additionally, we have removed proposed language in subsection (b), which will address IRRC's concerns regarding the clarity of the phrase "to determine if the individual presents a probable threat to the health and safety of the public." Also at IRRC's suggestion, we will remove the term "employees" from paragraph (c) because "employees" is unnecessarily broad when we want this to apply only to "agents." We note that we have expanded the definition of "agent" at § 111.2 to include employees, representatives, contractors, subcontractors and vendors, who perform sales and marketing activities, regardless of whether they are directly or indirectly connected to the supplier. However, we decline to

adopt the suggestions of DES and PCADV to expand and/or specify precise criminal activities out of concern that such specificity may go against the advice of the OAG and also invites the risk of overlooking activities that are not specifically listed. We also decline to include “pending charges” out of concern that this appears to be contrary to the guidance received from OAG, as discussed above.

In response to IRRC’s request that we clarify the ability of other parties to conduct the required background checks, we believe it is not necessary to address this point in the regulation, but will instead clarify it here in this order. There are companies that provide background security check services, and it is indeed possible that a supplier may want to utilize the services of a professional firm that specializes in background checks. We do not object to the use of these services. The important thing is not who performs the check – but that a check is done correctly and in accordance with these regulations. We also note that the supplier is ultimately the party we will hold responsible for the security background check, regardless of the entity that actually performed the check.

§ 111.5. Agent training.

PCADV would add specific customer information confidentiality provisions within the definition of “agent” and include confidentiality as a specific topic of agent training. NEM suggests that inserting “supplier-approved” before “training” in Section 111.5(d) to clarify that the supplier’s obligation is to ensure that the vendor or contractor utilizes the supplier’s training program.

IRRC notes that while paragraph (a)(1) requires training in state and federal laws, it questions whether this provision should also reference Pennsylvania's Telemarketer Registration Act since it directly relates to agents and to Section 111.10. IRRC also notes that paragraph (a)(2) requires training in "responsible and ethical sales practices" but is concerned that this phrase could be interpreted in different ways. IRRC believes that the

Commission should either include in the regulation the specific training required relating to responsible and ethical sales practices or add a citation to the practices the training must include.

IRRC is also concerned that the regulation is not clear regarding the bounds of actions an agent may take when doing door-to-door sales. For example, is it appropriate for the agent to ask to enter the dwelling, or should the agent only enter the dwelling upon the invitation of the customer? Additionally, IRRC thinks that paragraph (a)(10) is broad and suggests adding a cross-reference to the minimum terms and definitions the training must include. A time-frame associated with the record-keeping requirement should also be included in the final-form regulation.

IRRC also has two concerns with agent monitoring. First, IRRC thinks that the term "representative sample" is vague and that a more precise standard should be included in the final regulation. Second, IRRC questions how monitoring of door-to-door sales calls can be accomplished in a manner that ensures the agent is meeting the requirements of this regulation. In the preamble to the final-form regulation, IRRC asks that the PUC explain how a supplier is expected to monitor door-to-door sales and how that monitoring will adequately protect the public health, safety and welfare.

RESOLUTION

We agree with PCADV that customer confidentiality should be a training topic requirement specified in the regulation and we agree with IRRC that Pennsylvania's Telemarketer Registration Act should be a training requirement for agents engaged in telemarketing. In response to the request that we specify the requirements as to what constitutes "responsible and ethical sales practices" and "bounds of action," - we believe that complying with the proposed regulations in effect will constitute responsible and ethical sales practices and actions. We will add language to subsection (a) (2) specifying

this. To address IRRC's request for clarification as to the terms and definitions in subsection (a) (10), we will add a reference to the glossary of electric and gas terms on the Commission's website. We also agree with IRRC in that we should be more specific on the record-keeping requirement in paragraph (b) and will adopt the record-keeping timeframe of three years that is found in the existing regulations at 52 Pa. Code § 57.179 (Record maintenance). In addition, we agree with IRRC that the phrase "representative sample" in paragraph (e) is too vague and we will remove it, along with the word "employees" in (d) because it is superfluous given our expanded definition of agent. We also agree with NEM and will insert "supplier-approved" before "training" to make clear the supplier's obligation to review and approve the training a vendor provides to its employees.

Regarding the concerns expressed by IRRC as to how the Commission will monitor and enforce these regulations, please see our discussion relating to Sections 111.1 and 111.3.

§ 111.6. Agent compensation; discipline.

Some of the parties that submitted comments on behalf of the utilities and suppliers are in general agreement with the intent of the proposed regulation but have concerns. PEMC believes "that if the Commission seeks to enforce the provision strictly, Commission staff will be faced with a significant burden to evaluate every supplier compensation program for its employees, agents, and contractors. We are concerned that assessment of supplier compensation practices may be an overreach into the legitimate and proprietary business practices of suppliers." (PEMC page 6); (See also NEM p. 6, "The matter of appropriate and optimal agent compensation structures should be a matter within the purview of the supplier.")

WGES proposes that the language of the subsection should be limited to prohibiting the supplier from compensating those agents who engage in practices which run counter to those contained in the regulations because “such inappropriate practices should be eliminated through agent selection and training and supplier contacts with agents that bar payment for slamming or defrauding customers.” (WGES p. 2.) RESA opposes the language because “any time any agent violates the regulations, a supplier’s compensation arrangement with the agent could be viewed as violating this section because the agent is compensated by the supplier.”

RESA also disagrees with the implication that agents who are salaried employees are less likely to violate the regulations than those agents who are paid under a commission compensation scheme. To RESA, the regulations would require a supplier to determine in advance whether a particular compensation arrangement was problematic. RESA would modify the language of § 111.6 (a) to hold suppliers liable who “deliberately” design agent compensation program structure[s] which promote, encourage, or reward behavior which runs counter to those practices established by the regulations. (RESA p. 9.). In addition, RESA believes that the language of §111.6 (b) should be clarified to ensure that a supplier educates agents on the Commission’s long standing policy toward slamming and other violations of consumer protections. PEMC believes that Subsection (b) should include a procedure for those instances when an honest mistake is made concerning the transfer of a customer’s account and punish only those who engage in slamming. (PEMC p. 6.).

FES submits that the Commission should allow supplier’s to exercise discretion in setting agent compensation in a way that suits its business model. FES believes that the consequences to suppliers of their agents’ noncompliance are sufficient deterrence against supplier’s promoting illegal behavior.

OCA/AARP strongly supports the proposed language and urges the Commission to implement it without modification. CAC believes that agents engaged in door-to-door activities, regardless of whether they are employees or contracted vendors, should not work on a commission basis but instead should be salaried.

IRRC asks that, given concerns of some parties that contend that compensation structures should be left to their discretion, the Commission should explain the need for this subsection. Also, relating to subsection (b), IRRC has three concerns. First, IRRC asks if this provision would apply to independent contractors and vendors of suppliers, or would those entities have to develop their own internal discipline practices and procedures? Second, IRRC recommends that this subsection include a cross-reference to the PUC's policies regarding unauthorized transfers. Third, IRRC believes that the phrase "long-standing zero tolerance" and the last sentence of the subsection are both non-regulatory in nature and should be deleted. (IRRC p. 5-6.)

RESOLUTION

Regarding the proposed paragraph (a) and supplier employee compensation, we agree with those parties that suggest that this proposal is unnecessary, over-reaching and too vague and we will remove it. Regarding paragraph (b), we agree with IRRC and will remove the last sentence and the reference to "zero-tolerance" and will instead reference the supplier switching regulations for electric and gas. Concerning IRRC's question as to the applicability of this section, we note the long-standing practice of holding the licensed supplier responsible "for any fraudulent deceptive or other unlawful marketing or billing acts performed by the licensee, its employes [sic], agents or representatives."⁸ We believe this is sufficient notice to all suppliers that they will be held responsible for the actions of any contractors and vendors they utilize.

⁸ See 52 Pa. Code § 54.43(f) for electric; 52 Pa. Code § 62.114(4)(e) for gas.

§ 111.7. Customer authorization to transfer account; transaction; verification; documentation.

DES supports the language of the regulation as proposed but would urge the Commission to be flexible given the changing technological environment. For example, one technological change to be considered would be to determine whether allowing electronic signatures for enrollment would be permissible under the regulations. RESA would revise §111.7 (b) to allow an on-site agent to correct any problems with enrollment with the customer's consent. This would avoid the time lag associated with strict adherence to the regulation which would require only contact by phone, letter, or email should a problem arise with verification.

PEMC offers three modifications to §117 (b)(2)(ii). The first would permit an agent to remain in the customer's presence or home to be used as a resource during the verification process; this is done to ensure an informed decision. In order to avoid the perception of undue influence or coaching by the marketer, PEMC suggests that a specific question or set of questions be posed to the customer by the verification agent to show no coaching or influence was present.⁹ If the customer answers any of the questions "no," then this would result in the automatic termination of the verification process. In addition to this modification, PEMC would establish a "safe harbor" provision in the regulation that would permit marketers to adopt an internal policy providing for customers to have the clear option to separate themselves from the agent's vicinity during the verification process. If the customer requests the marketer to leave the customer's home, or the customer chooses to leave the public location following the sale, the agent would be required to comply with the customer's wishes immediately. Lastly, PEMC would include a requirement that the sales agents would not be permitted to have

⁹ Examples of questions would include: "Is the sales agent in your immediate vicinity? Are you aware of your right to not have the sales agent present during this verification process, unless you wish for the agent to be present? Can you verify that you are entering into this sales agreement voluntarily without any undue influence or pressure by the sales agent?" See PEMC p. 7.

any interaction with the verification agent once the verification process had begun because “once the verification starts, it is the customer who controls the conversation, including whether or not the customer would like to be separated from the sales agent during the verification.” (PEMC p. 8).

PEMC requests the addition of a new provision, §111.7 (5)(vii), which would deal with those suppliers who utilize automated sales verification systems. The companies who utilize these types of verification systems do not have a name or number attached to the record even though the verification is recorded and archived. The recordings would be maintained for six billing cycles and the maintenance of this information would provide reviewers with a record of the verification process. In addition, PEMC requests that the Commission permit the required pieces of information referenced in §111.7 to be maintained in different databases due to the expense of keeping them in one location. PEMC argues that such a change would be permissible so long as the information would be readily available for Commission review.

FES requests that the Commission reconsider its position with respect to the three-day right of rescission contained in §111.7(b) and remove the requirement that the customer be provided with a three-day right of rescission during telemarketing calls. Specifically, FES believes that because the customer is provided with the right of rescission on two different occasions, the third notification at the end of the verification process might be counterproductive during telemarketing sales as it might be construed as urging the customer to rescind his or her authorization.

OCA/AARP strongly support the proposed section which they believe draws a clear line between the sales agent’s personal contact in the home of the consumer and the need for the agent to physically depart before the verification process commences. As such, OCA/AARP urges the Commission to adopt § 111.7(b)(2) without modification. However, OCA/AARP is concerned with the Commission’s proposal to not require the

verification process when the enrollment is done without the interaction with an agent. OCA/AARP suggest that “there is a need to review the documents and forms used for such enrollments to ensure that the documents are clear, contain all necessary information to ensure that it is only the customer of record making the request, provide all necessary information about the supplier and the process and provide all necessary instructions. This rulemaking process does not provide the forum to review and address any necessary requirements.” As such, the OCA/AARP submit that this exception to the verification process should be removed. (OCA/AARP, p. 13.)

CAC also recommends that the verification of sales be required without the agent being present because such verification “is most likely to be independent and free from influence if the sales agent is not present.” (CAC, p. 7.)

IRRC has three concerns with subsection (a)(1). First, this subsection states that the process “may” include three specific actions. The use of the word “may” implies that a supplier has the option to use one of the three actions to authorize the transfer. If it is the PUC's intent to require suppliers to use one of the three actions in Paragraphs (i), (ii) and (iii) of Subsection (a)(1), then IRRC suggests “may include” should be replaced with “shall include one of.” However, if the Commission intends to allow suppliers to use other processes, the regulation should be amended to clarify this intent. Second, IRRC notes that (a)(1)(ii) and (iii) include a reference to a “program” and asks what this term means. Third, (a)(2) requires the document used to complete the transaction to identify the agent who completed the transaction. However, the documents referenced in Subsection (a)(2)(iii) and (iv) could be completed without the assistance of an agent. IRRC believes that it is unclear how the requirements of these provisions will be implemented and recommends that these provisions be clarified in the final-form regulation. Concerning Subsection (b), IRRC believes that the regulated community would benefit if a specific reference to 73 P.S. § 201-7, Pennsylvania's *Unfair Trade Practices and Consumer Protection Law* was included in the final regulation. (IRRC p.

6-7.)

RESOLUTION

The transaction verification process required by subsection (b) has been extensively discussed and debated; first in the working group process that developed the *Interim Guidelines*, and now in the proposed rulemaking. One of the central issues is the role and presence of the sales agent during the verification process. Many parties, including OCA/AARP and CAC believe potential customers should be free of the presence of the sales agent so that the verification is completed privately, thus minimizing the chance of intimidation. However, many suppliers point to practical problems that this requirement could create and how it allegedly hinders their communication with the potential customer.

We believe there is a way to structure this process so that customers will still be protected, even if agents are allowed to be in their presence during the verification. First, we will include new language stating that the agent is permitted to remain in the vicinity of the customer during the verification process only if the customer agrees. Further, we believe that by concluding the verification process with a reminder to the potential customer of the three-day right of rescission, as proposed in subsection (b)(3), we will provide sufficient safeguards in case the customer feels intimidated or unsure. If a potential customer was feeling too intimidated to ask the agent to leave, or if for any reason is not satisfied with what he or she just agreed to, a customer merely has to exercise his or her three-day right of rescission. This will negate what the customer just agreed to without penalty. Therefore, we decline to accept the suggestion of FES to remove the reminder of the three-day right of rescission from the verification because we believe this requirement is key to protecting the consumer in instances where the agent is present. We will enforce this requirement by using the complaints that customers file with us and will be asking complainants about the presence of the agent during

verification. Additionally, we will strengthen this provision by agreeing with IRRC and include a reference in the regulation to the Unfair Trade Practices and Consumer Protection Law.

Concerning IRRC's questions about subsection (a), we agree that this section is unclear and unnecessarily complex. As such, we will shorten and clarify it by simply requiring a supplier to establish either a verbal, written or electronic transaction process for a customer to authorize the transfer of his or her account to the supplier. We also agree with IRRC's concerns with subsection (a)(1) and will add language clarifying that the agent only has to be identified on the document if an agent was involved in the process.

Concerning PEMC's questions about the archiving of records under subsection (4), we respond by noting that we require that the records be maintained in a system that is capable of retrieving them. We will not dictate what kind of system or how many different systems may be involved; these are matters we leave to the discretion of the supplier.

OCA/AARP asks us to include under the verification requirements those transactions that do not include the interaction with an agent. We decline to do this because the main reason for the verification process is to protect against consumers being pressured, possibly intimidated, by the presence of an agent, either in person or on the phone. When a customer is enrolling through a process that does not involve an agent (*i.e.* direct mail, internet, PaPowerSwitch.com, etc.), these kind of pressures simply do not exist. Without an agent present, the customer is free to take all the time they want to review an offer, compare offers, read all materials and disclosures, and reject or accept the offer without any outside influence or pressure. Accordingly, we think requiring a verification process to confirm such transactions would be superfluous. However, OCA/AARP is correct in pointing out that all the documents involved in direct mail and

internet solicitations must contain all of the information necessary for the potential customer to arrive at an informed decision and must comply with all relevant rules governing such transactions.

§ 111.8. Agent identification; misrepresentation.

Subsection 111.8 (a) would require supplier-issued identification badges for all door-to-door sales agents or for those who appear at public events to be visible at all times. NEM wants to have the words “public event” defined in the regulations to include those events which may facilitate sales and marketing activities or may result in a customer enrollment. In doing so, this definition would exclude activities such as sporting events that are sponsored by the supplier or agent rallying events hosted by the supplier. OCA/AARP wishes to have this provision amended to require agents to “prominently or conspicuously” display identification badges and “to be on the outer clothing being worn at the time.”

OCA/AARP and DES request changes to §111.8 (b) with respect to how an agent identifies the supplier to the potential customer. DES would require the agent to identify the supplier both orally and in writing as opposed to the proposed regulation’s requirement that the agent perform the supplier identification either orally or in writing. OCA/AARP would require that the agent’s initial identification upon first contact be orally and then a written notification may be provided to the customer to confirm the oral representation made to the customer. In addition to this change, OCA/AARP would broaden §111.8 (c) to avoid any confusion about branding. OCA/AARP would add additional language to eliminate any potential confusion as to who an agent represents by prohibiting any branding elements which might be construed by a customer as working for or approved by a government agency or another supplier. OCA/AARP would remove the “deceptively similar” language in the regulation as being too vague and substitute it with more specific language to capture the intent of the regulation. OCA/AARP would

also include a new subsection (f) to require an agent to specifically advise a customer that their failure to choose a supplier will not affect their ability to receive natural gas or electric service.

CAC believes that agent identification cards should include a phone number the potential customer can call to verify that the person soliciting at their door is a legitimate agent. CAC also suggests that agents be required to direct potential customers to PUC and OCA information resources. (CAC, p. 7.)

IGS and RESA would add a new subsection §111.8 (f) in order to avoid confusing customers with the identity of the supplier for whom an agent represents. The new subsection (f) would require those suppliers who have similar names as the distribution company provide disclosures to the customer that explain that the non-affiliated company is not the utility and is not affiliated with the company and disclose the full legal name of the entity providing services that may appear to be similar to the utility. (IGS, p. 2-3.)

IRRC has three concerns with the subsection (a)(3) requirement that the agent's identification number be displayed on the identification badge in a "reasonably sized font." First, IRRC asks if a supplier must assign an identification number to each of its agents and if so, where can that requirement be found? The same concerns apply to business cards in subsection 111.9(d)(2). Second, IRRC asks what is considered a "reasonably sized font" and how will suppliers and agents know if they are meeting this standard? IRRC recommends that a more precise standard be included in the final-form regulation. Finally, IRRC asks how an agent can satisfy the requirement that the identification badge "be visible at all times" and would requiring the identification badge to be "prominently displayed" be an acceptable standard that could be met by the agent while still protecting the public health, safety and welfare?

Concerning the subsection (c) prohibition on an agent from wearing apparel or accessories and carrying equipment that contains branding elements "deceptively similar to that of the local Pennsylvania distribution company" IRRC has two concerns. First, IRRC thinks that the word "deceptively" is unclear and should be deleted from the final-form regulation. Second, the Commission should consider replacing the phrase "Pennsylvania distribution company" with the phrase "any EDC or NGDC" as this would provide greater clarity and would be more consistent with other statutes and regulations. (IRRC, p.7.)

RESOLUTION

The intent of Section 111.8 is to minimize to the extent possible, the chances of misrepresentation – such as a potential customer being confused as to who they are dealing with because of inadvertent or deliberate actions of a sales agent. Given the relatively new concept of competitive energy shopping and the inexperience of many potential energy customers, confusion is all too possible. In such an environment, it is very easy for a potential consumer to confuse any energy provider with their incumbent energy utility - a confusion that can be contributed to by either inadvertent or deliberate acts of the supplier agent.

Concerning subsection (a), we have already previously discussed and agreed to add a definition of "public event" to Section 111.2 as suggested by NEM (see our discussion relating to Section 111.2 for more information on this change). We agree with CAC that the agent identification card should include the supplier's phone number so that the potential customer can call the supplier if desired. In response to IRRC's concerns, we will remove the reference to "identification number" since this requirement is not specified anywhere, and we will remove the phrase "reasonably sized font" as too vague and subjective. In response to IRRC, we also will replace the requirement that the badge

be “visible at all times” with the more practical “prominently displayed.”

Concerning subsection (b), we agree with DES and OCA/AARP that agents should be identifying themselves and their company both orally and in writing. However, we decline IGS’s suggestion that suppliers affiliated with distribution utilities should provide additional disclosures to the potential customer as over-scripting. While we understand IGS’s concern, this is more a matter of protecting suppliers rather than consumers. As such, we believe our original proposal including references to the existing codes of conduct at § 54.122 and § 62.142 is the appropriate way to address these concerns. We also decline CAC’s suggestion that agents be required to refer consumers to PUC and OCA information resources as we wish to avoid over-scripting the agents; and inappropriately so in this case, because we would, in effect, be requiring an agent to provide information on the products and prices of competitors. In no other business that we are aware of does government force a business to provide consumers with information on their competitors.

Concerning subsection (c), we agree with OCA/AARP and IRRC, and will remove the word “deceptively” before “similar to that of the local Pennsylvania distribution company.” We will replace this with language prohibiting actions that suggest a relationship that does not exist. Per the request of IRRC, we will also replace the phrase “Pennsylvania distribution company” with the phrase “any EDC, NGDC...” Also, at the request of OCA/AARP, we will strengthen this sentence by adding “government agency or another supplier” in addition to “any EDC or NGDC.” In response to OCA/AARP’s request that we add a subsection (f) requiring agents to specifically advise customers that their failure to choose a supplier will not affect their ability to receive energy service, we will add a subsection (f) that prohibits agents from suggesting to potential customers that they “have to choose” a supplier since this is a point of confusion we hear about from consumers. We think this prohibition is more appropriate than adding yet more scripting.

§ 111.9. Door-to-Door Sales.

Although the Commission adopted a compromise solution in the proposed regulations regarding the time frame for door-to-door sales, several of the commenters request that the Commission revisit the positions they presented during the debate over the Interim Guidelines. Suppliers, in general, believe the proposed timeframes are unnecessarily restrictive. Those advocating an extension of the time frame include RESA (9 a.m. to 9 p.m. from October 1 through March 31), PEMC (9 a.m. to 9 p.m. for the entire year), DES (have the Commission adopt those approved by the North American Energy Standards Board which allow for 9 a.m. to 7 p.m. solicitations with seasonal variations).

However, OCA/AARP suggests that the timeframe be more restrictive (10 a.m. to 7 p.m. or in the alternative 9 a.m. to 7 p.m. year round) because they believe that any contacts after 7 p.m. are too intrusive as families try to spend time together, are engaged in homework, or are preparing for bath or bed time routines. OCA/AARP notes that Connecticut recently adopted the hours of 10 a.m. to 6:00 p.m. for door-to-door marketing.¹⁰

PEMC suggests that the requirement in § 111.9(2) that suppliers notify local officials of door-to-door marketing operations is not necessary and duplicative because when a supplier seeks and is granted a license from the municipality, the supplier is, in effect, informing the municipality of its activities. Additionally, PEMC points out that it may be difficult to identify the “local municipal officials” that would be required by this section. (PEMC, p. 10.)

¹⁰ DPUC Review of the Current Status of the Competitive Supplier and Aggregator Market in Connecticut and Marketing Practices and Conduct of Participants in that Market, Docket No. 10-06-24, Decision (Mar. 16, 2011) at Guideline IV(d)(4). See also CT Public Law NO. 11-80, § 113(F)(2)(B), effective July 1, 2011.

PEMC and RESA propose that the language of §111.9 (e) be changed to provide flexibility when dealing with individuals who do not use English as their primary language. To alleviate this problem, PEMC and RESA suggest that language be inserted into the subsection that would permit a member of the customer's household to assist the agent. RESA would require a customer's affirmative consent and would permit a friend or neighbor to act as translator on behalf of the customer.

In addition, PEMC and RESA are in agreement that §111.9 (f)(3) should be changed to permit an on-site agent to provide the customer with a copy of the disclosure statement as opposed to the mailing requirement contained in the proposed subsection. PEMC believes that the mailing requirement makes sense for telephone sales but not door-to-door sales and RESA believes that to permit an agent to deliver the disclosure statement in this fashion with customer consent would streamline the enrollment process. NEM suggests that if the customer is provided with a copy of the disclosure statement at the time the contract is signed, the supplier should not be required to send another disclosure statement to the customer. NEM thinks this should be made clear by adding "if the disclosure statement has not been previously provided" to the end of § 111.9(f)(3). (NEM, p. 7.)

RESA suggests that the word "cancel" be replaced by the word "rescind" in subsection (f)(4) to make the subsection consistent with the three business day right of "rescission" and to avoid confusing the term with specific contractual rights that the customer may or may not have to "cancel" the contract at any time.

IRRC notes that under 66 Pa. C.S.A. § 2206(c), relating to natural gas competition, the PUC has the statutory directive to:

... by order or regulation, establish requirements that each natural gas distribution company and natural gas supplier provide adequate, accurate

customer information to enable retail gas customers to make informed choices regarding the purchase of **all natural gas services** offered by that provider. Information shall be provided to retail gas customers in an **understandable format** that enables retail gas customers to compare prices and services on a uniform basis. (Emphasis added.)

IRRC adds that similar requirements relating to the electric industry are specified in 66 Pa. C.S.A. § 2807(d)(2) and that some parties have questioned whether door-to-door sales will provide the customer with the information needed to make an informed choice how door-to-door sales can be adequately monitored. IRRC believes that these are valid points and that the Commission should explain how the final-form regulation will ensure that customers, when solicited by door-to-door agents, will receive "adequate, reliable customer information," "in an understandable format" to enable customers to make informed choices, consistent with the statute. IRRC also asks the Commission to thoroughly explain its consideration and resolution of the comments that raise safety concerns with door-to-door sales and explain how the final-form regulation will adequately protect the public health, safety and welfare. Concerning the hours that door-to-door marketing or sales activities can occur, the Commission should explain how it chose the hours specified in the final-form regulation and why those hours represent the most reasonable hours for both the customer and the agents.

IRRC has two concerns with the paragraph (a)(2) requirement that a supplier notify local municipal officials "in advance of its schedule." First, notification "in advance" does not impose a specific time requirement. Second, the provision does not require notice if the schedule changes. IRRC recommends amending paragraph (a)(2) to specify a timeframe for the advance notice and also notification if the schedule changes.

Regarding the subsection (e) requirements relating to language skills, IRRC sees an overall need to address the circumstance where the agent and customer cannot communicate because 66 Pa. C.S.A. §§ 2206(c) and 2807(d)(2) require information to be in an understandable format. After it is established the agent and customer cannot

communicate, IRRC questions the need, reasonableness and effectiveness of continued contact and questions the use of "translation services, electronic language translation devices and language identification cards," as excessive and impractical, particularly when there are other methods for a customer to be aware of and participate in customer choice. IRRC is also concerned with this provision as proposed in that it restricts the initial conversation to English and addresses the "customer's English language skills" and questions whether a supplier, who is familiar with a demographic area, should be allowed to initiate conversations in a language other than English that is prevalent in that area. As such, IRRC, recommends deleting the word "English" so there is flexibility in what language is used first. IRRC questions the use of the word "shall" in paragraph (e) and also suggests, to be consistent with Section 111.11, replacing the word "cancel" with the word "rescind" in paragraph (f)(4).

IRRC supports subsection (g) but questions whether it is too narrow. For example, if a customer says they are not interested, under the regulation, the agent would not have to leave the premises. IRRC suggests that the provision be broadened to require the agent to leave the premises if requested to do so by the customer or if the customer expresses no interest in the product being sold. Finally, concerning subsection (h), IRRC suggests adding language to state within what time-frame the annotating of the database must occur. (IRRC, p. 8-10.)

RESOLUTION

The time of day in which door-to-door marketing must cease was a central topic of the working group that developed the current *Interim Guidelines* and continues to be a debated topic in this rulemaking. The current *Guidelines* and the proposed regulation reflect a "compromise" between those parties, mostly suppliers, who wanted an expanded timeframe, and those parties, mostly consumer groups, who wanted a more restrictive timeframe. Part of this "compromise" was to create the seasonal variation that is

reflected in the proposal between “summer” hours and “winter” hours. Upon careful review of the comments submitted in this ongoing debate, we conclude that we have heard no new or unique argument that convinces us to alter our original proposal. We continue to believe that a seasonal variation, with the 7 p.m. end time between October and March and the 8 p.m. end time between April and September is a reasonable “middle ground” that adequately protects consumer safety and privacy while providing suppliers with sufficient time to market their services. We reject suggestions that we expand the permitted time to 9 p.m. as we believe it is simply too intrusive upon households that expect an increased measure of privacy later in the evening. Likewise, we reject suggestions that restrict the permitted time to 6 p.m. as too limiting; with many potential customers only arriving home from work at 5 p.m. or 6 p.m. We also want to note that when we limit the activities to 7 p.m. or 8 p.m., we are saying that new customer contacts are prohibited after that time. Sale presentations that are already underway when the end-hour is reached are permitted to continue. We also want to emphasize that per subsection (a)(1), municipalities may have restrictions on hours that are more restrictive than outlined in this regulation – and, if so, the more restrictive timeframes in the municipal ordinance apply.

We agree with PEMC that notifying local officials is a duplicative requirement because when a supplier seeks a license from the municipality, the supplier is, in effect, informing the municipality of its activities. We also question the appropriateness of such “courtesy” requirements in binding regulations. This will make moot IRRC’s request that we specify timeframes for such notifications, including schedule changes.

Concerning the language provisions in subsection (e), we agree with IRRC and will remove the reference to “English” in the first sentence. We also agree with IRRC that the sales transaction should end if there is a language barrier present. As such, we must reject the request of PEMC and RESA to expand the use of translators and translation services.

Concerning subsection (f), we agree with PEMC, RESA and NEM and will amend subsection (f)(3) to require the sending of a disclosure statement only if it has not already been provided. The written disclosure statement is a key consumer protection that helps ensure that the customer is receiving accurate customer information in an understandable format that is sufficient for the customer to make informed choices regarding the purchase of competitive energy products offered by suppliers. The electric disclosure regulations at 52 Pa. Code § 54.5 and the analogous gas disclosure regulations at 52 Pa. Code § 62.75 require that new customers receive, in writing, a disclosure that includes:

- The rate, fixed or variable. If variable, the conditions upon variability.
- Length of agreement.
- Explanation of sign-up bonuses, incentives, promotions, special services, etc.
- Cancellation and renewal provisions.
- Contact information for the supplier, the utility, and the PUC.
- Explanation of penalties, fees and exceptions in a larger font size.
- A three-day right of rescission without penalty and information on how to exercise the right of rescission.
- A statement directing the consumer to the PUC if they have a problem or concerns with the supplier.
- A statement explaining that while distribution charges are regulated by the PUC and transmission charges are regulated by FERC, generation charges are set by the supplier chosen by the customer.

With regard to those commenters who suggest that we should prohibit door-to-door sales because they believe a consumer cannot make an “informed” choice based upon information provided by only one representative, we must point out that we have been sponsoring extensive consumer education efforts since retail choice became available. Our customer information regulations (52 Pa. Code §§54.1 – 54.9 for electric and 52 Pa. Code §§ 62.71 – 62.80 for gas) include numerous provisions intended to

provide consumers with the information they need about their energy choices, including:

- Supplier pricing, including a requirement that advertised prices must equal the price in the disclosure which then must also equal the price on the bill.
- Use of common and consistent terminology in customer communications, including marketing, billing and disclosure statements.
- Bill format requirements that include itemization and defining of charges; pricing in standard pricing units; 12-month usage histories and averages; company contact information; and a statement that the PUC regulates distribution rates, FERC regulates transmission rates, and generation rates are set by the supplier chosen by the customer.
- Requirements that electric suppliers have information available to customers on generation supply sources including documentation to support claims of renewable energy and prohibitions on using vague, unsubstantiated claims of environmental benefits.
- Customer information privacy requirements.
- Complaint handling procedures.

Additionally, the Commission has overseen an extensive consumer education process that includes utility efforts and Commission-funded efforts. For the most recent example of the Commission's consumer education efforts, please see the *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Order entered March 2, 2012. Of course our most important consumer education tool is the Commission's electric-shopping website, www.papowerswitch.com. This website includes information on:

- Switching power and what you are switching.
- Understanding your bill.
- Choosing an electric supplier.
- Your rights and protections.

- How to shop for electricity.
- Current supplier offers and online enrollment.
- Clean energy suppliers.
- Shopping worksheet.
- Questions to ask.
- Help paying your bill; assistance programs.
- Ways to save energy.
- Renewable energy questions.
- Frequently asked questions.
- Glossary of common electric competition terms.
- Contact information for suppliers and utilities, including web links and telephone numbers.
- Contact information for the PUC.
- Customer shopping statistics.

We believe that these consumer education efforts and existing regulations, augmented by the proposed regulations in this instant rulemaking, fulfill the Commission's obligations under 66 Pa. C.S.A. §§ 2206(c) and 2807(d)(2) to make sure that customers have the information they need to successfully navigate the competitive energy market.

Also concerning subsection (f), we agree with RESA and IRRC and will replace the word "cancel" with "rescind" in (f)(4), since that is the more appropriate term to describe what the customer is doing. "Rescinding" a contract within the three-day rescission period is indeed different from "canceling" a contract. We will also amend subsection (f)(2) to align this provision with the changes we are making at Section 111.7.

Concerning subsection (g), we agree with IRRC and will strengthen this sentence by adding that the agent should leave the premises if the potential customer expresses no interest in what is being sold. We will also, per IRRC's request, add language to subsection (h) specifying that a supplier should annotate, within two business days,

existing marketing and sales databases with requests to be exempted from further sales contacts.

Regarding the concerns expressed by IRRC as to how the Commission will monitor and enforce these regulations, please see our discussion relating to §§ 111.1 and 111.3.

We will also delete language in subsection (f)(2) that is duplicative of language at § 111.7(b)(2)(i).

§ 111.10. Telemarketing.

RESA believes that subsections (a)(1) and (2) should be consolidated into one section with the burden of ensuring compliance for these non-Commission requirements to be left with the suppliers and their agents because “the Telemarketer Registration Act is within the jurisdiction of the Attorney General and is subject to change and interpretation by the Attorney General’s Office.” (RESA, p. 13.)

OCA/AARP recommends that subsection (b) should mirror the language of §111.9(d)(1) in that the agent should provide his first name and the supplier name he/she represents immediately after greeting the potential customer. Moreover, the agent should be required to provide the same information to the customer regarding agent identification as contained in the door-to-door regulations. Telephone agents should advise potential customers of who they specifically represent and clearly state they are not representing any other entity.

NEM and PEMC recognize the common telemarketing practice of an agent providing a fictitious name in order to protect the identity of the agent for security reasons. NEM requests that the Commission modify Subsection §111.10 (b) to permit

this practice to continue. PEMC agrees with NEM's request but would do so only if the fictitious name is directly assigned to a specific agent/individual.

IRRC notes that paragraphs (a)(1), (2) and (4) place in PUC regulation requirements under the Telemarketer Registration Act and asks if the PUC has established a Memorandum of Understanding with the Attorney General. The Commission should explain how it will enforce this provision. IRRC also recommends adding to subsection (b) the same or similar requirement for agent identification as paragraph 111.9(d)(1). Finally, IRRC notes that paragraph 111.9(d)(1) requires the door-to-door salesperson to "state he is not working for and is independent of the local distribution company or another supplier" and asks why isn't this included in subsection (b).

RESOLUTION

We agree with OCA/AARP and IRRC and will revise subsection (b) to substantially reflect the analogous language in § 111.9(d) so that the telemarketing agent will identify himself to the potential customer the same as a door-to-door agent would have to do. We decline to address the use of fictitious names in the regulation as requested by NEM and PEMC, but will note here that we agree with PEMC that the use of fictitious names is acceptable, but only if the fictitious name is attributable to a specific agent that can be identified if needed. In response to IRRC's and RESA's concerns about enforcing the state telecommunication laws that are cited in this section, we again note that the Commission has a long-standing MOU with the OAG. Under this MOU, the Commission can refer matters that come to the Commission's attention but are more appropriately handled by the OAG due to jurisdictional concerns. As the competitive energy market continues to evolve, additional regulations and enforcement mechanisms may be developed. Given this possibility, we decline to reference all of the applicable regulations. Referencing them also risks communicating the false impression that the

Commission is limited to just those regulations and enforcement methods that are referenced.

The OAG had concerns with the use of the word “intent” in paragraph (a)(4) and suggested the word “request” replace it. We have made this revision.

§ 111.11. Receipt of disclosure statement and right to rescind transaction.

RESA proposes that the phrase “and is not submitted to the verification process” be removed from subsection (a) as it would not be necessary if RESA’s proposed definition for “verification process” is adopted. This would be consistent with RESA’s suggested exclusion from verification process for non-agent transactions set forth in §111.7 (b). In addition, RESA recommends the last sentence of subsection (b) become new paragraph (c) because in addition to regular mail, a customer could receive a disclosure statement online or via electronic mail. RESA would add additional paragraphs (d) (online enrollment process) and (e) (electronic mail) that would create a rebuttable presumption of receipt of disclosure statement if the customer agrees to receive the disclosure statement in that fashion.

OCA/AARP has concerns about recent changes proposed by the federal government to the guaranteed delivery time of the United States Postal Service and this would make the three day rebuttable presumption language of subsection 111.11 (c) inappropriate. OCA/AARP suggests that the Commission consider removing the language or to extend the timeframe beyond three days.

IRRC notes that subsection 111.12(c) cross-references 52 Pa. Code §§ 54.5(d) and 62.75(d), which address disclosure statements and asks why these weren't cross-referenced in Section 111.11. Also, given that subsection (c) addresses receipt of a disclosure statement by mail, IRRC states that the regulation should also provide similar

requirements for electronic delivery of disclosure statements. (IRRC, p. 10.)

RESOLUTION

We agree with IRRC and will include references to the electric and gas disclosure regulations, 52 Pa. Code §§ 54.5 and 62.75. We also agree with IRRC and RESA about inserting language addressing the electronic provision of disclosures. However, we decline to modify the three-day mailing timeframe as requested by OCA/AARP. While we understand their concern with possible U.S. Postal Service changes to mail delivery, these possible changes are only speculative at this point. If the U.S. Postal Service makes changes in the future that could impact this timeframe, we can revisit the matter.

§ 111.12. Consumer protection.

CAC urges the Commission to adopt the language of §111.12 and to have the Commission maintain a “Do Not Call” list with respect to door-to-door solicitations. OCA/AARP urges the Commission to adopt the language of §111.12. OCA/AARP also asks that the provisions of the marketing guidelines at Guideline M(2)¹¹ be included in the regulations, possibly as part of § 111.12. IRRC makes this same point.

¹¹ Guideline M(2) states: 2. “Suppliers shall: a. Not engage in misleading or deceptive conduct as defined by State or Federal law, or by Commission rule, regulation or order; b. Not make false or misleading representations including misrepresenting rates or savings offered by the supplier; c. Provide the customer with written information about the products and services being offered, upon request, or with contact information (phone number, website address, etc.) at which information can be obtained[;] d. Provide accurate and timely information about services and products being offered. Such information shall include information about the rates being offered, contract terms, early termination fees and right of cancellation and rescission[;] e. Ensure that any product or service offerings that are made by a supplier contain information, verbally or written, in plain language that is designed to be understood by the customer. This includes providing written information to the customer in a language in which the supplier’s representative has substantive discussions with the customer or in which a contract is negotiated.” *See* Interim Guidelines, Annex A at 12.

RESA seeks clarification of the two separate issues of “rescission” and the federal “cooling off period.” RESA suggests that the language of subsection (c) include the qualifying language that the three-day right of rescission and the federal cooling off period may run concurrently.

RESOLUTION

We agree with OCA/AARP and IRRC and will include in this section the provisions section M(2) of the current Interim Guidelines. Per RESA’s request, we will include language clarifying that the three-day rescission period (*See* 52 Pa Code §§ 54.5 and 62.75) and the federal “cooling off” period can run concurrently. We decline to adopt CAC’s suggestion that the PUC maintain a list of customers who do not want door-to-door solicitations, similar do the telemarketing “Do Not Call” lists. These regulations provide for sufficient protections for consumers who object to door-to-door solicitations. This includes the provisions in Section 111.9 that require an agent to immediately leave the residence when requested and for suppliers to respect all requests not to be visited and documenting their marketing databases noting such requests. We again point out that many municipalities have ordinances restricting or even prohibiting door-to-door activity, and that these local ordinances must be followed.

§ 111.13. Customer complaints.

PEMC requests that the last sentence of §111.13 (b) include language that would allow the retrieval of the record be satisfied by “customer name, account number or any other effective means in order to obtain access to the information.” (PEMC, p. 10.). RESA recommends that subsection (d) include a sentence that would encourage a customer to contact the company to resolve a dispute prior to seeking assistance from the Commission. OCA/AARP urges the adoption of §111.13 without modification.

RESOLUTION:

We agree with PEMC and will add “or any other effective means in order to obtain access to the information” because how the information is retrieved is not important; just that it is retrievable. Concerning RESA’s suggestion that we encourage customers to first contact the company to resolve disputes before seeking assistance from the Commission, we note that the general practice of the Commission’s call center is to first refer the customer back to the company if they have not previously contacted the company about the disputed matter. However, we are reluctant to codify this practice because there are exceptions where this is not appropriate. For example, in cases of slamming, we do not think it is appropriate to force the customer to go back to the entity that allegedly slammed them, – in part because the customer may not even have contact information for said entity. Likewise, if the complaint includes allegations of egregious door-to-door marketing activities, – that is something Commission staff will want to hear about, and the customer should not simply be referred back to the company that is the subject of the allegations.

§ 111.14. Notification regarding marketing or sales activity.

OCA/AARP support the adoption of §111.14 (a) and (b) without modification.

Many parties representing suppliers and energy marketing associations disagree with the mandatory language contained in §111.14 (b) and (c). NEM notes that the proposed regulation differs from the guidelines in that it requires the supplier to provide the utility with information while the guidelines did not require this. NEM urges the Commission to reserve the decision to share this information with the utility to the supplier’s business discretion. While DES supports “encouraging” suppliers to provide information to EDCs, it believes that they should not be required to do so. DES believes that any such notification should occur no later than the morning of the commencement

of the marketing activities.

PEMC feels that the language of §111.14 (b) should be changed from “shall” to “shall be encouraged” to provide the information necessary to help utility customer service representatives understand who the supplier is and what the supplier does. (PEMC, p. 11.) RESA would change the word “shall” to “should” and have the local distribution company direct the customer to the appropriate supplier for information.

Concerning § 111.14 (c), some parties suggested that the proposed subsection may conflict with the Commission’s desire to encourage customer shopping. FES believes that “an EDC should not use customer contacts regarding supplier options to market its own price and terms unless that information is specifically requested by the customer during the call...any specific questions about supplier-related questions should be referred to the supplier [and] any questions about supplier choice should be referred to the Commission’s website at PAPowerSwitch.com.” (FES at 5)

OCA/AARP believes that proposed §111.14 (c) may conflict with an established Commission order set forth in the Retail Markets Investigation.¹² OCA/AARP notes that the programs being considered in the current Retail Markets Investigation require an EDC’s customer service representative (CSR) to explain the program to the customer and this would include EGS pricing under the program. OCA/AARP would include language in the subsection that would permit a distribution company to provide information regarding a supplier’s prices and terms when it was part of one of these programs.

FirstEnergy is also concerned with a possible conflict between § 111.14 and the referral programs that may result from the Commission’s orders in its Retail Markets

¹² See *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket Number I-2011-2237952, Order entered March 2, 2012.

Investigation. As such, FirstEnergy requests that the Commission include an exception in § 111.14 for calls related to an EDC's customer referral program.

IRRC notes that Subsection (a) requires a supplier conducting marketing or sales activities "that the supplier anticipates may generate phone calls and inquiries to the Commission" to notify the PUC's Bureau of Consumer Services. IRRC finds this requirement to be unclear and subjective and questions how it could be enforced. IRRC asks the Commission to review this provision and clarify its intent.

RESOLUTION

Supplier notification to utilities and to the PUC of their marketing efforts was a controversial and much-debated subject during the development of the *Interim Guidelines*, and that controversy continues into this rulemaking. Upon careful consideration of the comments, we are persuaded that the sweeping nature of the proposed rule is not appropriate or needed at this time. We also agree with IRRC that the proposal was somewhat subjective and would be difficult to enforce. We think a more careful, narrowly-targeted rule would be more objective, easier to enforce, and more effective in addressing our primary concerns. Our primary concern in promulgating these regulations is allowing the use of door-to-door marketing to sell energy services and making sure that public safety and privacy is protected and that consumers are receiving the information they need to make informed energy choices. Since our primary concern is door-to-door marketing, we will revise this section to require the notification of marketing activities to only door-to-door marketing activities.

Requiring suppliers to report this information to the Commission will assist the Commission in monitoring the amount of door-to-door activity and track any resulting complaints or concerns. This will also assist the Commission with enforcing the instant regulations. Commission staff will be able to compare the complaints concerning door-

to-door marketing efforts with the notices received by the Commission to make sure that the Commission is indeed being notified appropriately. Commission staff will also be able to use this information to respond to questions from local and state officials about activities going on in their communities. Notifying the local utility of their door-to-door activities is appropriate because it is likely that consumers, possibly out of confusion, may contact the utility about agents selling energy services. This narrower requirement is also more practical. With approximately thirty suppliers serving residential consumers in the PECO and PPL service territories alone, requiring notification of all marketing activities (phone, direct mail, internet, etc.) could overburden both the Commission and the utilities with notices. This risks creating an unmanageable burden, with important matters, such as door-to-door activities that should receive greater attention, being buried among a stack of less-urgent notices.

We agree with OCA/AARP and FirstEnergy, and have included an exception to paragraph (c) to make allowances for referral programs or any Commission-sanctioned program that requires utilities to discuss supplier rates and terms. Such programs may become part of the competitive landscape in the coming years and we want to ensure these regulations are flexible enough to accommodate them.

CONCLUSION

Accordingly, pursuant to sections 501, 504, 1501, 1504, 2206(b), 2208(b) and(e), 2807(d)(1) and 2809(b) and (e) of the Public Utility Code, 66 Pa. C.S. §§ 501, 504, 1501, 1504, 2206(b), 2208(b) and (e), 2807(d)(1) and 2809(b) and (e); sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 732.204(b); section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5; and section 612 of the Administrative Code of 1929, 71 P.S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231-7.234, the

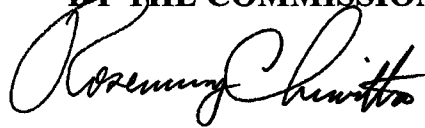
Commission proposes adoption of the final-form regulations establishing best practices for marketing and sales activities for electric and natural gas suppliers serving residential customers, as noted and set forth in Annex A; **THEREFORE,**

IT IS ORDERED:

1. That the Commission hereby adopts final regulations, 52 Pa. Code Chapter 111, by adding §§ 111.1--111.14 to read as set forth in Annex A.
2. That the Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
3. That the Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
4. That the Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by IRRC.
5. That the Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
6. That the regulations embodied in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

7. That the contact person for technical issues related to this rulemaking is Dan Mumford, Manager – Informal Compliance and Competition, Bureau of Consumer Services / Office of Competitive Market Oversight, (717) 783-1957. That the contact person for legal issues related to this rulemaking is Patricia Wiedt, Assistant Counsel, Law Bureau, (717) 787-5755. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: October 24, 2012

ORDER ENTERED: October 24, 2012

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart F. COMPETITIVE MARKETS

**CHAPTER 111. MARKETING AND SALES PRACTICES FOR THE
RETAIL RESIDENTIAL ENERGY MARKET**

§ 111.1. General.

The purpose of this chapter is to establish standards and practices for marketing and sales activities for EGSs and NGSs and their agents to ensure the fairness and the integrity of the competitive residential energy market. EGSs and NGSs and their agents shall comply with these standards and practices when engaged in sales and marketing activities involving residential customers. When these standards and practices do not address a specific situation or problem, the supplier shall exercise good judgment and use reasonable care in interacting with customers, ~~prospective customers~~ and members of the public.

§ 111.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

Act—Telemarketer Registration Act (73 P. S. §§ 2241—2249).

Agent—

~~(i)~~—A person who conducts marketing or sales activities, or both, on behalf of a ~~single~~ licensed supplier OR SUPPLIERS. The term includes an employee, a representative, an independent contractor or a vendor. IT ALSO INCLUDES SUBCONTRACTORS,

EMPLOYEES, VENDORS AND REPRESENTATIVES NOT DIRECTLY CONTRACTED BY THE SUPPLIER WHO CONDUCT MARKETING OR SALES ACTIVITIES ON BEHALF OF THE SUPPLIER.

~~—(ii) For NGSs, the term also includes "marketing services consultant" or "nontraditional marketer" as defined in § 62.101 (relating to definitions).~~

Commission—The Pennsylvania Public Utility Commission.

CUSTOMER: A NATURAL PERSON IN WHOSE NAME A RESIDENTIAL EDC, NGDC, EGS, OR NGS SERVICE ACCOUNT IS LISTED AND WHO IS PRIMARILY RESPONSIBLE FOR PAYMENT OF BILLS RENDERED FOR THE SERVICE.

Disclosure statement—A written disclosure of the terms of service between a supplier and a customer that satisfies the definition of "consumer contract" in section 3 of the Plain Language Consumer Contract Act (73 P. S. § 2203) containing information as required in, and developed consistent with, § 54.5 (relating to disclosure statement for residential and small business customers) for electric generation service and § 62.75 (relating to disclosure statement for residential and small business customers) for natural gas supply service.

Distribution company—An EDC or an NGDC.

Door-to-door sales—A solicitation or sales method whereby an agent proceeds randomly or selectively from residence to residence ~~without prior specific appointment.~~

EDC—Electric distribution company—The term as defined in 66 Pa.C.S. § 2803 (relating to definitions).

EGS—Electric generation supplier—The term as defined in 66 Pa.C.S. § 2803.

Electric generation service—Electricity and related services.

Energy service—Electric generation service or natural gas supply service.

~~*Marketing services consultant*—The term as defined in § 62.101~~

NGDC—Natural gas distribution company—The term as defined in 66 Pa.C.S. § 2202 (relating to definitions).

NGS—Natural gas supplier—The term as defined in 66 Pa.C.S. § 2202.

Natural gas supply services—The term as defined in 66 Pa.C.S. § 2202.

PUBLIC EVENT – AN EVENT IN A PUBLIC LOCATION WHICH MAY FACILITATE SALES AND MARKETING ACTIVITIES OR MAY RESULT IN A CUSTOMER ENROLLMENT TRANSACTION.

Sales AND MARKETING —The extension of an offer to provide services or products communicated orally, electronically or in writing to a customer.

Supplier—An EGS or an NGS.

Telemarketing—An activity, plan, program or campaign using one or more telephones that is conducted to induce customers to purchase goods or services. See section 2 of the act (73 P. S. § 2242), regarding definitions.

TRANSACTION – A PROCESS BY WHICH A CUSTOMER AUTHORIZES THE TRANSFER OF HIS OR HER ACCOUNT TO THE SUPPLIER.

TRANSACTION DOCUMENT – CONTRACTS AND FORMS USED BY A SUPPLIER TO ENROLL A CUSTOMER FOR SERVICE.

VERIFICATION – CUSTOMER VALIDATION OF HIS OR HER INTENT TO ENTER INTO A CONTRACT AND RECEIVE SERVICE FROM A SUPPLIER.

VERIFICATION PROCESS – AN ACTION VIA WRITTEN, AUDIO OR ELECTRONIC DOCUMENTATION BY WHICH A CUSTOMER VALIDATES HIS OR HER INTENT TO ENTER INTO A CONTRACT AND RECEIVE SERVICE FROM A SUPPLIER.

§ 111.3. Supplier liability for its agent.

(a) A supplier may use an agent to conduct marketing or sales activities in accordance with ~~Federal, State and municipal laws and~~ applicable Commission rules, regulations and orders.

(b) In accordance with § 54.43(f) (relating to standards of conduct and disclosure for licensees) for an EGS and § 62.114(e) (relating to standards of conduct and disclosure for licensees) for an NGS, a supplier is responsible for fraudulent, deceptive or other unlawful marketing ~~or billing~~ acts performed by its agent.

(c) Consistent with due process, for violations of ~~State and Federal law~~ committed by the supplier's agent, the Commission may:

- (1) Suspend or revoke a supplier's license.
- (2) Impose fines for fraudulent acts, violations of Commission regulations and orders.

§ 111.4. Agent qualifications and standards; criminal background investigations.

(a) A supplier shall ~~exercise good judgment in developing~~ DEVELOP standards and qualifications for individuals it chooses to hire as its agents, and may not hire an individual that fails to meet its standards.

(b) ~~Prior to hiring an individual who will be performing door-to-door marketing and sales activities, a supplier shall conduct criminal background investigations to determine if the individual presents a probable threat to the health and safety of the public.~~ A SUPPLIER MAY NOT PERMIT A PERSON TO CONDUCT DOOR-TO-DOOR SALES AND MARKETING ACTIVITIES UNTIL IT HAS OBTAINED AND REVIEWED A CRIMINAL HISTORY RECORD FROM THE PENNSYLVANIA STATE POLICE AND FROM EVERY OTHER STATE IN WHICH THE PERSON RESIDED FOR THE LAST 12 MONTHS. FOR A CURRENT EMPLOYEE OR AGENT WHO CONDUCTS SALES AND MARKETING ACTIVITIES, A SUPPLIER

MUST OBTAIN A CRIMINAL HISTORY RECORD NOT LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE OF THIS REGULATION.

(1) The criminal background investigation shall include checking the sex offender registry commonly referred to as the “Megan’s Law” registry maintained by the Pennsylvania State Police.

~~(2) There shall be a presumption that a person whose name is listed on the “Megan’s Law” registry presents a threat to the health and safety of the public.~~ A SUPPLIER MAY NOT HIRE A PERSON AS AN EMPLOYEE OR AN AGENT FOR DOOR-TO-DOOR MARKETING OR SALES WHO WAS CONVICTED OF A FELONY OR MISDEMEANOR WHEN THE CONVICTION REFLECTS ADVERSELY ON THE PERSON’S SUITABILITY FOR SUCH EMPLOYMENT.

(c) When a supplier contracts with an independent contractor or vendor to perform door-to-door activities, the supplier shall confirm that the contractor or vendor has performed criminal background investigations on its ~~employees and~~ agents in accordance with this section and with the standards set by the supplier.

§ 111.5. Agent training.

(a) A supplier shall ensure the training of its agents on the following subjects:

(1) State and Federal laws and regulations that govern marketing, telemarketing, consumer protection and door-to-door sales, including consumer protection regulations in Chapters 54 and 62 (relating to electricity generation customer choice; and natural gas supply customer choice) and applicable provisions in Chapters 56, 57 and 59 (relating to standards and billing practices for residential utility service; electric service; and gas service); AND PENNSYLVANIA’S TELEMARKETER REGISTRATION ACT.

(2) Responsible and ethical sales practices AS DESCRIBED IN THESE REGULATIONS.

(3) The supplier's products and services.

- (4) The supplier's rates, rate structures and payment options.
- (5) The customer's right to rescind and cancel contracts.
- (6) The applicability of an early termination fee for contract cancellation when the supplier has one.
- (7) The necessity of adhering to the script and knowledge of the contents of the script if one is used.
- (8) The proper completion of transaction documents.
- (9) The supplier's disclosure statement.
- (10) Terms and definitions related to energy supply, transmission and distribution service AS FOUND IN THE DICTIONARY OF UTILITY TERMS ON THE COMMISSION'S WEBSITE.
- (11) Information about how customers may contact the supplier to obtain information about billing, disputes and complaints.
- (12) THE CONFIDENTIALITY AND PROTECTION OF CUSTOMER INFORMATION AND THE REGULATIONS AT 52 PA. CODE § 54.43(D) (RELATING TO STANDARDS OF CONDUCT AND DISCLOSURE FOR LICENSEES) AND AT 52 PA. CODE § 62.114 (RELATING TO STANDARDS OF CONDUCT AND DISCLOSURE FOR LICENSEES).
 - (b) A supplier shall document the training of an agent and maintain a record of the training FOR 3 YEARS FROM THE DATE THE TRAINING WAS COMPLETED.
 - (c) A supplier shall make training materials and training records available to the Commission upon request. A supplier is not required to submit training materials and programs for advance Commission review and approval.
 - (d) When a supplier contracts with an independent contractor or vendor to perform marketing or sales activities on the supplier's behalf, the supplier shall confirm that the

contractor or vendor has provided SUPPLIER-APPROVED training to employees, agents and independent contractors in accordance with this section.

(e) The supplier shall monitor ~~a representative sample~~ of telephonic and door-to-door marketing and sales calls to:

(1) Evaluate the supplier's training program.

(2) Ensure that agents are providing accurate and complete information, complying with applicable rules and regulations and providing courteous service to customers.

§ 111.6. Agent compensation; discipline DISCIPLINE.

~~—(a) A supplier shall design its agent compensation program to ensure that it does not promote, encourage or reward behavior that runs counter to the practices established in this chapter and to the general obligation of fair dealing and good faith that a supplier should exercise when interacting with customers.~~

~~—(b) In developing internal agent discipline practices and procedures, a supplier shall incorporate the Commission's long-standing zero-tolerance policy~~ CONSIDER THE COMMISSION'S REGULATIONS regarding the unauthorized transfer of customer accounts AT 52 PA. CODE §§ 57.171 – 179 (RELATING TO STANDARDS FOR CHANGING A CUSTOMER'S ELECTRICITY GENERATION SUPPLIER) AND §§ 59.91 – 99 (RELATING TO STANDARDS FOR CHANGING A CUSTOMER'S NATURAL GAS SUPPLIER) and the violation of other consumer protections. A supplier shall consider the legal consequences faced by a supplier that fails to properly train and supervise its agents.

§ 111.7. Customer authorization to transfer account; transaction; verification; documentation.

(a) A supplier shall establish a WRITTEN, ORAL, OR ELECTRONIC transaction process for a customer to authorize the transfer of the customer's account to the supplier.

~~—(1) The process may include the following:~~

~~—(i) The formation of a written or oral contract when a customer knowingly authorizes the transfer of the customer's account to a supplier.~~

~~—(ii) The enrollment of a customer in a program when a customer knowingly authorizes, orally or in writing, the transfer of the customer's account to a supplier.~~

~~—(iii) The subscription of a customer to a program when a customer knowingly authorizes, orally or in writing, the transfer of the customer's account to a supplier.~~

(2)(1) A document used to complete a transaction shall include a means to identify, WHEN AN AGENT IS INVOLVED, the agent who completed the transaction and a notation indicating whether the transaction was the result of:

(i) A door-to-door call or other in-person contact with an agent.

(ii) A telephone contact with an agent.

(iii) A written document completed and mailed to a supplier by a customer outside the presence of, or without interaction with, an agent.

(iv) An electronic document completed and uploaded to a supplier's web site or e-mailed to a supplier by a customer outside the presence of, or without interaction with, an agent.

~~(3)~~(2) A supplier shall provide a copy of documentation used in a customer transaction to the Commission upon request.

(b) A supplier shall establish a process to verify a transaction that involved an agent. The process shall confirm that the customer authorized the transfer of the customer's account to the supplier. This subsection does not apply to a transaction that was completed solely by the customer as set forth in subsection (a)~~(2)~~(1)(iii) and (iv).

(1) A supplier may use a third party to verify transactions.

(2) The verification process shall be separate from the transaction process and initiated only after the transaction has been finalized.

~~(i) When verifying a transaction that resulted from an agent's in-person contact with a customer in a public location, the verification process shall be initiated only after the customer leaves the vicinity of the agent.~~

—(ii) When verifying a transaction that resulted from an agent's contact with a customer at the customer's residence, the verification process shall be initiated only after the agent has physically exited the customer's residence, UNLESS THE CUSTOMER AGREES THAT THE AGENT MAY REMAIN IN THE VICINITY OF THE CUSTOMER DURING THE VERIFICATION PROCESS. PRIOR TO INITIATING THE VERIFICATION PROCESS, THE AGENT SHALL INFORM THE CUSTOMER THAT THE AGENT WILL NOT BE IN THE VICINITY DURING THE VERIFICATION UNLESS THE CUSTOMER AGREES TO THE AGENT'S PRESENCE.

(3) A customer shall be informed of the 3-business-day right of rescission of the transaction under §§ 54.5(d) and 62.75(d) (relating to disclosure statement for residential and small business customers) AND THE CUSTOMER'S RIGHTS UNDER 73 P.S. § 201-7 (RELATING TO PENNSYLVANIA'S UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW) at the end of the verification process contact.

(4) A supplier shall maintain a record of a verification in a system that is capable of retrieving the record by customer name and customer account number for a period of time equivalent to at least six billing cycles to enable compliance with § 57.177 (relating to customer dispute procedures) for an EGS and § 59.97 (relating to customer dispute procedures) for an NGS.

(5) The verification record shall include the transaction documents and the following information:

- (i) The date that the transaction was completed.
- (ii) The name or identification number of the agent that completed the transaction.
- (iii) The date of the verification.

(iv) The name or identification number of the individual that conducted the verification.

(v) The results of the verification.

(vi) The date that the disclosure statement was provided to the customer and the method by which it was provided.

(6) A supplier shall provide copies of verification records to the Commission upon request.

(c) When a supplier is informed that a transaction could not be verified, the supplier shall contact the customer by telephone, e-mail or letter and explain that the transaction could not be verified. The supplier may offer assistance to correct the problem so that the transaction can be resubmitted to the verification process.

§ 111.8. Agent identification; misrepresentation.

(a) A supplier shall issue an identification badge to agents who conduct door-to-door activities or appear at public events. The badge must:

(1) Accurately identify the supplier, its trade name and logo.

(2) Display the agent's photograph.

(3) Display the agent's full name ~~and identification number in reasonably sized font.~~

(4) Be ~~visible at all times~~ PROMINENTLY DISPLAYED.

(5) DISPLAY A CUSTOMER-SERVICE PHONE NUMBER FOR THE SUPPLIER.

(b) Upon first contact with a ~~potential~~ customer, an agent shall identify the supplier that he represents. The agent shall state that he is not working for and is independent of the customer's local distribution company or other supplier. This requirement shall be fulfilled ~~either~~ by BOTH an oral statement by the agent ~~or~~ AND by written material provided by the agent.

(c) When conducting door-to door activities or appearing at a public event, an agent may not wear apparel or accessories or carry equipment that contains branding elements, including a logo, that are ~~deceptively similar to that of the local Pennsylvania distribution company~~ SUGGESTS A RELATIONSHIP THAT DOES NOT EXIST WITH ANY EDC, NGDC, GOVERNMENT AGENCY OR ANOTHER SUPPLIER.

(d) A supplier may not use the name, bills, marketing materials or consumer education materials of another supplier, ~~distribution company~~ EDC, NGDC or government agency in a way that suggests a relationship that does not exist.

(e) An agent of a supplier that is an affiliate of a distribution company shall comply with the rules regarding affiliate marketing in § 54.122 (relating to code of conduct) for an EGS and in § 62.142 (relating to standards of conduct) for an NGS.

(F) A SUPPLIER OR SUPPLIER AGENT MAY NOT SAY OR SUGGEST TO A CUSTOMER THAT UTILITY CUSTOMERS ARE REQUIRED TO CHOOSE A COMPETITIVE ENERGY SUPPLIER.

§ 111.9. Door-to-door sales.

(a) A supplier and its agents shall comply with local ordinances regarding door-to-door marketing and sales activities.

(1) A supplier shall limit door-to-door marketing or sales activities to the hours between 9 a.m. and 7 p.m. during the 6 months beginning October 1 and ending March 31, and to the hours between 9 a.m. and 8 p.m. during the months beginning April 1 and ending September 30. When a local ordinance has stricter limitations, a supplier shall comply with the local ordinance.

~~—(2) As a courtesy, a supplier shall notify the local municipal officials in advance of its schedule and the locations in which it intends to conduct door-to-door marketing and sales activities.~~

(b) A supplier and its agents shall comply with ~~State and Federal laws and regulations~~ that govern marketing, consumer protection and door-to-door sales including consumer protection regulations in Chapters 54 and 62 (relating to electricity generation customer choice; and natural gas supply customer choice) and the applicable provisions in Chapters 56, 57 and 59 (relating to standards and billing practices for residential utility service; electric service; and gas service).

(c) When conducting door-to-door sales or marketing activities, an agent shall display his identification badge issued by the supplier. The identification shall be ~~visible at all times~~ **PROMINENTLY DISPLAYED**.

(d) When engaging in door-to-door sales or marketing activities, an agent shall comply with the following:

(1) After greeting the ~~potential~~ customer, the agent shall immediately identify himself by name, the supplier the agent represents and the reason for the visit. The agent shall state that he is not working for and is independent of the local distribution company or another supplier.

(2) The agent shall offer a business card or other material that lists the agent's name, identification number and title and the supplier's name and contact information, including telephone number. This information does not need to be preprinted on the material. When the information is handwritten, it shall be printed and legible.

(e) When a customer's ~~English~~ language skills are insufficient to allow the customer to understand and respond to the information being conveyed by the agent, or when the customer or a third party informs the agent of this circumstance, the agent shall ~~find another agent who is fluent in the customer's language to continue the sales or marketing activity. If the agent cannot find another agent to help with translation, the agent shall terminate contact with the customer. The agent shall use translation services, electronic language translation devices and language identification cards only to identify the language spoken by the potential customer.~~

(f) When an agent completes a transaction with a customer, the agent shall:

(1) Provide a copy of each document that the customer signed or initialed relating to the transaction. A copy of these documents shall be provided to the customer before the agent leaves the customer's residence. If requested by the customer, a copy of the materials used by the agent during the call shall be provided to the customer as soon as practical.

(2) Explain the supplier's verification process to the customer ~~and that the verification process may not be initiated until after the agent has left the customer's residence.~~

(3) State that the supplier shall send a copy of the disclosure statement about the service to the customer after the transaction has been verified **IF THE DISCLOSURE STATEMENT HAS NOT BEEN PREVIOUSLY PROVIDED.**

(4) State that the customer may ~~cancel~~ **RESCIND** the transaction within 3 business days after receiving the disclosure statement.

(g) An agent shall immediately leave a residence when requested to do so by a customer or the owner or an occupant of the premises **OR IF THE CUSTOMER EXPRESSES NO INTEREST IN WHAT THE AGENT IS ATTEMPTING TO SELL.**

(h) A supplier shall comply with an individual's request to be exempted from door-to-door marketing and sales contacts and annotate its existing marketing or sales databases consistent with this request **WITHIN 2 BUSINESS DAYS OF THE INDIVIDUAL'S REQUEST.**

§ 111.10. Telemarketing.

(a) A supplier and its agents shall comply with ~~State and Federal laws and regulations~~ that govern marketing, consumer protection and telemarketing sales including consumer protection regulations in Chapters 54 and 62 (relating to electricity generation customer choice; and natural gas supply customer choice) and applicable provisions in Chapters

56, 57 and 59 (relating to standards and billing practices for residential utility service; electric service; and gas service).

(1) A supplier that is licensed by the Commission and engages in telemarketing is not required to register as a telemarketer under section 3(a) of the act (73 P. S. § 2243(a)), regarding registration requirement, but shall comply with other provisions of the act.

(2) An agent that contracts with a supplier to conduct telemarketing and sales activities on behalf of the supplier shall register as a telemarketer and comply with the act.

(3) A supplier and its agents shall comply with the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C.A. §§ 6101—6108) and 16 CFR Part 310 (relating to telemarketing sales rule).

(4) Customer consent to the release of customer information by the distribution company to the supplier to enable competitive solicitations does not constitute an express ~~intent~~ REQUEST to receive telephone solicitation calls. See section 5 of the act (73 P. S. § 2245), regarding unlawful acts and penalties. See the definition of "do not call list" in section 2 of the act (73 P. S. § 2242).

(b) An agent who contacts customers by telephone shall, ~~provide the agent's first name and state the name of the supplier on whose behalf the call is being made. The agent shall provide his identification number upon request by the customer.~~ AFTER GREETING THE CUSTOMER, IMMEDIATELY IDENTIFY HIMSELF BY NAME, IDENTIFY THE SUPPLIER THE AGENT REPRESENTS AND THE REASON FOR THE TELEPHONE CALL. THE AGENT SHALL STATE THAT HE IS NOT WORKING FOR AND IS INDEPENDENT OF THE LOCAL DISTRIBUTION COMPANY OR ANOTHER SUPPLIER. THE AGENT MAY NOT SAY OR SUGGEST TO A CUSTOMER THAT UTILITY CUSTOMERS ARE REQUIRED TO CHOOSE A COMPETITIVE ENERGY SUPPLIER.

(c) When an agent completes a transaction with a customer, the agent shall explain the supplier's verification process to the customer and state that the supplier will send a copy of the disclosure statement and other material about the service to the customer after the transaction has been verified. At the end of the telephone contact, the agent shall state that the customer may rescind the transaction within 3 business days after receiving the disclosure statement.

§ 111.11. Receipt of disclosure statement and right to rescind transaction.

(a) When a transaction is completed by a customer without the presence of or interaction with an agent and is not submitted to the verification process, a supplier shall provide the customer with a copy of its disclosure statement as soon as it is practical. A customer shall have the right to rescind the transaction within 3 business days after receiving the disclosure statement. SEE § 54.5(D) (RELATING TO DISCLOSURE STATEMENT FOR RESIDENTIAL AND SMALL BUSINESS CUSTOMERS) THAT APPLIES TO EGSS AND § 62.75(D) (RELATING TO DISCLOSURE STATEMENT FOR RESIDENTIAL AND SMALL BUSINESS CUSTOMERS) THAT APPLIES TO NGSS.

(b) After a transaction that involved an agent has been completed and verified, a supplier shall provide the customer with a copy of its disclosure statement. THE DISCLOSURE STATEMENT MAY BE PROVIDED IN-PERSON OR BY UNITED STATES MAIL. THE DISCLOSURE STATEMENT MAY BE PROVIDED ELECTRONICALLY IF THE CUSTOMER CONSENTS TO ELECTRONIC DELIVERY. A customer shall have the right to rescind the transaction within 3 business days after receiving the disclosure statement.

(c) There shall be a rebuttable presumption that a disclosure statement correctly addressed to a customer with sufficient first class postage attached shall be received by the customer 3 days after it has been properly deposited in the United States mail. IF DELIVERED IN-PERSON, THE DISCLOSURE SHALL BE CONSIDERED

RECEIVED BY THE CUSTOMER ON THE DATE OF DELIVERY. IF DELIVERED ELECTRONICALLY, THE DISCLOSURE SHALL BE CONSIDERED RECEIVED BY THE CUSTOMER ON THE DATE IT WAS TRANSMITTED ELECTRONICALLY.

§ 111.12. Consumer protection.

(a) A supplier and its agents may not discriminate in the provision of electric generation and natural gas as to availability and terms of service to a customer based on race, color, religion, national origin, sex, marital status, age, receipt of public assistance income and exercise of rights under the Consumer Credit Protection Act (15 U.S.C.A. §§ 1601—1693r) and 12 CFR Part 202 (relating to Equal Credit Opportunity Act (Regulation B)). This requirement is consistent with § 54.43(e) (relating to standards of conduct and disclosure for licensees) for EGSs and § 62.114(e) (relating to standards of conduct and disclosure for licensees) for NGSs.

(b) A supplier and its agents that engage in door-to-door marketing or sales shall comply with the Federal cooling-off period requirements. See 16 CFR Part 429 (relating to rule concerning cooling-off period for sales made at homes or at certain other locations).

(c) A supplier and its agents shall comply with the 3-business-day cooling off period requirement in § 54.5(d) (relating to disclosure statement for residential and small business customers) that applies to EGSs and § 62.75(d) (relating to disclosure statement for residential and small business customers) that applies to NGSs. THIS COOLING OFF PERIOD MAY RUN CONCURRENTLY WITH THE FEDERAL COOLING OFF PERIOD CITED IN SUBSECTION (B).

(D) A SUPPLIER SHALL:

(1) NOT ENGAGE IN MISLEADING OR DECEPTIVE CONDUCT AS DEFINED BY STATE OR FEDERAL LAW, OR BY COMMISSION RULE, REGULATION OR

ORDER.

(2) NOT MAKE FALSE OR MISLEADING REPRESENTATIONS INCLUDING MISREPRESENTING RATES OR SAVINGS OFFERED BY THE SUPPLIER.

(3) PROVIDE THE CUSTOMER WITH WRITTEN INFORMATION ABOUT THE PRODUCTS AND SERVICES BEING OFFERED, OR WITH INSTRUCTIONS FOR WHERE THE INFORMATION CAN BE OBTAINED.

(4) PROVIDE ACCURATE AND TIMELY INFORMATION ABOUT SERVICES AND PRODUCTS BEING OFFERED. INFORMATION SHALL INCLUDE RATES BEING OFFERED, CONTRACT TERMS, EARLY TERMINATION FEES AND RIGHT OF CANCELLATION AND RESCISSION.

(5) ENSURE THAT ANY PRODUCT OR SERVICE OFFERINGS MADE BY A SUPPLIER CONTAIN INFORMATION, VERBALLY OR WRITTEN, IN PLAIN LANGUAGE DESIGNED TO BE UNDERSTOOD BY THE CUSTOMER. THIS INCLUDES PROVIDING ANY WRITTEN INFORMATION TO THE CUSTOMER IN A LANGUAGE WHICH THE SUPPLIER'S REPRESENTATIVE HAS HAD SUBSTANTIVE DISCUSSIONS WITH THE CUSTOMER OR IN WHICH A CONTRACT IS NEGOTIATED.

§ 111.13. Customer complaints.

(a) A supplier shall investigate customer inquiries, disputes and complaints concerning marketing or sales practices. The supplier shall cooperate with the Commission and other government agencies that are investigating complaints about marketing or sales practices prohibited by State and Federal laws and with local law enforcement officials that are investigating complaints about violations of local municipal law.

(b) A supplier shall implement an internal process for responding to and resolving customer inquiries, disputes and complaints. The process shall document as a record the customer inquiry, dispute or complaint, subsequent communications between the supplier and the customer, and the resolution of the inquiry, dispute or complaint. A supplier shall

retain the record for a time period equivalent to six billing cycles in a system capable of retrieving that record by customer name and account number OR BY ANY OTHER EFFECTIVE MEANS TO OBTAIN ACCESS TO THE INFORMATION.

(c) The internal process shall comply with the applicable dispute regulations including:

- (1) Section 54.9 (relating to complaint handling process).
- (2) Section 56.141 (relating to dispute procedures).
- (3) Section 56.151 (relating to general rule).
- (4) Section 56.152 (relating to contents of the public utility company report).
- (5) Section 57.177 (relating to customer dispute procedures).
- (6) Section 59.97 (relating to customer dispute procedures).
- (7) Section 62.79 (relating to complaint handling process).

(d) A supplier shall provide a single contact and a list of designated escalation contacts for the Commission staff to access to address consumer inquiries and resolve complaints.

§ 111.14. Notification regarding marketing or sales activity.

(a) When a supplier engages in DOOR-TO-DOOR ~~marketing or sales~~ AND MARKETING activity ~~that the supplier anticipates may generate phone calls and inquiries to the Commission~~, the supplier shall notify the Bureau of Consumer Services no later than the morning of the day that the activity shall begin. The notification shall include general, nonproprietary information about the activity, the period involved and a general description of the geographical area.

(b) A supplier shall provide the local distribution company with general, nonproprietary information about the DOOR-TO-DOOR ~~marketing or sales~~ AND MARKETING activity that caused the supplier to provide notice to the Commission in

accordance with subsection (a). The supplier shall provide this general information to the distribution company no later than the morning of the day that the ~~marketing or sales~~ AND MARKETING activities begin. The distribution company shall use this information only for acquainting its customer service representatives with ~~marketing or sales~~ AND MARKETING activity occurring in its service territory so that they may knowledgeably address customer inquiries. Consistent with § 54.122 (relating to code of conduct) for an EDC and § 62.142 (relating to standards of conduct) for an NGDC, a distribution company may not use the information for other purposes.

(c) In responding to a customer inquiry about price and service, a distribution company may provide information about its own price and terms but shall refer the customer to the supplier for questions about the supplier's prices and terms. THIS SUBSECTION DOES NOT APPLY IN THE CONTEXT OF A COMMISSION-APPROVED PROGRAM THAT REQUIRES A DISTRIBUTION COMPANY TO PROVIDE INFORMATION ABOUT A SUPPLIER'S PRICES AND TERMS.

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**COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

DATE: March 5, 1998

SUBJECT: Executed Memorandum of Understanding with the Office of Attorney General (Our Q&A 97.0117.2)

TO: John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
John Hanger, Commissioner
David W. Rolka, Commissioner
Nora Mead Brownell, Commissioner
Barbara Bruin, Executive Director

FROM: Carl S. Hisiro, Assistant Counsel *CSH*

Attached is a copy of the fully executed Memorandum of Understanding ("MOU") between the Public Utility Commission and the Office of Attorney General for your records. This MOU develops interagency protocol procedures for handling terms-of-service and electric competition complaints resulting from the deregulation of the electric generation market.

Attachment

cc: Veronica Smith, Deputy Executive Director
Bohdan R. Pankiw, Acting Chief Counsel
Karen Moury, Deputy Chief Counsel
Mitchell A. Miller, Director, BCS
Donald H. Muth, Director, FUS
David Lewis, BCS
Kevin F. Cadden, Communications
Phyllis Zitzer

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING is made this 5th day of February 1998, by and between the Pennsylvania Office of Attorney General (herein "OAG") and the Pennsylvania Public Utility Commission (herein "PUC").

WHEREAS, on December 3, 1996, Governor Tom Ridge signed into law the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801-12 (herein "Electricity Competition Act"). The purpose of the Electricity Competition Act is to open up competition in the electric utility industry by giving all retail customers the ability to buy electric generation from their choice of electric generation suppliers.

WHEREAS, section 2809 of the new law gives the PUC the authority to license electric generation suppliers and section 2811 empowers the PUC to monitor the supply and distribution of electricity to retail customers to prevent anticompetitive or discriminatory conduct, and to prevent the unlawful exercise of market power.

WHEREAS, section 2811 also gives the PUC authority to conduct investigations, upon complaint or its own motion, and to refer its findings to the OAG or appropriate federal agencies whenever it has reason to believe that "anticompetitive or discriminatory conduct, including the unlawful exercise of market power is preventing the retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market."

WHEREAS, the potential now exists for electric generation suppliers to engage in unfair or deceptive marketing practices and other anticompetitive or discriminatory conduct, the PUC adopted internal procedures for handling electric competition complaints under section 2811, including appropriate referral procedures, which became effective August 8, 1997.

WHEREAS, both the PUC and the OAG recognize that other disputes related to terms, conditions and adequacy of service of a contractual nature often involve dual jurisdiction between the PUC under its service standards provision contained in 66 Pa. C.S. § 1501, and the OAG under Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1-209-6, the Plain Language Consumer Contract Act, 72 P.S. §§ 2201-12, and the Federal Trade Commission Act, 15 U.S.C. §§ 41-58.

WHEREAS, the OAG has enforcement authority under Pennsylvania's Unfair Trade Practices and Consumer Protection Law and the federal antitrust laws, 15 U.S.C. §§ 1, *et seq.*, to challenge unfair or deceptive marketing practices, terms-of-service provisions, and other anticompetitive or discriminatory conduct engaged in by electric generation suppliers.

WHEREAS, for both terms, conditions and adequacy of service complaints and section 2811 complaints, the PUC has authority under the Public Utility Code, 66 Pa. C.S. §§ 101, *et seq.*, to initiate proceedings to develop guidelines, policy statements or regulations to address an industry-wide issue

or to file a section 701 complaint seeking a cease and desist order (or any other relief authorized by law) where more immediate and company-specific action is warranted.

WHEREAS, it would be mutually advantageous for the PUC and the OAG to develop interagency protocol procedures to maximize the ability of the OAG to obtain effective and adequate relief on behalf of consumers who have been injured by violations of the state consumer protection or federal antitrust laws and the PUC to develop, in appropriate cases, guidelines, policy statements or regulations to address industry-wide problems or obtain cease and desist orders for specific violations of the Public Utility Code.

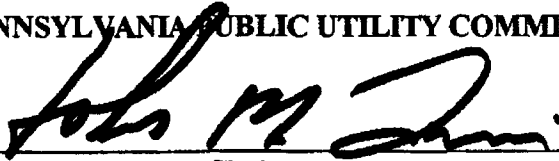
NOW, THEREFORE, the PUC and the OAG agree that the following protocol shall apply whenever the PUC or the OAG receive a complaint alleging unfair or deceptive marketing practices, terms-of-service disputes, or other anticompetitive or discriminatory conduct engaged in by electric generation suppliers.

1. The agency that receives the original complaint will endeavor to complete its initial review in a prompt and timely manner.
2. At the completion of its initial review, the reviewing agency shall refer the complaint and its findings to the other agency for review and possible action if the original reviewing agency believes that the matter complained of is within the authority and jurisdiction of the other agency.
3. The PUC and the OAG agree to provide each other with periodic status reports, as appropriate, of any investigation begun because of a referral pursuant to this protocol procedure, including a final report when the investigation is completed or closed.
4. The PUC and OAG agree to meet informally on a quarterly basis to discuss matters of common interest and to share statistical information or data and/or activity reports generated by either agency summarizing terms-of-service and/or electric competition complaints handled by that agency during the applicable reporting period.
5. In referring complaints or providing status reports to the other agency, the investigating agency should not disclose any information that is protected by a confidentiality agreement, order, or law unless a waiver has been obtained from the party protected by the agreement, order, or law.
6. Nothing in this protocol shall require or prohibit either the PUC or the OAG from initiating any informal or formal action at the conclusion of its own investigation that it would be authorized to bring under any existing law.
7. Nothing in this protocol shall require, prohibit, or otherwise restrict the PUC's Bureau of Consumer Services from continuing to handle individual complaints concerning account eligibility criteria, credit and deposit practices, account billing, and termination disputes consistent with the existing policies and procedures set out in Chapter 56 of the Pa. Code, Title 52.

8. Nothing in this protocol shall require, prohibit, or otherwise restrict the OAG from continuing to handle individual complaints concerning unfair trade practices, consumer protection law violations, or antitrust law violations.

This agreement may be modified or terminated only upon written agreement of the PUC and the OAG.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

By: 
John M. Quain, Chairman

2-9-98
Date

By: 
Robert K. Bloom, Vice Chairman

2-24-98
Date

By: 
John Hanger, Commissioner

2-9-98
Date

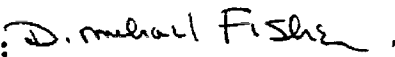
By: 
David W. Rolka, Commissioner

2-9-98
Date

By: 
Nora Mead Brownell, Commissioner

2/9/98
Date

PENNSYLVANIA OFFICE OF ATTORNEY GENERAL

By: 
D. Michael Fisher, Attorney General

February 5, 1998
Date

The undersigned have reviewed and approved the foregoing Memorandum of Understanding:

COUNSEL, PUBLIC UTILITY COMMISSION

By: *J. F. Poulantzas*

2/5/98
Date

COMPTROLLER, PUBLIC UTILITY COMMISSION

By: *Debra Chernoff*

3/4/98
Date



COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION
400 NORTH STREET
HARRISBURG, PA 17120

April 11, 2013

ROBERT F. POWELSON
CHAIRMAN

The Honorable Silvan B. Lutkewitte, III
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown II
333 Market Street
Harrisburg, PA 17101

**Re: L-2010-2208332/57-283 Final Rulemaking Re Marketing and Sales
Practices for the Retail Residential Energy Market,
52 Pa. Code, Chapter 111**

Dear Chairman Lutkewitte:

Enclosed please find one (1) copy of the regulatory documents concerning the above-captioned rulemaking. Under Section 745.5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission, on October 11, 2011, submitted a copy of the Notice of Proposed Rulemaking to the Senate Consumer Protection and Professional Licensure Committee, the House Committee on Consumer Affairs and the Independent Regulatory Review Commission (IRRC). This notice was published at 41 *Pa.B.* 5624 on October 22, 2011. The Commission also provided the Committees and IRRC with copies of all comments received in compliance with Section 745.5(b.1).

In preparing this final form rulemaking, the Commission has considered all comments received from the Committees, IRRC and the public.

Sincerely,


Robert F. Powelson

Enclosures

pc: The Honorable Robert M. Tomlinson
The Honorable Lisa Boscola
The Honorable Robert Godshall
The Honorable Peter J. Daley, II
Legislative Affairs Director Perry
Chief Counsel Pankiw
Assistant Counsel Wiedt
Mr. Mumford
Regulatory Coordinator DelBiondo

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-2010-2208332/57-283

Subject: Final Rulemaking Re Marketing and Sales Practices
for the Retail Residential Energy Market

Pennsylvania Public Utility Commission

2013 APR 11 AM 11:04

RECEIVED
IRRC

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted.
- Final Regulation
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REPORT

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
4/11/13	<i>S. Guffet</i>	HOUSE COMMITTEE (Godshall) Consumer Affairs
4/11/13	<i>Mary Walmer</i>	SENATE COMMITTEE (Tomlinson) Consumer Protection and Professional Licensure
4/11/13	<i>K. Cooper</i>	Independent Regulatory Review Commission Attorney General
		Legislative Reference Bureau