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PENNSYLVANIA CONSUMER ADVISORY COUNCIL COMMENTS TO PROPOSED  
RULEMAKING ORDER ON MARKETING AND SALES PRACTICES  
Docket L-2010-2208332

**A. GENERAL**

**1. These comments deal only with Proposed Rulemaking  
Section 111.9 – Door-to Door Sales.**

**Door-to-door sales of electric generation and natural gas  
utility service should be prohibited.**

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The Consumer Advisory Council ("CAC") submitted prior Comments to the Pennsylvania Public Utility Commission regarding the adoption of interim Marketing Guidelines and continues to strongly urge the Commission to conclude that door-to-door sales of electric generation and natural gas utility service constitute "unsafe, inadequate and unreasonable service." As discussed in more detail below, the CAC reiterates its conviction that door-to-door sales are fraught with danger for many consumers. Moreover, unlike the objective and balanced information available through the PUC powerswitch.com and OCA web sites, door-to-door sales are designed to provide consumers with inadequate information to make an informed purchase decision. These important safety and information issues alone continue to make door-to-door sales of electric generation and natural gas utility service unreasonable. Consequently, this Commission should reconsider its determination to permit the use of this marketing and sales technique and conclude that door-to-door sale of such utility service should be prohibited.

**2. The sale of utility service door-to-door does not enable  
consumers to make real "informed and comparative"  
purchase decisions.**

As of December 20, 2011, the PA Power Switch web site of the Pennsylvania Public Utility Commission reports that 1,459, 010

Pennsylvanian's have already switched electric generation suppliers.<sup>1</sup> This number has dramatically grown since electric rate caps have expired and continues to increase daily. In addition, the PA Power Switch web site provides consumers with immediate information concerning such topics as: How to choose; How to find a supplier; and, what to ask.<sup>2</sup> In addition, the Natural Gas Choice section of the PA PUC web site provides consumers with information concerning how to shop for natural gas service, pricing information and the names of suppliers in Pennsylvania.<sup>3</sup>

Similarly, the web site of the Pennsylvania Office of Consumer Advocate makes available to consumers a "Residential Consumer's Shopping Guide" for electric supply service which discusses "how to shop" and provides information concerning the "price to compare" for use in evaluating each offer from an electric generation supplier.<sup>4</sup> The OCA also offers a Residential Consumers Natural Gas Shopping Guide which discusses how to shop for natural gas and compare prices for gas suppliers in each major natural gas utility service territory.<sup>5</sup>

It is important to note that the above information is made available to consumers online and are provided to consumers in written form in response to a telephone request. These currently available resources objectively educate consumers regarding the process of selecting electric and natural gas suppliers and provide precisely the type of information necessary to make "informed and comparative purchase decisions."

This Commission should conclude that the process of door-to-door sales contravenes the important consumer education efforts engaged in by the PUC and the OCA. Unless electric generation and natural gas suppliers agree to replicate the work of these agencies

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<sup>1</sup> <http://www.papowerswitch.com/>

<sup>2</sup> Id..

<sup>3</sup> <http://www.puc.state.pa.us/utilitychoice/whatis.aspx?ut=nc>

<sup>4</sup> <http://www.oca.state.pa.us/Industry/Electric/elecomp/ElectricGuides.htm>

<sup>5</sup> [http://www.oca.state.pa.us/Industry/Natural\\_Gas/Default.htm](http://www.oca.state.pa.us/Industry/Natural_Gas/Default.htm)

at the door of residential consumers, such sales are inherently biased toward one supplier, will not provide consumers with the same level of detail made available by these agencies, and will limit a consumer's opportunity for reflection and consideration of the information they receive at their door. Unlike some other goods and services sold door-to-door, the CAC submits that electric and natural gas service are so essential and fundamental to the life of residential consumers and families that the selection process for electric and natural gas service suppliers must be an "informed and comparative purchase decision."

**3. Consumers, particularly elderly, infirm and uneducated consumers, may be victimized through door-to-door sales by unfair and deceptive trade practices.**

Unlike online sales, telephone sales, mail order sales and in-store sales of goods and services, door-to-door sales are fundamentally different because a stranger enters the property, or home, of a residential consumer for the purpose of making a sale. The CAC submits that the sale of electric generation and natural gas utility service door-to-door requires greater regulation than other any sales methods because of the "physical invasion" of consumer privacy which results from door-to-door sales. This physical invasion of privacy creates an increased risk of physical harm to consumers and a greater likelihood that elderly, infirm and uneducated consumers may become victims.

The Pennsylvania Legislature has recognized the special nature of sales to consumers at their residence in the Unfair Trade Practices and Consumer Protection Law by providing for a 3 day right to cancel such contracts and requiring that consumers be provided with written notice of their right to cancel.<sup>6</sup> Moreover, the Act requires that the written right to cancel be in the same language as that principally used in the sales presentation.<sup>7</sup>

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<sup>6</sup> Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-7(a)

<sup>7</sup> 73 P.S. §§ 201-7(b).

In the experience of Members of the CAC<sup>8</sup>, door-to-door sales often target the elderly. There have been several reported cases of misrepresentation by some door-to-door sales person. Tactics have been confusing; in many cases, causing residents to believe that they had been approached by the default utility provider.

Elderly residents are perceived by many as vulnerable and easier to persuade. While the sale of electric supply and natural gas services may be distinguishable from most traditional door-to-door sales, solicitors for these services will invariably perceive the same vulnerability, and may take advantage of it. The CAC is extremely concerned that the elderly, infirm and uneducated consumers may be victimized through door-to-door sales through the use of unfair and deceptive trade practices. We encourage this Commission to adopt the one position which avoids this possibility and prohibit door-to-door sales of electric supply and natural gas utility service.

**4. If door-to-door sales of electric generation and natural gas utility service are authorized by the PA PUC, they should be limited to consumers who specifically request such solicitations.**

Unwanted door-to-door solicitations can be a nuisance and an intrusion upon the privacy of consumers at home. In 2002, Pennsylvanians were given the opportunity to avoid telemarketing calls at home for the same reasons by registering on the PA Do Not Call list. In fact, one million citizens registered in a single two-week period that year, and millions more have registered through the past few years.<sup>9</sup> These statistics illustrate the sentiment of millions of PA residents in opposition to telephone solicitations which invade the sanctity of the home. The CAC submits that the negative public response to this Commission's authorization of more serious physical intrusions upon their privacy – through door-to-door sales, will be greater.

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<sup>8</sup> As you know, the CAC includes appointed Members representing the PA Department of Aging, the Dollar Energy Fund, the West Philadelphia Coalition of Neighborhoods and Businesses, The Pennsylvania Utility Law Project, the International Brotherhood of Electrical Workers, the PA Legislature, Academia, Business and more.

<sup>9</sup> <http://www.attorneygeneral.gov/dnc.aspx>

Consequently, the CAC continues to recommend that if this Commission determines that door-to-door sales of electric supply and natural gas service will be permitted, Section 111.9 should specifically limit that practice only to those residential consumers who affirmatively authorized such contact.

## **B. BACKGROUND CHECKS**

### **1. Criminal record background checks should be required of all persons who solicit door-to door.**

As noted above, door-to-door sales are a physical invasion upon the property and privacy of consumers. If such sales practices are authorized, all such sales persons should have criminal record background checks conducted before being permitted to conduct such sales.

### **2. Evidence of convictions of felony offenses or any offenses involving sexual abuse or sexual misconduct should prohibit a person from conducting door-to-door sales.**

Should this Commission determine that criminal background checks be required for door-to-door sales, the CAC continues to recommend that persons convicted of felony offenses, or any offenses involving sexual abuse or sexual misconduct, be prohibited from conducting door-to-door sales of electric generation and natural gas utility service. The rationale for this requirement is simple: in order to insure that utilities provide "safe" service, the Commission must not permit utilities to send convicted felons or persons convicted of sexual offenses to solicit consumers at their homes.

### **1. Management, administration and all fees associated with background checks should be the responsibility of the utility company.**

Should this Commission authorize the door-to-door sale of electric generation and natural gas utility service, it may be contemplated that utility companies will conduct such activity through independent contractors. Under all circumstances, this Commission should make it clear that the utility is responsible for the management, administration and payment of fees associated with the conduct of background checks and for ensuring that only qualified individuals engage in door-to-door sales on their behalf.

Section 111.3. Supplier liability for its agent, addresses this issue. This section states that a supplier, defined to include an EGS or a NGS, may use agents to conduct marketing or sales activities in accordance with federal, state and municipal law, and applicable commission rules, regulations and orders. Referencing section 54.43(f) and section 62.114(e), relating to standards of conduct for licensees for EGSs and NGSs respectively, it discusses a supplier's liability for the actions of its employees, agents and representatives and imposition of possible penalties, including the suspension or revocation of a supplier's license. This proposed regulation is based on Interim Guideline A.

The CAC supports this section and requests that it be adopted as stated.

### **C. MONITORING/QUALITY CONTROL**

#### **1. Verification of sales transactions must be conducted without the sales agent present.**

The purpose of sales verification is to confirm that the consumer understands what they have purchased before a sale is completed. Should the Commission authorize the door-to-door sale of electric generation and natural gas utility service, the CAC recommends that independent third-party verification of sales transaction be required, without the sales agent present, before a sale can be completed. Verification by an independent third party can reduce the likelihood of unfair trade practices being used on consumers. Moreover, such

verification is most likely to be independent and free from influence if the sales agent is not present.

The CAC recommends that the safeguards recommended above be incorporated into Section 111.7 of the Rulemaking which addresses these issues.

D. **APPEARANCE & IDENTIFICATION/MISREPRESENTATION** Should the Commission authorize the door-to-door sale of electric generation and natural gas utility service:

1. The PA PUC should make it clear that the PA Unfair Trade Practices and Consumer Protections Law applies to all door-to-door sales of electric generation and natural gas utility service.
2. Picture identification cards should be issued by utilities with utility logos.
3. Utilities engaged in these sales practices should be required to have a publicly available number or method for consumers to verify that the person soliciting at their door is legitimate.
4. Persons engaged in door-to-door sales on behalf of utilities, regardless to whether they are employees or independent contractors, should be salaried – not on the Commission.
5. As a part of the door-to-door transaction, Solicitors should be required to direct consumers to the PUC and OCA resources discussed in Section A2 above to secure genuine comparisons.

The CAC recommends that the safeguards recommended above be incorporated into Section 111.8 of the Rulemaking which addresses these issues.

E. **FEDERAL, STATE & LOCAL LAWS** Should the Commission authorize the door-to-door sale of electric generation and natural gas utility service:

1. Compliance with PA and Federal "Do Not Call Laws" must be required

2. Compliance with state and local door-to-door sales laws must be required.
3. Compliance with state and federal Unfair Trade Practices laws must be required.

Consumer protection. Section 111.12 of the proposed Rulemaking incorporates these safeguards and the CAC strongly recommends its

#### **F. NO CALL/VISIT LIST**

1. **Consumers should have the opportunity to advise through the PUC and current utility that they do not wish to be visited door-to door.**

The experience of the Pennsylvania Office of Attorney General with the telemarketing Do Not Call list should be instructive for this Commission. As mentioned above, in 2002 Pennsylvania's were given the opportunity to avoid telemarketing calls at home by registering on a Do Not Call list with the Attorney General and one million Pennsylvania's did so in a two week period, and millions more have done so since.<sup>10</sup> Because unwanted door-to-door solicitations present a similar nuisance and constitute a physical intrusion upon the property, privacy and quiet enjoyment of consumers a consumer's home, Pennsylvania consumer should, at least, be given the same opportunity to say "Do Not Visit" my home by registering on a similar list.

Should the Commission authorize the door-to-door sale of electric generation and natural gas utility service, the CAC proposes that the Commission's Bureau of Consumer Services serve as a central repository for such a list and that every utility company engaged in door-to-door be required to utilize such lists. Further, the CAC proposes that BCS handle consumer complaints regarding solicitations conducted in disregard of the list as they currently do with other consumer and utility disputes.

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<sup>10</sup> <http://www.attorneygeneral.gov/dnc.aspx>



Further, in recognition of safety concerns, solicitors should be prohibited from leaving materials such as door hangers or literature at the residence of consumers who are not at home, or fail to respond to a call. Leaving such information may provide others with evidence that no one is at home and create greater risk of harm for consumers.

**2. Consumers should not have their information provided to existing utility shared with anyone who they have not specifically authorized to receive it.**

It is almost intuitive that consumers who sign up for utility service, and provide personal information to the utility, do so for that particular purpose alone. It is also difficult to believe, with strong evidence, that consumers automatically agree to the dissemination of their personal identification information and/or usage data, without their knowledge and express consent. Notwithstanding the arguments in favor of competition and creating a "level playing field", the CAC urges this Commission not to replace its consent, or that of the utilities, with that of the consumer owner of such information.

Should the Commission authorize the door-to-door sale of electric generation and natural gas utility service, the CAC strongly recommends that consumers be permitted to direct their existing utilities not to share any of their personal identification information, usage data or other information with anyone they have not specifically authorized to receive such information.

Respectfully Submitted,  
FOR: The Pennsylvania Public Utility Commission  
Consumer Advisory Council



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Timothy B. Hennessey, Chairman