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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Rulemaking Re: Marketing and Sales :
Practices for the Retail Residential Energy : Docket No. L-2010-2208332
Market :

COMMENTS
OF THE
OFFICE OF CONSUMER ADVOCATE
AND AARP

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I. INTRODUCTION

On February 10, 2011, the Pennsylvania Public Utility Commission (Commission or PUC) issued a Proposed Rulemaking Order on Marketing and Sales Practices for the Retail Residential Energy Market (Rulemaking Order) at Docket No. L-2010-2208332. The Order was published in the Pennsylvania Bulletin on October 22, 2011, wherein comments from interested parties were requested. See 41 Pa.B. 5624.

Prior to entering the Rulemaking Order, on July 16, 2010, the PUC entered a Tentative Order with Proposed Interim Guidelines applicable to the marketing and sales practices of electric generation suppliers (EGSs) and natural gas suppliers (NGSs). See Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers, Docket No. M-2010-2185981, Tentative Order (July 16, 2010) (Tentative Order). The Commission and Staff developed the Proposed Interim Guidelines in response to concerns about consumers being exposed to unfamiliar marketing strategies and sales techniques. Tentative Order at 2. The Commission noted that one particular sales technique, door-to-door sales, had created confusion for some customers who have contacted the Commission with their concerns. Id. Because of the on-going concerns of consumers and the Commission, the Commission tasked the Committee Handling Activities for Retail Growth in Electricity (CHARGE Working Group) with developing marketing guidelines regarding door-to-door sales. Tentative Order at 4.

Several suppliers, EDCs and advocacy groups, including the Office of Consumer Advocate (OCA) and AARP, filed Comments and Reply Comments to the Tentative Order.¹ On November 5, 2010, the Commission entered a Final Order announcing Interim Guidelines on Marketing and Sales Practices for Suppliers. See Interim Guidelines on Marketing and Sales

¹ The OCA filed joint Comments and joint Reply Comments with AARP and Dominion Retail to the Tentative Order which will be referred to herein as the OCA/AARP/Dominion Retail Comments.

Practices for Electric Generation Suppliers and Natural Gas Suppliers, Docket No. M-2010-2185981, Final Order (Nov. 5, 2010) (Interim Guidelines).

As the Commission considers this rulemaking, the OCA and AARP (hereinafter OCA/AARP) again join to reiterate their concerns about the use of door-to-door marketing as a method of selling essential energy services.² As set forth in the prior OCA/AARP/Dominion Retail Comments:

Shopping for energy supply requires thoughtful consideration of a wide range of information, including information about prices, individual customer usage patterns, other available offers, default service prices, potential termination fees, and the length of contracts in the face of price volatility. A door-to-door sales contact, where the customer may not have ready access to the necessary information for making an informed choice, and may feel pressured to make a quick decision in light of a sales agent standing in their door or home, could result in customers making less than optimal choices about their energy supply. This concern is heightened even further when door-to-door sales techniques are used with senior citizens or vulnerable customer populations. Making an informed choice is critical for these customers as the potential for getting locked into a contract that becomes unaffordable is not merely an annoyance, but a matter of their own health and safety if they are unable to pay their energy bill and face termination of service. The quarterly changing price to compare, and the potential for more complex rate structures as smart metering technology is deployed in Pennsylvania, heighten these concerns.

See OCA/AARP/Dominion Retail Comments to Tentative Order at 1-2.

Customer confusion and the potential for fraud or abuse in the door-to-door sales contact have been borne out in other states where this sales technique has been used. For example, in

² When this Rulemaking Order was issued, Vice Chairman Tyrone J. Christy invited comment from interested parties about whether door-to-door marketing is a valid marketing strategy that should be permitted by the Commission. See Rulemaking Order at 10, Statement of Vice Chairman Tyrone J. Christy.

Illinois, AARP joined with the Illinois Citizens Utility Board (CUB)³ in filing a complaint against a marketer related to door-to-door sales practices. The Illinois Commerce Commission and CUB had received approximately 5,630 complaints alleging various forms of misrepresentation by the sales agents for the marketer, including allegations that the sales agents were switching customers without authorization, were representing that they were from the utility, were providing misleading or incomplete information, and were taking advantage of non-English speaking or elderly customers who did not understand the transaction. Citizens Utility Board, Citizen Action/Illinois, and AARP's Complaint Against Illinois Energy Savings Corp. D/B/A U.S. Energy Savings Corp., Case No. 08-0175, Order (Apr. 13, 2010).

The OCA/AARP submit that while there is always a potential for fraud and sales abuses, these practices can be particularly prevalent in hard-sell door-to-door solicitations as has been seen in other states. The OCA/AARP commend the Commission for its efforts to find a way to allow door-to-door sales while addressing the concerns with such a sales technique.

In general, the OCA/AARP support these Proposed Regulations, with some proposed modifications as outlined in these Comments. The Proposed Regulations set forth specific standards and requirements to help guard against the problems encountered in other states. The OCA/AARP submit, though, that the Proposed Regulations could be strengthened in some areas and could better encapsulate the Commission's intent if certain modifications are adopted. The OCA/AARP recommend that the Commission make some modifications to the language in Sections 111.1, 111.2, 111.4(a) and (b), 111.8(a) and (b) and 111.10(b) to provide clarity and consistency in the Proposed Regulations. The OCA/AARP also recommend changes to the definition of "agent" so that it encompasses all possible supplier/agent roles and scenarios and

³ CUB was created by the Illinois legislature in 1983 as a nonprofit and nonpartisan organization. Its mission is to represent the interests of residential utility customers across the state.

recommend the inclusion of a definition for the term "transaction documents" in Section 111.2 of the Proposed Regulations. Additionally, the OCA/AARP recommend that the Commission incorporate the language of Guideline M(2) from its Interim Guidelines into these Proposed Regulations.

One of the OCA/AARP's primary concerns with the Proposed Regulations is with Section 111.9(a)(1) regarding the hours of operation of the door-to-door marketing and sales activities. Proposed Section 111.9(a)(1) establishes the hours as 9:00 a.m. to 7:00 p.m. from October 1 through March 31 and between 9:00 a.m. and 8:00 p.m. from April 1 to September 30, unless the local ordinance has stricter limitations. The OCA/AARP supported a shorter window of time for sales and marketing contacts, from noon to 6:00 p.m., but the OCA/AARP noted their willingness to support the Staff proposal in the Tentative Order for the Interim Guidelines to permit a compromise window of 9:00 a.m. to 7:00 p.m. See OCA/AARP/Dominion Retail Comments to Tentative Order at 8-9. The hours in these Proposed Regulations, however, exceed those compromise time frames for the April 1 to September 30 period.⁴ Permitting door-to-door sales up to 8:00 p.m. allows intrusions into consumers' homes into the later hours of the evening when many are preparing for the next day, preparing for bed, or trying to spend time together with their families.

Since the Interim Guidelines were established, the Connecticut Department of Public Utility Control (DPUC) enacted guidelines for marketing and sales practices, wherein it adopted the hours of 10:00 a.m. to 6:00 p.m. for door-to-door marketing activities. See 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

⁴ In the Final Interim Guidelines, the Commission did not adopt the Staff compromise. The Commission adopted the time frames that are reflected in these proposed regulations.

(Mar. 16, 2011) at Guideline IV(d)(4). These time frames were subsequently reflected in Connecticut legislation that became effective on July 1, 2011. Connecticut Public Act No. 11-80, Section 113(f)(2)(b). The OCA/AARP submit that the Commission should limit the hours for door-to-door sales throughout the year so that door-to-door sales are less intrusive to customer's daily life. The OCA/AARP recommend that the hours of 10:00 a.m. to 7:00 p.m. would be a reasonable time frame, but the OCA/AARP can again accept the Staff compromise proposal of allowing door-to-door sales between the hours of 9:00 a.m. and 7:00 p.m. throughout the year.

In the Comments below, the OCA/AARP review the individual sections and present their recommendations.

II. COMMENTS

A. Section 111.1—General.

Section 111.1 of the Proposed Regulations sets out the purpose of the new regulations. See Rulemaking Order at 14 (Section 111.1). It states in part: "EGSs and NGSs and their agents shall comply with these standards and practices when engaged in sales and marketing activities involving residential customers." See Rulemaking Order at 14. The OCA/AARP submit that the Commission should also include language stating that EGSs and NGSs and their agents shall also comply with all Federal, State and municipal laws and applicable Commission rules, regulations and orders. Such language would make Section 111.1 consistent with other sections of the Proposed Regulations. See e.g. Rulemaking Order at 15 (Proposed Section 111.3). Specifically, the OCA/AARP propose the following language:

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 and all Federal, State and municipal laws and applicable Commission rules, regulations and orders 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.

B. Section 111.2 – Definitions.

Section 111.2 of the Proposed Regulations sets forth the definitions used in the new regulations for marketing and sales practices for EGSs and NGSs. See Rulemaking Order at 14-15 (Section 111.2).

1. The Definition of “Agent” Should Be Broadened To Include All Supplier/Agent Scenarios.

In the Rulemaking Order, the Commission requested that interested parties comment on the proposed definition of “agent.” See Rulemaking Order at 4. The definition in the Proposed Regulations includes only those persons who conduct marketing or sales activities on behalf of a *single* licensed supplier. See Rulemaking Order at 14 (Proposed Section 111.2). It is foreseeable that a person may conduct marketing or sales activities on behalf of two or more licensed suppliers, and the proposed definition of “agent” may not include such person. The OCA/AARP submit that the definition of “agent” should be all-inclusive.

The Connecticut Department of Public Utility Control (DPUC) Guidelines for Marketing and Sales Practices for Electric Suppliers and Aggregators, provided a definition of the term “agent” that the Commission may wish to consider. See 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).⁵ In the DPUC Guidelines, the term “agent” is defined as follows:

(1) “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 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[.]

DPUC Guidelines, I(b). The OCA/AARP submit that this definition of “agent” may be more comprehensive and may provide a better model for use by the Commission in its Proposed Regulations.

2. The Definitions of “EGS,” “NGS,” and “Natural Gas Supply Services” Should Be Consistent with the Definitions of “EDC” and “NGDC.”

The OCA/AARP submit that with regard to the definitions of “EGS—Electric generation supplier,” “NGS—Natural gas supplier,” and “Natural gas supply services” in Section 111.2 of the Proposed Regulations, the Commission should add to the end of each definition the following phrase: “(relating to definitions).” These additions would make the definitions of these terms consistent with the definitions of “EDC” and “NGDC” in Section 111.2 of the Proposed Regulations, which read “*EDC—Electric distribution company—The term as defined in 66 Pa.C.S. § 2803 (relating to definitions)*” and “*NGDC—Natural gas distribution company—The term as defined in 66 Pa.C.S. § 2202 (relating to definitions)*.” See Rulemaking Order at 15 (Section 111.2).

⁵ The DPUC Guidelines can be found at: <http://www.dpuc.state.ct.us/FINALDEC.NSF/0d1e102026cb64d98525644800691cfe/75b6d290287494e085257856004e9923?OpenDocument&Highlight=0,10-06-24>.

3. A Definition Should Be Added for the Term “Transaction Documents.”

The OCA/AARP submit that the Commission should include a definition for the term “Transaction documents” in Section 111.2 of the Proposed Regulations. This term is used in the Proposed Regulations at Section 111.5(a)(8) and Section 111.7(b)(5). The OCA/AARP submit that it is a term of art, for which a definition should be provided. From the context of these Sections, and referencing the underlying Guideline from which these sections were drawn, it is the OCA/AARP’s understanding that the term is referencing the contract and enrollment forms. In light of this understanding, the OCA/AARP suggest the following definition:

Transaction documents—the contracts and forms used by an EGS or NGS to enroll a customer for service.

The OCA/AARP submit that this definition, or a similar definition, should be provided for clarity.

C. Section 111.3 – Supplier liability for its agent.

Section 111.3 sets out a supplier’s liability for actions or inactions of its agents. See Rulemaking Order at 15 (Section 111.3). The OCA/AARP submit that the Commission’s Proposed Regulation regarding a supplier’s liability for its agent is strong and reflects the Commission’s zero tolerance policy for the fraudulent or deceptive marketing and sales practices of suppliers and their agents in the Commonwealth. The OCA/AARP urge the Commission to adopt the language in Section 111.3 without modification.

D. Section 111.4 – Agent qualifications and standards; criminal background investigations.

Section 111.4 sets out a supplier’s obligations in developing standards and qualifications for its agents and a supplier’s obligation *vis a vis* criminal background investigations of its agents. See Rulemaking Order at 16 (Section 111.4).

1. The Language in Subsection (a) Should Be Strengthened.

Section 111.4(a) states: “A supplier shall exercise good judgment in developing standards and qualifications for individuals it chooses to hire as its agents.” See Rulemaking Order at 16 (Section 111.4(a)). The OCA/AARP submit that the mandate to “exercise good judgment,” in and of itself, may not be sufficient in this context. Instead, suppliers should be required to “exercise good judgment and follow industry standards.” Adding the requirement to “follow industry standards” provides more direction to suppliers in developing their hiring processes in accordance with standards used by EDCs and NGDCs when hiring employees who have direct contact with customers at their homes. This standard is particularly applicable given the privacy and security issues attendant to such home visits.

2. Subsection (b) Should Mirror the Interim Guidelines.

Section 111.4(b) requires suppliers to “conduct a criminal background investigation[.]” prior to hiring an individual who will be performing door-to-door marketing and sales “to determine if the individual presents a *probable* threat to the health and safety of the public.” See Rulemaking Order at 16 (Section 111.4(b)(emphasis added). Interim Guideline B required suppliers to conduct “*comprehensive* criminal background checks and screenings necessary to determine if an individual presents a *possible* threat to the health and safety of the public” on all potential door-to-door marketing agents or sales agents. See Interim Guidelines, B(1)(emphasis added).

In short, Section 111.4(b) deviates in two respects from the Interim Guidelines. First, the Proposed Regulation does not include the word “comprehensive” in reference to the criminal background checks. In the Order adopting Interim Guideline B, the Commission noted that several parties “supported [the Commission’s] proposal to require ‘comprehensive criminal

background checks.” Further, the Commission stated: “[D]oor-to-door sales is 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 own home.” Interim Guidelines at 15. The OCA/AARP submit that the word “comprehensive” should be added back to the Proposed Regulation.

Second, the word “probable” is used instead of the word “possible” in reference to whether an individual is a threat to the health and safety of the public. See Rulemaking Order at 16 (Section 111.4(b)); see also Interim Guidelines, B(1). The Commission clearly stated its intention in Interim Guideline B to assess the possibility of threats, not the probability:

[S]uppliers will conduct background checks and screenings sufficient to determine whether the individual presents a *possible* threat to public health and safety. If the background check indicates that an individual is a *possible* threat to public health and safety, the individual shall not be employed for a position that places him in contact with the public.

Interim Guidelines at 15-16. (Emphasis added). The dictionary definition of “possible” includes: “being within the limits of ability, capacity or realization,” “being what may be conceived, be done or occur according to nature, custom or manners,” and “having an indicated potential.” See Merriam Webster’s Dictionary.⁶ The dictionary definition of “probable” includes: “likely to become true or real.” Id.⁷ The definition of “probable” is a different standard to meet than that of “possible.” The OCA/AARP submit that “possible” should be added back to the Proposed Regulation as it better reflects the intent of the criminal background check.

The OCA/AARP submit that the Commission should use the language adopted in Interim Guideline B(1) in the Proposed Regulations, as the language in Interim Guideline B(1) is better suited to meet the Commission’s goal of developing strong regulations to prevent

⁶ <http://www.merriam-webster.com/dictionary/possible>

⁷ <http://www.merriam-webster.com/dictionary/probable>

fraudulent or deceptive marketing and sales practices of suppliers and their agents in the Commonwealth and protecting the health and safety of the public.

To align the language of Section 111.4(b) of the Proposed Regulations with that of Interim Guideline B, the OCA/AARP submit that the following changes be made:

(b) Prior to hiring an individual who will be performing door-to-door marketing and sales activities, a supplier shall conduct comprehensive criminal background investigations to determine if the individual presents a possible ~~probable~~-threat to the health and safety of the public.

These changes will restore the requirements of the Interim Guidelines.

E. Section 111.5 – Agent training.

Section 111.5 sets forth the requirements regarding suppliers' training of their agents. See Rulemaking Order at 16-17 (Section 111.5). The Proposed Regulation includes a provision in addition to those in the Interim Guidelines, namely that a supplier must ensure that its vendors and independent contractors have provided the same training for its employees, agents or independent contractors. See Rulemaking Order at 4, 17 (Section 111.5(d)). The OCA/AARP support this addition to the Proposed Regulation, as it provides an additional layer of consistency in presentations and information provided to residential customers regarding supplier offers. Further, it reflects the Commission's desire for strong guidelines for marketing and sales practices in the residential retail market.

Additionally, the term "transaction documents" is used in Section 111.5(a)(8). As mentioned in Section II.B.3, supra, the OCA/AARP submit that a definition for the term "transaction documents" should be provided in Section 111.2 (Definitions) of the Proposed Regulations for additional clarity.

F. Section 111.6 – Agent compensation; discipline.

Section 111.6 sets forth the requirements for agent compensation and discipline. See Rulemaking Order at 17 (Section 111.6). The provisions in Section 111.6 are strengthened as compared to those contained in its companion Interim Guideline E. The OCA/AARP strongly support the Proposed Regulation. Specifically, Section 111.6 requires suppliers to design their agent compensation programs to ensure that they do “not promote, encourage or reward behavior that runs counter to the practices established” in the Proposed Regulations or the “general obligation of fair dealing and good faith that a supplier should exercise when interacting with customers.” See Rulemaking Order at 17 (Section 111.6(a)). Section 111.6 also requires suppliers to incorporate the Commission’s long-standing zero tolerance policy regarding slamming and violations of other consumer protections. See Rulemaking Order at 17 (Section 111.6(b)). The OCA/AARP submit that Section 111.6 is clearer and more concise regarding the prevention of slamming and violations of other consumer protections. Moreover, Section 111.6 ensures that the practices of suppliers are aligned with the expectation of full compliance. The OCA/AARP urge the Commission to implement Section 111.6 without modification.

G. Section 111.7 – Customer authorization to transfer account; transaction; verification; documentation.

Section 111.7 sets forth the requirements for suppliers to obtain authorization from a customer to transfer his or her account. See Rulemaking Order at 17-19 (Section 111.7). The Commission requested that interested parties comment on the new exception to the verification process when a transaction is completed without the involvement of an agent. See Rulemaking Order at 6; see also Rulemaking Order at 18 (Section 111.7(b)). The exception provides that a supplier’s verification process does not apply when an account transfer is the product of “[a] written document completed and mailed to a supplier by a customer outside the presence of, or without interaction with, an agent” or “[a]n 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." See Rulemaking Order at 18 (Section 111.7(a)(2)(iii) and (iv)). The OCA/AARP have concerns with this exception at this time and do not recommend its adoption here. Before adopting such an exception, 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 respectfully submit that this exception should be removed at this time.⁸

The OCA/AARP continue in their strong support for Section 111.7(b)(2) (relating to third party verification) as drafted, which draws a clear line between the sales agent's personal contact in the home of the consumer and the need for the sales agent to physically depart before the consumer commences the independent process of verifying the consumer's consent to enroll for energy supply service from that supplier. As the OCA/AARP/Dominion Retail stated in their prior Comments to the Tentative Order:

[T]he verification process is to be an independent process, without the influence of the sales agent, and must be conducted in a way which protects the consumer and assures that the consumer's verification reflects willingly given consent. Many customers, including senior citizens, persons living alone and vulnerable customers, may feel influenced or intimidated when answering the verification questions in the presence of the sales agent. If the sales agent is allowed to remain present while the consumer goes through the verification process, the consumer's consent may result from this confusion or feeling of intimidation. A verification which is given by a consumer in these circumstances cannot be the

⁸ The OCA/AARP also note that changes to the confirmation process will need to be reviewed and coordinated with any such exception to the verification process. Even if a request appears to have been initiated by a customer, mistakes or slamming could still occur.

result of effective consent and valid. A consumer who has not given valid consent to enroll with a supplier can lead to disputes, increased costs for the supplier, and possibly reputational harm. The consumer is exposed to harm and serious inconvenience as service may be provided for a time by a supplier not validly chosen and at terms and conditions which may cost the consumer more than supplier or default service the consumer was switched away from.

The Guidelines proposed by Staff strike the right balance on this issue. The Guidelines provide the sales agent with the opportunity to contact the consumer to provide additional information, including a return in-person visit with customer consent, if there is confusion about the offer detected during the verification process. Marketers could also establish a procedure that would allow the telephone transfer to a sales agent if it was determined during the verification process that the customer required additional information or was confused about the offer. Guideline D-4, though, draws the very important line between the end of the in-person sales contact and the separate process by which the consumer verifies his or her intent to enroll with the supplier for energy service.

See OCA/AARP/Dominion Retail Comments to Tentative Order at 6-7.

Section 111.7(b)(2) incorporates into the Proposed Regulations the same language from Guideline D-4 of the Interim Guidelines. The OCA/AARP urge the Commission to adopt Section 111.7(b)(2) without modification to this important protection.

Additionally, the term "transaction documents" is used in Section 111.7(b)(5). As mentioned in Section II.B.c, supra, the OCA/AARP submit that a definition for the term "transaction documents" should be provided in Section 111.2 (Definitions) of the Proposed Regulations for additional clarity.

H. Section 111.8 – Agent identification; misrepresentation.

Section 111.8 sets forth the requirements for agent identification to potential customers and avoiding misrepresentation. See Rulemaking Order at 19-20 (Section 111.8). Generally, the

OCA/AARP support Section 111.8. The OCA/AARP have some recommended modifications to this section to make the requirements more clear and to strengthen certain protections.

1. Section 111.8(a) Should Be Clarified To Ensure The Identification Badge Is Clearly Visible.

In Section 111.8(a), the proposed Regulations set forth the requirements for the supplier identification badge. The badge is required to provide information that accurately identifies the supplier, identifies the agent, and provides the agent's photograph. The proposed regulation requires that the badge be "visible at all times." The OCA/AARP submit that the Commission may wish to clarify the requirement that the badge be visible. The OCA/AARP have reviewed door-to-door marketing guidelines, regulations and statutes from other states regarding this requirement. In other state guidelines, it is made clear that the badge must be prominently or conspicuously displayed and must be on the outer clothing being worn at the time.⁹ The Commission's proposed regulations may benefit from this clarity. The OCA/AARP recommend the following modification to the last sentence of subsection (a):

The individual that represents the supplier shall wear the identification badge in a clear and conspicuous location on the outer clothing that shall be visible to the public at all times when conducting the supplier's business.

The OCA/AARP submit that this language will better ensure that the identification badge can be seen by the public at all times.

2. Subsection (b) Should Be Modified To Ensure Clear Supplier Identification.

The OCA/AARP submit that Section 111.8(b) which provides for supplier identification could be strengthened. To avoid any possible confusion, the agent should fulfill the requirement

⁹ See, 16 Tex. Admin Code §25.474; Connecticut Public Act No. 11-80 §113(f)(2)(b); In Matter of Retail Access Business Rules, NY PSC Case No. 98-M-1343, Order at 63.

of identification by oral statement upon first contact with the potential customer. Written material should only be used to confirm what the customer has been told orally at the beginning of the contact. The OCA/AARP suggest the following language be adopted:

(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 an oral statement by the agent, or by written material provided by the agent.~~ The agent may also provide written material to the customer confirming the oral representation.

Most customers do not take the time to carefully read written materials while an agent is giving his or her sales pitch. Instead, customers often wait until a later time, after the agent has left, to read these materials. Therefore, if the agent does not orally identify himself or herself, the supplier that he or she represents and state that he or she is not working for the potential customer's EDC or other supplier, the potential customer may not realize who the agent is and who the agent works for until much later at a time when the agent is not available to answer any questions the potential customer may have about who the agent represents. The OCA/AARP submit that Section 111.8(b) should be changed, as outlined above, in order to avoid any possible confusion by potential customers about an agent's identification and affiliation.

3. Subsection (c) Should Be Clarified And Broadened To Avoid Confusion.

Subsection (c) requires that a supplier not wear, use, carry or provide anything that has branding elements that are "deceptively similar" to that of the local distribution utility. The OCA/AARP have concerns that the phrase "deceptively similar" may be vague. The OCA/AARP recommend that this section contain a more specific statement. In addition, the OCA/AARP recommend that the prohibition not just apply to similarities to the local distribution company, but that it also prevent similarities to agencies such as the Commission, and to other

suppliers. Branding which creates any confusion should be prohibited. The OCA/AARP recommend the following modification to subsection (c) to address these points:

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 designed to provide an impression to a reasonable person that the individual represents or is in any way connected to a governmental agency, another supplier, or deceptively similar to that of the local distribution company.

The OCA/AARP submit that this broader language more clearly captures the intent that there be no deception of the customer based on branding elements.

4. A New Subsection Should Be Added To Avoid A Potential Misrepresentation.

One concern that has been raised is that some customers leave a sales contact with the misapprehension that they must select a supplier to continue to receive their electric or gas service. While the OCA/AARP have been unable to determine how widespread this practice may be in Pennsylvania, the OCA/AARP recommend that the proposed Regulations contain a specific subsection to ensure that this does not happen with any regularity. Since sales agents will be trained in these regulations, this specific regulation will help to head off this practice.

The OCA/AARP recommend the inclusion of a subsection 111.8(f) that reads as follows:

The agent shall not imply or represent that an applicant or customer is required to select a supplier in order to continue to receive natural gas or electric service.

This provision will help to limit this type of potential misrepresentation.

I. Section 111.9 – Door-to-door sales.

Section 111.9 sets forth the requirements and guidelines for door-to-door sales. See Rulemaking Order at 20-21 (Section 111.9). The OCA/AARP strongly support Section 111.9 as

written in the Rulemaking Order with the exception of Section 111.9(a)(1). Section 111.9(a)(1) permits door-to-door marketing between 9:00 a.m. and 7:00 p.m. from October 1 through March 31 and between 9:00 a.m. and 8:00 p.m. from April 1 to September 30, unless the local ordinance has stricter limitations. This mirrors the Interim Guidelines adopted by the Commission. See Interim Guidelines at 40-41, Guideline J-2. The OCA/AARP submit that these hours are overly broad and should be limited to 10:00 a.m. to 7:00 p.m. all year round.

As the OCA/AARP/Dominion Retail noted in their Comments to the Tentative Order, in the working group OCA/AARP/Dominion Retail initially recommended that the allowable window for door-to-door marketing activities be noon to 6:00 p.m. The OCA/AARP/Dominion Retail, however, were willing to support the Staff's recommendation for a window for door-to-door marketing from 9:00 a.m. to 7:00 p.m., unless the local ordinance is more restrictive, as a reasonable compromise between the OCA/AARP/Dominion Retail's position and others who sought a window that went later than 7:00 p.m. The Commission adopted in its Interim Guidelines an 8:00 p.m. end time for door-to-door marketing from April 1 to September 30, which was later than the 7:00 p.m. Staff recommendation. See Interim Guidelines at 40-41, Guideline J-2. The Commission proposes to retain these longer hours in these proposed regulations.

Permitting door-to-door marketing later than 7:00 p.m. between April 1 and September 30, or any time of the year, allows intrusions into the home into the later hours of the evening when many customers are preparing for the next day, preparing for bed, or trying to spend time together as a family. Also, families with school-age children may be engaged in homework activities during this time, and those with small children may be engaged in bath time or bed time-routines. Such unwelcome intrusions by strangers late into the night can also engender fear

and distrust of the process. Additionally, while the OCA/AARP had accepted the Staff's compromise proposal of a 9:00 a.m. start time, the OCA/AARP remain concerned that such an early start time may impact customers as they complete morning routines.

Since the enactment of the Commission's Interim Guidelines, the Connecticut DPUC adopted the hours of 10:00 a.m. to 6:00 p.m. for door-to-door marketing activities, a time period which is now reflected in Connecticut legislation. See DPUC Guidelines, IV(d)(4); see also CT Public Law No. 11-80, §113(f)(2)(b) (effective July 1, 2011). The OCA/AARP submit that using the 10:00 a.m. time frame as a start time appears to be a more reasonable time to begin intrusions into customer's homes for the purpose of selling electric and natural gas service.

The OCA/AARP recommend that the Commission reconsider this issue and establish the hours for door-to-door marketing from 10:00 a.m. to 7:00 p.m. unless the local ordinance is more restrictive. These hours provide ample opportunity for sales visits that accommodate all types of customer schedules. The hours are available during the weekdays and on the weekends, providing sufficient opportunity for door-to-door sales agents to meet with customers, including those that work during the weekdays. The OCA/AARP urge the Commission to adopt the less intrusive hours for door-to-door marketing of 10:00 a.m. to 7:00 p.m., unless local ordinance is more restrictive. The OCA/AARP can again accept the Staff compromise proposal of allowing door-to-door sales between the hours of 9:00 a.m. and 7:00 p.m. throughout the year if the Commission finds that the additional hour is appropriate.

J. Section 111.10 – Telemarketing.

Section 111.10 sets forth the requirements for telemarketing activities. See Rulemaking Order at 21-22 (Section 111.10). The OCA/AARP support Section 111.10 but submit that the language in Section 111.10(b) should be made clearer and more concise regarding what is

expected of agents in identifying themselves to potential customers. In Section 111.10(b), the requirement for the agent to identify himself or herself is stated, but there is no time frame specified for the identification, such as immediately after greeting the potential customer. By contrast, in Section 111.9(d)(1) (relating to door-to-door sales), the agent must “identify himself by name, the supplier the agent represents and the reason for the visit” immediately after greeting the potential customer. See Rulemaking Order at 20 (Section 111.9(d)(1)).

The OCA/AARP submit that the language of Section 111.10(b) should mirror that in Section 111.9(d)(1) and state that an agent should provide his first name and the name of the supplier on whose behalf the call is being made *immediately* after greeting the potential customer. Specifically, the OCA/AARP recommend the following language:

(b) An agent who contacts customers by telephone shall, immediately after greeting the potential customer, 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.

The OCA/AARP submit that adding this time requirement brings this section into conformity with the door-to-door regulations and ensures that customer knows which entity is contacting them about service.

The OCA/AARP also recommend that subsection (b) be modified to incorporate the same types of recommendations regarding agent identification that apply to those agents meeting a customer in person. Telemarketers should be required to make clear statements about the supplier they represent and should clearly state that they are not representing any other entity. To parallel the OCA/AARP’s recommendations in Section II.H, the OCA/AARP suggest the following modifications to subsection (b):

An agent who contacts customers by telephone shall provide the agent’s first name and shall state the name of the supplier on

whose behalf the call is being made. The agent shall not state or imply that the agent represents the customer's local distribution company, a government agency, or any other supplier. The agent shall not state or imply that the customer is required to select a supplier to continue to receive electric or gas service. The agent shall provide his or her identification number upon request by the customer and shall provide the supplier's toll free telephone number to the customer.

K. Section 111.11 – Receipt of disclosure statement and right to rescind transaction.

Section 111.11 sets forth the requirements for provision of the disclosure statement to customers and the customer's right to rescind. See Rulemaking Order at 22 (Section 111.11). The OCA/AARP generally support Section 111.11. Section 111.11(c), however, refers to "a rebuttable presumption that a disclosure statement correctly addressed to a customer with sufficient first class postage" is received by the customer three days after it is placed in the mail. See Rulemaking Order at 22 (Section 111.11(c)). The Federal Government has proposed changes to the guaranteed delivery time of the United States Postal Service. It is unclear when or if these changes may take effect. The OCA/AARP submit that the proposed changes could have the effect of making the rebuttable presumption of receipt in three days created in Section 111.11(c) inappropriate. The OCA/AARP submit that in the future, it may be appropriate to consider removing the language regarding a rebuttable presumption, or in the alternative, to extend the timeframe beyond three days.

L. Section 111.12 – Consumer protection.

Section 111.12 sets forth the consumer protection requirements with which suppliers and their agents must abide. See Rulemaking Order at 22 (Section 111.12). The OCA/AARP strongly support Section 111.12 and urge the Commission to adopt Section 111.12. As discussed

in Section II.O below, the Commission may wish to supplement this section by including the requirements of Interim Guideline M(2) in the section.

M. Section 111.13 – Customer complaints.

Section 111.13 sets forth the requirements for supplier investigation and response to customer inquiries, disputes and complaints concerning marketing or sales practices. See Rulemaking Order at 22-23 (Section 111.13). The OCA/AARP strongly support Section 111.13 and urge the Commission to adopt Section 111.13 without modification.

N. Section 111.14 – Notification regarding marketing or sales activity.

Section 111.14 sets forth suppliers' notification requirements for marketing or sales activities. See Rulemaking Order at 23 (Section 111.14). The OCA/AARP generally support Section 111.14 and for the reasons explained below, strongly support the addition of Section 111.14(b), which requires suppliers to provide the local EDC or NGDC with information about sales and marketing activities it will conduct in the EDC's or NGDC's service territory.

1. Sections 111.14(a) and (b) Should Be Adopted without Modification.

As stated in the OCA/AARP/Dominion Retail's prior Comments to the Tentative Order:

[T]he need to notify the distribution company of planned or imminent sales and marketing activities within the service territory is as important as the notice to the Commission [required by Section 111.14(a)]. The OCA/AARP/Dominion Retail note that the purpose of such notice, whether given to the Commission or to the distribution company, serves at least two purposes. First, the notice allows the Commission and distribution company to adjust staffing and minimize consumer frustration when calls are put on hold. Second, the notice allows the Commission staff and distribution company customer service representatives to know that the sales and marketing efforts are being conducted by licensed suppliers or their agents and so inform consumers that the sales and marketing activities are allowable under Commission rules and regulations. The distribution company in particular is often on the "front lines" of receiving such consumer calls. If the distribution company does not receive such notice, the distribution

company customer service representative cannot with certainty provide such confirmation to consumers. The result may be continued consumer suspicion of the door-to-door marketer in particular and the process in general.

A required notice to the distribution company is also necessary to better protect the safety of customers. All too often in the recent past, criminals have tried to gain access to homes through pretending to be a utility representative. Allowing door-to-door sales by marketers who are selling a "utility type" service could lead to additional such pretenses to enter the home. A utility customer service representative able to provide information to the consumer can help to detect these situations and make both the utility and the Commission aware of the need, for example, of public notification of such scams.

Thus, the ability for the distribution company to have timely information and so be able to make a factual and neutral statement to the consumer is no less important for the distribution company than for Commission staff. A consumer who is puzzled or has questions about the propriety of a door-to-door marketer who offers to sell energy service may be equally likely to contact the Commission or the distribution company.

See OCA/AARP/Dominion Retail Comments to Tentative Order at 10-11. Based on the foregoing, the OCA/AARP submit that the language in Section 111.14(b) is crucial to the requirements for sales and marketing activities. The OCA/AARP urge the Commission to adopt Sections 111.14(a) and (b) without modification.

2. The Commission Should Take Into Consideration the Possible Outcomes of the Retail Markets Investigation with Regard to Section 111.14(c).

Section 111.14(c) allows EDCs, in response to a customer inquiry about price and service, to provide information about its price and terms but requires the EDC to refer the customer to the supplier for questions about a supplier's price and terms. In the current Retail Markets Investigation, the Commission is considering certain competitive enhancements, including retail opt-in auctions, customer referral programs and/or modified service initiation processes. These programs all require an EDC's customer service representative to explain the

program to the customer, including the EGS pricing under the program. If the Commission ultimately adopts some of these competitive enhancements, the language in Section 111.14(c) may conflict with EDCs' customer call centers responsibilities under these competitive enhancement programs. In order to avoid confusion, the OCA/AARP suggest the following language be adopted:

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. The distribution company may provide information regarding a supplier's prices and terms when part of a program that has been approved by the Commission for implementation by the distribution company.

O. Certain Requirements of Guideline M(2) Should Be Included in the Regulations.

From the OCA/AARP's review, it does not appear that Guideline M(2) of the Interim Guidelines has been fully captured in the Proposed Regulations. See Interim Guidelines at 46 and Annex A at 12. 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.

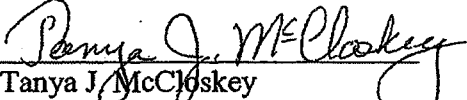
See Interim Guidelines, Annex A at 12.

The important supplier obligations contained in Guideline M(2) should not be overlooked in the Proposed Regulations. The OCA/AARP submit that the provisions of Guideline M(2) should be included in the Regulations. The provisions could be incorporated into Section 111.12 (relating to consumer protections) or possibly incorporated into a new section of the Regulations.

III. CONCLUSION

The OCA and AARP commend the Commission in its efforts to enact regulations to protect consumers and assist suppliers in the development and implementation of sales and marketing efforts, all in the pursuit of providing Pennsylvania consumers with the opportunity to make informed choices regarding their retail energy service.

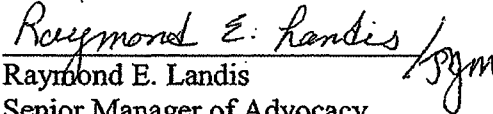
Respectfully submitted,


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December 21, 2011

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Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
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RE: Rulemaking Re: Marketing and Sales
Practices for the Retail Residential Energy
Market
Docket No. L-2010-2208332

Dear Secretary Chiavetta:

Enclosed for filing are an original and fifteen (15) copies of the Comments of the
Office of Consumer Advocate and AARP, in the above-referenced proceeding.

Should you have any questions, please contact our office at the number above.

Respectfully Submitted,

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044

Enclosures

cc: Daniel Mumford, BCS
Patricia Krise Burket, LAW
Cyndi Page, CMU

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