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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF THE
PENNSYLVANIA UTILITY LAW PROJECT

The Pennsylvania Utility Law Project ("PULP") respectfully submits these comments to the Pennsylvania Public Utility Commission's ("Commission" or "the Commission") Proposed Rulemaking Order on Marketing and Sales Practices for the Retail Residential Energy Market ("Rulemaking Order") issued on February 10, 2011 at Docket No. L-2010-2208332 and published in the Pennsylvania Bulletin on October 22, 2011 at 41 Pa. B. 5624.

I. Introduction

PULP provides information, assistance, and advice about residential utility and energy matters affecting low-income consumers. As the designated statewide project of the Pennsylvania Legal Aid Network ("PLAN") of civil legal aid programs, PULP acts in coordination with PLAN programs and their clients, other nonprofit agencies, and community groups to represent low-income utility and energy consumers. We appreciate the opportunity to present these comments on behalf of the low-income utility consumers we represent.

Since the passage of the *Natural Gas Choice and Competition Act* and the *Electricity Generation Customer Choice and Competition Act*¹ ("Choice Acts") the Commission has taken an active role in promoting the development of competitive electric generation and natural gas supply markets in the hopes of providing lower cost energy options to Pennsylvania consumers. The goal is commendable. However, at the same time, the path that is taken on the route toward new market development and the promise of lower prices is one of risk and newly faced challenges. In our view, the most significant risk to residential consumers comes through the use of door-to-door-solicitation as a sales technique for the sale and marketing of retail residential electricity supply. These concerns were directly addressed in each of the comments, submitted in response to the Interim Guidelines, by consumer representatives. Moreover, the Commission itself has acknowledged that, since the elimination of rate caps:

[G]reater 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.²

In a statement accompanying the Proposed Rulemaking, Former Vice-Chairman Tyrone J. Christy invited further comment on the specific issue of door-to-door sales:

Although the proposed regulations that the Commission is issuing today are well-intentioned, they are based on the assumption that door-to-door marketing is a valid marketing strategy. I invite comment from the public on this issue.³

The Vice-Chairman further stated:

In addition to the concerns about unscrupulous sales agents expressed by the CAC, PULP and the OCA/AARP/Dominion Retail in their previous comments, I

¹ 66 Pa.C.S. §§ 2200 *et seq.* and 2800 *et seq.*

² Background Discussion to Proposed Rulemaking, 41 Pa. B. 5624.

³ Statement of Vice Chairman Tyrone J. Christy, 41 Pa.B. 5624

also am concerned that door-to-door sales will lead to instances where customers are physically assaulted and/or subjected to property crimes by sales agents who have not been properly screened. Given that electricity and natural gas supply can be marketed effectively through a myriad of other ways, I invite comment on whether the Commission should continue to allow door-to-door sales of electricity and gas to residential customers.⁴

Because of the unique implications the use of door-to-door sales practices have for low-income households, PULP will focus and present its comments specifically in response to the request put forward by the former Vice-Chairman regarding the use of door-to-door sales marketing. While we do not independently comment on the many other issues which are addressed within the Proposed Rulemaking, these other matters have been fully analyzed by the Office of Consumer Advocate (“OCA”), AARP and the Pennsylvania Coalition Against Domestic Violence (“PCADV”). Their comments regarding these matters are thoughtful, articulate and well reasoned. Therefore, while PULP, on behalf of the low-income consumers we represent, only addresses the singularly important issue of door-to-door sales, PULP also endorses and supports the comments of OCA, AARP and PCADV on all other matters not addressed.

PULP respectfully submits that the Commission should proceed cautiously to ensure that the development of competitive markets does not come at the expense of other important consumer concerns, such as the safety of vulnerable customer populations and the protection of their household privacy. The proposed use of door-to-door marketing for electric and natural gas supply constitutes “unsafe, inadequate and unreasonable service” as it places vulnerable consumer populations at too great a risk and improperly violates consumer privacy. Simply put, door-to-door marketing should be prohibited in the Final Rulemaking.

⁴ Id.

II. Comments

A. Door-to-door sales should not be a permitted marketing and sales practice in the retail residential energy market.

To a significantly greater degree than other methods of sales promotion within the retail electric market, door-to-door sales place vulnerable consumers at heightened risk of unfair and deceptive trade practices, run counter to the intent of the Choice Acts, and unduly jeopardize vulnerable populations to potential physical harm. The endemic dangers presented by door-to-door solicitation so greatly outweigh the potential benefits, if any, to the promotion of a competitive market that PULP respectfully submits that the Commission should reconsider its proposed rules concerning door-to-door solicitations.

In total agreement with the Pennsylvania Coalition of Domestic Violence (PCADV), PULP reiterates its earlier comments which were made to the *Interim Guidelines* prior to this Rulemaking and strongly endorses an all-out ban of door-to-door marketing of electric generation and natural gas service. The numerous examples pointed out by the PCADV amply demonstrate that the worst of the potentially unpalatable practices of door-to-door sales are simply not amenable to control by even the most well-meaning or well-drafted regulations. Since prohibition of door-to-door marketing would not unduly burden alternative suppliers or undermine the creation of a competitive marketplace, PULP respectfully and strongly urges the Commission take the bolder step, in keeping with its regulatory mission, to look out for the interest of the public, and unequivocally prohibit door-to-door marketing.

1. Door-to-door marketing places vulnerable customers at heightened risk of unfair and deceptive trade practices.

There are five types of complaints of unfair and deceptive trade practices cited most often regarding door-to-door sales: (1) deception by salesmen in getting inside the door; (2) high-pressure sales tactics; (3) misrepresentation as to the quality, price, or characteristics of the product; (4) high prices for low-quality merchandise; and (5) the nuisance created by the visit to the home by the uninvited salesmen.”⁵

Low-income and other vulnerable households are particularly susceptible to these kinds of tactics and are often targeted for door-to-door sales because they are poorer than other consumers, have limited cash flow and have little or no savings, all of which makes promises of cheaper natural gas or cheaper electricity almost impossible to resist, even if the promises are not altogether true or guaranteed. These low-income customers frequently are under enormous economic pressure due to unpaid bills, including bills for utility service. This financial distress makes these households more susceptible to high-pressure sales tactics which offer “a way out from under” some of these bills; given their financial distress, the consumers may make hasty or uninformed decisions in their desire to solve their immediate financial problems.

Lest some might doubt the reality of these concerns, a brief review of the recent predatory lending epidemic in Pennsylvania is instructive in just how damaging door-to-door sales practices can be to vulnerable populations. “Predatory lending practices are characterized as routinely charging exorbitant fees and high interest rates, adding unneeded credit and life insurance to monthly mortgage payments, promoting loans that

⁵ 37 C.F.R. 22937.

negatively amortize, and regularly providing loans with prepayment penalties and balloon payments.”⁶ Lenders and home repair peddlers, the purveyors of predatory loans, often go door-to-door selling their products.⁷ What is even more troubling about predatory lending is that the perpetrators are “reputable” businesses and banks in our community. And since these practices were targeted toward the most vulnerable communities, those communities have suffered disproportionately the rise in foreclosures.

As the predatory lending example illustrates, low-income, elderly, disabled, non-English speaking communities are particularly susceptible to unfair and deceptive trade practices that often take place in door-to-door sales. They are “easy marks” who are targeted.

2. Door-to-door marketing runs counter to the intent of the Choice Acts.

Inherent in a door-to-door sales transaction is that the sales agent is marketing the product that he is selling, rather than the notion of competition itself. PULP fully supports the robust dissemination of accurate, unbiased information about the benefits of the competitive market. In that way, consumers can evaluate the costs and benefits of shopping and pursue the option that best suits their need. The prime example of an effective tool for this sort of information is the Commission’s website

www.PaPowerSwitch.com.

However, PULP submits that the kind of information consumers receive from PaPowerSwitch.com is radically different from that which they receive from a door-to-

⁶ Michelle W. Lewis, *Perspectives on Predatory Lending: The Philadelphia Experience*, Journal of Affordable Housing, Volume 12, Number 4, Summer 2003 at 491-492. Retrieved from www.philatask.com/ABAart03.pdf on 12/21/11.

⁷ *Perspectives on Predatory Lending* at 494.

door solicitation from an agent peddling the products and services of a particular company. Door-to-door sales do not support customers in making an informed choice. This is a serious deficiency since the Choice Acts, as one might suspect from their names, are built upon the assumption that customers will make choices, *informed choices*. The General Assembly explicitly included in each law a requirement that information be provided to customers to support an informed decision-making process.⁸ As such, consumers will need to do homework as part of the process of choosing an alternative supplier. This homework includes researching a range of options and companies to have sufficient data on which to base a reasoned decision. The Commission and the Office of the Consumer Advocate (“OCA”) clearly recognize this because both have created detailed websites to guide consumers and provide pertinent information on which to make an informed choice.

At the November 10, 2011 En Banc Hearing regarding the Commission’s Retail Market Investigation, Dr. Terry Madonna of Franklin and Marshall University indicated that 88% of those he surveyed were aware that they could switch electric suppliers⁹ and 87% of the Pennsylvanians who looked into changing electric suppliers found PaPowerSwitch.com easy to use and helpful.¹⁰ The success and positive response to the objective, unbiased, helpful and non-pressured method of learning about the cost, terms and options available to consumers is striking. Consumers desire information which they

⁸ See 66 Pa.C.S. §§ 2206(c) and 2807(d)(2).

⁹ Fall 2011 Omnibus Survey State of Electric Competition in Pennsylvania, Dr. Terry Madonna, presented to Pennsylvania Public Utility Commission at November 10, 2011 En Banc Hearing regarding the Commission’s Retail Markets Investigation at Slide 2. (“Madonna Presentation”). Available at: <http://www.puc.state.pa.us/electric/PDF/RetailMI/EnBanc111011-P-CE-TM.pdf>

¹⁰ Madonna Presentation, Slide 3.

can digest in a reasoned and thoughtful manner. Through the use of modern means of communication, such as PaPowerSwitch.com, such information is readily available.

Door-to-door sales methods, however, are diametrically opposed to the kind of informed decision making contemplated by the Choice Acts and the General Assembly. Door-to-door sales are high-pressure, one-sided presentations intended to persuade a customer that the agent's product is "the right" one, perhaps the only one, certainly the only one that makes sense. Agents do not provide a range of options, a set of data to be contemplated and considered. Obviously, they are not required to. They provide their company's products as the "only" option with their own forceful slant on the "facts." This kind of interaction is more likely to result in a consumer being swayed by a good sales pitch rather than making a well informed decision. Given that door-to-door sales do not lead a consumer to make an informed choice, they run counter to the intent of the Choice Acts and should not be permitted.

3. The prohibition of door-to-door marketing would not unduly burden alternative suppliers or undermine the creation of a competitive marketplace.

The prohibition of door-to-door marketing would not unduly burden alternative suppliers or undermine the creation of a competitive marketplace. We live in a world that is awash with multiple channels of communication – radio, television, print media, and wireless connections, including the Internet, e-mail, etc. Millions of businesses use these channels to market their products successfully. It seems difficult to understand why electric generation and natural gas suppliers can not do the same. While it may be convenient for these companies to go door-to-door using lists of private customer information provided by local distribution companies it is not necessary to use door-to-

door sales in order for competition to take hold in today's marketplace and the attendant risks to consumers are simply too high

Door-to-door sales are not needed since there are ample other resources consumers can use to learn about alternative suppliers. For instance, both the Commission and the OCA maintain easily accessible websites with ample information regarding alternative suppliers, both gas and electric.¹¹ These websites provide consumers with a range of information from which the consumer can make an informed choice, unlike the high-pressure push of a single option that occurs during an agent's visit to their door. Given superior resources like these websites, the prohibition of door-to-door sales will not unduly burden alternative suppliers and not undermine the development of a healthy market.

As of December 20, 2011, the PaPowerSwitch.com website of the Pennsylvania Public Utility Commission reports that 1, 459, 010 Pennsylvanian's have already switched electric generation suppliers.¹² This number has dramatically grown since electric rate caps have expired and continues to increase daily. In this context, it seems particularly questionable to permit the unnecessary practice of door-to-door sales and its associated by-products of high pressure one-sided sales promotion, endangerment to consumer safety, and loss of privacy.

¹¹ See <http://www.oca.state.pa.us/Industry/Electric/elecomp/ElectricGuides.htm> ,
http://www.oca.state.pa.us/Industry/Natural_Gas/gascomp/GasGuides.htm ,
<http://www.papowerswitch.com/> , and
http://www.puc.state.pa.us/naturalgas/naturalgas_suppliers_list.aspx.

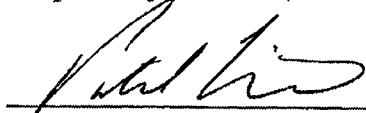
¹² <http://www.papowerswitch.com/>

III. Conclusion

In conclusion, PULP is grateful for the opportunity to provide comments concerning this important proposed Rulemaking Order and respectfully and strongly urges the Commission to determine in the Final Rulemaking that the use of door-to-door marketing for retail residential electric and natural gas supply constitutes "unsafe, inadequate and unreasonable service" and should be prohibited.

Should the Commission reject our entreaty to fully prohibit door- to- door solicitation then, in the alternative, PULP submits that the recommendations for strengthening proposed Section 111.9 regarding door-to-door sales which have been advanced by OCA, AARP and PCADV in their respective comments provide the most appropriate alternative.

Respectfully submitted,



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Dated: December 21, 2011

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Via E-Filing

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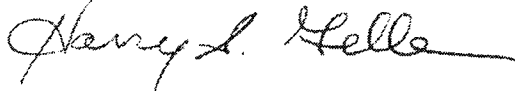
**Re: Rulemaking Re: Marketing and Sales Practices for the Retail Residential
Energy Market, Docket No. L-2010-2208332**

Dear Secretary Chiavetta:

Pursuant to the Pennsylvania Public Utility Commission's Proposed Rulemaking Order issued February 10, 2011 in the above referenced matter please find the Comments of the Pennsylvania Utility Law Project enclosed for filing.

Please contact me directly if you have any questions. Thank you.

Respectfully submitted,



Harry S. Geller, Esq.