

# 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-2010-2160942  
Identification Number: 57-287

IRRC Number:

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2929

(3) PA Code Cite: 52 Pa. Code § 54.122

(4) Short Title: Proposed Rulemaking for Revision of 52 Pa. Code Chapter 54 Pertaining to Code of Conduct, § 54.122

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

Primary Contact: Aspasia V. Staevska, Assistant Counsel, Pennsylvania Public Utility Commission, Law Bureau, Commonwealth Keystone Building, P.O. Box 3265, Harrisburg, PA 17105; Phone: 717.425.7403; Fax: 717.783.3458; Email: [astaevska@pa.gov](mailto:astaevska@pa.gov)

Secondary Contact: Robert F. Young, Deputy Chief Counsel, Pennsylvania Public Utility Commission, Law Bureau, Commonwealth Keystone Building, P.O. Box 3265, Harrisburg, PA 17105; Phone: 717.787.5000; Fax: 717.783.3458; Email: [ryoung@pa.gov](mailto:ryoung@pa.gov)

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

- |                                                         |                                                                |
|---------------------------------------------------------|----------------------------------------------------------------|
| <input checked="" type="checkbox"/> Proposed Regulation | <input type="checkbox"/> Emergency Certification Regulation;   |
| <input type="checkbox"/> Final Regulation               | <input type="checkbox"/> Certification by the Governor         |
| <input type="checkbox"/> Final Omitted Regulation       | <input type="checkbox"/> Certification by the Attorney General |

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

The Electricity Generation Customer Choice and Competition Act (the "Act") provides retail electric customers subject to the Commission's jurisdiction with the option to obtain their generation service from an electric generation supplier, as opposed to the incumbent electric distribution company. 66 Pa.C.S. § 2801, *et seq.* The Commission has adopted customer choice regulations necessary to the performance of its duties under the Act. 52 Pa. Code § 54.1, *et seq.* The proposed revisions to the Code of Conduct regulations are designed to prevent cross subsidization between electric distribution companies and their affiliated electric generation suppliers, to minimize customer confusion resulting from the use of similar names, symbols, and marks, and to add additional transparency to shared corporate services between the electric distribution companies and their affiliated electric generation suppliers.

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

**66 Pa.C.S. § 501 (b) Administrative authority and regulations.**--The commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. The commission may make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties.

**66 Pa.C.S. § 504. Reports by public utilities**

The commission may require any public utility to file periodical reports, at such times, and in such form, and of such content, as the commission may prescribe, and special reports concerning any matter whatsoever about which the commission is authorized to inquire, or to keep itself informed, or which it is required to enforce. The commission may require any public utility to file with it a copy of any report filed by such public utility with any Federal department or regulatory body. All reports shall be under oath or affirmation when required by the commission.

**66 Pa.C.S. § 505. Duty to furnish information to commission; cooperation in valuing property**

Every public utility shall furnish to the commission, from time to time, and as the commission may require, all accounts, inventories, appraisals, valuations, maps, profiles, reports of engineers, books, papers, records, and other documents or memoranda, or copies of any and all of them, in aid of any inspection, examination, inquiry, investigation, or hearing, or in aid of any determination of the value of its property, or any portion thereof, and shall cooperate with the commission in the work of the valuation of its property, or any portion thereof, and shall furnish any and all other information to the commission, as the commission may require, in any inspection, examination, inquiry, investigation, hearing, or determination of such value of its property, or any portion thereof.

**66 Pa.C.S. § 506. Inspection of facilities and records**

**66 Pa.C.S. § 508. Power of the commission to vary, reform and revise contracts**

**66 Pa.C.S. § 701. Complaints**

**66 Pa.C.S. § 1301. Rates to be just and reasonable**

**66 Pa.C.S. § 1304. Discrimination in rates**

**66 Pa.C.S. § 1502. Discrimination in service**

**66 Pa.C.S. §1505. Proper service and facilities established on complaint**

**66 Pa.C.S. §§ 1701-1705. Accounting and budgetary matters**

**66 Pa.C.S. §§ 2101-2107. Relations with affiliated interests**

**66 Pa.C.S. § 2804. Standards for restructuring of electric industry**

The following interdependent standards shall govern the commission's assessment and approval of each public utility's restructuring plan, oversight of the transition process and regulation of the restructured electric utility industry:

(3) The commission shall require the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transmission and distribution. The commission may require the unbundling of other services.

**66 Pa.C.S. § 2807**

**(d) Consumer protections and customer service.**--The electric distribution company shall continue to provide customer service functions consistent with the regulations of the commission, including meter reading, complaint resolution and collections. Customer services shall, at a minimum, be maintained at the same level of quality under retail competition.

(1) The commission shall establish regulations to ensure that an electric distribution company does not change a customer's electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier.

(2) The commission shall establish regulations to require each electric distribution company, electricity supplier, marketer, aggregator and broker to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider. Information shall be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.

**66 Pa.C.S. § 2809. Requirements for electric generation suppliers**

**66 Pa.C.S. § 2811**

**(a) Monitoring competitive conditions.**--The commission shall monitor the market for the supply and distribution of electricity to retail customers and take steps as set forth in this section to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power.

(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.

No.

(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 foster the continued development of Pennsylvania's retail electricity competitive market, to prevent cross subsidization of services between electric distribution companies and their affiliated electric generation suppliers, to provide transparency in the provision of services in the retail electricity market, and to forbid deceptive practices that result in customer confusion. Most electricity consumers in the Commonwealth are likely to benefit from this regulation. The Pennsylvania Public Utility Commission will also benefit from the proposed enhancements in its oversight functions in the retail electricity market.

(11) 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.

N/A

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

All electric distribution companies in the Commonwealth will need to follow new reporting requirements. While these additional reporting requirements will likely involve more work and time, we do not anticipate that they will be unduly burdensome.

In order to compete more fairly in the retail electricity market and achieve needed transparency, electric distribution companies and their affiliated electric generation suppliers will need to disengage from sharing certain corporate services and physically separate their shared offices.

Pennsylvania electricity consumers are not expected to be adversely affected by the regulation.

(13) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

Electric distribution companies and electric generation suppliers providing services in the Commonwealth will be required to comply with the regulation.

(14) 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.

The costs and savings are difficult to estimate at the present time because of the varying nature and degree of shared corporate services and offices between electric distribution companies and their affiliated electric generation suppliers. The costs related to the proposed reporting requirements are not expected to be burdensome.

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

No undue costs and/or savings are anticipated.

(16) Provide a specific estimate of the costs and/or savings to **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.

No undue costs and/or savings are anticipated.

(17) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. N/A

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>						
<b>COSTS:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>						

(17a) Provide the past three year expenditure history for programs affected by the regulation. N/A

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>


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

While the costs associated with the regulation are not fully known at the present time, there will be significant economic benefits to Pennsylvania electricity consumers resulting from the elimination of cross subsidization of service between electric distribution companies and their affiliated electric generation suppliers. The regulation promotes additional market transparency mechanisms aimed at fostering a competitive retail electricity market, as well as measures that guard against deceptive practices resulting in customer confusion.

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

On March 18, 2010, the Commission issued an Advance Notice of Proposed Rulemaking (ANOPR) seeking input from the regulated community, statutory advocates, and interested parties. The following parties provided comments in response to the ANOPR: the Pennsylvania Office of Consumer Advocate; the Energy Association of Pennsylvania; the National Energy Marketers Association; the Pennsylvania Energy Marketers Coalition; West Penn Power Company; Metropolitan Edison Company; Pennsylvania Electric Company; and Pennsylvania Power Company.

Pursuant to a second Motion adopted at the Public Meeting of February 24, 2011, the Pennsylvania Public Utility Commission identified additional safeguards for a properly functioning competitive market to be included in this rulemaking. The additional safeguards, along with the received comments pursuant to the ANOPR, were taken into consideration in developing and drafting the regulation.

(20) 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.

N/A

(21) 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.

No.

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

Most states that allow shopping in the retail electricity sector have similar, if not more stringent, provisions to the proposed regulation. For instance, Texas' Code of Conduct establishes safeguards that govern the interaction between utilities and their affiliates in a way that avoids potential market-power abuses and cross-subsidization between regulated and unregulated activities. Contracts between utilities and their affiliates need to follow competitive bidding practices. 16 TAC §§ 25.272-3.

Illinois has a similar regulation that governs the relationship between electric utilities and their affiliates and prohibits discrimination against unaffiliated interests. 83 Ill. Adm. Code 450.

The New Jersey Board of Public Utilities (BPU) has adopted regulations governing the relationship between electric distribution companies and their affiliates. N.J.A.C. 14:4-3.1, *et seq.* This regulation also applies to incumbent gas utilities and their competitive affiliates. The New Jersey BPU has recently proposed to readopt its Energy Competition Rules at N.J.A.C. 14:4, with minor amendments unrelated to affiliate relations.

The Maryland Public Service Commission has promulgated regulations governing the relationship between incumbent gas and electric utilities and their affiliated competitive suppliers. Code of Maryland Regulations (COMAR), 20.40.01.01, *et seq.* The regulation identifies authorized utility-affiliate transactions, prohibited transactions and conduct, rules on sharing of personnel, record and reporting requirements for these transactions.

The Public Utility Commission of Ohio has adopted regulations requiring corporate separation of incumbent utilities and affiliated competitive suppliers. Ohio Annotated Code (OAC Ann.) 4901:1-37-01, *et seq.*

The Massachusetts Department of Public Utilities has adopted regulations governing the relationship between electric distribution companies and their competitive supplier affiliates. 220 CMR 12.01, *et seq.* The regulations identify prohibited transactions, anti-competitive practices, structural separation requirements, etc.

Other jurisdictions that have adopted similar codes of conduct include Michigan, Maine, Connecticut, New Hampshire, and Oregon.

The prevalence of these codes of conduct in jurisdictions that allow retail electricity shopping is a strong indication of the necessity to develop stringent regulations that guard against cross subsidization and promote competitive markets. To ensure that these goals are met and that Pennsylvania competes with other states effectively, it is necessary for the Commission to revise its regulation as proposed.

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

No.

(24) 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.

None.

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

N/A

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

- |                                                                                                |                           |
|------------------------------------------------------------------------------------------------|---------------------------|
| A. The date by which the agency must receive public comments:<br>in <i>Pa.B.</i>               | 45 days after publication |
| B. The date or dates on which public meetings or hearings<br>will be held:                     | _____ N/A _____           |
| C. The expected date of promulgation of the proposed<br>regulation as a final-form regulation: | 2012 - 2013               |
| D. The expected effective date of the final-form regulation:                                   | upon publication          |
| E. The date by which compliance with the final-form<br>regulation will be required:            | _____ TBD _____           |
| F. The date by which required permits, licenses or other<br>approvals must be obtained:        | _____ N/A _____           |

(27) Provide the schedule for continual review of the regulation.

Review will be provided as needed.



**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU**

**(Pursuant to Commonwealth Documents Law)**

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2012 JAN 27 P 12:08  
DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General.

BY *Amy M. Elliott*  
(DEPUTY ATTORNEY GENERAL)

JAN 10 2012  
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-2010-2160942/57-287

DATE OF ADOPTION August 25, 2011

BY *Rosemary Chiavetta*  
Rosemary Chiavetta

TITLE *Secy*  
(SECRETARY)

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

BY *Bohdan R. Pankiw*  
Bohdan R. Pankiw  
Chief Counsel

8/25/2011  
DATE OF APPROVAL

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

L-2010-2160942  
Proposed Rulemaking  
Revisions to Code of Conduct at  
52 Pa. Code Section 54.122  
52 Pa. Code, Chapter 54

The Pennsylvania Public Utility Commission on August 25, 2011, adopted a proposed rulemaking order which amends the Commission's existing regulations regarding competitive safeguards to be consistent with Chapter 28 of the Electricity Generation Customer Choice and Competition Act. The contact person is Aspasia Staevska, Law Bureau, 425-7403.

## **EXECUTIVE SUMMARY**

**L-2010-2160942/57-287**

**Rulemaking Re: Code of Conduct**

**52 Pa. Code § 54.122**

On March 18, 2010, the Public Utility Commission (PUC) issued an Advance Notice of Proposed Rulemaking (ANOPR) seeking input from the regulated community, statutory advocates, and interested parties on revisions to the Code of Conduct regulations applicable to electric distribution companies and electric generation suppliers engaged in the retail electricity market within the Commonwealth of Pennsylvania. Numerous parties provided comments in response to the ANOPR.

Pursuant to a second Motion adopted at the Public Meeting of February 24, 2011, the PUC identified additional safeguards for a properly functioning competitive market to be included in this rulemaking. The additional safeguards, along with the received comments pursuant to the ANOPR, were taken into consideration in developing and drafting the regulation. The PUC issued the proposed regulation on August 25, 2011.

The proposed revisions to the regulation are designed to foster the continued development of Pennsylvania's retail electricity competitive market. Specifically, the regulation accomplishes this goal by providing safeguards against cross subsidization between electric distribution companies and their affiliated electric generation suppliers, minimizing customer confusion resulting from the use of similar names, symbols, and marks, and adding additional transparency to shared corporate services between the electric distribution companies and their affiliated electric generation suppliers.

The contact persons for this proposed rulemaking are Aspassia V. Staevska (717.425.7403; [astaevska@pa.gov](mailto:astaevska@pa.gov)), and Robert F. Young (717.787.5000; [rfyoung@pa.gov](mailto:rfyoung@pa.gov)).

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

Public Meeting held August 25, 2011

Commissioners Present:

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

Revisions to Code of Conduct at  
52 Pa. Code § 54.122

Docket No. L-2010-2160942

**PROPOSED RULEMAKING ORDER**

The Commission is responsible for implementing and enforcing the provisions of the Electricity Generation Customer Choice and Competition Act (the “Act”), 66 Pa.C.S. § 2801, *et seq.* The Commission has adopted customer choice regulations necessary to the performance of its duties under the Act. 52 Pa. Code § 54.1, *et seq.* Pursuant to a Motion adopted at the Public Meeting of February 25, 2010, the Commission announced it would be reviewing the Competitive Safeguards subchapter of its customer choice rules. 52 Pa. Code §§ 54.121 – 123. Subsequently, the Commission issued an Advance Notice of Proposed Rulemaking Order (“ANOPR”) identifying the scope of the proceeding and soliciting initial comments. Pursuant to a second Motion adopted at the Public Meeting of February 24, 2011, the Commission identified additional safeguards for a properly functioning competitive market to be included in this rulemaking. The Commission now proposes the attached revisions to the Competitive Safeguards subchapter for public comment. After receipt and review of public comments, the

Commission will issue a final rulemaking for approval consistent with the regulatory review process.

## **BACKGROUND**

The Act, which became effective January 1, 1997, provides retail electric customers subject to the Commission's jurisdiction with the option to obtain their generation service from an electric generation supplier ("EGS"), as opposed to the incumbent electric distribution company ("EDC"). EGSs must be licensed by the Commission before offering service. EDCs must provide EGSs with direct access, which means that EGSs can use the EDC's transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the EDC's own use of the system. 66 Pa.C.S. § 2804(2); definition of "direct access", 66 Pa.C.S. §2803.

The emphasis on direct access was a deliberate choice by the General Assembly. There was a genuine concern on the part of Pennsylvania and other states adopting retail choice laws that incumbent utilities would directly or indirectly favor affiliated EGSs, to the detriment of robust retail electric competition. Such anti-competitive practices might take form in the sharing of customer information, the linking of regulated services to non-competitive services, financial subsidy of an affiliate through the use of EDC staff and facilities, etc. Accordingly, Pennsylvania and other jurisdictions with retail choice laws typically included provisions prohibiting such conduct. Public utility commissions in nearly all retail choice jurisdictions have adopted rules intended to safeguard the competitive marketplace.

The Pennsylvania Public Utility Commission adopted competitive safeguards, which became effective on July 8, 2000. The rules have not been subject to amendment. For the reasons identified in the ANOPR, the Commission concluded that it would be

appropriate to consider revisions to reflect changes in the markets, technology and law subsequent to the passage of the Competition Act.

The following parties provided comments in response to the ANOPR: the Pennsylvania Office of Consumer Advocate (“OCA”), the Energy Association of Pennsylvania (“EAP”), the National Energy Marketers Association (“NEM”), the Pennsylvania Energy Marketers Coalition (“PEMC”), West Penn Power Company (“West Penn”), and the joint comments of the Metropolitan Edison Company, Pennsylvania Electric Company, and the Pennsylvania Power Company (“FirstEnergy Companies”).

## **DISCUSSION**

### **A. Summary of the Comments**

The above-referenced parties offered a number of comments. Generally, these parties felt that the existing code of conduct was effective. However, the following specific revisions to the existing Code of Conduct were suggested:

- Both OCA and the FirstEnergy Companies recommended that the Commission revise Section 54.122(9) to incorporate use of the Commission’s website and electronic mail as a means to share current lists of suppliers.
- FirstEnergy recommended adding a provision that EGSs may not represent themselves as being an employee of an EDC through attire or actions.
- NEM recommended the addition of prohibitions against EDCs financially subsidizing affiliated EGSs, or from transferring the regulated assets or property of an EDC to an affiliated EGS at less than market value.

- The Energy Association proposed two changes. First, that the Code should prohibit EDCs and EGSs from using company logos in a deceptive manner. Second, that EGSs should enter into licensing agreements with EDCs before using any of their intellectual property.
- PEMC, like the Energy Association, commented on the proper use of logos. It recommended that EGS representatives involved in door-to-door sales be required to have identification, which correctly identifies the name and logo of the company.

## **B. Review of Other Retail Choice States**

Nearly every state that adopted retail choice models has regulations governing the relationships between EDCs and affiliated EGSs. Commission staff has undertaken a review of each jurisdiction's code for elements that should be adopted in Pennsylvania. In particular, the Commission considered the rules adopted by the states of Texas, Illinois and New Jersey in crafting this proposed rulemaking. These jurisdictions have very comprehensive regulations on this subject. Some of the comments we received included the adoption of elements present in the codes of conduct in effect in these states.

## **C. Proposed Revisions**

The Commission proposes to realign the regulation according to subject matter for a more convenient use. We propose to divide the regulation into the following six subject matter categories: (a) non-discrimination requirements; (b) customer requests for information; (c) prohibited transactions and activities; (d) accounting and training requirements; (e) dispute resolution procedures; and (f) penalties. As a result of this streamlining, we had to renumber most subsections of the regulation. The following summary provides information on each subsection.

**54.122.(1)(i)**

This is subsection (1) of the current regulation. It has been renumbered but not revised substantively.

**54.122.(1)(ii)**

This is subsection (2) of the current regulation. It has been renumbered but not revised substantively.

**54.122.(1)(iii)**

This is subsection (5) of the current regulation. It has been renumbered but not revised substantively.

**54.122.(1)(iv)**

This is subsection (6) of the current regulation. It has been renumbered but not revised substantively.

**54.122.(1)(v)**

This is subsection (7) of the current regulation. It has been renumbered but not revised substantively.

**54.122.(2)(i)**

This is subsection (9) of the current regulation. It has been modified consistent with some of the received comments. EDC representatives

are now required to refer customers to the Commission's retail choice website and offer to provide customers with a list of the current suppliers. EDC representatives may not rank or recommend particular suppliers regardless of their affiliate status.

**54.122. (2)(ii)**

This is subsection (10) of the current regulation. It has been modified to exclude references to affiliate EGSs using the EDC's name and logo as part of the EGS's trade name or corporate appearance for marketing and communication purposes. The limitations on the EDC's name, logo, and other identifying elements by all EGSs are now addressed in 54.122.(3)(iv).

**54.122. (3)(i)**

At NEM's suggestion, a new subsection has been added making express the prohibition against an EDC financially subsidizing an affiliated EGS. No costs associated with an affiliated EGS should be recovered in the EDC's regulated rates.

**54.122. (3)(ii)**

Also at NEM's suggestion, this subsection is being proposed to bar the transfer of any regulated EDC assets to its affiliated EGS at less than market value.



**54.122.(3)(iii)**

This subsection is proposed pursuant to the Commission's Motion aimed at preventing direct or indirect cross-subsidies, like the use of the affiliate EDC for credit support for affiliated EGS sales.

**54.122. (3)(iv)**

This subsection is proposed to address comments offered by the Energy Association. It requires an EGS to enter into a licensing agreement with an EDC before using the EDC's service-mark or trademark and to feature a prominent disclaimer. The disclaimer will state that the EGS is not the same company as the EDC and that a customer need not buy the EGS's services or products in order to continue receiving services from the EDC. By requiring a disclaimer, the Commission attempts to minimize customer confusion and eliminate any deceptive practices that may occur when an EGS uses the EDC's service-mark or trademark.

**54.122. (3)(v)**

This new subsection was added pursuant to the Commission's Motion to examine whether EDC-affiliated EGSs should change their names so as to be dissimilar from both the EDC affiliate and the corporate parent. We have found that this requirement varies in different jurisdictions. We propose that both the affiliated and non-affiliated EGSs be required to change their names to be dissimilar to the EDC.

**54.122. (3)(vi)**

This new subsection is proposed to address comments of the Energy Association and PEMC. It prohibits the EGS representatives from falsely claiming to represent the EDC of the service territory.<sup>1</sup>

**54.122. (3)(vii)**

This new subsection was added pursuant to the Commission's Motion to prohibit joint marketing, sales, and promotional activities by EDCs and affiliate EGSs. This prohibition is common in many retail choice jurisdictions.

**54.122(3)(viii)**

This is subsection (3) of the current regulation. It has been renumbered but not revised substantively.

**54.122(3)(ix)**

This new subsection requires that EGSs and EDCs do not share office space and instead occupy different buildings. This limitation is common in other jurisdictions.

**54.122. (4)(i)**

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<sup>1</sup> The subsection refers to the proposed § 111.8 of the Marketing and Sales Practices for the Retail Residential Energy Market regulations and interim guidelines about marketing and sales practices for the retail residential energy market that address this issue at length.

This new subsection requires an EDC and affiliated EGS to maintain separate accounting records. This is a feature of codes of conduct in other jurisdictions, such as Illinois, and we propose to adopt it in Pennsylvania.

**54.122. (4)(ii)**

Several jurisdictions, such as Maryland and Ohio, require EDCs to maintain, in a single document, a description of the relationship between it and any affiliated EGSs. This document has been described as a “cost allocation manual” in these two states. It allows the appropriate regulatory body to efficiently verify and audit the utility’s compliance with the code of conduct. We will require the same in Pennsylvania. If part of the final rule, the Commission will establish a docket at which EDCs shall file their cost allocation manuals. The cost allocation manual will be reviewed as part of the audit and management efficiency investigation provisions in § 516 of the Public Utility Code.

**54.122.(4)(iii)**

This is subsection (11) of the current regulation. It has been revised to provide additional clarification on the functional separation requirements for employees of the EDC and affiliated EGSs. It states that EDCs and affiliated EGSs shall not share employees or services, except for corporate support services, emergency services, or tariff services.

**54.122.(4)(iv)**

This is subsection (8) of the current regulation. It has been renumbered but not revised substantively.

**54.122.(5)(i)**

This is subsection (4) of the current regulation. It has been renumbered but not revised substantively.

**54.122.(6)(i)**

Most jurisdictions have provisions for civil penalties for non-compliance. Here we have provided a reference to 66 Pa.C.S. § 3301, which allows the Commission to assess a civil penalty of up to \$1,000 a day for non-compliance with a regulation.

**CONCLUSION**

Accordingly, under 66 Pa. C.S. § 501, 2807(e), Section 2804(2) of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2804(2), the Commonwealth Documents Law, 45 P.S. §§ 1201 *et seq.*, and the regulations promulgated hereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5, the Commission proposes revisions to its regulations pertaining to the electricity generation customer choice, and its provisions for competitive safeguards, as noted and set forth in Annex A;

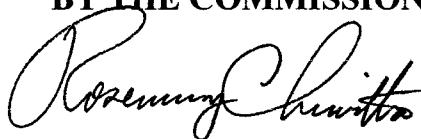
**THEREFORE,**

**IT IS ORDERED:**

1. That the Proposed Rulemaking at Docket L-2010-2160942 will consider the regulations 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 by the Independent Regulatory Review Commission.
5. That the Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
6. An original and 15 copies of any written comments referencing the docket number of the proposed rulemaking shall be submitted within 45 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn.: Secretary, P.O. Box 3265, Harrisburg, PA 17105-3265.
7. That the contact person for legal issues related to this rulemaking is Aspasia Staevska, Assistant Counsel, Law Bureau, 717-425-7403. 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,**

A handwritten signature in cursive script, reading "Rosemary Chiavetta".

Rosemary Chiavetta,  
Secretary

(SEAL)

ORDER ADOPTED: August 25, 2011

ORDER ENTERED: August 25, 2011

**ANNEX A**  
**TITLE 52. PUBLIC UTILITIES**  
**PART I. PUBLIC UTILITY COMMISSION**  
**Subpart C. FIXED SERVICE UTILITIES**  
**CHAPTER 54: ELECTRICITY GENERATION CUSTOMER CHOICE**

\* \* \* \* \*

**Subchapter E: Competitive Safeguards**

\* \* \* \* \*

**§ 54.122. Code of conduct.**

Electric generation suppliers and electric distribution companies shall comply with the following requirements:

[ (1) An electric distribution company may not give an electric generation supplier, including without limitation, its affiliate or division, any preference or advantage over any other electric generation supplier in processing a request by a distribution company customer for retail generation supply service.

(2) Subject to customer privacy or confidentiality constraints, an electric distribution company may not give an electric generation supplier, including without limitation its affiliate or division, any preference or advantage in the dissemination or disclosure of customer information and any dissemination or disclosure shall occur at the same time and in an equal and nondiscriminatory manner. "Customer information" means all information pertaining to retail electric customer identity and current and future retail electric customer usage patterns, including appliance usage patterns, service requirements or service facilities.

(3) An electric distribution company or electric generation supplier may not engage in false or deceptive advertising to customers with respect to the retail supply of electricity in this Commonwealth.

(4) Each electric distribution company shall adopt the following dispute resolution procedures to address alleged violations of this section:

(i) Regarding any dispute between an electric distribution company or a related supplier, or both, and an electric generation supplier (each individually referred to as a "party" and collectively referred to as "parties"), alleging a violation of any of the provisions of this section, the electric generation supplier shall provide the electric distribution company or related supplier, or both, as applicable, a written notice of dispute which includes the names of the parties and customers, if any involved and a brief description of the matters in dispute.

(ii) Within 5 days of receipt of the notice by the electric distribution company or related supplier, or both, a designated senior representative of each of the parties shall attempt to resolve the dispute on an informal basis.

(iii) If the designated representatives are unable to resolve the dispute by mutual agreement within 30 days of the referral, the dispute shall be referred for mediation through the Commission's Office of Administrative Law Judge. A party may request mediation prior to that time if it appears that informal resolution is not productive.

(iv) If mediation is not successful, the matter shall be converted to a formal proceeding before a Commission administrative law judge, and the prosecuting parties shall be directed to file a formal pleading in the nature of a complaint,



petition or other appropriate pleading with the Commission within 30 days or the matter will be dismissed for lack of prosecution. Any party may file a complaint, petition or other appropriate pleading concerning the dispute under any relevant provision of 66 Pa.C.S. (relating to the Public Utility Code).

(5) An electric distribution company may not illegally tie the provision of any electric distribution service within the jurisdiction of the Commission to one of the following:

(i) The purchase, lease or use of any other goods or services offered by the electric distribution company or its affiliates.

(ii) A direct or indirect commitment not to deal with any competing electric generation supplier.

(6) An electric distribution company may not provide any preference or advantage to any electric generation supplier in the disclosure of information about operational status and availability of the distribution system.

(7) An electric distribution company shall supply all regulated services and apply tariffs to nonaffiliated electric generation suppliers in the same manner as it does for itself and its affiliated or division electric generation supplier, and shall uniformly supply all regulated services and apply its tariff provisions in a nondiscriminatory manner.

(8) Every electric distribution company and its affiliated or divisional electric generation supplier shall formally adopt and implement these provisions as company policy and shall take appropriate steps to train and instruct its employees in their content and application.

(9) If an electric distribution company customer requests information about electric generation suppliers, the electric distribution company shall provide the latest list as compiled by the Commission to the customer over the telephone, or in written form or by other equal and nondiscriminatory means. In addition, an electric distribution company may provide the address and telephone number of an electric generation supplier if specifically requested by the customer by name. To enable electric distribution companies to fulfill this obligation, the Commission will maintain a written list of licensed electric generation suppliers. The Commission will regularly update this list and provide the updates to electric distribution companies as soon as reasonably practicable. The Commission will compile the list in a manner that is fair to all electric generation suppliers and that is not designed to provide any particular electric generation supplier with a competitive advantage.

(10) An electric distribution company or its affiliate or division may not state or imply that any delivery services provided to an affiliate or division or customer of either are inherently superior, solely on the basis of their affiliation with the electric distribution company, to those provided to any other electric generation supplier or customer or that the electric distribution company's delivery services are enhanced should supply services be procured from its affiliate or division. When an electric distribution company's affiliated or divisional supplier markets or communicates to the public using the electric distribution company's name or logo, it shall include a disclaimer stating that the affiliated or divisional supplier is not the same company as the electric distribution company, that the prices of the affiliated or divisional supplier are not regulated by the Commission and that a customer is not required to buy electricity or other products from the affiliated or divisional supplier to receive the same quality service from the electric distribution company. When an affiliated or divisional supplier advertises or communicates

through radio, television or other electronic medium to the public using the electric distribution company's name or logo, the affiliated or divisional supplier shall include at the conclusion of any communication a disclaimer that includes all of the disclaimers listed in this paragraph.

(11) An electric distribution company which is related as an affiliate or division of an electric generation supplier or transmission supplier (meaning any public utility that owns, operates, or controls facilities used for the transmission of electric energy) which serves any portion of this Commonwealth; and any electric generation supplier which is related as an affiliate or division of any electric distribution company or transmission supplier which serves any portion of this Commonwealth, shall insure that its employees function independently of other related companies.]

(1) Non-discrimination requirements.

(i) An electric distribution company may not give an electric generation supplier, including without limitation its affiliate or division, any preference or advantage over any other electric generation supplier in processing a request by a distribution company customer for retail generation supply service.

(ii) Subject to customer privacy or confidentiality constraints, an electric distribution company may not give an electric generation supplier, including without limitation its affiliate or division, any preference or advantage in the dissemination or disclosure of customer information and any dissemination or disclosure shall occur at the same time and in an equal and nondiscriminatory manner. "Customer information" means all

information pertaining to retail electric customer identity and current and future retail electric customer usage patterns, including appliance usage patterns, service requirements or service facilities.

(iii) An electric distribution company may not illegally tie the provision of any electric distribution service within the jurisdiction of the Commission to one of the following:

(A) The purchase, lease or use of any other goods or services offered by the electric distribution company or its affiliates.

(B) A direct or indirect commitment not to deal with any competing electric generation supplier.

(iv) An electric distribution company may not provide any preference or advantage to any electric generation supplier in the disclosure of information about operational status and availability of the distribution system.

(v) An electric distribution company shall supply all regulated services and apply tariffs to nonaffiliated electric generation suppliers in the same manner as it does for itself and its affiliated or division electric generation supplier, and shall uniformly supply all regulated services and apply its tariff provisions in a nondiscriminatory manner.

(2) *Customer requests for information.*

(i) If an electric distribution company customer requests information about electric generation suppliers, the electric distribution company shall provide the address of the Commission's retail choice website and offer to

send the most current list of suppliers for that service territory, as compiled by the Commission, by regular mail, electronic mail, facsimile, telephonically, or by other equal and nondiscriminatory means, according to the customer's preference. The electric distribution company may not recommend or offer an opinion on the relative merits of particular suppliers. In addition, an electric distribution company may provide the mailing address, website address, and telephone number of an electric generation supplier if specifically requested by the customer by name. To enable electric distribution companies to fulfill this obligation, the Commission will maintain a written list of licensed electric generation suppliers. The Commission will regularly update this list and provide the updates to electric distribution companies as soon as reasonably practicable. The Commission will compile the list in a manner that is fair to all electric generation suppliers and that is not designed to provide any particular electric generation supplier with a competitive advantage.

(ii) An electric distribution company or its affiliate or division may not state or imply that any delivery services provided to an affiliate or division or customer of either are inherently superior, solely on the basis of their affiliation with the electric distribution company, to those provided to any other electric generation supplier or customer or that the electric distribution company's delivery services are enhanced should supply services be procured from its affiliate or division.

*(3) Prohibited transactions and activities.*

(i) An electric distribution company may not subsidize an affiliated electric generation supplier. Costs or overhead related to competitive,

nonregulated activities of an affiliated electric generation supplier may not be included in the rates of an electric distribution company.

(ii) An electric distribution company may not sell, release or otherwise transfer to an affiliate electric generation supplier, at less than market value, assets, services or commodities that have been included in regulated rates.

(iii) An electric distribution company may not allow an affiliate electric generation supplier to secure credit through the pledge of assets in the rate base of the electric distribution company or the pledge of money necessary for utility operations.

(iv) An electric generation supplier shall not use any word, term, name, symbol, device, registered or unregistered mark, or any combination thereof (collectively and singularly referred to as "EDC identifier"), that identifies or is owned by an electric distribution company, in connection with the sale, offering for sale, distribution, or advertising of any goods or services, unless the electric generation supplier includes a disclaimer and enters into an appropriate licensing agreement specifying such rights.

(A) The disclaimer shall state that the electric generation supplier is not the same company as the electric distribution company whose EDC identifier is featured, and that a customer need not buy the electric generation supplier's products or services in order to continue receiving services from the electric distribution company.

(B) In print and internet communications, the disclaimer shall be placed immediately adjacent to the EDC identifier and shall be in equal

prominence to the main body of the text. In radio or television communications, the disclaimer shall be clearly spoken.

(v) An electric generation supplier may not have the same or substantially similar name or fictitious name as the electric distribution company or its corporate parent. An electric generation supplier shall be granted 6 months from the effective date of this regulation to change its name.

(vi) An electric generation supplier may not allow an employee or agent to represent himself or herself as an employee of the electric distribution company through his or her attire or actions. An electric generation supplier shall comply with the Commission's rules regarding agent identification and misrepresentation.

(vii) An electric distribution company and an affiliated electric generation supplier may not engage in joint marketing, sales, or promotional activities unless the joint marketing, sales, or promotional activities are offered to all electric generation suppliers in the same manner under similar terms and conditions.

(viii) An electric distribution company or electric generation supplier may not engage in false or deceptive advertising to customers with respect to the retail supply of electricity in this Commonwealth.

(ix) An electric distribution company and affiliated electric generation supplier may not share office space and shall be physically separated by occupying different buildings.

(4) Accounting and training requirements.

(i) An electric distribution company and an affiliated electric generation supplier shall maintain separate accounting records for their business activities.

(ii) An electric distribution company that has an affiliated electric generation supplier shall document the business relationship through a cost allocation manual.

(A) The cost allocation manual shall include an organizational chart, identify all contractual agreements between the two entities, include job positions and job descriptions of all shared or temporarily assigned employees, and contain a log of business transactions between the electric distribution company and electric generation supplier.

(B) The cost allocation manual shall be filed with the Commission within 6 months of the effective date of this regulation. Substantial revisions to the cost allocation manual shall be filed when necessary. The cost allocation manual shall be posted by the electric distribution company on its Internet website within 48 hours of filing with the Commission.

(C) The cost allocation manual shall be reviewed as part of the audits and management efficiency investigations pursuant to § 516 of the Public Utility Code, 66 Pa.C.S. § 516 (relating to audits of certain utilities).

(iii) An electric distribution company and affiliated electric generation supplier or transmission supplier may not share employees or services, except for corporate support services, emergency support services, or tariff



services offered to all electric generation suppliers on a non-discriminatory basis. Temporary assignments of employees from an electric distribution company to an affiliated electric generation supplier or transmission supplier, for less than 1 year, shall be considered the same as sharing employees.

(A) “Corporate support services” do not include purchasing of electric transmission facilities, service and wholesale market products, hedging and arbitrage, transmission and distribution service operations, system operations, engineering, billing, collection, customer service, information systems, electronic data interchange, strategic management and planning, account management, regulatory services, legal services, lobbying, marketing or sales.

(B) “Emergency support services” are temporary services necessary to protect consumer safety or prevent interruption of service.

(C) The electric distribution company shall report to the Commission by January 31 of each year the work history of each shared, temporarily assigned, or permanently transferred employee to the affiliated electric generation supplier during the previous calendar year, and the employee’s new position with the affiliate.

(iv) Every electric distribution company and its affiliated or divisional electric generation supplier shall formally adopt and implement these provisions as company policy and shall take appropriate steps to train and instruct its employees in their content and application.

*(5) Dispute resolution procedures.*

(i) Each electric distribution company shall adopt the following dispute resolution procedures to address alleged violations of this section:

(A) Regarding any dispute between an electric distribution company or a related supplier, or both, and an electric generation supplier (each individually referred to as a "party" and collectively referred to as "parties"), alleging a violation of any of the provisions of this section, the electric generation supplier shall provide the electric distribution company or related supplier, or both, as applicable, a written notice of dispute which includes the names of the parties and customers, if any involved, and a brief description of the matters in dispute.

(B) Within 5 days of receipt of the notice by the electric distribution company or related supplier, or both, a designated senior representative of each of the parties shall attempt to resolve the dispute on an informal basis.

(C) If the designated representatives are unable to resolve the dispute by mutual agreement within 30 days of the referral, the dispute shall be referred for mediation through the Commission's Office of Administrative Law Judge. A party may request mediation prior to that time if it appears that informal resolution is not productive.

(D) If mediation is not successful, the matter shall be converted to a formal proceeding before a Commission administrative law judge, and the prosecuting parties shall be directed to file a formal pleading in the nature of a complaint, petition or other appropriate pleading with the Commission within 30 days or the matter will be dismissed for lack of prosecution. Any party may file a complaint, petition or other appropriate pleading

concerning the dispute under any relevant provision of 66 Pa.C.S. (relating to the Public Utility Code).

(6) Penalties.

(i) An electric distribution company or electric generation supplier that does not comply with this subchapter shall be subject to penalties under 66 Pa.C.S. § 3301 (relating to civil penalties for violations).



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

ROBERT F. POWELSON  
CHAIRMAN

January 27, 2012

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

Re: L-2010-2160942/57-287, Proposed Rulemaking  
Revisions to Code of Conduct at, 52 Pa. Code  
Section 54.122, 52 Pa. Code, Chapter 54

Dear Chairman Lutkewitte:

Enclosed please find one copy of the proposed rulemaking and the regulatory analysis form prepared in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." Pursuant to Section 5(a) of the Regulatory Review Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15), the Commission is submitting today a copy of the proposed rulemaking and regulatory analysis form to the Chairman of the House Committee on Consumer Affairs and to the Chairman of the Senate Committee on Consumer Protection and Professional Licensure.

The purpose of this proposal is to amend the Commission's existing regulations regarding competitive safeguards to be consistent with Chapter 28 of the Electricity Generation Customer Choice and Competition Act. The contact person is Aspasia Staevska, Law Bureau, 425-7403.

The proposal has been deposited for publication with the Legislative Reference Bureau.

Very truly yours,

Robert F. Powelson  
Chairman

Enclosures

pc: The Honorable Robert M. Tomlinson  
The Honorable Lisa Boscola  
The Honorable Robert Godshall  
The Honorable Joseph Preston, Jr.  
Legislative Affairs Director Perry  
Chief Counsel Pankiw  
Assistant Counsel Staevska  
Regulatory Coordinator DeIBiondo

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT  
TO THE REGULATORY REVIEW ACT

ID Number: L-2010-2160942/57-287

Subject: Revisions to Code of Conduct at 52 Pa. Code Section  
54.122

Pennsylvania Public Utility Commission

TYPE OF REGULATION

Proposed Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted.

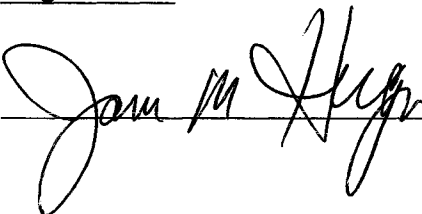

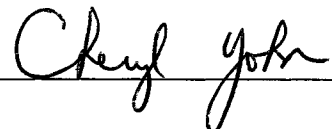
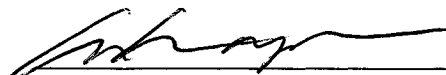
Final Regulation

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

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FILING OF REPORT

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
1/27/12		<u>HOUSE COMMITTEE</u> (Godshall) Consumer Affairs
1-27-12		<u>SENATE COMMITTEE</u> (Tomlinson) Consumer Protection and Professional Licensure
1/27/12		Independent Regulatory Review Commission Attorney General
1-27-12		Legislative Reference Bureau