



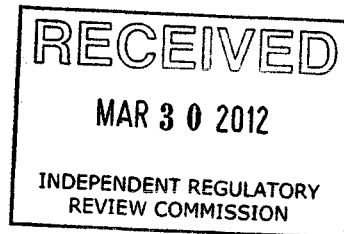
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March 27, 2012

VIA HAND-DELIVERY

Rosemary Chiavetta, Esq.
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17120



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**RE: PROPOSED RULEMAKING ORDER for
REVISIONS TO CODE OF CONDUCT at 52 PA. CODE § 54.122
Docket No. L-2010-2160942**

Dear Secretary Chiavetta,

Enclosed please find an original and 15 copies of the comments of the Energy Association of Pennsylvania ("EAP" or "Association") filed in the above-referenced proceeding.

Respectfully submitted,

Donna M.J. Clark
Vice President & General Counsel

cc: Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
James H. Cawley, Commissioner
Wayne E. Gardner, Commissioner
Pamela A. Witmer, Commissioner
Aspassia Staevska, Law Bureau (electronic copy - astaevska@pa.gov)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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

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Comments of the
Energy Association of Pennsylvania

I. INTRODUCTION

On August 25, 2011, the Pennsylvania Public Utility Commission ("PUC" or "Commission") entered a Proposed Rulemaking Order at the above-referenced docket ("Order"), seeking comments on proposed revision to the Code of Conduct for electric distribution companies ("EDCs") and electric generation suppliers ("EGSs") at 52 Pa. Code § 54.122. The Order was published in the Pennsylvania Bulletin on February 11, 2012 and provided 45 days for interested parties to file comments. The Energy Association of Pennsylvania ("EAP" or "Association"), a statewide trade association whose members include EDCs operating in Pennsylvania subject to the jurisdiction of the Commission, respectfully submits the following comment to the Order and supports the comments filed by its individual member EDCs¹.

¹ EAP electric distribution company members include Citizens' Electric Company, Duquesne Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, Pennsylvania Power Company, Pike County Light & Power Company, PPL Electric Utilities Corporation, UGI Utilities, Inc. (Electric Division), Wellsboro Electric Company, and West Penn Power Company.

II. COMMENTS

The existing Code of Conduct which became effective on July 8, 2000 was developed by a Competitive Safeguards Working Group that collaboratively developed consensus principles that form the basis of the current regulations. The governing Code of Conduct establishes rules to, *inter alia*, prevent the improper sharing of marketing and other competitively sensitive information between EDCs and their affiliated EGSs to the detriment of the competitive electric retail market in Pennsylvania. The Commission concludes in the instant Order that those regulations first established in 2000 need to be revised and delineates a number of substantive changes which as detailed in EDC comments would have a substantial impact on the operations of Pennsylvania EDCs and their affiliated EGSs both in Pennsylvania and in out-of-state markets. The Association respectfully urges the Commission to reconsider the Proposed Rulemaking Order and refrain from revising the existing Code of Conduct.

As stated in EAP's comments to the Advanced Notice of Proposed Rulemaking Order entered at this docket, Pennsylvania EDCs have employed considerable resources and successfully implemented the current regulations as evidenced by the lack of complaints or requests for mediation filed over the last twelve years under the existing Code of Conduct. While the Association commends the periodic review of long-standing regulations, major regulatory changes are not warranted where, as here, no evidence or support has been offered to suggest that the existing rules do not serve to deter or prevent the undesired behavior, i.e., the improper sharing of marketing and other competitively sensitive information between EDCs and their affiliated EGSs. The current wholesale proposed revisions to the Code of Conduct are overly broad and not reasonable inasmuch as the existing Code of Conduct has proven adequate to prevent anti-competitive behavior.

On the other hand, the revisions outlined in the proposed regulations would necessitate major and costly changes to the manner in which Pennsylvania EDCs and their affiliated EGSs operate, would favor EGSs which are affiliated with EDCs situate in other jurisdictions over Pennsylvania based utilities, and would not serve to enhance competition in the retail electric market in the Commonwealth. The Association believes that a number of the proposed revisions are contrary to prior Commission decisions pursuant to which EDCs currently operate in Pennsylvania and that the revisions raise legal issues under the Public Utility Code and the United States Constitution.


For example, the changes set forth at §§54.122(3)(iv) and (v) to, *inter alia*, ban an EGS from using the same or similar name as its affiliated EDC or corporate parent, violate the First Amendment protection of commercial speech, violate the Fifth Amendment protection from a government taking without just compensation and do not meet the requirements of Chapter 28 of the Public Utility Code to provide accurate information to consumers. The proposals found at §§54.122(3)(ix) and (4)(iii) to restrict EGSs affiliated with Pennsylvania EDCs from sharing office space, employees or corporate services are contrary to many practices previously approved by the Commission in affiliated interest agreements, violate the Commerce Clause of the United States Constitution and are contrary to rules established by the Federal Energy Regulatory Commission for wholesale generation and transmission services. Additionally, the revisions contained within §54.122(3)(ii) to mandate the price at which an EDC can sell, release or transfer property that has been included in regulated rates to an affiliated EGS unnecessarily interfere with the management decision of a utility and are inconsistent with prior decisions of the Commission under Chapter 21 of the Public Utility Code. The Association requests, at a minimum, that the Commission delete the sections referenced above in any final revision to the

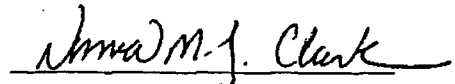
Code of Conduct based not only on the issues generally raised here but on the analysis of these issues as contained in the filings of its EDC members.

III. CONCLUSION

The Association supports robust competition in Pennsylvania and recognizes the need for safeguards to prevent unfair and anti-competitive practices, including the need to prevent affiliate preference. The current Code of Conduct achieves that end. It provides adequate protection without unduly restricting competition in the Pennsylvania retail electric market and without providing an unfair advantage to either an EGS with an in-state EDC affiliation or an EGS with an out-of-state EDC or corporate parent affiliation. This is clearly evidenced by the lack of complaints filed by market participants and the lack of enforcement efforts initiated by the Commission over the past twelve years. The proposed revisions to the Code of Conduct are not only unnecessary based on that experience but are unlawful when examined in light of state, federal and constitutional law. Finally, the Association asks the Commission to refrain from finalizing the proposed revisions based on the lack of evidence or facts demonstrating affiliate preference or anti-competitive behavior which may, if proven, warrant the proposed major and costly overhaul of the current Code of Conduct.

Respectfully submitted,


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