

PENNSYLVANIA ENERGY MARKETERS COALITION

2929
March 27, 2012

Rosemary Chiavetta
Secretary, Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265



Dear Secretary Chiavetta:

Enclosed please find the Comments of the Pennsylvania Energy Marketers Coalition ("PEMC"), in response to the Pennsylvania Public Utility Commission's Proposed Rulemaking Order on revisions to the code of conduct for electric distribution companies and electric generation suppliers (Docket No. L-2010-2160942).

Please do not hesitate to contact me with any questions or concerns regarding our Comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Caliva, III".

Frank Caliva, III
Regulatory Consultant
Pennsylvania Energy Marketers Coalition (PEMC)

Senior Consultant, Public Affairs &
Strategy Development
Strategic Communications, LLC
1012 14th Street NW, Suite 1106
Washington, DC 20005

Enclosures

2929



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Revision of Code of Conduct)
for Electric Distribution Companies) Docket No. L-2010-2160942
and Electric Generation Suppliers)

COMMENTS OF THE PENNSYLVANIA ENERGY MARKETERS COALITION

INTRODUCTION

The Pennsylvania Public Utility Commission ("PUC," or "Commission") seeks Comments on the above-referenced Proposed Rulemaking, issued on August 25, 2011, and published in the Pennsylvania Bulletin on February 11, 2012, regarding revisions to the Commission's Code of Conduct which was codified on July 8, 2000 and which established certain competitive safeguards to govern the relationships between Electricity Generation Suppliers ("EGSs") and Electricity Distribution Companies ("EDCs").¹

As independent energy marketers, Agway Energy Services, LLC ("Agway"), Energy Plus Company ("Energy Plus"), Pennsylvania Gas & Electric, Inc. ("PAG&E"), and SouthStar Energy Services ("SouthStar"), known separately and together for purposes of this filing as the Pennsylvania Energy Marketers Coalition ("PEMC")², appreciate the opportunity to comment on the proposed rules issued by the Commission, which would update the Code of Conduct for EDCs and EGSs within the Commonwealth.

As we noted in our Comments of May 18, 2010, in the instant proceeding, PEMC has a strong interest in the continued development of an efficient and competitive electricity market in Pennsylvania. As such, our Comments in this proceeding are focused on helping to ensure a level playing field for all EDCs and EGSs within the Commonwealth, and ensuring that

¹ See 52 Pa. Code § 54.122

² This group of energy marketers, which supply natural gas, electricity, and various other energy services to residential and commercial customers across a large number of utility markets throughout several states, works together collaboratively on non-competitive, regulatory issues to advance retail energy markets and consumer choice.

consumers have the ability to make educated and informed decisions to meet their energy needs. In general, we believe this revised code of conduct is a significant step forward in regards to these objectives. Additionally, we offer a suggestion for strengthening this code even further, and request Commission clarification on two provisions of the revised code, below.

**CLARIFICATION NEEDED REGARDING USE OF EDC NAME AND OTHER
INTELLECTUAL PROPERTY BY EGS**

Under the section "Prohibited transactions and activities," § 54.122 (3)(iv) states, "An electric generation supplier may not use a word, term, name, symbol, device, registered or unregistered mark or a 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 goods or services, unless the electric generation supplier includes a disclaimer and enters into an appropriate licensing agreement specifying the rights." The PEMC appreciates the intent of this provision, but is concerned that strictly applied, it could prevent even an unaffiliated EGS from providing reasonable information to customers. An example of such would be an offer for electricity supply that was priced as a percentage off the utility's price-to-compare, and included the name of the utility in the offer for clarification purposes. The PEMC recommends the addition of a sub-paragraph (C), which states, "Reference to an EDC's price-to-compare or similar references, which are not an attempt to capitalize on the consumer's recognition of an EDC identifier but rather to provide relevant information to the consumer, are exempt from the disclaimer and licensing agreement provisions," or language to that effect.

Further, § 54.122 (3) (v) states, "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 change its name by [six months after the

effective date of adoption of this proposed rulemaking].” The PEMC understands this provision to mean that an EGS *could not* use an EDC identifier as part of its name, even with the inclusion of a disclaimer and the signing of a licensing agreement. Clarification is needed on this apparent contradiction with § 54.122 (3) (iv), which the PEMC understands to mean that an EGS *could* use an EDC identifier as part of the EGS’s name, logo, or marketing and advertising material, subject to (1) the inclusion of a disclaimer explaining that the EGS is not the same company as the EDC, and (2) the development of a licensing agreement between the EGS and EDC.

EXPAND CODE OF CONDUCT TO COVER NGDC and NGS RELATIONSHIPS

The PEMC, which includes competitive energy suppliers that market both electricity and natural gas, believe this code of conduct should be expanded in its application to natural gas distribution companies (“NGDCs”) and natural gas suppliers (“NGSs”), as well as EDCs and EGSs. We strongly believe that the same concerns for consumer protection, and the vigorous, transparent competition that undergirds this revised code of conduct for the electricity market, are equally relevant to the natural gas market. We respectfully urge the Commission to either expand the scope of this rulemaking to include NGDCs and NGSs, or to open a separate docket for this purpose.

CONCLUSION


PEMC believes the Commission has a very important opportunity to put in place a revised Code of Conduct that will help move the Pennsylvania electricity market closer to competitive neutrality, in which all EGSs compete based on the value they provide customers, as opposed to competing with the possibility of unfair advantages offered through affiliated relationships or structural biases. We view this revised code of conduct as crucial to allowing consumers across the Commonwealth to make educated choices about their energy needs based on accurate, unbiased information regarding opportunities from suppliers, affiliated and

unaffiliated alike. The PEMC looks forward to continued collaboration with the Commission, Staff, Office of Consumer Advocate, utilities, suppliers, and other stakeholders on this and other issues, to advance the interests of Pennsylvania consumers.

March 27, 2012

Respectfully submitted,

PENNSYLVANIA ENERGY MARKETERS COALITION



Frank Caliva, III
Regulatory Consultant
Pennsylvania Energy Marketers Coalition
(PEMC)

Senior Consultant, Public Affairs &
Strategy Development
Strategic Communications, LLC
1012 14th Street NW, Suite 1106
Washington, DC 20005



Michael F. Meath
Regulatory Consultant
Pennsylvania Energy Marketers Coalition
(PEMC)

President
Strategic Communications, LLC
3532 James Street, Suite 106
Syracuse, New York 13206

CC: PEMC Distribution List (below)

Pennsylvania Energy Marketers Coalition (PEMC)

Agway Energy Services, LLC
Energy Plus Company
Pennsylvania Gas & Electric
SouthStar Energy Services