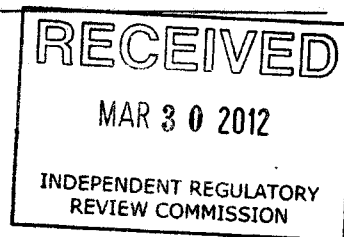


2929

March 22, 2012



VIA ELECTRONIC FILING AND OVERNIGHT MAIL

Ms. Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

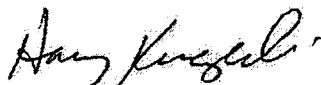
Re: Docket No. L-2010-2160942 – Spark Energy, L.P.’s Comments to the Proposed Rulemaking Order for Revisions to the Code of Conduct at 52 Pa. Code § 54.122

Secretary Chiavetta,

Please find enclosed, an original and 15 copies of Spark Energy, L.P.’s comments to the Proposed Rulemaking Order in the above stated proceeding regarding Revisions to the Code of Conduct at 52 Pa. Code § 54.122.

Please contact me by phone at 832.217.1858 or via email at hkingerski@sparkenergy.com, if you have any questions or need any further information.

Respectfully submitted,

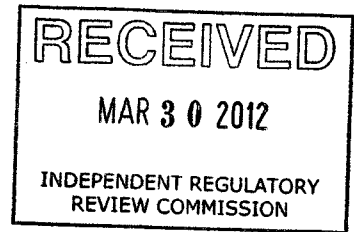


Harry Kingerski
Director - Regulatory

Enclosure

2929

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION



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

Docket No. L-2010-2160942

Comments of Spark Energy

Spark Energy, L.P. ("Spark Energy") hereby respectfully submits its comments to the Proposed Rulemaking Order issued by the Commission on August 25, 2011 and published in the Pennsylvania Bulletin on February 10, 2012, concerning the Competitive Safeguards subchapter of the Commission's electric customer choice rules.

Spark Energy is a licensed Electric Generation Supplier (EGS) in Pennsylvania that sells electricity to customers in the PECO and PPL service territories. Spark Energy Gas, LP ("Spark Energy Gas") is an affiliate of Spark Energy and a licensed Natural Gas Supplier (NGS) in Pennsylvania. Collectively, Spark Energy and Spark Energy Gas serve retail customers in seventeen states across the country.

Spark Energy supports this Commission effort to impose proper market restrictions and restraints on certain activities of a regulated electric distribution company (EDC) and an electric generation supplier (EGS). EGS naming or DBA practices, co-branding between regulated and non-regulated affiliates, and joint agreements between regulated utilities and non-affiliated suppliers have the potential to cause customer confusion and misunderstanding in the market. We applaud the Commission for moving forward with codes of conduct that will lessen customer confusion and improve retail electric competition.

Our comments will address Section 54.122(3), subsections (ii), (iv), (v), and (vii) of the proposed rules. These subsections are highly interrelated and are potentially inconsistent with

one another as presently written. For convenience, these sections from the Order are shown below. Suggested redline changes to these subsections appear at the end of the document.

___(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.

(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.

(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.

1. Subsection (v) prevents an EGS from having a name similar to the EDC but subsection (iv) allows an EGS to enter into a licensing agreement that would allow the EGS to use an EDC identifier, including its name. Spark Energy supports the spirit of subsection (v). However, subsection (iv) allows an EGS through a licensing agreement to use the name of an EDC. An EGS, either intentionally or unintentionally, should not be allowed to use a well-established EDC name to create the impression that the EGS is the same entity or related to the EDC, or to unfairly capitalize on the name recognition of the EDC. A

licensing agreement should not be allowed to create opportunity for an end-run around the naming prohibition in subsection (v).

Remedy: add the phrase "regardless of agreements made under subsection (iv) above" to the beginning of subsection (v).

2. Subsection (vii) prevents an EGS from engaging in joint marketing efforts with an affiliated EDC unless all EGSs are given the same opportunity by the EDC. This restriction should extend, not just to affiliated EGSs, but to all EGSs. An EDC should not engage in any joint marketing activity with any EGS unless all EGSs are offered the same opportunity under similar terms and conditions.

Remedy: delete "affiliated" from subsection (vii).

3. Subsection (vii) prohibits joint marketing activities between an EDC and affiliated EGS unless the EDC affords the same opportunity to all EGSs. However, subsection (iv) allows an EDC to license the use of an EDC Identifier to a single EGS without any similar requirement that the EDC offer the EDC Identifier to all EGSs. Spark Energy supports the spirit of subsection (vii) and that spirit should not be undermined by subsection (iv). Agreements permitted under subsection (iv) should be non-exclusive and made available to all EGSs under similar terms, and conditions. Any activity which cannot be offered by the EDC in this manner should be excluded from subsection (iv) licensing agreements.

Remedy: add wording to subsection (iv) that specifies these licensing agreements are non-exclusive and must be available to all EGSs in the same manner under similar terms and conditions.

4. Subsection (ii) prevents an EDC from selling, releasing, or transferring assets, services or commodities to an affiliated EGS at less than market value. This restriction should extend to all EGSs, not just to affiliated EGSs. An EDC should not engage in any such

transfers of assets, services or commodities to any EGS at less than market value. However, the section should be clarified to indicate that services provided simultaneously to all EGSs in the normal course of administering the choice program (e.g., customer data, billing services, etc.) are not subject to these restrictions.

Remedy: in subsection (ii), delete "affiliate"; add additional phrase "but does not apply to services performed by an electric distribution company and offered to all electric generation suppliers in the normal course of administering a choice program".

5. It should be clarified that licensing agreements between EDCs and EGSs permitted under subsection (iv) are subject to the "not less than market value" requirement of subsection (ii). In making any such transfer of EDC identifiers, an EDC should be held accountable to the Commission to show that the transfer adequately compensates EDC ratepayers for the market value of the EDC identifier being licensed. Most suppliers, including Spark Energy, spend a good deal of money to create brand awareness. An EGS should not be able to acquire an EDC identifier through a licensing agreement at anything less than market value.

Remedy: in subsection (ii), add the phrase "this restriction applies, but is not limited to, agreements under subsection (iv) below".

6. When reference is made to an EDC in the Code of Conduct rules, it should be clear that the reference is to any EDC, not just the single EDC operating in a particular service area. For example, subsection (v) prevents an EGS operating in "the" EDC (call it "EDC1") from taking the name "EDC1". However, the customer confusion or unfair advantage created by allowing an EGS to use the EDC1 name is not confined only to the service territory of EDC1; an EGS using the EDC1 name in EDC2 may also create customer confusion in EDC2, especially if EDC2 operates adjacent to EDC1 or EDC1 is a very

well known EDC. Our recommendation is to clarify these instances such that EDC restrictions are applicable to Pennsylvania EDCs and not only host EDCs.

Remedy: in subsection (v), precede EDC with "an" rather than "the"; add language to subsection (iv)(A) to clarify requirements for disclaimer language ("if the EDC identifier is associated with the electric distribution company that provides delivery service to the customer(s) targeted by the activity").

7. Spark Energy recognizes that standards of conduct applicable to the gas industry (contained in 52 Pa. Code § 62.142) are unaffected by this Rulemaking. Historically, many consumers in Pennsylvania have received natural gas and electricity supply from separate utilities. However, going forward, many consumers will be able to purchase both natural gas and electricity from the same competitive supplier since many suppliers are licensed as both an EGS and NGS. As that happens, the opportunity for customer confusion and unfair advantage from EDC/EGS/NGDC/NGS partnerships and practices will grow. Once this Rulemaking is completed, we encourage the Commission to extend the advances made in the electric Code of Conduct to the gas Code of Conduct and recognize the convergence to consumers of these shopping experiences.

To implement the above comments 1 – 6, Spark Energy suggests the following changes to Section 54.122(3), subsections (ii), (iv), (v), and (vii):

(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. This restriction applies, but is not limited to, agreements under subsection (iv) below, but does not apply to services performed by an electric distribution company and offered to all electric generation suppliers in the normal course of administering a choice program.

(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 non-exclusive licensing agreement with the electric distribution company specifying such rights, and the electric distribution company offers the same opportunity to all electric generation suppliers in the same manner under similar terms and conditions.

(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, if the EDC identifier is associated with the electric distribution company that provides delivery service to the customer(s) targeted by the activity, 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.

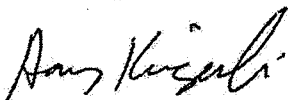
(B) In print and internet communications, the disclaimer shall be placed immediately adjacent to the EDC identifier and shall be in equal prominence to the main body of the text. In radio or television communications, the disclaimer shall be clearly spoken.

(v) Regardless of agreements made under subsection (iv) above, a[A]n electric generation supplier may not have the same or substantially similar name or fictitious name as an [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.

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

Spark Energy thanks the Commission for its consideration of these comments.

Sincerely,



Harry Kingerski
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March 22, 2012