

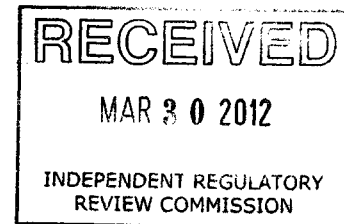
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March 29, 2012

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**VIA ELECTRONIC FILING AND HAND DELIVERY**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

RE: *Revisions to Code of Conduct at 52 Pa. Code § 54.122*; Docket No. L-2010-2160942;  
**COMMENTS OF ELECTRIC GENERATION SUPPLIER PARTIES  
(DOMINION RETAIL, INC., INTERSTATE GAS SUPPLY, INC., AND SHIPLEY  
ENERGY) TO PROPOSED RULEMAKING ORDER**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the corrected first page to Comments that were previously filed on March 27, 2012 under the incorrect Docket No. L-2008-2069114. Please replace the incorrect first page of said Comments with the enclosed, corrected first page.

Thank you for your attention to this matter and should you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Todd S. Stewart".

Todd S. Stewart  
*Counsel for Shipley Energy Company,  
Dominion Retail, Inc., and Interstate  
Gas Supply, Inc.*

TSS/alh  
Enclosure

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION



*Revisions to Code of Conduct* :  
*at 52 Pa. Code § 54.122* : Docket No. L-2010-2160942

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**COMMENTS OF ELECTRIC GENERATION SUPPLIER PARTIES (DOMINION  
RETAIL, INC., INTERSTATE GAS SUPPLY, INC., AND SHIPLEY ENERGY) TO  
PROPOSED RULEMAKING ORDER**

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On February 11, 2012 the Pennsylvania Public Utility Commission's ("Commission") proposed rulemaking, *Revisions to Code of Conduct at 52 Pa. Code § 54.122*; at Docket No. L-2010-2160942 ("Rulemaking Order"), was published in the Pennsylvania Bulletin. Ordering Paragraph No. 6 of the Rulemaking Order required that written comments shall be submitted within forty-five (45) days of the date of publication, or on March 27, 2012. These Comments are filed in compliance with that requirement.

The Electric Generation Supplier Parties; Dominion Retail, Inc. d/b/a Dominion Energy Solutions ("DES"), Interstate Gas Supply, Inc. d/b/a IGS Energy ("IGS") and Shipley Energy ("Shipley"), (collectively the "EGS Parties") commend the Commission for taking the initiative to update the Code of Conduct provisions that were first implemented as competitive safeguards in July of 2000. These important rules were crafted to ensure that all participants in the marketplace operate on a level playing field *vis a vis* the host utility and other market participants and are vital to ensuring fair and transparent competition.

The EGS Parties submit these comments in an effort to assist the Commission in reaching its stated goal of updating its regulations to establish an appropriate code of conduct for utilities and competitors. The EGS Parties suggest, however, that these standards should apply not only

in the electric generation supply market, but that the Commission consider implementing the same requirements for the natural gas supply market. It is important to maintain consistent rules across the two energy markets because many of the same companies participate in both markets—the EGS Parties represented here, for example—as well as many other suppliers. Moreover, Pennsylvania has at least two distribution companies that provide both natural gas and electric distribution service. The EGS Parties believe that consistency in these types of more generic market rules across the energy markets will aid the parties in implementing the new requirements, will avoid confusion that can be caused when requirements differ, even if only slightly, across the two markets in which they operate, and will create efficiencies by assisting all concerned entities in compliance and understanding of what is expected of EDCs, NGDCs and the competitive suppliers. Accordingly, as a general comment, the EGS Parties submit that applying the requirements to both electricity and natural gas markets makes sense and should be considered.

The EGS Parties present their comments to specific portions of the Proposed Rulemaking Order below:

*1. 52 Pa. Code § 54.122(2)*

With regard to the revisions to Section 54.122(2)(i), the EGS Parties agree that it is appropriate to incorporate requiring EDCs to reference the Commission's [www.PaPowerSwitch.com](http://www.PaPowerSwitch.com) website, and requiring EDCs to provide customers with a list of current suppliers without comment, ranking, or other recommendations with regard to any supplier when customers request information about competitive alternatives. Such a requirement complies with the overall goal of a level playing field and is appropriate. This requirement will become ever more important with the advent of the proposed new/mover referral programs that will result

from the ongoing RMI process. However, the Commission may wish to consider how this requirement may interact with the implementation of the proposed “Standard Offer Referral Programs.” It is not necessary that a requirement to provide unbiased and neutral information regarding suppliers, be disruptive to a program that assigns customers to what potentially could be a subset of suppliers operating in a particular EDC’s service territory, but the language “and electric distribution company may not recommend or offer an opinion on the relative merits of particular suppliers” causes some concern. Perhaps some sort of qualification, such as, “unless provided as part of a Commission approved program,” or some similar qualifying language could avoid any future issues. As a general matter however this section appears to be well focused on the objective.

2. *52 Pa. Code § 54.122(3).*

a. Subsection (3)(iv) appears to intend that EGSs not use the name or logo or any mark of an EDC that might imply to an unsuspecting customer that some relationship existed between that EGS and the EDC. The proposed rule would prohibit an EGS that markets to customers in a particular EDC’s service territory from mentioning the name of the EDC, even when providing such basic information such as stating that particular EDC’s price to compare or other basic information such as the contact information for that EDC for outages; unless the EGS had a license agreement with the EDC and used prominent disclaimers.

While the intention of the requirement--to prevent EGS’ from advertising in a manner that would tend to confuse customers into believing that somehow the EGS was affiliated with or working in concert with the EDC—may be warranted, the prohibition may be too broad, and may eliminate some practical and necessary communication between EGSs and customers. Requiring a license agreement in each and every such instance also may prevent an EGS from

making communications that may otherwise be required. For example, 52 Pa. Code § 54.5(c)(11) requires an EGS to provide a disclosure statement that includes the EDC's name and contact information. Even mentioning the EDC's name, however, is otherwise prohibited by the express language of the proposed subsection, in the absence of a license agreement, but there is no requirement that an EDC grant such a license in this, or any case.

While advertisements that imply an EGS/EDC connection --without authorization -- should be prohibited, there are other more practical aspects of communicating with customers or potential customers, more mundane uses of the EDC's name, that appear to be necessary and which should not be subject to the potential bottleneck of a license requirement. Accordingly, the EGS Parties recommend that the Commission consider rewording the prohibition to include a qualifier that would allow the incidental use of the utility's name for communicating such things as price to compare or other types of required communications without a license agreement.

b. Subsection (v) appears to present a potential conflict with the requirements of subsection (iv) above. That is, it is not clear whether an EGS could enter into a licensing agreement with an EDC under the requirements of Subsection (iv), that would allow that EGS to trade or do business using the EDC's name, only to run afoul of the prohibition in Subsection (v) that no entity, other than the EDC may take on the EDC's name. If the intention is that **no entity** other than an EDC acting as EDC, may avail itself of the benefit of the utility's brand as a corporate identifier, without regard to the potential for such a license arrangement or affiliate status, then the Commission should clarify that point.

The requirements of Subsection (v) also appear to be somewhat vague in suggesting that no electric generation supplier may have the same or a "substantially similar" name or fictitious name as the electric distribution company or its corporate parent. Does this requirement apply to

all electric distribution companies in the Commonwealth of Pennsylvania such that no supplier operating in the Commonwealth may have a name that is “substantially similar to the name of any electric distribution company”? Does the requirement apply to utility names that were once used in Pennsylvania but have since been retired? What is the Commission’s intention with regard to the enforcement of the phrase “substantially similar”? Would the inclusion of the words “electricity”, or “natural gas” be considered to be substantially similar, or use of the designator “Pennsylvania” or “Commonwealth” be included on the list of prohibited names? It is possible that such a requirement could affect suppliers who are not connected with utilities, have never intended to suggest any such connection, yet are susceptible to the loss of a brand identity—which has significant economic value—without due process or compensation. The EGS Parties believe that if the Commission intends to enforce such a requirement, that it be enforced equally and that the parameters be further elaborated so that parties whose property rights may be affected are able to understand the extent to which the Commission will seek to enforce this particular prohibition.

With regard to the relationship between Subsections (iv) and (v), it is important to know the interplay between these requirements. The Commission’s intention appears to be to confine the benefit of the intellectual property in a “brand”, to the entity that developed and owns that asset. The EGS Parties support this goal, but need to understand the breadth of the Commission’s intentions with regard to the intellectual property in question.

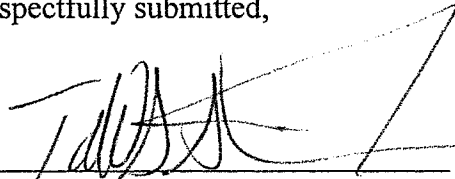
c. Subsection (vii). The implementation of Subsection (vii) also may prove to be complicated. For example, if a single supplier enters into a license agreement to use an EDC name for some marketing purpose under Subsection (iv), would the utility be required to provide that same opportunity to all suppliers under Subsection (vii)? It would appear that Subsection

(vii) would preclude any exclusive use of a EDC's name for marketing purposes under Subsection (iv). If that is the intention, those requirements may prove to be more prohibitive than considered.

3. *Conclusion.*

As a general matter, the EGS Parties wish to again thank the Commission for this effort and once more suggest that it is vitally important that the Commission enforce these Code of Conduct regulations in a proactive and equal matter. The EGS Parties stand ready to assist the Commission further in this process as needed.

Respectfully submitted,



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Dated: March 27, 2012