|  |  |  |
| --- | --- | --- |
| PUC logo | COMMONWEALTH OF PENNSYLVANIA  PENNSYLVANIA PUBLIC UTILITY COMMISSION  P.O. BOX 3265, HARRISBURG, PA 17105-3265 | **IN REPLY PLEASE REFER TO OUR FILE** |

December 10, 2009

To: Electric Generation Suppliers

Docket No.: M-2009-2082042

The Commission, through the Office of Competitive Market Oversight, has become aware of an issue that has been raised in the context of some applications filed by electric generation suppliers, which has the potential to hinder development of a competitive market, particularly in the PPL Electric Utilities service territory where rate caps are expiring at the end of this month.

A question has arisen as to whether entities or individuals under contract with electric generation suppliers (EGSs) must be licensed by the Commission in order to provide marketing services, such as telemarketing, direct mail, newsletters, brochures or door-to-door activities. Due to uncertainty on the part of some EGSs as to the potential licensing requirements for entities or individuals with whom they have contracted to provide these services, and their resulting reluctance to proceed with marketing activities in PPL’s service area, the Commission is providing this clarification.

The Electricity Generation Customer Choice and Competition Act (Act) requires EGSs, including brokers, marketers and aggregators, to obtain a license from the Commission to sell electricity or related services to retail customers in Pennsylvania. 66 Pa. Code §2803. The Commission’s regulations further provide that an EGS may not engage in marketing prior to being licensed. 52 Pa. Code §54.32.

Since the Act went into effect, EGSs have frequently relied upon independent third parties to market their services especially to residential and small business consumers. These marketing services providers have solicited customers to purchase electricity from the EGS with whom they are under contract. While numerous Chief Counsel opinion letters have been provided over the past 12 years indicating that entities providing such services need not be licensed, many active EGSs are not aware of those opinions; and in those instances, the Commission itself was not asked to clarify these matters.

Similar questions have been clearly addressed by the Commission for the natural gas industry. Specifically, the Commission has expressly exempted from licensing those entities that provide marketing and sales support services to licensed natural gas suppliers (NGSs) under a contract. 52 Pa. Code §62.101. Just as the Commission would not require an NGS’s own employees to be individually licensed to perform such functions, independent third parties providing marketing services on behalf of the NGS have not been required to obtain a license.

As long as third parties entities are working directly for an EGS, as an employee or independent contractor, and their activities are limited to providing marketing and sales support services, they are not engaged in the sale of electricity or related services to consumers. As marketing services providers, these entities need not be licensed by the Commission under the

Act. Before these entities would become involved in arranging for electric service to be provided to end users, including the collection or payment of supply costs, they would be required to obtain a license. Going forward, as necessary, the Commission will not hesitate to further clarify activities requiring a license.

EGSs are reminded of their responsibility for any fraudulent, deceptive or other unlawful marketing or billing acts performed by their employees, agents or representatives. *See* 52 Pa. Code §54.43. For instance, if an independent marketing services provider under contract with the EGS misrepresents an offer to a consumer or uses deceptive practices to attract the customer to the EGS, the Commission will hold the EGS responsible. Such actions of the third party marketing services provider could result in the imposition of civil penalties on EGSs, including fines, license suspension or license revocation.

The Commission is aware that the business model of using independent contractors for marketing and sales support has caused customer service concerns in some states. Through OCMO, the Commission will be closely monitoring the issue in Pennsylvania and will evaluate this business model by November 30, 2010 to determine if steps are necessary to restrict or prohibit this practice.

Any questions about this letter should be directed to the Office of Competitive Market Oversight by email at [ra-OCMO@state.pa.us](mailto:ra-OCMO@state.pa.us) or by calling the Director of Operations at 717-783-5331.



Very truly yours,

James J. McNulty

Secretary

cc: Office of Competitive Market Oversight