



595 Summer Street, Suite 300
Stamford, CT 06901-1407
Tel: 203.356.1318
Fax: 203.425.9562
www.mxenergy.com

August 12, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building,
400 North Street, 2nd Floor
Harrisburg, PA 17120

**RE: Interim Guidelines on Marketing and Sales Practices for Electric Generation
Suppliers and Natural Gas Suppliers, Docket M-2010-2185981**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Comments of MXenergy in the above
reference proceeding,

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Blake'.

Robert Blake
Sr. Vice President, Regulatory Affairs

Enclosure

Copy to: Office of Competitive Market Oversight

**BEFORE THE
PENNSYLVANIA PUBLIC SERVICE COMMISSION**

Interim Guidelines on Marketing and *
Sales Practices for Electric Generation * Docket No. M-2010-2185981
Suppliers and Natural Gas Suppliers *
*

Comments of MXenergy Inc.

MXenergy Electric Inc. (MX or MXenergy) hereby submits its comments concerning the Pennsylvania Public Service Commission's July 15, 2010 Tentative Order in Docket M-2010-2185981, "Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers" ("Tentative Order"). The Office of Competitive Market Oversight (OCMO) developed these proposed interim guidelines working with both CHARGE (Committee Handling Activities for Retail Growth in Electricity) and SEARCH (Stakeholders Exploring Avenues to Remove Competitive Hurdles).

Since Pennsylvania began the process of deregulating electric generation, the Pennsylvania Public Service Commission has lead the way in helping develop competitive energy retail markets. With the expiration of the electric generation rate caps in PPL Electric Utilities in 2010 and 2011, for the First Energy Companies, the Commission has noted that consumers are being presented with unfamiliar marketing strategies and sales techniques. Further, the Commission cited customer confusion resulting from the direct sales or door-to door sales.

MXenergy is one of the fastest growing natural gas and electricity suppliers in North America, serving approximately 500,000 customers in 40 utility territories in the United States and Canada. Founded in 1999, to provide natural gas and electricity to consumers in deregulated energy markets, MXenergy helps residential customers and small business customers control their energy bills by providing both fixed and variable rate plans. Because of MX's commitment to the effective operation of a vigorous, dynamic, yet fair, competitive residential energy market, MXenergy strongly endorses the Proposed Interim Guidelines for Marketing and Sales Practices for Electric Generation and Natural Gas Suppliers, with two exceptions, Section D4, which requires an agent to physically separate himself from the potential customer by exiting the customer's residence before the transaction verification process occurs and Section J2, concerning the limitation of door to door solicitations sales hours.

MXenergy proffers that an informed educated consumer is a happy consumer. A happy consumer will understand how Electricity Choice works, the benefits of a fixed or variable priced energy product and weigh the disclosed contract elements, such as the term of the contract and any early termination fees before making a choice to enroll with a specific retail energy supplier. Electricity Choice is a complicated concept for many consumers. MXenergy, from years of experience, has found that face to face explanation of Choice is the best way to educate consumers and door to door sales has proven to be the best way to reach consumers who wouldn't otherwise explore the benefits of Electricity Choice. An in-person sale gives the customer the opportunity to have an extended dialog and to get his or her questions answered to their satisfaction before deciding whether to enter into an agreement with the marketer. Limiting consumer's

exposure to door to door sales activity will lead to less understanding and to more consumer confusion. MXenergy has long advocated that in addition to the proper training of sales representatives, the use of independent third-party verifiers is the most effective tool to insure that sales are voluntary and well-informed. We believe that all suppliers should be required to use this process, with the verification done by an independent party that is not compensated in any way that might encourage the acceptance of a questionable sale. MXenergy has investigated the efficacy of the Third Party Verification (TPV) process and recommends the following changes for strengthening the process and in so doing limiting consumer perceived intimidation without closing off the educational dialogue between the agent and potential consumer.

Specifically, MXenergy recommends that the TPV process include a mandated question that will verify that no intimidation or coaching has occurred during the sales process. Secondly, MX recommends that all retail energy providers be required to make Quality Assurance (“QA”) calls to customers that are performed by an independent entity. These QA calls should be completed on at least 10% of all customers who were enrolled through a door-to-door process. With these two additional safeguards, the TPV will verify the customer’s consent to the transaction while allowing the salesperson to be available to address additional question the customer may think of during the transaction. If the TPV process does trigger additional questions then the TPV process can be stopped and the agent can respond to the potential consumer’s questions thereby dispelling their confusion and help the potential consumer make an informed energy choice. If the customer is satisfied with the additional information, then the TPV can be restarted for the customer.

MXenergy Strongly Supports the Commission's Proposed Interim Guidelines for Retail Energy Suppliers and With a Few Minor Edits Believes the Guidelines Will Help Produce Informed and Consensual Consumer Enrollments.

The Pennsylvania Public Service Commission and the Commission's Staff must be commended for their activist approach to helping open the retail energy markets in Pennsylvania while providing a positive experience for all energy retail consumers. The proposed guidelines intended to facilitate an effective operational retail residential energy market is properly crafted to benefit the consumer, suppliers and the distribution companies. The fairness and integrity of the competitive market is of paramount importance and must be buttressed with adequate consumer protections. MXenergy takes very seriously its responsibility for the actions of its third party door to door sales agents and telemarketing agents and is constantly reviewing its processes to further refine these customer interactions with the potential customer so he is provided all the necessary information to make an informed energy choice without the undue bias that intimidation or coaching can produce.

MXenergy already employs most of what is specified in interim guidelines in its current marketing and sales practices. We agree that they represent "best practices" except for the two minor revisions in process that were referenced earlier in these comments. MXenergy utilizes the following marketing and sales procedures to provide a positive experience for all potential consumers and ensure that all enrollments are the result of an educated and consensual interaction between our marketing or sales channel partner and the potential customer.

- Background checks are performed for all marketing or sales channel partners.
- Mandatory training is conducted and periodically updated training is provided to make sure our agents have the most current information.

MXenergy ensures that the training includes: knowledge of applicable Pennsylvania laws and regulations governing marketing, consumer protection and door to door sales, knowledge and understanding of responsible and ethical sales practice, knowledge of our products and services, knowledge of MXenergy's products and payment options, knowledge of customers' right to rescind or cancel, knowledge of applicability of early termination fee, knowledge of and adherence to supplier-developed scripts; knowledge on the proper completion of contract and enrollment documents; knowledge of MX's disclosure statement, knowledge of relevant terms and definitions, knowledge of how customers may contact MX to obtain information concerning billing disputes and complaints. Following training, MXenergy employees visit with our third-party agents from time to time to make sure that all policies and procedures are being properly communicated to, and followed by, the sales force.

- Proper appearance, uniform, and identification allow all potential consumers to identify our marketing and sales channel partners as MX representatives. The uniform includes the distinctive logo and is red so that the agent can easily be differentiated as not representing the local utility. Identification and business card are presented at the inception of the visit.
- Discipline of our marketing and sales channel partners is swift and errs on the side of protecting the consumer. There is a zero tolerance policy concerning "slamming" and related customer-enrollment issues. In most instances, pending investigation of a complaint or aberration in procedure, the agent is suspended pending final dispensation of the investigation. Depending on the severity of the alleged infraction the agent may be retrained, suspended without pay, or terminated. In severe circumstances, when an agent is found to have violated MX regulations, calls are made to his former enrollments to make sure the enrollments were consensual and based on all relevant necessary information.
- MX complies with all local ordinances that may restrict agent activity.
- All marketing and sales channel partners provide identification cards with their picture and name and explain to the potential consumer that they are not affiliated with the local distribution company.
- MX conducts a **Quality Assurance Program** to track consumer satisfaction and also review our procedures to ascertain if any revisions are necessary so that the potential consumer has the most positive, informative experience possible which promotes fairness and integrity in the competitive energy market direct consumer interactions. For door to door solicitations our survey is automated and collects data on four yes/no direct questions:

Did the field representative present MXenergy identification?

Was it clear that he or she was a representative of MXenergy and not the utility?

Did the representative clearly explain that you will continue to pay the utility for the delivery and service portion of your bill and that you will receive one bill from the utility with each of our charges?

Did you complete the third party verification call? This is when you should have gotten on the phone and answered yes or no to questions presented to you by an individual other than the sales representative, after you agreed to sign up.

For telemarketing purposes, MX also conducts mandatory quality assurance. We monitor 15-25% of all telemarketing calls to make sure that MX and PUC procedures, practices and regulations were cited properly.

Guideline D-4 Should be Amended So That Door to Door Agents Are Not Required to Exit a Potential Consumer's Residence Before the Verification Process Confirming the Customer's Consent to the Sale Takes Place.

Requiring a marketing or sales channel partner to exit the premises¹ before the TPV commences does not recognize the practicalities of the exchange nor how “real life” door to door sales are conducted. MXenergy procedures specify that a marketing or sales channel representative not enter a potential consumer’s home but instead speak outside of their door. At the conclusion of the sales process, the consumer consents to the enrollment through a TPV process. The TPV process begins and ends with the representative on the line with the independent verifier. The TPV company cannot give the agent a “confirmation” number until the call is successfully completed. Based on the draft version of D-4, the representative would have to go back to the customer’s location to confirm that the call had been successfully completed. If the potential consumer has a

¹ PLEASE NOTE: During discussion in Harrisburg with the CHARGE and SEARCH group and Staff, the non-consensus edit to D4 involved an agent leaving the potential customer’s home, physically leaving the house. MX understood this to mean the agent would be, disengaged from the customer, not his property.

question during the TPV process, the TPV will terminate. Unfortunately, consumer confusion will result. No MX representative would be on the premises to explain misconceptions or provide any additional information that the customer required.

MXenergy, instead of requiring marketing or sales representative to physically exit a customer's residence before a TPV starts, strongly supports the incorporation of a required a final question at the end of the TPV process. The question should read "Did you experience any evidence of coaching or intimidation by the agent during the sales or this TPV process?" Further, a mandatory Quality Assurance program for at least 10% of door to door sales should be required by the Commission. The QA questions will determine, among other items, if any intimidation or coaching occurred during the sales or verification process. Market penetration in the PPL service territory has been accomplished in no small part through the door to door sales process. Requiring marketing or sales channel representatives to leave the premises before the TPV will interrupt the process, lead to more confusion, and less enrollments for competitive retail offers.

Guideline J-2 Should be Amended to Designate the Hours of Operation for Door-to-Door Marketing and Sales Activities from 9:00a.m. to 7:00p.m. during the winter period and 9:00a.m. to 9:00p.m. during the summer period.

Further limiting the hours of door to door marketing and sales activities hinders retail energy suppliers' ability to meet and educate potential residential energy supply consumers. Most people arrive home from work between 5:30 and 7p.m. Local ordinances should control when door to door marketing and sales are permissible. If the local ordinances are silent or less restrictive on this issue, the Commission should err on

the side of allowing door to door marketing and sales channel partners to educate and enroll potential retail energy customers. Door to Door sales are currently being utilized by other industries, such as for books, magazines and cleaning produces. In fact, there are some door to door sales forces that sell multiple products including energy. It would be both illogical and discriminatory to impose these restrictions on the energy industry but not on others. It seems to make little sense to have a door to door sales person, who is selling multiple products, to stop selling energy per a Commission regulation, but is allowed to continue selling their other products under local ordinances rules.

In the alternative, door to door marketing and sales activities should reflect a timeframe of 9a.m. to 8p.m. or dusk, which ever comes first. The time period of 7p.m. to 8p.m, in our experience, is the best time for most consumers; they have completed their dinner and are available to spend time discussing energy.

Conclusion

MXenergy appreciates the opportunity to comment on the Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers. MXenergy strongly supports the Commission's Proposed Interim Guidelines for Retail Energy Suppliers, and with a few minor edits believes the guidelines will be "best in class" of all state consumer protection guidelines that will help produce informed and consensual consumer enrollments.

Respectfully submitted,


for
SANDY MINCH GUTHORN

Sandra Minch Guthorn
Senior Counsel-Regulatory Affairs
MXenergy
10010 Junction drive
Suite 104-S
Annapolis, Maryland 20701
sguthorn@mxenergy.com
(240)456-0505 (ext 5520)