

COMMONWEALTH OF PENNSYLVANIA



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August 16, 2010

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

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

Dear Secretary Chiavetta:

Enclosed for filing are an original and five (5) copies of the Comments of the Office of Consumer Advocate, AARP, and Dominion Retail, in the above-referenced proceeding.

Should you have any questions, please contact our office of at the number above.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Tanya J. McCloskey".

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044

Enclosures

cc: Daniel Mumford, BCS
Patricia Krise Burket, LAW

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE,
AARP, AND DOMINION RETAIL

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DATED: August 16, 2010

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I. INTRODUCTION

On July 16, 2010, the Pennsylvania Public Utility Commission (Commission or PUC) entered a Tentative Order with Proposed Interim Guidelines applicable to the marketing and sales practices of electric generation suppliers (EGSs) and natural gas suppliers (NGSs). The Commission and Staff developed the Proposed Interim Guidelines due to concerns with consumers being exposed to unfamiliar marketing strategies and sales techniques. Tentative Order at 2. The Commission noted that one particular sales technique, door-to-door sales, has created confusion for some customers who have contacted the Commission with their concerns. Id. Because of the on-going concerns of consumers and the Commission, the Commission tasked the CHARGE Working Group with developing marketing guidelines regarding door-to-door sales. Tentative Order at 4.

As an initial matter, the Office of Consumer Advocate, AARP, and Dominion Retail (OCA/AARP/Dominion Retail) share the Commission's concerns about the use of door-to-door sales as a marketing strategy for the sale of electric and natural gas supply.¹ Shopping for energy supply requires thoughtful consideration of a wide range of information, including information about prices, individual customer usage patterns, other available offers, default service prices, potential termination fees, and the length of contracts in the face of price volatility. A door-to-door sales contact, where the customer may not have ready access to the necessary information for making an informed choice, and may feel pressured to make a quick decision in light of a sales agent standing in their door or home, could result in customers making less than optimal choices about their energy supply. This concern is heightened even further

¹ The OCA, AARP and Dominion Retail began working together on these issues due to the same types of concerns identified by the Commission. The OCA, AARP and Dominion Retail have worked together both before and during the working group process to try to protect consumers and to develop reasonable rules to support competition.

when door-to-door sales techniques are used with senior citizens or vulnerable customer populations. Making an informed choice is critical for these customers as the potential for getting locked into a contract that becomes unaffordable is not merely an annoyance, but a matter of their own health and safety if they are unable to pay their energy bill and face termination of service. The quarterly changing price to compare, and the potential for more complex rate structures as smart metering technology is deployed in Pennsylvania, heighten these concerns.

The OCA/AARP/Dominion Retail would also note that the Commission's concerns about customer confusion and the potential for fraud or abuse in the door-to-door sales contact have been borne out in other states where this sales technique has been used. In Illinois, AARP joined with the Illinois Citizens Utility Board (CUB) in filing a complaint against a marketer related to door-to-door sales practices. The Illinois Commerce Commission and CUB had received approximately 5,630 complaints alleging various forms of misrepresentation by the sales agents for the marketer, including allegations that the sales agents were switching customers without authorization, were representing that they were from the utility, were providing misleading or incomplete information, and were taking advantage of non-English speaking or elderly customers who did not understand the transaction. The OCA/AARP/Dominion Retail submit that while there is always a potential for fraud, fraud and sales abuses can be particularly prevalent in hard-sell door-to-door solicitations as has been seen in other states.

The OCA/AARP/Dominion Retail recognize that at this time, the Commission is attempting to find a way to allow door-to-door sales while also addressing the concerns with such a sales technique. The OCA/AARP/Dominion Retail commend the Commission and Staff for being proactive in the development of these marketing and sales practices guidelines. The

Interim Guidelines provide timely and significant guidance for marketers and suppliers which may be designing new sales and marketing plans that are directed at consumers who have never shopped for competitive electric or natural gas supply before or who may be considering a change of supplier. As marketers and suppliers are themselves newly entering – or re-entering – the Pennsylvania retail energy markets, the Commission’s Proposed Interim Guidelines provide timely guidance to assure that the marketers and suppliers sales practices comply with Pennsylvania law and standards and so promote a positive consumer shopping experience.

The OCA/AARP/Dominion Retail participated in the CHARGE Working Group that led up to the Staff recommendation regarding the Interim Guidelines. The Proposed Interim Guidelines reflect the time and thoughts contributed by members of the working group convened by the Commission and the final imprint of Commission Staff charged with drafting the guidelines. As such, the Proposed Interim Guidelines reflect many compromises by working group participants. The OCA/AARP/Dominion Retail submit that in general, the Proposed Interim Guidelines provide a sound framework to guide marketers and suppliers as they launch new sales and marketing initiatives. The OCA/AARP/Dominion Retail strongly support these guidelines and strongly support the Commission’s “zero tolerance” policy concerning slamming and related customer-enrollment issues. Guideline E. The OCA/AARP/Dominion Retail also support the commitment of the Commission to monitor marketing and sales activity under these Guidelines and to track consumer complaints about these sales practices. As the Commission properly notes, these forms of sales practices should continue to be evaluated to determine

whether these practices should be permitted to continue.² The OCA/AARP/Dominion Retail also intend to remain vigilant to identify whether the Guidelines require strengthening or clarification, based on the results of door-to-door sales and marketing efforts by marketers and suppliers, for the protection of consumers and to promote the integrity of Pennsylvania's market for competitive energy supply.

Although many of the Proposed Interim Guidelines received general support from the working group, the Commission's Order notes that there are three issues on which the working group could not reach full agreement. The first issue, Guideline D-4, relates to verification and the need for the door-to-door marketer to physically exit a customer's residence so that the verification process is conducted without the presence and influence of the sales agent. The OCA/AARP/Dominion Retail strongly support the Interim Guidelines as drafted by Staff regarding the need for the sales contact to end, and the sales agent to leave the home, before the verification process is conducted. The need for the sales agent to physically depart the consumer's home, before the consumer verifies for the independent third party that the consumer consents to the purchase of energy supply is a crucial provision, necessary to assure that the consumer's verification is a personal and informed decision, willingly made.

The second issue, Guideline J-2, concerns the hours of operation for door-to-door marketing and sales activities. The Proposed Interim Guidelines establish from 9:00 a.m. to 7:00 p.m. as the allowable window of time. Although OCA/AARP/Dominion Retail had favored a shorter window of time for sales and marketing contacts, from noon to 6:00 P.M., the

² As explained below, the OCA/AARP/Dominion Retail request clarification of the Commission's evaluation planned for completion by November 30, 2010. Tentative Order at 8. Due to the passage of time in developing the Interim Guidelines, and due to the fact that marketing will begin in earnest in most electric company service territories this Fall, OCA/AARP/Dominion Retail urge the Commission to clarify that the November 30, 2010 review is only the first review that will take place. The OCA/AARP/Dominion Retail are concerned that the Commission will not have sufficient information about the sales practices or the operation of these Guidelines by November 30th, only a few short months away.

OCA/AARP/Dominion Retail could support the Staff proposal which has the benefit of establishing a defined window and allows marketing activity during the day and into the early evening. This will allow marketers to reach customers with varying schedules without allowing customers to be disturbed late into the evening.³

The third issue concerns the need for the EGS or NGS to contact the distribution company in advance of sales and marketing activities which may lead to consumer calls to the Commission or the utility. The OCA/AARP/Dominion Retail submit that suppliers should be required to notify the local distribution company when they are making door-to-door sales in the service territory. Such notice will enable the distribution company to be prepared to respond to customer inquiries and provide the customer with necessary information. This is not only a matter of ensuring that customers receive proper information from the distribution company, but can also be a matter of safety. With incidents of criminals appearing at customer homes with utility style uniforms and logos, making sure that the utility has proper information about expected activity in their service territory is critically important.

The OCA/AARP/Dominion Retail will address these non-consensus items in these Comments. The OCA/AARP/Dominion Retail will also recommend that the Commission continue to monitor sales activity, and the operation of these Guidelines, beyond the November 30, 2010 date stated in the Tentative Order.

³ It is also critical to note that the Guidelines require compliance with the local ordinances when the ordinance is more restrictive. Many communities do not allow door-to-door sales or limit such activities. The Commission Guidelines correctly note that these more restrictive ordinances must be followed.

II. COMMENTS

A. Proposed Guideline D-4 Establishes A Necessary and Crucial Division Between the Sales Contact and Verification Process

Proposed Guideline D-4 states:

The transaction verification process shall occur after the agent has physically separated himself from the potential customer by exiting the customer's residence. The transaction verification process shall conclude by reminding the customer of the 3-day right of rescission pursuant to 52 Pa.Code § 54.5(d) and § 62.75 (relating to disclosure statements for residential and small business customers).

Tentative Order, Annex A, p. 4. The OCA/AARP/Dominion Retail strongly support the Guideline as drafted by Staff which draws a clear line between the sales agent's personal contact in the home of the consumer and the need for the sales agent to physically depart before the consumer commences the independent process of verifying the consumer's consent to enroll for energy supply service from that supplier.

The OCA/AARP/Dominion Retail submit that the verification process is to be an independent process, without the influence of the sales agent, and must be conducted in a way which protects the consumer and assures that the consumer's verification reflects willingly given consent. Many customers, including senior citizens, persons living alone and vulnerable customers, may feel influenced or intimidated when answering the verification questions in the presence of the sales agent. If the sales agent is allowed to remain present while the consumer goes through the verification process, the consumer's consent may result from this confusion or feeling of intimidation. A verification which is given by a consumer in these circumstances cannot be the result of effective consent and valid. A consumer who has not given valid consent to enroll with a supplier can lead to disputes, increased costs for the supplier, and possibly reputational harm. The consumer is exposed to harm and serious inconvenience as service may

be provided for a time by a supplier not validly chosen and at terms and conditions which may cost the consumer more than supplier or default service the consumer was switched away from.

The Guidelines proposed by Staff strike the right balance on this issue. The Guidelines provide the sales agent with the opportunity to contact the consumer to provide additional information, including a return in-person visit with customer consent, if there is confusion about the offer detected during the verification process. Marketers could also establish a procedure that would allow the telephone transfer to a sales agent if it was determined during the verification process that the customer required additional information or was confused about the offer. Guideline D-4, though, draws the very important line between the end of the in-person sales contact and the separate process by which the consumer verifies his or her intent to enroll with the supplier for energy service. The OCA/AARP/Dominion Retail submit that Staff got it right with its Guideline D-4, giving sales agents and marketers a bright line test or “clear demarcation point” for the division between the sales contact and verification process, while assuring consumers are protected. Tentative Order at 7.

The OCA/AARP/Dominion Retail support adoption of Guideline D-4 without change to this protection. The verification process can and must be conducted without the physical presence or involvement of the sales agent. Suppliers have other options to provide the consumer with guidance during the verification process, such as making a customer service representative available by telephone if there is a question or arranging a return visit by the sales agent with customer consent. Guideline D-4 will assure that the consumer can make the decision to enroll and verify that consent with an independent verifier while in the privacy and sanctity of the own home, without the physical presence and influence of a sales agent. No alternative or compromise of the firm and clear language of Guideline D-4 would be appropriate.

B. The Window of Time During Which Door-to-Door Marketing Would Be Allowed Under Guideline J-2 Reflects A Workable Compromise Which Should Not Be Modified

As noted in the Tentative Order, participants in the working group suggested several ways to define the window of time during which door-to-door marketing and sales would be allowed (if not otherwise limited by local ordinance). Tentative Order at 9. The OCA/AARP/Dominion Retail had recommended noon to 6:00 p.m. as the allowable window. Other participants supported a more extended window of time. A third proposal would end door-to-door marketing activities at dusk. The Staff recommendation for a window for door-to-door marketing from 9:00 A.M. to 7:00 P.M., unless the local ordinance is more restrictive, strikes a reasonable balance and should be adopted.

The OCA/AARP/Dominion Retail support Guideline J-2 as drafted by Staff, although the window of time is longer than the time period favored by OCA/AARP/Dominion Retail. The Staff proposal covers the daytime when some consumers may be at home and the early evening when other consumers may be home from work. Additionally, there is no uncertainty as to the start point and end point during which door-to-door marketing would be allowed, in the absence of more restrictive standards fixed by local ordinance. The alternative proposal identified by the Commission which would fix the end of the door-to-door marketing window by “dusk” (presumably when the sun starts to set) suffers from a lack of certainty and consistency. While dusk clearly falls earlier in the winter than the hours proposed by the Staff and later in the summer, the precise time at which a sales agent or consumer may consider dusk to have occurred on a single day may differ. In fact, dusk, or sunset, changes each day. The OCA/AARP/Dominion Retail oppose the use of dusk for determining the end point of the daily window of time allowed for door-to-door marketing. This determinant lacks certainty and so is

inappropriate to use as a guideline against which a supplier or sales agent's conduct will be measured.

The Commission should adopt the Staff proposed Guideline J-2, or in the alternative some shorter period of time within that time frame, so long as the beginning and end points are fixed times.

C. Proposed Guideline K Should Be Modified To Make Clear That Suppliers Shall Make Contact With The Distribution Company In Advance Of Certain Marketing And Sales Activities

Proposed Guideline K addresses "Distribution Company and Commission Involvement." Guideline K-1 states that "Suppliers engaging in any marketing or sales activities, which the supplier anticipates, may generate phone calls and inquiries to the Commission shall notify" specified Commission staff in advance of commencement of those sales activities. Tentative Order, Annex A at 10. The advance notice shall be given by the supplier, but may be given as late as the morning of the day the marketing or sales activity commences. Id. The OCA/AARP/Dominion Retail support this provision. Guideline K serves an important purpose by allowing the Commission to receive notice from the supplier of planned or imminent sales and marketing activities which may cause consumers to call the Commission for confirmation that such sales activities are allowable or with questions or complaints. The provisions of Guideline K correctly recognize that sales and marketing activities by suppliers are likely to have a ripple effect and increase consumer demand for contact with Commission staff.

As noted by the Tentative Order, however, the provisions of Guideline K-2, as drafted by Staff, is a non-consensus item. Tentative Order at 9. Guideline K-2 states in part that:

Suppliers should also provide the local distribution company with general information about the marketing or sales activity that caused the supplier to provide notice to BCS [Bureau of Consumer Services] in accordance with paragraph K-1. The supplier should

provide this general information to the distribution company no later than the morning of the day that the marketing or sales activities commence.

Tentative Order, Annex A at 10. The balance of Paragraph 2 describes the restrictions on the use of this information by the distribution company. Rather than require some notification to the distribution company, Guideline K-2 leaves it up to the individual marketer whether to notify the distribution company.

The OCA/AARP/Dominion Retail submit that the need to notify the distribution company of planned or imminent sales and marketing activities within the service territory is as important as the notice to the Commission. The OCA/AARP/Dominion Retail note that the purpose of such notice, whether given to the Commission or to the distribution company, serves at least two purposes. First, the notice allows the Commission and distribution company to adjust staffing and minimize consumer frustration when calls are put on hold. Second, the notice allows the Commission staff and distribution company customer service representatives to know that the sales and marketing efforts are being conducted by licensed suppliers or their agents and so inform consumers that the sales and marketing activities are allowable under Commission rules and regulations. The distribution company in particular is often on the “front lines” of receiving such consumer calls. If the distribution company does not receive such notice, the distribution company customer service representative cannot with certainty provide such confirmation to consumers. The result may be continued consumer suspicion of the door-to-door marketer in particular and the process in general.

A required notice to the distribution company is also necessary to better protect the safety of customers. All too often in the recent past, criminals have tried to gain access to homes through pretending to be a utility representative. Allowing door-to-door sales by

marketers who are selling a “utility type” service could lead to additional such pretenses to enter the home. A utility customer service representative able to provide information to the consumer can help to detect these situations and make both the utility and the Commission aware of the need, for example, of public notification of such scams.

Thus, the ability for the distribution company to have timely information and so be able to make a factual and neutral statement to the consumer is no less important for the distribution company than for Commission staff. A consumer who is puzzled or has questions about the propriety of a door-to-door marketer who offers to sell energy service may be equally likely to contact the Commission or the distribution company. The OCA/AARP/Dominion Retail submit that the asymmetry of the supplier’s obligation to provide notice under Guideline K, where the supplier “shall notify” the Commission, but the supplier is only encouraged to notify the distribution company, is not reasonable and may harm consumer confidence in the competitive energy supply market as well as safety.

The OCA/AARP/Dominion Retail recommend that Guideline K-2 be modified to state that “Suppliers *shall* also provide...” and “The Supplier *shall* provide the general information to the distribution company...” (“shall” is substituted for “should”). Such a uniform approach should enhance consumer confidence and acceptance of the competitive energy supply market and save suppliers from spending on door-to-door marketing activities which might otherwise be undermined by skepticism, misunderstanding or misinformation. The OCA/AARP/Dominion Retail fully agree that the distribution company and the customer service representatives must adhere to the necessary code of conduct to avoid any release of competitively sensitive information such as marketing strategies.

D. Guideline Q Should Be Clarified

Guideline Q states the Commission's intention to gather and maintain statistics concerning complaints regarding supplier marketing and sales practices as well as proven incidents of unauthorized customer enrollments and transfers of customer accounts so that the Commission can monitor this activity. The OCA/AARP/Dominion Retail fully support this initiative. The Guideline, however, references a Secretarial Letter issued December 10, 2009 at Docket No. M-2009-2082042. In that Secretarial Letter, the date for providing the information and statistics to the Commission is November 30, 2010. The Commission also references this date in its Tentative Order. Tentative Order at 8.

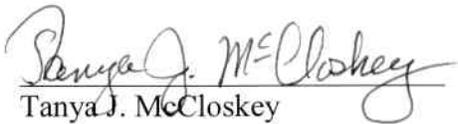
The OCA/AARP/Dominion Retail request that the Commission clarify that its initiative set out in Guideline Q does not end on November 30, 2010. While the Commission may have information from several months of marketing activity in the PPL Electric service territory by that date, the OCA/AARP/Dominion Retail anticipate that marketing activity in the remaining service territories will only begin in earnest this Fall of 2010. Additionally, the Guidelines will not be in place for a sufficiently long period of time prior to November 2010 to fully determine whether they have served their intended purpose.

It was the understanding of the OCA/AARP/Dominion Retail that the Commission intended to engage in on-going monitoring of sales activities and the operation of the Guidelines. The OCA/AARP/Dominion Retail request that the Commission make this intent clear.

III. CONCLUSION

The OCA/AARP/Dominion Retail commend the Commission on its efforts to develop guidelines to protect consumers and assist NGSs and EGSs in the development and implementation of sales and marketing efforts, all towards the goal of providing Pennsylvania consumers with the opportunity for choice and savings through development of competitive markets for energy supply.

Respectfully Submitted,



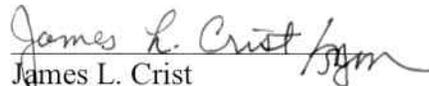
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