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August 16, 2010

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

On behalf of the Pennsylvania Independent Oil & Gas Association (“PIOGA”) enclosed please find the original of its Comments along with the electronic filing confirmation with regard to the above-referenced matter.

Very truly yours,

Kevin J. Moody, Esq.

KJM/jls
Enclosure

cc: Office of Competitive Market Oversight (via email only)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

COMMENTS OF
THE PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION

The Pennsylvania Independent Oil & Gas Association (PIOGA)¹ has participated in the Commission's SEARCH (Stakeholders Exploring Avenues for Removing Competition Hurdles) initiatives to encourage increased competition in the retail natural gas market. PIOGA appreciates the Commission's efforts and understands that it will take some time for these efforts to produce the intended and anticipated results.

According to the Tentative Order, the development of these interim marketing guidelines is the result of residential electric customers expressing concerns with door-to-door marketing practices of competitive electric suppliers. Door-to-door marketing and telemarketing are not presently preferred by PIOGA member NGSs because there is not much of a competitive natural gas market for mass-market customers² due to the fundamental problems identified by the Commission in its report to the General Assembly. Nonetheless, PIOGA commends the

¹ PIOGA, formerly known as the Independent Oil and Gas Association of Pennsylvania (IOGA of PA), is the comprehensive trade association representing oil and natural gas interests throughout Pennsylvania. Effective April 1, 2010, the Pennsylvania Oil and Gas Association (POGAM) merged into IOGA of PA and the name of the organization changed to Pennsylvania Independent Oil and Gas Association (PIOGA). PIOGA now has over 800 members, including oil and natural gas producers, Commission-licensed natural gas suppliers (NGSs) and marketers, drilling contractors and service companies, professional service firms and individuals, and royalty owners. PIOGA members produce, transport and market Pennsylvania natural gas production from conventional wells over intrastate and interstate pipeline systems to PUC-regulated natural gas distribution companies (NGDCs) for system supply and to retail customers. PIOGA members are also engaged in the exploration, development, production and sale of natural gas from the Marcellus Shale formation.

² See, OCA Pennsylvania Natural Gas Shopping Statistics, July 1, 2010: only 6.95% of residential natural gas customers statewide are served by competitive suppliers.

Commission for addressing these issues through the SEARCH initiatives and overseeing the development of interim guidelines that have been agreed to by nearly all participants.

PIOGA agrees with the foundation of the guidelines – that third parties providing marketing and sales support services to licensed suppliers are not required to be licensed.³ PIOGA also agrees that the proposed guidelines should provide assurance to the public in general and residential customers in particular that the Commission is responding to their concerns about a familiar marketing strategy and sales technique (door-to-door marketing) being applied in an unusual setting – selling natural gas and electricity.⁴ However, PIOGA questions whether the Commission may prohibit a lawful activity – the use of third party marketers – by licensed suppliers, as referenced in the Tentative Order (p.3).⁵

One non-consensus proposed guideline raises significant anticompetitive concerns – advance notification to the utility of a supplier’s door-to-door marketing activities. Proposed Guideline K-2 states that no later than the morning of the day that the activity commences suppliers “should” provide the utility with the same general information provided in the advance notice to the Commission required by proposed Guideline K-1.⁶ However, the order discusses the issue in terms of the “need for the supplier to contact” the utility, the suppliers’ position not “to be required to do so”, and the consumer representatives’ position that this notice must occur.

Despite the admonition in the proposed guideline that this information is to be used only to permit utility customer service representatives to respond to anticipated customer inquiries and

³ Tentative Order at 2; 52 Pa. Code §62.101 (“marketing services consultant”).

⁴ PIOGA’s experience is that mass-market natural gas and electricity customers have been exposed to and are familiar with telemarketing of those commodities.

⁵ The Commission referenced its determination in the December 10, 2009 Secretarial Letter (M-2009-2082042) to evaluate by November 30, 2010, whether suppliers’ use of unlicensed third parties for marketing and sales support should be restricted or prohibited.

⁶ The notice to the Commission is to include “general, non-proprietary information as to the extent of the marketing or sales effort, for what period of time, and a description of the geographical area involved.” Proposed Guideline K-1.

is subject to the Code of Conduct, the reality is that such advance notice – even of only a few hours – of such highly confidential competitive information provides an opportunity for the incumbent utility to engage in impermissible anticompetitive behavior for which there is no timely and effective remedy.

PIOGA supports advance notice to the Commission. However, the potential competitive harm to suppliers of such notice to the utility outweighs the speculative benefit to the utility, especially considering the availability of Commission staff to respond to customer inquiries. A way of dealing with the concerns of the consumer representatives and the utilities that does not include potential competitive harm to suppliers is to provide sufficient customer education about lawful marketing practices used by suppliers along with directions that customers contact the Commission if they have questions or concerns about suppliers' marketing efforts.

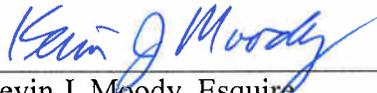
Accordingly, PIOGA requests that the Commission clearly state that the advance notice to the utility under the proposed guideline, as written, is a courtesy and not mandatory. PIOGA suggests that, with the one exception identified in the Tentative Order,⁷ “guidelines” may not impose mandatory requirements. Non-statutory mandatory requirements are imposed by regulations promulgated under the Commonwealth Documents Law. PIOGA also requests that the Commission consider providing additional customer education as suggested above.

⁷ “Note as well that when a guideline is based on, or is consistent with, duties, requirements or prohibitions established in the Public Utility Code, Commission regulations or orders, or other applicable Pennsylvania, federal or municipal law, compliance with the guideline is expected.” Tentative Order at 4.

CONCLUSION

With the exceptions discussed above, PIOGA supports the proposed interim marketing guidelines as a balanced response to legitimate customer confusion concerns while not unreasonably impeding the lawful marketing and sales activities of competitive suppliers.

Respectfully submitted,



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Date: August 16, 2010

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