**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held April 23, 2015

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

James H. Cawley

Pamela A. Witmer

Gladys M. Brown

Petition for Clarification Docket No. P-2015-2464976

of Commission Supplier Marketing

Regulations; 52 Pa. Code §111.7.

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Commission is a recommendation from the Commission’s Office of Competitive Market Oversight (OCMO) to address a Petition for Clarification (Petition) of the applicability of the Commission’s residential energy supplier marketing regulations at 52 Pa. Code § 111.7. The request for clarification concerns the appropriate sales verification procedure to apply when engaging in door-to-door marketing activity with agents using tablet computers. Through this Order, we answer the Petition.

**Background**

On June 29, 2013, the Commission promulgated regulations governing marketing and sales practices in the residential energy market. *See* 52 Pa. Code §§ 111.1-111.14. The regulations apply to both electric generation suppliers (EGSs) and natural gas suppliers (NGSs) and to any entity or persons conducting activities on their behalf. *See* 52 Pa. Code § 111.1. The regulations require specific conduct for door-to-door sales and transactions. *See* 52 Pa .Code §§ 111.7-111.9. When adopting the new rules, the Commission declared that suppliers are expected to conduct themselves with these regulations in mind so that their sales and marketing activities do not call into question the fairness and integrity of the competitive market.[[1]](#footnote-1)

**The Petition**

On January 28, 2015, Interstate Gas Supply, Inc. d/b/a IGS Energy (IGS) filed the Petition with the Commission to request clarification of the sales verification process applicable to electric and natural gas suppliers at 52 Pa. Code § 111.7. At the same time, IGS served copies of the Petition upon the Office of Consumer Advocate (OCA), Office of Small Business Advocate and the Commission’s Bureau of Investigation and Enforcement and the Law Bureau. On February 17, 2015, the OCA filed an answer to the Petition. On March 2, 2015, IGS filed a response to the OCA’s answer. Finally, on March 16, 2015, the OCA filed a letter acknowledging the response from IGS.

IGS is licensed by the Commission to serve both retail electricity and retail natural gas customers in the Commonwealth (License Nos. A-2011-2228643 and A-125051 respectively). IGS provides service as an EGS/NGS throughout most of the electric distribution company (EDC) and natural gas distribution company (NGDC) service territories in Pennsylvania. *See* Petition at 2.

In its Petition, IGS proposes a new process for door-to-door enrollments which involves sales agents that they refer to as “Home Energy Consultants” (HECs). Petition at 1. IGS reports that the HECs are employees of IGS (as opposed to independent contractors) whose compensation is primarily derived from salary (as opposed to sales commission). *Id.* The HECs will be equipped with communications-enabled tablet computers that also have GPS capabilities which will allow IGS to track the whereabouts of the HECs while they are conducting sales activities. *Id.* This tracking capability will allow IGS to record the presence of an HEC at the residence of the enrolled customer during the enrollment process and to record the date and time of sale. *Id.* With the tablet computers, the enrollment process can be completed with electronic signatures to verify the acceptance of the terms and conditions. *Id.* When an electric signature is utilized, the customer is emailed an electronic copy of the electronically executed documents; a paper copy is typically mailed within 24 hours of the enrollment. *Id.* at 2. If a customer is uncomfortable engaging with the electronic process, a wet signature version on a paper copy is available and the customer will proceed to a third-party verification process. *Id.*

IGS’s petition concerns the process that is used to verify the sales transaction. IGS reports that:

… [a]t the conclusion of the electronic sales transaction, and if the customer affirmatively consents to the HEC remaining on the premises (after being specifically asked that question) the customer is then presented with the tablet computer and asked to complete, on their own, a series of questions intended to verify the transaction. The first question is whether the customer was informed of their ability to request that the sales representative leave the premises during the verification process which the customer now must answer, with the answers being recorded electronically, and importantly, on their own, in order for the verification to be complete. Further, the questions asked of the customer are identical to the questions the customer would otherwise answer if the verification was being completed telephonically. If the customer answers all of the questions appropriately, the customer then signs the verification form and is provided an electronic copy of that form, and the transaction is considered to be complete. If the customer responds inappropriately to the verification questions, an error message appears and the sale cannot be completed. If the customer affirms the transaction, the visit is concluded with the transaction being considered verified. If the customer does not consent to the sales representative remaining on the premises during the verification process, the HEC leaves the premises and the transaction is concluded through a traditional third-party verification telephone call process.

IGS Petition at 3.

IGS believes this verification process complies with 52 Pa. Code § 111.7(b)(2), contending that the verification process is separate and only completed after the sales transaction. *See* Petition at 4. Importantly, before the verification occurs, the HEC asks the customer whether the HEC may remain at the premises during the verification and informs the customer that the HEC must leave per the customer’s request. *Id.* If the HEC leaves the premises, the transaction is completed through a third-party verification telephone call. *Id.* Accordingly, IGS requests that the Commission clarify that the use of the tablet computer to verify the HEC's enrollment of customers as described in the Petition is consistent and in compliance with 52 Pa. Code § 111.7(b)(2). IGS’s post-enrollment quality assurance customer surveys indicate customer dissatisfaction with the third-party telephone verification process, as customers find it complicated, superfluous, and impersonal. IGS Petition at 3. IGS seeks to implement the verification process described above, in part, in response to this customer feedback. *Id.*

On February 17, 2015, the OCA filed an answer, supporting IGS’s efforts to improve its enrollment mechanisms, but voicing some concerns regarding IGS’s proposal. First, the OCA notes that customer information can potentially be accessed from the tablet computers. Therefore, the OCA submits that IGS should demonstrate that it has established adequate protections to ensure the privacy of customer information, particularly in the event that a tablet computer is lost or stolen. OCA Answer at 4. Second, the OCA is concerned about a verification process conducted with the tablet computer in the presence of the salesperson. The OCA submits that the verification process is best implemented as an independent process, without the influence of the sales agent. *Id*. OCA notes that IGS will be offering the customer the option of verification without the agent present, but believes that IGS should demonstrate that its processes are sufficiently robust to establish this affirmative voluntary consent and to show that the customer responded to the questions on the tablet computer without the assistance of the agent. *Id.* at 5. Additionally, OCA suggests that the Commission may want to review the questions IGS intends to ask its customers to help ensure adequate consumer protections. *Id*.

On March 2, 2015, IGS filed a response to the OCA’s answer. In their response, IGS clarifies that the software that enables the IGS agent to enroll customers creates a portal between the tablet computer and IGS's servers, and that sensitive customer information does not remain on the tablet computer. IGS Response at 1. IGS further explains that the tablet computer and the software for the portal are controlled by separate password protection and that the device can be wiped of all data in case it would be lost or stolen. *Id.* IGS explains that a thief/hacker would have to break not only the agent’s password for the tablet and the password for the portal software, but would also have to do this prior to the agent reporting the device lost or stolen and the device being wiped of all data. *Id.* IGS notes that their protocols require an agent to report any lost or stolen tablets immediately. *Id.*.

Regarding the OCA’s concerns with the use of the tablet computer as part of the verification process and the need for the agent to remain nearby while the verification is being completed, IGS offers, as a result of its discussions with the OCA, to enhance the processes described in its Petition to ensure that the customer understands his or her right to ask the agent to leave the premises, and has nonetheless agreed to allow the agent to remain. IGS Response at 2. IGS reports that their modified process places the first question regarding the customer's affirmative consent to the agent remaining on the premises on a separate page and that the customer cannot navigate off that page unless the customer affirmatively answers the question, and also initials a box affirming that they have answered the question. If the customer fails to answer the question affirmatively or initial the appropriate box, the remaining verification questions will not appear and the tablet computer will display a message indicating that a telephonic verification is required. IGS response at 2.

As for OCA’s suggestion that the Commission review IGS's verification questions, IGS responds that its verification questions are intended to achieve the goals described by the OCA's comments. The customer will be required to answer all questions affirmatively or else the tablet will display a message that the transaction will not be processed unless third-party verification is completed. IGS adds that the process they are proposing is customer friendly and educational while ensuring that there is no confusion as to the nature of the product. IGS response at 2.

On March 16, 2015, the OCA filed a letter acknowledging the IGS response. In their letter, OCA declared that the “clarifications and additional processes outlined by the Company’s Response address the concerns raised by the OCA.” OCA letter at 1.

**Discussion**

A party may file a petition for clarification of the applicability of our regulations to the party’s circumstances. *See* 52 Pa. Code §§ 5.41, 5.42, 5.572(a).[[2]](#footnote-2) Answers to petitions generally must be filed within 20 days of service of the petition. 52 Pa. Code § 5.61(a).

The regulation at issue in this petition, 52 Pa. Code § 111.7, governs interactions and transactions between an energy supplier and an existing or potential future customer:

§ 111.7. Customer authorization to transfer account; transaction; verification; documentation.

(a) A supplier shall establish a written, oral or electronic transaction process for a customer to authorize the transfer of the customer’s account to the supplier…

(b) **A supplier shall establish a process to verify a transaction that involved an agent.** The process shall confirm that the customer authorized the transfer of the customer’s account to the supplier.This subsection does not apply to a transaction that was completed solely by the customer as set forth in subsection (a)(1)(iii) and (iv).

(1) A supplier may use a third party to verify transactions.

(2) **The verification process shall be separate from the transaction process and initiated only after the transaction has been finalized.** When verifying a transaction that resulted from an agent’s contact with a customer at the customer’s residence, the verification process shall be initiated only after the agent has physically exited the customer’s residence, unless the customer agrees that the agent may remain in the vicinity of the customer during the verification process. Prior to initiating the verification process, the agent shall inform the customer that the agent may not be in the vicinity during the verification unless the customer agrees to the agent’s presence…

52 Pa. Code § 111.7 (emphasis added).

The verification process mandated in this regulation was extensively discussed and debated during the rulemaking process used to promulgate these regulations in 2012.[[3]](#footnote-3) The Commission specifically exempted the verification process for those transactions not involving interaction with an agent. *See* 52 Pa. Code § 111.7(b). When a customer is enrolling through a process that does not involve an agent (*i.e.* direct mail, internet, etc.), a customer is free to take the time to carefully review an offer, compare offers, read all materials and disclosures, and reject or accept the offer without any outside influence or pressure. Notably, enrolling customers with tablet computers does not exempt IGS from the verification process. The use of the tablet computer is not the key factor in determining whether the verification process is required; the key factor is the role of an agent in the customer’s home or on the customer’s premises. As such, we conclude that the verification process is relevant to the kinds of sales transactions described in IGS’s petition.

One of the central issues in the 2012 rulemaking was the role and presence of the sales agent during the verification process. Many parties to the rulemaking believed that potential customers should be free of the presence of the sales agent so that the verification is completed privately, thus minimizing the chance of intimidation and pressure. However, many suppliers pointed to practical problems attendant to the verification requirement. The Commission decided, in the final rule, to structure the verification process so that the choice would be left to the customer, thereby allowing sales agents to remain in the vicinity of the customer during the verification process only upon customer consent.  Additionally, if a customer feels too intimidated to ask the agent to leave, or if for any reason is not satisfied with what he or she just agreed to, a customer may exercise his or her three-day right of rescission. *See* 52 Pa. Code §§ 54.5, 62.75.

It appears that the verification process IGS proposes, especially as discussed in their March 2 response to the OCA, aligns with the Commission’s intent and objectives in promulgating 52 Pa. Code § 111.7. IGS complies with the first part of the verification process by requiring the IGS agent to affirmatively ask the potential customer if the customer consents to the agent’s presence. If the customer does not consent to the presence of the agent during the verification process, the agent will immediately leave the premises and the transaction will conclude through a traditional third-party verification telephone call. IGS Petition at 4. Therefore, IGS’s proposed verification process complies with 52 Pa. Code § 111.7.

The next question raised by IGS’s Petition is whether the use of a tablet computer to verify a sales transaction complies with 52 Pa. Code § 111.7. We first note that while many use the term “third-party verification” and “TPV” when discussing “verification,” as IGS sometimes does in its Petition, these terms are not necessarily analogous or interchangeable. “TPV” is one form of verification out of many. The regulation does not *require* that verification be performed by a third party; rather, the regulation merely *allows* for a third-party to perform the verification. *See* 52 Pa. Code § 111.7(b)(1). The regulation requires no specific form or format of verification, but simply requires “a process to verify a transaction that involved an agent.” 52 Pa. Code § 111.7(b)(1). The regulation does, however, require the following in the supplier’s verification record:

* Confirmation that the customer authorized the transfer of the customer’s account to the supplier.
* The 3-day right of rescission.
* The date that the transaction was completed.
* The name or identification number of the agent that completed the transaction.
* The date of the verification.
* The name or identification number of the individual that conducted the verification.
* The results of the verification.
* The date that the disclosure statement was provided to the customer and the method by which it was provided.
* A record of a verification in a system that is capable of retrieving the record by customer name and customer account number for a period of time equivalent to at least six billing cycles.

*See* 52 Pa. Code § 111.7(b).

We note that the verification is not required to include all of the terms and conditions agreed to by the customer, as that is the role of the disclosure statement that all residential and small business customers must receive upon enrolling with a supplier. *See* 52 Pa. Code §§ 54.5, 62.75.

The technology, mechanism, or device used by a supplier to conduct verification is not the relevant factor in determining compliance with the regulation. Compliance with the regulation hinges on meeting the above-mentioned verification requirements. In light of the averments in IGS’s petition, it appears that a tablet computer can perform the necessary functions and allow IGS to meet the verification requirements.

Nonetheless, we must still determine whether IGS’s proposed verification meets the standard that “the verification process shall be separate from the transaction process and initiated only after the transaction has been finalized.”*See* 52 Pa. Code § 111.7(b)(2). The intent of this distinction between the sales transaction and the verification is to make clear that the verification process verifies what the customer has already agreed to during the sales transaction. In effect, once the “sales” part of the transaction is completed there should be no more “selling” of the product to the customer during the verification. The two processes are “separate” and ideally this separation should be apparent to the customer. Clearly, this kind of separation is more apparent if the verification is performed by someone other than the sales agent. A more “separate” and distinct verification process will create a more robust valid verification, which will assist in resolving a subsequent dispute. However, as noted above, a “third-party” is not required. Suppliers may use other methods to meet the verification requirements. *See* 52 Pa. Code § 111.7(b).

Based on the foregoing discussion, we find that IGS’s proposed verification process complies with 52 Pa. Code § 111.7. We also note and agree with IGS that the use of tablet computers by sales agents coupled with its procedures provide several benefits to both suppliers and customers. The Commission desires to promote the use of new technologies that may improve the customer experience, decrease costs for companies, and encourage greater regulatory compliance. IGS’s use of a tablet computer appears to provide most, if not all, of these benefits.

The Commission has also been quite vocal about our concerns with door-to-door marketing.[[4]](#footnote-4) *See* 52 Pa. Code § 111.9. We welcome the introduction of technological devices or other mechanisms that provide suppliers with greater control and oversight of their sales agents in the field. The GPS-tracking abilities of the tablet computers highlighted by IGS provide several benefits. Tracking and documenting the presence of an agent at the residence of the customer at the date and time of sale will be of great value in resolving any subsequent dispute. A tablet computer also provides greater security for customer information. *See* IGS Response to the OCA (Mar. 2, 2015). Through the use of its password- protected tablet computer, it appears that IGS has taken the necessary steps to protect customer information.

The tablet computer will also allow almost real time electronic delivery of executed sales documents to the customer at the email address provided by the customer. This will allow customers to review, almost immediately, while the matter is still fresh in their minds, the terms they just agreed to – and quickly act on their 3-day right of rescission if need be.

In conclusion, the use of the tablet computer, used properly and in accordance with IGS’s proposed verification process, is a significant benefit to suppliers and consumers. While IGS’s proposed verification process complies with 52 Pa. Code § 111.7, we remind IGS of the need to comply with all of our regulations governing marketing and sales practices for the retail residential energy market. *See* 52 Pa. Code §§ 111.6-111.9 (governing supplier discipline, customer authorization and verification, agent identification and misrepresentation, and door-to-door sales).

**Conclusion**

Through this Opinion and Order, the Commission provides IGS with the clarification requested concerning the compliance of their proposed sales verification process with the requirements of 52 Pa. Code § 111.7. The Commission finds that IGS’s proposed process is consistent with the regulation. The sales verification process outlined in 52 Pa. Code § 111.7 permits the specific process IGS has proposed in its Petition. We emphasize that this Opinion and Order relies on the facts presented in the IGS Petition and IGS’s response to the OCA’s Answer to the Petition. Different facts, particularly those involving security of customer data and the verification process, may dictate a different result.

**THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Clarification of Interstate Gas Supply, Inc. d/b/a IGS Energy is granted, consistent with this Opinion and Order.

2. That this Opinion and Order shall be served on IGS Energy, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Bureau of Investigation & Enforcement.

3. That a copy of this Opinion and Order shall be posted on the Commission’s website at the Office of Competitive Market Oversight’s web page.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

ORDER ADOPTED: April 23, 2015

ORDER ENTERED: April 23, 2015

**APPENDIX**

**52 Pa. Code § 111.7**

#### § 111.7. Customer authorization to transfer account; transaction; verification; documentation.

(a) A supplier shall establish a written, oral or electronic transaction process for a customer to authorize the transfer of the customer’s account to the supplier.

(1) A document used to complete a transaction must include a means to identify, when an agent is involved, the agent who completed the transaction and a notation indicating whether the transaction was the result of:

(i) A door-to-door call or other in-person contact with an agent.

(ii) A telephone contact with an agent.

(iii) A written document completed and mailed to a supplier by a customer outside the presence of, or without interaction with, an agent.

(iv) An electronic document completed and uploaded to a supplier’s web site or e-mailed to a supplier by a customer outside the presence of, or without interaction with, an agent.

(2) A supplier shall provide a copy of documentation used in a customer transaction to the Commission upon request.

(b) A supplier shall establish a process to verify a transaction that involved an agent. The process shall confirm that the customer authorized the transfer of the customer’s account to the supplier. This subsection does not apply to a transaction that was completed solely by the customer as set forth in subsection (a)(1)(iii) and (iv).

(1) A supplier may use a third party to verify transactions.

(2) The verification process shall be separate from the transaction process and initiated only after the transaction has been finalized. When verifying a transaction that resulted from an agent’s contact with a customer at the customer’s residence, the verification process shall be initiated only after the agent has physically exited the customer’s residence, unless the customer agrees that the agent may remain in the vicinity of the customer during the verification process. Prior to initiating the verification process, the agent shall inform the customer that the agent may not be in the vicinity during the verification unless the customer agrees to the agent’s presence.

(3) A customer shall be informed of the 3-business-day right of rescission of the transaction under § § 54.5(d) and 62.75(d) (relating to disclosure statement for residential and small business customers) and the customer’s rights under section 7 of the Unfair Trade Practices and Consumer Protection Law (73 P. S. § 201-7) at the end of the verification process contact.

(4) A supplier shall maintain a record of a verification in a system that is capable of retrieving the record by customer name and customer account number for a period of time equivalent to at least six billing cycles to enable compliance with § 57.177 (relating to customer dispute procedures) for an EGS and § 59.97 (relating to customer dispute procedures) for an NGS.

(5) The verification record must include the transaction documents and the following information:

(i) The date that the transaction was completed.

(ii) The name or identification number of the agent that completed the transaction.

(iii) The date of the verification.

(iv) The name or identification number of the individual that conducted the verification.

(v) The results of the verification.

(vi) The date that the disclosure statement was provided to the customer and the method by which it was provided.

(6) A supplier shall provide copies of verification records to the Commission upon request.

(c) When a supplier is informed that a transaction could not be verified, the supplier shall contact the customer by telephone, e-mail or letter and explain that the transaction could not be verified. The supplier may offer assistance to correct the problem so that the transaction can be resubmitted to the verification process.

1. *See Final Corrected Rulemaking Order Rulemaking Re: Marketing and Sales Practices for the Retail Residential Energy Market*. Docket Number L-2010-2208332 (Order entered October 24, 2012).   
    [↑](#footnote-ref-1)
2. A person may also obtain the Commission’s determination on an issue through a petition for declaratory order, 52 Pa. Code § 5.41, or through less formal methods such as a Chief Counsel opinion letter. See e.g., 52 Pa. Code § 1401(f). [↑](#footnote-ref-2)
3. *See Id*. at 30-35. [↑](#footnote-ref-3)
4. *See Id*. at 5 – 8. [↑](#footnote-ref-4)