

Deanne M. O'Dell
717.255.3744
dodell@eckertseamans.com

July 27, 2016

Via Electronic Filing

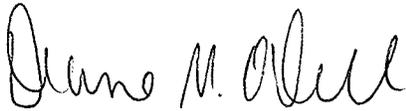
Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Commonwealth of Pennsylvania, et al., v. Blue Pilot Energy, LLC
Docket No. C-2014-2427655

Dear Secretary Chiavetta:

On behalf of the Retail Energy Supply Association ("RESA") enclosed for electronic filing with regard to the above-referenced matter are the following documents: (1) Petition to Intervene or, in the Alternative, Motion for Leave To Accept Exception, (2) Notice to Plead; and, (3) Exception. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell

DMO/lww
Enclosure

cc: Hon. Elizabeth Barnes w/enc.
Hon. Joel Cheskis w/enc.
Office of Special Assistants w/enc. via email only (ra-OSA@pa.gov)
Certificate of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's) Petition to Intervene or, in the Alternative, Motion for Leave To Accept Exception, (2) Notice to Plead; and, (3) Exception upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

John M. Abel, Esq.
Margarita Tulman, Esq.
Bureau of Consumer Protection
Office of Attorney General
15th Fl., Strawberry Square
Harrisburg, PA 17120
jabel@attorneygeneral.gov
mtulman@attorneygeneral.gov

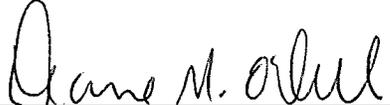
Candis A. Tunilo, Esq.
Christy Appleby, Esq.
Kristine E. Marsilio, Esq.
Office of Consumer Advocate
555 Walnut St.,
5th Floor, Forum Place
Harrisburg, PA 17101-1923
ctunilo@paoca.org
cappleby@paoca.org
kmarsilio@paoca.org

Michael Swindler, Esq.
Stephanie M. Wimer, Esq.
Bureau of Investigation & Enforcement
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
mswindler@pa.gov
stwimer@pa.gov

Sharon Webb, Esq.
Office of Small Business Advocate
Commerce Building, Suite 202
300 North Second St.
Harrisburg, PA 17101
swebb@pa.gov

Karen O. Moury, Esq.
Buchanan Ingersoll & Rooney PC
409 N. Second St.
Harrisburg, PA 17101-1357
karen.moury@bipc.com

Dated: July 27, 2016



Deanne M. O'Dell, Esq.

TABLE OF CONTENTS

I. INTRODUCTION1

**II. EXCEPTION: THE I.D. ERRS IN CONCLUDING THAT EGSs ARE
REQUIRED TO OBTAIN A WET SIGNATURE TO COMPLETE AN
ENROLLMENT ACQUIRED THROUGH TELEMARKETING (COL # 30).....4**

A. The TRA Creates An Exception To The Wet Signature Requirements For
Contractual Sales That Are Regulated Under Other Laws Of The
Commonwealth And Nothing In Commission’s Regulations Remove The
Right Of Suppliers To Rely On This Exception.....5

B. The Commission Regulates The Contractual Sale Of Electricity And
Specifically Does Not Require A Wet Signature 10

III. CONCLUSION14

I. INTRODUCTION

The Retail Energy Supply Association (“RESA”)¹ submits this single Exception² urging the Commission to reject the recommendation of the Initial Decision (“I.D.”) to interpret the Telemarketer Registration Act (“TRA”)³ and the Commission’s regulations to impose a new requirement on electric generation suppliers (“EGSs”) to acquire a customer’s signature on a contract before the customer’s enrollment with the EGS is deemed valid (i.e. a “wet signature”).⁴ This has never been required by the Commission’s regulations,⁵ has never even been considered to be implemented as a requirement during numerous Commission proceedings preceding the currently effective regulations, and is not consistent with the requirements of the TRA. To be clear, RESA is not taking any position regarding the specific allegations against Blue Pilot Energy, LLC (“Blue Pilot”) involving its marketing practices and, to the extent the Commission concludes that Blue Pilot violated the Commission’s regulations, RESA supports appropriate action. However, if the unprecedented recommendation of the I.D. regarding wet signatures is

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

² RESA is simultaneously filing a Petition to Intervene or, in the Alternative, Motion For Leave To Accept Exception. As explained more fully therein, the recommendation of the I.D. to impose a new wet signature requirement on all suppliers in the context of an enforcement action (in which RESA had no reason to intervene earlier) presents extraordinary circumstances to support intervention now as permitted by 52 Pa. Code § 5.74(c).

³ 73 P.S. §§ 2241-2249.

⁴ *Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655, Initial Decision dated July 7, 2016 at 107-112, 137 (COL # 30) (“I.D.”).

⁵ These regulations include: 52 Pa. Code §§ 111.1-111.14 (Marketing and Sales Practices for the Retail Residential Energy Market); 52 Pa. Code §§ 54.1-54.10 (Customer Information); and, 52 Pa. Code §§ 57.176-5.180 (Standards for Changing a Customer’s Electricity Generation Supplier).

adopted by the Commission, the telemarketing sales channel for EGSs would no longer be a viable option. This is because EGSs would not be able to finalize enrollments until after the customer returns the contract with a wet signature and EGSs would have to hold open the offered price pending return of the signed contract. The response rate of customers to provide a wet signature on an agreement for which they have already contracted would be negligible. Thus, suppliers are not likely to utilize this sales channel under these circumstances. Removing a currently viable and utilized sales channel in the existing market structure that the Commission has already acknowledged poses “any number of challenges” to EGSs would unnecessarily further hinder “consumers’ ability to enjoy a functioning competitive market.”⁶ Requiring customers to return a signed contract to complete a telemarketing enrollment would also negatively impact consumers. For those customers who would actually return the contract, they would experience an unnecessary delay between enrollment and effective date for the new EGS price – a delay the Commission spent much time trying to avoid through its accelerated switching process.

Thus, the outcome of adopting the recommendation of the I.D. to require wet signatures on telemarketing contracts would negatively impact the efforts of the Commission to foster the development of a workably competitive market (as required by the Electricity Generation Customer Choice and Competition Act, “Competition Act”)⁷ and seriously undermine all the work of the Commission and interested stakeholders in developing the Commission’s regulations to clearly define the process EGSs are required to follow to successfully enroll customers.

⁶ *Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service*, Docket No. L-2011-2237952, Final Order entered at February 15, 2013 at 12.

⁷ 66 Pa.C.S. §§ 2801-2812.

As explained more fully below, there is no sound legal foundation upon which to adopt the recommendation of the I.D. It is not consistent with the express language of the TRA (even if the Commission could interpret the TRA, which it cannot). In addition, the effort of the I.D. to point to the Commission's regulations for the intent of the Commission to require a wet signature ignores the actual words of all the relevant regulations (which do not require wet signatures). Accepting the flawed logic of the I.D. to rely on the Commission's regulations in support of the position would require one to believe that the Commission intentionally hid an elephant in a mouse hole meaning that it buried this fundamental, market-altering requirement so deep in its recent regulations that nobody could find it (let alone plan for it). If the Commission intended to uproot such a long-standing understanding and practice in Pennsylvania, it would not have chosen to do so in such a covert way.⁸ The Commission's regulations relied upon by the I.D.: (1) spanned almost three and a half years; (2) involved at least ten meetings among Commission staff and industry members; (3) produced interim guidelines adopted only after consideration of formal comments received to a tentative order; and, (4) were finalized in a final rulemaking adopted only after consideration of comments to the proposed rulemaking and after consideration of a petition for reconsideration (and responsive comments).⁹ At no time was there any discussion of the intent or desire of the Commission to implement a new requirement that EGSs had to acquire wet signatures on telemarketing contracts.

⁸ The elephant-in-mouse-hole doctrine holds that "Congress ... does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions--it does not, one might say, hide elephants in mouseholes." *Whitman v. American Trucking Association*, 531 U.S. 457, 468 (2001).

⁹ *Rulemaking Re: Marketing and Sales Practices for the Retail Residential Energy Market*, Docket No. L-2010-2208332, Final Rulemaking Order entered October 24, 2012 at 2-3. ("*Marketing and Sales Final Rulemaking Order*").

For all these reasons, RESA urges the Commission to grant this exception and make clear what is already clear in the TRA and the Commission’s regulations – a wet signature is not required for telemarketing contracts.

II. EXCEPTION: THE I.D. ERRS IN CONCLUDING THAT EGSs ARE REQUIRED TO OBTAIN A WET SIGNATURE TO COMPLETE AN ENROLLMENT ACQUIRED THROUGH TELEMARKETING (COL # 30)

There are two overarching fundamental flaws with the recommendation of the I.D. to require a wet signature on telemarketing contracts. First, there is no such requirement pursuant to the TRA. Rather, the TRA specifically grants an exception to the wet signature requirements for contractual sales regulated by other laws.¹⁰ Thus, even if the Commission could interpret the TRA or somehow rely on the “standards” of the TRA (as the I.D. suggests), the TRA does not require EGSs to acquire wet signatures on telemarketing contracts.

The second overarching fundamental flaw with the I.D. is that the Commission’s regulations do not require wet signatures on telemarketing contracts. To the contrary, the Commission’s regulations provide great detail about what EGSs can and cannot do to ensure that they have a valid enrollment from a customer.¹¹ None of these requirements include acquiring a wet signature on telemarketing contracts. If the Commission were to now determine that such a requirement will be imposed, it would be a brand-new requirement that would negatively impact the marketplace by removing telemarketing as a viable sales channel for EGSs and imposing an unnecessary delay for customers between the time they enroll with a supplier and the time when the new supplier price will become effective.

¹⁰ 73 P.S. § 2245(d)(1).

¹¹ These regulations include: 52 Pa. Code §§ 111.1-111.14 (Marketing and Sales Practices for the Retail Residential Energy Market); 52 Pa. Code §§ 54.1-54.10 (Customer Information); and, 52 Pa. Code §§ 57.176-5.180 (Standards for Changing a Customer’s Electricity Generation Supplier).

A. **The TRA Creates An Exception To The Wet Signature Requirements For Contractual Sales That Are Regulated Under Other Laws Of The Commonwealth And Nothing In Commission’s Regulations Remove The Right Of Suppliers To Rely On This Exception**

The I.D. concludes that the failure to obtain wet signatures on telemarketing contracts is “a direct violation” of the TRA.¹² The Commission has already made clear in its *Material Question Order* that the General Assembly did not provide the Commission with jurisdiction to hear claims brought pursuant to the TRA.¹³ Therefore, this recommended legal conclusion of the I.D. interpreting the requirements of the TRA to find a violation must be denied.

Perhaps in an effort to disconnect this conclusion from being viewed as interpreting the TRA, the I.D. states that it is not “enforcing the TRA per se” but considering “the standards in the TRA in determining whether a violation has occurred.”¹⁴ Although this is really a distinction without a difference as applied here, a review of the TRA makes clear that it does not require EGSs to acquire wet signatures on telemarketing contracts. Rather, EGSs are specifically exempt from this requirement because the contractual sale of electricity is regulated under other laws of the Commonwealth.¹⁵ Section 2245(a) of the TRA sets forth the acts that are prohibited and Section 2245(a)(7) states as follows:

Failing to reduce any sale of good or services made during a telemarketing call to a written contract and obtaining the consumer’s signature on the written contract, **except as provided in subsection (d).**¹⁶

¹² I.D. at 111.

¹³ *Commonwealth of Pennsylvania, et al. v. blue Pilot Energy, LLC*, Docket No. C-2014-2427655, Opinion and Order entered December 11, 2014 at 17 (“*Material Question Order*”).

¹⁴ I.D. at 111.

¹⁵ 73 P.S. § 2245(d)(1).

¹⁶ 73 P.S. § 2245(a)(7)(emphasis added).

Section 2245(d) sets forth the exceptions to the listed prohibited acts and states:

EXCEPTION – A signed, written contract is not needed if any of the following apply:

(1) The contractual sale is regulated under other laws of this Commonwealth.¹⁷

When interpreting a statute, courts are guided by the Statutory Construction Act, which provides that “the object of all interpretation and construction of all statutes is to ascertain and effectuate the intention of the General Assembly.”¹⁸ “The clearest indication of legislative intent is generally the plain language of a statute.”¹⁹ “When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”²⁰ It is presumed: (1) “[t]hat the General Assembly intends the entire statute to be effective and certain;”²¹ and, (2) “[t]hat the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.”²² Finally, “[e]very statute shall be construed, if possible, to give effect to all its provisions.”²³

Here, the TRA is unambiguous – the TRA wet signature requirement does not apply when the contractual sale is regulated under other laws of the Commonwealth.²⁴ The intent of the General Assembly could not be clearer. Likewise, there cannot be any ambiguity in the fact that the sale of electricity is regulated by the Commission (as discussed more below in Section

¹⁷ 73 P.S. § 2245(d).

¹⁸ 1 Pa.C.S. § 1921(a).

¹⁹ *Walker v. Eleby*, 842 A.2d 389, 400 (Pa. 2004).

²⁰ 1 Pa. C.S. § 1921(b).

²¹ 1 Pa. C.S. § 1922(2).

²² 1 Pa. C.S. § 1922(1).

²³ 1 Pa. C.S. § 1921(a).

²⁴ 73 P.S. § 2245(d).

II.B).²⁵ Therefore, applying the time-tested statutory construction principles to the clear and unambiguous terms of the TRA makes clear that the TRA does not require EGSs to acquire a wet signature on contracts formed as a result of telemarketing. As such, there is no support for the I.D.’s position that the “standards” of the TRA require a wet signature because they do not.

Although the I.D. does reference (and then disregard) the TRA exception from the wet signature, the I.D. concludes that the failure to obtain wet signatures constitutes a violation of Section 111.10(a) of the Commission’s regulations.²⁶ According to the I.D., Section 111.10(a)(1) – which incorporates guidance from the attorney general in an advisory opinion from February 2010²⁷ – supports the proposition that “EGSs are subject to all requirements of the TRA, except the requirement that they register with the OAG.”²⁸ The reasoning of the I.D. appears to be that the statement in the Commission’s regulations that EGSs are subject to all requirements of the TRA somehow means that EGSs are required to obtain wet signatures pursuant to the TRA for telemarketing contracts. This reasoning is flawed on several levels.

First, the I.D. appears to recommend relying on the Commission’s regulations as a way to interpret the TRA statute even though the Commission does not have authority to interpret the TRA. Notwithstanding this, the I.D. appears to conclude that the Commission’s regulations somehow make the logic of the I.D. not an interpretation of the TRA. Pursuant to this flawed logic, the Commission’s regulations only specifically state the registration exemption applies to EGSs and, therefore, (according to the I.D.) no other exceptions of the TRA can apply to EGSs.

²⁵ 66 Pa. C.S. § 2807(d).

²⁶ I.D. at 111.

²⁷ I.D. at 109; Request For Opinion, 2010 Pa. AG LEXIS 1 (Feb. 8, 2010).

²⁸ I.D. at 109.

However, reliance on the Commission's regulations to interpret a statute not within the Commission's jurisdiction and in a way that removes rights (i.e. to rely on an exception) has no sound basis. The Commission cannot interpret the TRA whether in an I.D. or through regulations that cross-reference specific sections of the TRA. In other words, the Commission's regulations cannot give or take away rights from a completely different statutory scheme over which the Commission has no jurisdiction.

Second, even if this flawed reliance on the Commission's regulations were to be considered, the registration requirements under the TRA are in a completely different section of the TRA (Section 2242 which defines telemarketers and includes what entities are exempt from registration) from the wet signature requirements (Section 2245 which lists the prohibited acts and exceptions). Nothing in the Attorney General's opinion or the Commission's regulations reference the section of the TRA (Section 2245) dealing with the wet signature requirements. Thus, there is no indication from the regulations themselves or the Attorney General Opinion that any guidance provided therein was with respect to the wet signature requirements of the TRA. While the I.D. is correct in its statement that the regulations of the Commission and the Attorney General opinion address TRA registration requirements, this fact sheds no light on the wet signature requirements. Thus, nothing in the Commission's regulations or the Attorney General's opinion states that the right of suppliers to rely on the TRA wet signature requirements exception is in any way removed or unavailable.

Finally, at the same time the I.D. concludes that somehow the Commission intended (or could) take away the right of EGSs to rely on a clear exception in the TRA, it notes that the

“Commission’s regulations do not pre-empt or replace the requirements of the TRA.”²⁹ This is certainly an accurate conclusion but the way it is applied here makes no sense. If the TRA applies, notwithstanding the Commission’s regulations, then the wet signature exception applies. The only reason it would not (following the flawed logic of the I.D.) would be to conclude that the Commission’s decision not to specifically reference the wet signature exception in its regulations somehow removed the exception. This, however, is nonsensical. If the Commission intended to uproot such a long-standing understanding and practice in Pennsylvania, it would not have chosen to do so in such a covert way. These regulations were entered into after a long process of review that involved many stakeholder meetings and discussions as well as numerous comment periods. The Commission’s regulations relied upon by the I.D.: (1) spanned almost three and a half years; (2) involved at least ten meetings among Commission staff and industry members; (3) produced interim guidelines adopted only after consideration of formal comments received to a tentative order; and, (4) were finalized in a final rulemaking adopted only after consideration of comments to the proposed rulemaking and after consideration of a reconsideration (and responsive comments) of the Commission’s proposals.³⁰ At no time was there any discussion of the intent or desire of the Commission to implement a new requirement that EGSs had to acquire wet signatures on telemarketing contracts.

In sum, the I.D.’s recommendation that the Commission find that a wet signature is required for telemarketing contracts must be denied. The Commission has no authority to interpret the requirements of the TRA but, even if it did, EGSs are exempt from the TRA’s wet

²⁹ I.D. at 112.

³⁰ *Rulemaking Re: Marketing and Sales Practices for the Retail Residential Energy Market*, Docket No. L-2010-2208332, Final Rulemaking Order entered October 24, 2012 at 2-3. (“*Marketing and Sales Final Rulemaking Order*”).

signature requirements pursuant to an express exception in the TRA. Nothing in the Commission's regulations can be relied upon to create a different interpretation of the TRA or to otherwise take away an exception specifically stated in the TRA.

B. The Commission Regulates The Contractual Sale Of Electricity And Specifically Does Not Require A Wet Signature

As a creature of statute, the Commission has only those powers which are expressly conferred upon it by the legislature (or which may arise by necessary implication).³¹ Pursuant to the Competition Act, the Commission regulates the contractual sale of electricity offered by EGSs. Specifically, Section 2807(d) of the Competition Act gives the Commission the authority to establish regulations regarding the process EGSs are required to follow to form a valid contract with a customers.³² The Commission has implemented numerous regulations in furtherance of this authority and has many times made clear that it has a zero tolerance policy against slamming (i.e. unauthorized switching of customers).³³ In other words, the Commission has taken steps to ensure that a customer intended to switch to an EGS which is consistent with a purpose of a wet signature requirement for telemarketing contracts (i.e. to make sure that the customer intended to enter into the contract). The Commission's currently effective regulations which govern the EGS contracting process include: (1) the permissible sales and marketing methods that may be used by EGSs;³⁴ (2) the process EGSs use to enter into a valid contract with

³¹ See, e.g., *Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 794 (Pa. 1977)

³² 66 Pa. C.S. § 2807(d).

³³ *Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 57 Regulations Regarding Standards For Changing a Customer's Electricity Generation Supplier*, Docket No. L-2014-2409383, Final-Omitted Rulemaking Order entered April 3, 2014 at 13.

³⁴ 52 Pa. Code §§ 111.1-111.14 (Marketing and Sales Practices for the Retail Residential Energy Market).

the customer;³⁵ and, (3) the coordination between the EGSs and the electric distribution companies (“EDCs”) to effectuate the change in service to the EGS.³⁶

More specifically, the Commission’s marketing and sales regulations (effective June 29, 2013), establish a two-step process that EGSs are required to follow effectuate a valid enrollment.³⁷ These are the “transaction” process and the “verification” process. The Commission requires that they be two separate processes. The purpose of the transaction process is to authorize the transfer of the customer’s account to the supplier.³⁸ The purpose of the verification process is to confirm – through a separate process – that the customer has authorized the transfer of his or her account to the supplier.³⁹ Importantly, the Commission carved out only one sales channel exception to this two-step process for sales which are completed outside the presence of or without interaction with an agent of the supplier.⁴⁰ All other sales, however, are required to comply with this process. This includes telemarketing sales. Ironically, Section 111.10(c) of the Commission’s regulations (cited by the I.D.) makes this point clear by requiring the telemarketing agent to “explain the supplier’s verification process.”⁴¹ The “verification process” requirements are set forth in Section 111.7(b) and these requirements do not include a

³⁵ 52 Pa. Code §§ 54.1-54.10 (Customer Information).

³⁶ 52 Pa. Code §§ 57.176-5.180 (Standards for Changing a Customer’s Electricity Generation Supplier).

³⁷ 52 Pa. Code § 111.7.

³⁸ 52 Pa. Code § 111.7(a).

³⁹ 52 Pa. Code § 111.7(b).

⁴⁰ 52 Pa. Code § 111.7(b).

⁴¹ 52 Pa. Code § 111.10(c). RESA only excepts to the I.D.’s conclusion that this Section of the Commission’s regulations requires a wet signature for telemarketing contracts. I.D. at 111. RESA does not dispute that this Section also requires that a supplier send a copy of the disclosure statement to the customer and that the customer be informed of his or her right to rescind the transaction within 3 business days after receiving the disclosure statement.

requirement to obtain a wet signature for any contract.⁴² As the Commission stated, “[t]he transaction verification process required by [52 Pa Code § 111.7(b)] has been extensively discussed and debated; first in the working group process that developed the *Interim Guidelines*, and now in the proposed rulemaking.”⁴³ At no time during this process did the Commission include a proposal to require wet signatures for telemarketing contracts and no such requirement is reflected in the final-approved regulations.

In addition, the Commission’s customer information regulations (updated effective July 14, 2014) provide specific detail about the information that EGSs must include in its contracts with residential and small commercial customers.⁴⁴ The required elements for the customer contract apply regardless of sales channel. Nothing in these regulations require that the customer sign the contract and return it to the supplier before the enrollment can be deemed valid. Again, the Commission undertook an extensive stakeholder process to develop these updates to its regulations and at no time in this process did the Commission include a proposal to require wet signatures for any type of contracts.

Finally, the Commission’s accelerated switching regulations (effective December 15, 2014), set forth what is required for an EDC to switch the customer’s service. Specifically, these regulations state that “[w]hen a customer has provided the selected EGS or current EGS with oral confirmation or written authorization to select the new EGS. . . the EDC shall make the change.”⁴⁵ Like the other regulations, nothing in these regulations specify that there are differing

⁴² 52 Pa. Code 111.7(b).

⁴³ *Marketing and Sales Final Rulemaking Order* at 33.

⁴⁴ 52 Pa. Code § 54.5.

⁴⁵ 52 Pa. Code § 57.174(a)(emphasis added).

requirements based on sales channel. Likewise, there is nothing in these accelerated switching regulations which specifically require that customers enrolling through telemarketing sales must provide a signed, written contract before the switch may take place. Further, at no time in the process did the Commission include a proposal to require wet signatures for telemarketing contracts.

These comprehensive regulations of the Commission, enacted pursuant to the Commission's statutory authority under the Competition Act, undercut the legal conclusions of the I.D. in two key ways. First, these regulations make clear that the contractual sale of electricity is regulated by the Commission. Therefore, the exception to the wet signature requirements in the TRA (Section 2245(d)(1)) which states that "a signed, written contract is not needed if. . . the contractual sale is regulated under other laws of this Commonwealth"⁴⁶ applies. While, as discussed above, the Commission does not have the jurisdiction to interpret the TRA, a read of the TRA and application of statutory interpretation principles makes clear that EGSs are not required by the TRA to acquire wet signatures on telemarketing contracts.

Second, a comprehensive review of all the applicable regulations shows that the Commission does not require that a wet signature be acquired for telemarketing contracts. With regard to telemarketing, the Commission's regulations specifically state that suppliers are required to comply with all its regulations.⁴⁷ Pursuant to these Commission regulations, the customer can authorize the transfer of his or her account through any established "written, oral or electronic transaction process."⁴⁸ Similarly, the Commission's regulations do not require that the

⁴⁶ 73 P.S. § 2245(d)(1).

⁴⁷ 52 Pa. Code § 111.10(a). These regulations include all of those discussed here notwithstanding the I.D. narrow focus on only Section 111.10.

⁴⁸ 52 Pa. Code § 111.7(a).

“verification” process of the supplier must include a customer’s signature on a contract in its list of required information.⁴⁹ And, the Commission’s regulations specifically permit EDCs to rely on a customer’s “oral confirmation” of his or her desire to begin service with an EGS.⁵⁰ Therefore, the I.D.’s conclusion that Section 111.10 of the Commission’s regulations (the only regulation of the Commission cited in the I.D.) require a wet signature for telemarketing contracts⁵¹ is patently wrong.

In sum, the Commission is vested with the authority pursuant to the Competition Act to establish regulations regarding the process EGSs are required to follow to form a valid contract with a customer.⁵² Over the years, the Commission has complied with this task and has implemented numerous regulations intended to ensure that customers are informed about and affirmatively agree to receive service from an EGS.⁵³ None of these regulations require that an EGS acquire a wet signature on telemarketing contracts. As such, the recommendation of the I.D. to impose such a requirement now must be denied.

III. CONCLUSION

For the reasons discussed previously, there is simply no legal foundation supporting the decision of the I.D. to conclude that the Commission intended to require suppliers to acquire a wet signature on all telemarketing contracts. The Commission has no authority to interpret the requirements of the TRA but, even if it did, EGSs are exempt from the TRA’s wet signature

⁴⁹ 52 Pa. Code § 111.7(b)(5).

⁵⁰ 52 Pa. Code § 57.174(a).

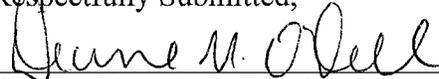
⁵¹ I.D. at 111-112.

⁵² 66 Pa. C.S. § 2807(d).

⁵³ 52 Pa. Code §§ 111.1-111.14 (Marketing and Sales Practices for the Retail Residential Energy Market); 52 Pa. Code §§ 54.1-54.10 (Customer Information); and, 52 Pa. Code §§ 57.176-5.180 (Standards for Changing a Customer’s Electricity Generation Supplier).

requirements pursuant to an express exception in the TRA. Nothing in the Commission's regulations can be relied upon to create a different interpretation of the TRA or to otherwise take away an exception specifically stated in the TRA. In addition, the Commission – pursuant to its clear statutory authority under the Competition Act – has implemented numerous regulations regarding the process EGSs are required to follow to form a valid contract with a customer.⁵⁴ None of these regulations require EGSs to acquire a wet signature for telemarketing contracts. To the contrary, a read of the various regulations make clear that the contracting processes do not contemplate wet signatures. Adopting the recommendation of the I.D. to impose such requirement now would fundamentally disrupt the competitive marketplace by removing telemarketing as a viable sales channel for EGSs and imposing an unnecessary delay for customers between the time they enroll with a supplier and the time when the new supplier price will become effective. Such a result would not be in the public interest and, therefore, RESA urges the Commission to grant this exception and reject the recommendation of the I.D. on this issue.

Respectfully Submitted,



Deanne M. O'Dell, Esquire

Attorney ID #81064

Sarah C. Stoner, Esquire

Attorney ID #313793

Eckert Seamans Cherin & Mellott, LLC

213 Market Street, 8th Floor

Harrisburg, PA 17101

(717) 237-6000 (phone)

(717) 237-6019 (fax)

Date: July 27, 2016

Attorneys for Retail Energy Supply Association

⁵⁴ 66 Pa. C.S. § 2807(d).