



# 2018 Supplier Workshop

January 31, 2018

## CHAPTER 111 RESIDENTIAL SUPPLIER MARKETING REGULATIONS

January 31, 2018



## The usual disclaimers...

These are not the actual regulations. For the regulations, look for Title 52 on [www.pacode.com](http://www.pacode.com).

Pursuant to 52 Pa Code §1.96, informal opinions are provided solely as an aid to you. They are not binding upon the Commonwealth or the Commission. Informal opinions are subject to withdrawal or change at any time to conform with new or different interpretations of the law.



# History

- Docket L-2010-2208332
- Proposed Rulemaking Order: February 10, 2011.
- Published in PA Bulletin October 22, 2011.
- Final Rulemaking Order: October 24, 2012.
- Reconsideration Order: April 4, 2013.
- Approved by IRRC: May 16, 2013.
- These documents are available on the OCMO webpage or by DOCUMENT SEARCH.



## 111.1 GENERAL

The purpose of this chapter is to establish standards and practices for marketing and sales activities for EGSs and NGSs and their agents to ensure the fairness and the integrity of the competitive **residential** energy market. EGSs and NGSs and their agents shall comply with these standards and practices when engaged in sales and marketing activities involving residential customers. **When these standards and practices do not address a specific situation or problem, the supplier shall exercise good judgment and use reasonable care in interacting with customers, and members of the public.**



# Expectations

Suppliers are expected to conduct themselves with these expectations in mind so that their sales and marketing activities do not call into question the fairness and integrity of the competitive market. Anything that damages the reputation of the competitive market harms not only consumers, but also all suppliers participating in the market.



# Expectations:

While these regulations are important, they cannot address all of the possible issues that may arise when suppliers interact with customers. Everyone should use good judgment to avoid any practices that may appear to be overly intimidating or aggressive, especially when dealing with vulnerable customers, such as the elderly, and suppliers should have policies in place to prevent such practices.



## 111.2 Definitions: AGENT

A person who conducts marketing or sales activities, or both, on behalf of a licensed supplier or suppliers. **The term includes an employee, a representative, an independent contractor or a vendor. It also includes subcontractors, employees, vendors and representatives** not directly contracted by the supplier who conduct marketing or sales activities on behalf of the supplier.



## **111.2 Definitions: CUSTOMER**

A natural person in whose name a residential EDC, NGDC, EGS, or NGS service account is listed and who is primarily responsible for payment of bills rendered for the service.



## 111.2 Definitions:

***Door-to-door sales***—A solicitation or sales method whereby an agent proceeds randomly or selectively from residence to residence.

***Sales and marketing*** —The extension of an offer to provide services or products communicated orally, electronically or in writing to a customer.



## 111.2 Definitions:

**TRANSACTION** –A process by which a customer authorizes the transfer of his or her account to the supplier.

**TRANSACTION DOCUMENT** – Contracts and forms used by a supplier to enroll a customer for service.

**VERIFICATION** –Customer validation of his or her intent to enter into a contract and receive service from a supplier.

**VERIFICATION PROCESS** – an action via written, audio or electronic documentation by which a customer validates his or her intent to enter into a contract and receive service from a supplier.



## **111.3 Supplier Liability For Its Agents:**

(b) In accordance with § 54.43(f) (relating to standards of conduct and disclosure for licensees) for an EGS and § 62.114(e) (relating to standards of conduct and disclosure for licensees) for an NGS, a supplier is responsible for fraudulent, deceptive or other unlawful marketing acts performed by its agent.



## 111.3 Supplier Liability For Its Agents:

(c) Consistent with due process, for violations committed by the supplier's agent, the Commission may:

(1) Suspend or revoke a supplier's license.

(2) Impose fines for fraudulent acts, violations of Commission regulations and orders.

**The licensed supplier will be held responsible for the acts of its representatives, vendors and contractors.**



## **111.4 Agent qualifications and standards; criminal background investigations:**

A supplier may not permit a person to conduct door-to-door sales and marketing activities until it has obtained and reviewed a criminal history record from the Pennsylvania State Police and from every other state in which the person resided for the last 12 months.



## **111.4 Agent qualifications and standards; criminal background investigations:**

The criminal background investigation shall include checking the sex offender registry commonly referred to as the “Megan’s Law” registry maintained by the Pennsylvania State Police.



## **111.4 Agent qualifications and standards; criminal background investigations:**

A supplier may not hire a person as an employee or an agent for door-to-door marketing or sales who was convicted of a felony or misdemeanor when the conviction reflects adversely on the person's suitability for such employment.



## 111.4 Agent qualifications and standards; criminal background investigations:

When a supplier contracts with an independent contractor or vendor to perform door-to-door activities, **the supplier shall confirm that the contractor or vendor has performed criminal background investigations** on its agents in accordance with this section and with the standards set by the supplier.



## **111.4 Agent qualifications and standards; criminal background investigations:**

- We advise having “multiple eyes” review all background check applications.
- Check for typos, birthdates, transposed digits and letters, name spellings, etc.
- Also perform multiple checks on the information received in response. Make sure everything matches your records and the application you submitted.



## 111.5 Agent Training

- Laws and regulations governing marketing, consumer protection and door-to-door sales;
- Responsible and ethical sales practices;
- Supplier's products and services; rates, rate structures and payment options;
- Customers' right to rescind and cancel contracts;



# 111.5 Agent Training

- Termination fee for contract cancellation (if applicable);
- Adherence to scripts; proper completion of contract, enrollment documents and disclosures;
- Terms and definitions as found on PaPowerSwitch.com;
- How customer can contact the supplier;
- Customer confidentiality and protection of information.



## 111.5 Agent Training

(b) A supplier shall document the training of an agent and maintain a record of the training for 3 years from the date the training was completed.

(c) A supplier shall make training materials and training records available to the Commission upon request. A supplier is not required to submit training materials and programs for advance Commission review and approval.



## 111.5 Agent Training

(d) When a supplier contracts with an independent contractor or vendor to perform marketing or sales activities on the supplier's behalf, the supplier shall confirm that the contractor or vendor has provided supplier approved training to agents and independent contractors in accordance with this section.



## 111.5 Agent Training

(e) The supplier shall monitor telephonic and door-to-door marketing and sales calls to:

- (1) Evaluate the supplier's training program.
- (2) Ensure that agents are providing accurate and complete information, complying with applicable rules and regulations and providing courteous service to customers.



## 111.6 Discipline

In developing internal agent discipline practices and procedures, a supplier shall consider the Commission's regulations regarding the unauthorized transfer of customer accounts at 52 Pa. Code §§ 57.171 – 179 (relating to standards for changing a customer's electricity generation supplier) and §§ 59.91 – 99 (relating to standards for changing a customer's natural gas supplier) and the violation of other consumer protections.

**SLAMMING : ZERO TOLERANCE.**



## 111.6 Discipline

We advise suppliers to have in place quality control mechanisms to monitor marketing.

**Quality control and monitoring is especially needed if a vendor or contractor is being used.**



## **111.7 Customer authorization to transfer account; transaction; verification; documentation**

### **TRANSACTION DOCUMENTATION:**

- 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.
- Transaction documentation shall include identity of agent (if agent involved) and what type of transaction (door to door, telephone, etc.).
- Documentation provided to Commission upon request.



## **111.7 Customer authorization to transfer account; transaction; verification; documentation**

### **VERIFICATION:**

(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).

**IF AN AGENT IS INVOLVED IN THE  
TRANSACTION – THEN THE VERIFICATION  
PROCEDURE APPLIES.**



## **111.7 Customer authorization to transfer account; transaction; verification; documentation**

### **VERIFICATION:**

- (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.

**The TRANSACTION and VERIFICATION are separate procedures. The VERIFICATION starts only AFTER the SALES TRANSACTION is completed.**



## **111.7 Customer authorization to transfer account; transaction; verification; documentation**

### **VERIFICATION:**

- Shall include mention of the 3-business day right of rescission.
- Supplier shall maintain a record of the verification for a period of time equivalent to at least six billing cycles.
- The record should include the date, agent I.D., who conducted the verification, results, and the date the disclosure statement was provided to the customer.



## **111.7 Customer authorization to transfer account; transaction; verification; documentation**

### **VERIFICATION:**

- A supplier shall provide copies of verification records to the Commission upon request.

**In case of subsequent informal complaint filed at the Commission, please provide the verification records with your response to the informal complaint.**



## **111.8 Agent identification; misrepresentation.**

- (a) A supplier shall issue an identification badge to agents who conduct door-to-door activities or appear at public events. The badge must:
- (1) Accurately identify the supplier, its trade name and logo.
  - (2) Display the agent's photograph.
  - (3) Display the agent's full name.
  - (4) Be prominently displayed.
  - (5) Display a customer-service phone number for the supplier.



## **111.8 Agent identification; misrepresentation.**

(b) Upon first contact with a customer, an agent shall identify the supplier that he represents. The agent shall state that he is not working for and is independent of the customer's local distribution company or other supplier. This requirement shall be fulfilled by both an oral statement by the agent and by written material provided by the agent.



## **111.8 Agent identification; misrepresentation.**

When conducting door-to door activities or appearing at a public event, an agent may not wear apparel or accessories or carry equipment that contains branding elements, including a logo, that suggests a relationship that does not exist with any EDC, NGDC, government agency or another supplier.



## **111.8 Agent identification; misrepresentation.**

(d) A supplier may not use the name, bills, marketing materials or consumer education materials of another supplier, EDC, NGDC or government agency in a way that suggests a relationship that does not exist.

(e) An agent of a supplier that is an affiliate of a distribution company shall comply with the rules regarding affiliate marketing in § 54.122 (relating to code of conduct) for an EGS and in § 62.142 (relating to standards of conduct) for an NGS.



## **111.8 Agent identification; misrepresentation.**

(f) A supplier or supplier agent may not say or suggest to a customer that utility customers are required to choose a competitive energy supplier.

- **“I need to see your bill”**
- **“I want to make sure you are receiving the utility discount/rebate/refund you are entitled to.”**
- **“I am conducting a survey for the [utility, PUC, etc.].”**
- **“You have to shop because your current [utility, supplier] is going out of the business.”**
- **“An urgent matter about your utility bill.”**
- **“We are partners/working for your [utility].”**



## 111.9 Door-to-door sales.

(a) A supplier and its agents shall comply with local ordinances regarding door-to-door marketing and sales activities.

**LOCAL ORDINANCES  
SUPERSEDE PUC CHAPTER 111  
REGULATIONS.**



## 111.9 Door-to-door sales.

### **HOURS:**

October 1 – March 31: 9 a.m. – 7 p.m.

April 1 – September 30: 9 a.m. – 8 p.m.

**When a local ordinance has stricter limitations, a supplier shall comply with the local ordinance.**



## 111.9 Door-to-door sales.

- There is a great diversity in local ordinance door-to-door requirements.
- Some municipalities have robust rules, permitting requirements, bans, etc. Some municipalities have nothing.
- Municipal boundaries can be tricky.
- PA has townships, boroughs and cities.



## **111.9 Door-to-door sales.**

Regardless of local permitting requirements, we encourage suppliers to reach out to the local officials where you are operating and let them know who you are; what your agents will be doing; and how to contact you.



## 111.9 Door-to-door sales.

(1) After greeting the customer, the agent shall immediately identify himself by name, the supplier the agent represents and the reason for the visit. The agent shall state that he is not working for and is independent of the local distribution company or another supplier.

(2) The agent shall offer a business card or other material that lists the agent's name, identification number and title and the supplier's name and contact information, including telephone number.



## **111.9 Door-to-door sales.**

(e) When a customer's language skills are insufficient to allow the customer to understand and respond to the information being conveyed by the agent, or when the customer or a third party informs the agent of this circumstance, the agent shall terminate contact with the customer.



## 111.9 Door-to-door sales.

When an agent completes a transaction with a customer, the agent shall:

- Provide a copy of each document that the customer signed or initialed relating to the transaction.
- Explain the supplier's verification process to the customer.
- Tell customer when/how they can expect a disclosure statement.
- Explain the 3-business day rescission right.



## **111.9 Door-to-door sales.**

(g) An agent shall immediately leave a residence when requested to do so by a customer or the owner or an occupant of the premises or if the customer expresses no interest in what the agent is attempting to sell.

(h) A supplier shall comply with an individual's request to be exempted from door-to-door marketing and sales contacts and annotate its existing marketing or sales databases consistent with this request within 2 business days of the individual's request.



## 111.10 Telemarketing.

A supplier and its agents shall comply with regulations that govern marketing, consumer protection and telemarketing sales including:

- Consumer protection regulations in Chapters 54 and 62
- Applicable provisions in Chapters 56, 57 and 59.
- Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C.A. §§ 6101—6108) and 16 CFR Part 310 (relating to telemarketing sales rule).



# 111.10 Telemarketing – DO NOT CALL .

Customer consent to the release of customer information by the distribution company to the supplier to enable competitive solicitations does not constitute an express request to receive telephone solicitation calls. See section 5 of the act (73 P. S. § 2245), regarding unlawful acts and penalties. See the definition of "Do Not Call List" in section 2 of the act (73 P. S. § 2242).

**The Eligible Customer List (ECL) does not supersede the DO NOT CALL list. The DO NOT CALL lists must be respected regardless if the customer is on the ECL or not.**



## 111.10 Telemarketing

(b) An agent who contacts customers by telephone shall, after greeting the customer, immediately identify himself by name, identify the supplier the agent represents and the reason for the telephone call. The agent shall state that he is not working for and is independent of the local distribution company or another supplier. The agent may not say or suggest to a customer that utility customers are required to choose a competitive energy supplier.



## 111.10 Telemarketing

We advise that these rules and expectations apply to all phone contacts to a potential customer's household, regardless of whether it is a live agent or recorded voice and regardless whether it is addressed to a utility customer or any member of the household or whether it involves only leaving a voice mail message.



## 111.10 Telemarketing

(c) When an agent completes a transaction with a customer, the agent shall explain the supplier's verification process to the customer and state that the supplier will send a copy of the disclosure statement and other material about the service to the customer after the transaction has been verified. At the end of the telephone contact, the agent shall state that the customer may rescind the transaction within 3 business days after receiving the disclosure statement.



## 111.12 Consumer Protection

- Suppliers and agents cannot discriminate on basis of race, color, religion, national origin, sex, marital status, age, receipt of assistance, and exercise of consumer protection rights.
- Shall comply with 3-business-day rescission/cooling off period.
- Shall not engage in misleading or deceptive conduct.



## 111.12 Consumer Protection

- Shall not make false or misleading representations including misrepresenting rates or savings offered by the supplier.
- Shall provide the customer with written information about the products and services being offered.
- Shall provide accurate and timely information about services and products being offered.



## 111.12 Consumer Protection

- Shall ensure that any product or service offerings made by a supplier contain information, verbally or written, in plain language designed to be understood by the customer.

**The consumer protection standards found in Section 111.12 apply to ALL marketing regardless of venue or method (direct mail, electronic, telemarketing, door-to-door, etc.)**



## 111.13 Complaints

- Shall investigate customer inquiries, disputes and complaints concerning marketing or sales practices.
- Shall cooperate with the Commission and other government agencies that are investigating complaints.
- Shall implement an internal process for responding to and resolving customer inquiries, disputes and complaints.



## 111.13 Complaints

- Shall retain the record of the complaint for a time period equivalent to six billing cycles.

**Shall provide a single contact and a list of designated escalation contacts for the Commission staff to access to address consumer inquiries and resolve complaints.**



## **111.14 Notification regarding marketing or sales activity.**

(a) When a supplier engages in door-to – door sales and marketing activity, the supplier shall notify the Bureau of Consumer Services no later than the morning of the day that the activity shall begin. The notification shall include general, nonproprietary information about the activity, the period involved and a general description of the geographical area.



## 111.14 Notification regarding marketing or sales activity.

- Residential door-to-door activity ONLY.
- Email notifications to: RA-PCDOORTODOOR@pa.gov
- Only one notice is required. No later than “morning of the day” marketing begins.
- Time period: approximately XX/XX/XX – XX/XX/XX; or “Month(s) of X” are acceptable.
- Geographic area: municipalities (city, borough, township).
- Contact Information: who should we contact if we have questions about what was submitted?
- Questions? Contact Annette Falcone at anfalcone@pa.gov or (717-783-9088).



## **111.14 Notification regarding marketing or sales activity.**

- A supplier shall provide the local utility with general, nonproprietary information about the door-to-door sales and marketing activity that caused the supplier to provide notice to the Commission.
- The supplier shall provide this general information to the utility no later than the morning of the day that the sales and marketing activities begin.
- The utility shall use this information only for acquainting its customer service representatives with sales and marketing activity occurring in its service territory so that they may knowledgably address customer inquiries.



## RESOURCES:

- [www.pacode.com](http://www.pacode.com) Title 52, Chapter 111.
- [www.puc.pa.gov](http://www.puc.pa.gov)
- Document Search: Docket L-2010-2208332
- OCMO webpage:  
[http://www.puc.pa.gov/utility\\_industry/electricity/electric\\_competitive\\_market\\_oversight.aspx](http://www.puc.pa.gov/utility_industry/electricity/electric_competitive_market_oversight.aspx)
- [Secretarial Letter](#) - Letter regarding the Guidance on Chapter 111 Residential Supplier Marketing Regulations. Docket No. L-2010-2208332, dated December 8, 2017.



## CONTACTS re: MARKETING

- Office of Competitive Market Oversight:  
RA-OCMO@pa.gov.
- Matt Hrivnak, Bureau of Consumer Services:  
[mhrivnak@pa.gov](mailto:mhrivnak@pa.gov) (717) 783-1678
- Dan Mumford, Director, Office of Competitive Market Oversight: [dmumford@pa.gov](mailto:dmumford@pa.gov) (717)783-1957
- To report door-to-door activity per 111.14: Annette Falcone, Bureau of Consumer Services:  
[anfalcone@pa.gov](mailto:anfalcone@pa.gov) (717-783-9088).



**Questions?**