

## **CHARGE Conference Call**

**May 27, 2010 – 9:30 a.m.**

**Call-in number: 1-866-618-6746 and Access Code: 6060145**

### **Topics for Discussion**

#### **1. EGS Marketing Activities**

- Redlined draft containing changes arising from discussion on May 13, 2010 call is attached
- Special meeting focusing solely on marketing guidelines will be held on June 7, 2010 at 10:00 a.m. for CHARGE and SEARCH participants to attend in person or participate by conference call
  - Any written comments, redlined versions or alternative proposals are voluntary but must be submitted to [ra-ocmo@state.pa.us](mailto:ra-ocmo@state.pa.us) by June 1, and we will circulate to all other participants (unless you ask us to treat them as confidential)

#### **2. Supplier Consolidated Billing Implementation**

- Status update from EDEWG
- Need to determine best way to move forward in both obtaining approval for business practices/transactions and addressing remaining issues

#### **3. Eligible Customer List**

- Staff is drafting a recommendation for the PUC to address various ECL issues relating to uniformity and availability of customer information needed by EGSSs

#### **4. Default Service Bid Information**

- Staff will provide update on status of efforts to standardize release of this information

#### **5. Estimated State Tax Amount on Bills**

- Question has arisen about whether the presentation of “estimated total state taxes” on residential bills is required for generation charges of EGSSs as there is no standard treatment among EGSSs
- Staff has determined that EDC tax components are Capital Stock, Property Tax-Local and PURTA, State Unemployment Compensation, PA State Income Tax, and Gross Receipts Tax.
- Staff is conducting further review of statute and regulations to offer guidance to EGSSs on this issue; interested in feedback from group on value of having information on bills about taxes (other than GRT) paid by EGSSs

## **6. Historical Usage Requests**

- Staff expects issuance of a Secretarial Letter in the near future to clarify that EDCs are obligated to provide historical usage information in response to EDI request when a customer has previously restricted release of this information but has given the EGS a letter of authorization
- Along with providing this clarification, Staff hopes to also provide guidance for language used in LOA, including the broker situation
  - A draft template is attached

## **7. Last-In Enrollments**

- Question was raised during April 29 call about how EDCs handle multiple enrollments for the same customer before the 16-day cut-off date
- Brandon developed the attached spreadsheet to show each EDCs' handling of various last-in scenarios
- Issue needs to be addressed on a future CHARGE or EDEWG call
  - Staff will consult with Brandon to determine best forum

## **8. Mixed Meter – EGS Authority**

- Questions have been raised about whether EGSs must have authority to serve residential customers when a residential customer is served as part of a mixed meter situation
  - Staff's prior guidance was that if the customer is served under a Residential rate schedule, the EGS should have authority under the license to serve residential customers (and that residential consumer protections would apply)
- During the April 29 call, EGSs expressed concerns about needing a license to serve residential customers if they are contracting with a commercial entity, such as a military base, due to marketing, reporting and compliance differences
- Based on concerns raised during April 29 call, staff has revisited this issue and now believes that it may not be necessary for an EGS to obtain a license to serve residential customers or to afford residential consumer protections when the EGS contracts with and bills the commercial customer
  - Staff will try to close the loop on this issue soon and provide any necessary clarification

## **9. AEPS Summit**

- AEPS Summit will be held on June 17 in Hearing Room 1, Keystone Building, 1:00-4:00 p.m.
  - Presentations by PUC staff, the credits administrator, GATS and DEP
  - EDCs and EGSSs who served load in any portion of 2010 or intend to serve load in 2011 should send a representative
  - Will provide opportunity for EGSSs to learn about AEPS obligations
  - Secretarial Letter with more information will be forthcoming soon

## **10. CHARGE Contact List**

- Contact list is on website at the following link:

[http://www.puc.state.pa.us/electric/electric\\_CompetitiveMarketOversight.aspx](http://www.puc.state.pa.us/electric/electric_CompetitiveMarketOversight.aspx)

- Please send contact information or updates to [ra-ocmo@state.pa.us](mailto:ra-ocmo@state.pa.us); purpose of this list is to enable stakeholders to contact one another directly to resolve issues and is separate from email distribution list

## **11. Meeting Schedule for Remainder of 2010**

- May 13, 9:30 a.m.
- May 27, 9:30 a.m.
- **June 7, 10:00 a.m. (Special in-person meeting/conference call to discuss Marketing Guidelines)**
- June 10, 9:30 a.m.
- June 24, 9:30 a.m.
- July 8, 9:30 a.m.
- July 22, 9:30 a.m.
- August 5, 9:30 a.m.
- August 26, 9:30 a.m.
- September 9, 9:30 a.m.
- September 30, 9:30 a.m.
- October 14, 9:30 a.m.

- October 28, 9:30 a.m.
- November 18, 1:30 p.m. (Note: different time)
- December 9, 9:30 a.m.
- December 23, 9:30 a.m.

**MARKETING AND SALES PRACTICES FOR  
ELECTRIC GENERATION SUPPLIERS AND RESIDENTIAL CUSTOMERS**

**DRAFT**

**A. GENERAL**

These guidelines are intended to facilitate the effective operation of a vigorous, dynamic, yet fair, competitive residential energy market, to the benefit of consumers, suppliers and distribution companies alike. A competitive energy market can provide a positive experience for all consumers and marketing activity, when done properly, can play an important role in educating consumers. 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.

While these guidelines are important, they cannot address all of the possible issues that may arise when suppliers or their sales agents or marketing agents 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.

The use of the term “agent” in these guidelines is intended to apply to any person who is conducting marketing or sales activities, or both, on behalf of a licensed supplier or suppliers. Consequently, unless stated to the contrary, the term “agent” includes an employee, a representative, an independent contractor, or a vendor.

Suppliers (EGSs) may use employees to conduct marketing<sup>1</sup> or sales<sup>2</sup> activities in accordance with the policy guidelines set forth herein and in compliance with federal, state and municipal (local) law, and applicable Public Utility Commission (PUC or Commission) rules, regulations and orders. Suppliers may employ independent contractors or vendors to perform marketing or sales support services in accordance with the policy guidelines set forth herein and in compliance with federal, state and municipal (local) law, and applicable Commission rules, regulations and orders. Section 54.43(f) of

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<sup>1</sup> “Marketing” is defined in the Commission’s regulations as “the publication, dissemination or distribution of informational and advertising materials regarding the EGS’s services and products to the public by print, broadcast, electronic media, direct mail or by telecommunication.” See 52 Pa. Code § 54.31 (definitions).

<sup>2</sup> The term “sales” is not defined in the regulations. However, “offer to provide service” is defined as the extension of an offer to provide services or products communicated orally, or in writing to a customer.”

the EGS licensing requirements states that the supplier is responsible for “any fraudulent deceptive or other unlawful marketing or billing acts performed by the licensee its employees, agents or representatives.” *See* 52 Pa. Code § 54.43(f).

**B. AGENT BACKGROUND CHECKS:**

1. The suppliers performing door-to-door marketing should shall conduct, on all potential door-to-door marketing agents or sales agents, comprehensive criminal background checks and screenings necessary to determine if an individual presents a possible threat to the health and safety of the public. Suppliers should shall exercise good judgment in developing standards and qualifications and shall not hire an individual that fails to meet these standards.
2. When the supplier contracts with an independent contractor or vendor to perform door-to-door activities, the supplier should shall confirm that the contractor or vendor has performed criminal background checks and appropriate screenings of its employees.

**C. AGENT TRAINING:**

1. Suppliers should shall ensure, and maintain appropriate documentation indicating, that the training of their marketing agents or sales agents includes:
  - a. Knowledge and awareness of applicable Pennsylvania laws and regulations governing marketing, consumer protection and door-to-door sales.
  - b. Knowledge and understanding of responsible and ethical sales practices.
  - c. Knowledge of the supplier’s products and services.
  - d. Knowledge of supplier’s rates, rate structures and payment options.
  - e. Knowledge of the customers’ right to rescind and cancel contracts.
  - f. Knowledge of the applicability of an early termination fee for contract cancellation if the supplier has one.
  - g. Knowledge of and adherence to supplier-developed scripts.
  - h. Knowledge on the proper completion of contract and enrollment documents.
  - i. Knowledge of the supplier’s disclosure statement.
  - j. Knowledge of relevant terms and definitions.
  - k. Knowledge of how customers may contact the supplier to obtain information about billing, disputes, and complaints.

2. Advance review and approval of training documents, programs and records by the Commission is not required. However, these documents ~~should~~shall be made available to Commission staff upon request.

**D. AGENT MONITORING / QUALITY CONTROL / DOCUMENTATION:**

1. On customer enrollment documentation, there ~~should~~shall be a notation or other means that indicates the enrollment was the result of a door-to-door sale with a unique sales agent identifier. The record ~~should~~shall be made available to the Commission or its staff upon request.
  2. An appropriate, representative sample of all sales or marketing calls, both telephonic and door-to-door, ~~should~~shall be monitored by the supplier's sales managers or marketing managers or by the vendor's managers using appropriate methods to ensure accuracy, completeness, courtesy and compliance with applicable rules.
  3. All transactions ~~should~~shall be verified by some appropriate method that confirms the customer's consent to the transaction. A record of the verification shall be maintained in The mechanism used should be a system that identifies each record, and is capable of retrieving that record by customer name for a period of time equivalent to at least three billing cycles (to enable compliance with 52 Pa. Code § 57.177~~(~~relating to customer dispute procedures). These documents ~~should~~shall be made available to Commission staff upon request.
  4. The transaction verification process should conclude by reminding the customer of the 3-business day right of rescission pursuant to 52 Pa. Code § 54.5(d)(relating to disclosure statements for residential and small business customers).
- ~~A supplier's quality control processes at its Call Center should include listening to and validating an appropriate, representative sample of customer records for accuracy and completeness.~~
5. If the supplier detects a problem with an enrollment, the customer ~~shall~~should be contacted by phone, email or by letter explaining the issue and offering help with a resolution.

**E. AGENT DISCIPLINE:**

When developing internal agent discipline policies, all parties should be aware of the Commission's long-standing "zero-tolerance" policy concerning slamming and related customer-

enrollment issues. The Commission has penalized companies that engage in inappropriate practices and has made it clear that such practices will not be tolerated. For example, in *Pennsylvania Public Utility Commission v. Total Gas & Electric Inc.*, Order entered September 26, 2001 at Docket No. M-00011529 at page 5, the Commission declared that:

[t]he Commission does not trivialize allegations of unauthorized enrollment of customers, or “slamming”, and seeks to deter such conduct by instituting firm retaliatory measures for violations of the Commission’s regulations with respect to enrollment of customers.

Section 3301 of the Public Utility Code provides for penalties of \$ 1000.00 per violation per day for any infraction of the rules and regulations of the Commission. *See* 66 Pa.C.S. § 3301 (relating to civil penalties for violations). All parties should also be aware of the Commission’s Policy Statement on *Factors and Standards for Evaluating Litigated and Settled Proceedings* at 52 Pa. Code § 69.1202. This policy statement explains how the Commission will calculate and apply penalties, taking into account mitigating and aggravating factors, to address violations of the Public Utility Code, and Commission regulations, directives and orders. Suppliers should also be aware that, consistent with due process, the Commission can suspend or revoke a supplier’s license for violations of applicable provisions of the Public Utility Code and other consumer protection law, applicable Commission regulations, and orders pursuant to 52 Pa. Code § 54.42 (relating to license suspension; license revocation).

#### **F. AGENT APPEARANCE / UNIFORMS / IDENTIFICATION:**

1. Door-to-door sales agents or marketing agents ~~shall~~must present valid identification issued by the supplier for whom they are seeking to enroll customers. The identification ~~should~~shall be visible at all times, and ~~shall~~should accurately identify the supplier, including its legitimate trade name and logo. Additionally, the identification ~~should~~shall display a photograph of the agent and the full name of the agent in reasonably sized type.
2. A door-to-door sales agent or marketing agent ~~should~~shall offer a business card or other material that states the agent’s identity and supplier name, and includes the supplier’s contact information. The agent’s name does not need to be pre-printed on sales or marketing materials.
3. The door-to-door sales agent or marketing agent ~~should~~shall not dress in uniforms that contain any branding elements that are deceptively similar to that of the local Pennsylvania distribution company (including logo).
4. Supplier marketing agents or sales agents who contact customers by telephone for the purpose of marketing or selling a product or service offered by the supplier ~~should~~shall

provide the agent's first name and, on request, his or her identification number and ~~should shall~~ state the name of the supplier on whose behalf the call is being made.

5. A supplier ~~shall~~should not use bills, marketing materials or consumer education materials of another supplier, distribution company, or government agency in a deceptive manner or in a way that infers a relationship that does not exist.

#### **G. MISREPRESENTATION:**

1. An agent ~~should~~shall identify the supplier that he or she represents as an independent energy supplier, and ~~shall~~should identify himself or herself as a representative of that specific supplier. The agent should also make clear that he or she is not working for, and is in fact independent of the local distribution company or another supplier. This requirement may be fulfilled either (a) by an oral statement by the agent, or (b) by written material left by the agent.
2. Agents of a supplier that is an affiliate of a distribution company shall comply with the rules regarding affiliate marketing at 52 Pa. Code § 54.122 (relating to the code of conduct). When the supplier's trade name is similar to that of its affiliated distribution company, the supplier shall inform a customer that it is ~~should not describe or disclose their relationship to a Pennsylvania distribution company unless this information is specifically requested by the customer. When a customer requests such information, the agent shall state that the affiliated or divisional supplier is~~ not the same company as the distribution company, that its ~~the~~ prices of the affiliated or divisional supplier are not regulated by the Commission, and that a customer is not required to buy its supply or other products ~~from the affiliated or divisional supplier~~ to receive the same quality service from the distribution company. See 52 Pa. Code § 54.122 (relating to the code of conduct).
3. When an affiliated ~~or divisional~~ supplier advertises or communicates through radio, television or other electronic medium to the public and its name or logo is similar to that of using the distribution company's name or logo, the affiliated or divisional supplier shall include at the conclusion of any communication a disclaimer that includes all of the disclaimers listed in ~~this~~ paragraph 2. See 52 Pa. Code § 54.122 (relating to the code of conduct).
4. A supplier is responsible for any fraudulent deceptive or other unlawful marketing or sales performed by its employees, contractors, agents or representatives. See 52 Pa. Code § 54.43(f)(relating to standards of conduct and disclosure for licensees).

## **H. FEDERAL LAW/CONSUMER PROTECTION**

1. A supplier, its employees, representatives and agents shall not discriminate in the provision of electricity as to availability and terms of service based on race, color, religion, national origin, sex, marital status, age, receipt of public assistance income, and exercise of rights under the Consumer Credit Protection Act (15 U.S.C. §§ 1601—1693c). *See* 15 U.S.C. §§ 1691—1691f (relating to equal credit opportunity) and 12 CFR Part 202 (relating to equal credit opportunity)(Regulation B). *See* 52 Pa. Code §54.43(e)(standards of conduct and disclosure).
2. A supplier, its employees, representatives and agents shall comply with the federal “Do Not Call” law. Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C Sec. 6101, *et seq.* [[link](#)] and Telemarketing Sales Rule, 16 CFR Part 310 [[link](#)]. The Act is administered by the Federal Trade Commission (FTC).
3. A supplier and its employees, independent contractor or vendor companies, agents and representatives engaged in door-to-door marketing or sales shall comply with the federal cooling off period requirements *See Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*; 16 CFR Part 429 (FTC).

## **I. STATE LAWS / OAG / CONSUMER PROTECTION:**

1. According to the Office of Attorney General, a supplier that is licensed by the PUC and engages in telemarketing does not need to register as a telemarketer pursuant to 73 P.S. § 2243 (a), but must follow all other provisions of the *Telemarketer Registration Act*. *See* 73 P.S. §§ 2241-2249.
2. An independent contractor or vendor shall follow all provisions of the Telemarketer Registration Act, including being registered as a telemarketer. *See* 73 P.S. § 2243(a).
3. Customer consent to the release of customer information by the distribution company to the supplier to enable competitive solicitations does not constitute an express intent to receive telephone solicitation calls. *See* 73 P.S. § 2242 (“do not call” list).

**J. LOCAL ORDINANCES:**

1. Suppliers performing door-to-door marketing or sales, as a courtesy, should notify the local municipal officials of its locations and schedule of door-to-door marketing or selling activities. Suppliers shall comply with all local ordinances regarding door-to-door solicitations. These ordinances may be titled “peddling and hawking” or “transient businesses,” and may require that a permit be obtained for each agent. Permit requirements may be linked to background checks in some municipalities. Some ordinances may also prohibit all door-to-door sales or marketing. Local officials would be the contact point in these situations.
2. Local ordinances may include provisions restricting the hours of operation for door-to-door solicitations. Suppliers ~~shall~~should limit door-to-door marketing or sales activity to the hours between 9:00 am and 9:00 pm. When~~If~~ the local ordinance is stricter, suppliers shall comply with the local ordinance.

**K. DISTRIBUTION COMPANY AND COMMISSION INVOLVEMENT:**

1. Suppliers engaging in any marketing or sales activities, which the supplier anticipates, may generate phone calls and inquiries to the Commission are encouraged to notify XXXXXXX at the Commission’s Bureau of Consumer Services (BCS) at [XXXX@state.pa.us](mailto:XXXX@state.pa.us). The notification should include general, non-proprietary information as to the extent of the marketing or sales effort (how many customers), for what period of time, and a description of the geographical area involved. This will benefit suppliers in that Commission staff, in answering inquiries they receive from consumers and public officials, will be able to respond with helpful information.
2. Suppliers are also encouraged to contact, as a courtesy, the local distribution company with the same, ~~above noted~~ information in paragraph 1. This information is to be used by the local distribution company only for the purpose of acquainting its customer service representatives with marketing or sales activity occurring in its service territory so that they may knowledgably address any customer inquiries concerning such activity. Local distribution companies are reminded that, in handling this information, the requirements of the Code of Conduct apply. See 52 Pa. Code § 54.122. Because of distribution companies’ position as a source of information for all customers, distribution company customer service representatives should not offer explicit or implicit opinions about the nature or effect of any supplier’s offers or marketing or sales efforts and materials and should not discourage customers from choosing service by any supplier.

**L. DISCLOSURE STATEMENTS / CONTRACT TERMS:**

1. IfWhen the supplier successfully signs-up the customer, the supplier shall provide the customer with a copy of the disclosure statement developed in cooperation with the BCS. *See 52 Pa. Code § 54.5 (relating to disclosure statement for residential and small business customers).*
2. A supplier marketing agent or sales agent shallshould offer to provide the customer with written information regarding the supplier products and services offered immediately upon request. This information shallshould include the supplier's name, website, and telephone number for inquiries, verification and complaints.

**M. MARKETING /SALES ACTIVITIES AND MATERIALS:**

1. WhereWhen it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the supplier's marketing agent or sales agent, or whenwhere the customer or another third party informs the agent of this circumstance, the agent shall either find another agent who is fluent in the customer's language to continue the sales or marketing activity or shall terminate contact with the customer. The use of translation services and language identification cards is permitted.
2. Suppliers shouldshall:
  - a. Not engage in misleading or deceptive conduct as defined by State or Federal law, or by Commission rule, regulation or order;
  - b. Not make false or misleading representations including misrepresenting rates or savings offered by the supplier;
  - c. Provide the customer with written information about the products and services offered, upon request, or with contact information (phone number, website address, etc.) at which information can be obtained.
  - d. Provide accurate and timely information about services and products being offered. Such information shouldshall include information about rates, contract terms, early termination fees and right of cancellation and rescission.

- e. Ensure that any product or service offerings that are made by a supplier contain information, verbally or written, in plain language that is designed to be understood by the customer. This includes providing any written information to the customer in a language in which the supplier's representative has substantive discussions with the customer or in which a contract is negotiated.
3. Suppliers shall comply with relevant Commission regulations concerning marketing or sales including:
  - a. 52 Pa. Code § 54.3. Standards and pricing practices for retail electricity service.
  - b. 52 Pa. Code § 54.6. Request for information about generation supply.
  - c. 52 Pa. Code § 54.7. Marketing/sales activities.
  - d. 52 Pa. Code § 54.43. Standards of conduct and disclosure for licensees.
  - e. 52 Pa. Code § 57.176. Valid written authorization.

**N. RESCISSON PERIOD:**

1. The supplier ~~shall~~must inform consumers of state consumer protection laws that govern the cancellation or rescission of electric generation supply contracts. *See section 7 of the Unfair Trade Practices and Consumer Protection Law (73 P. S. § 201-7). See also 52 Pa. Code § 54.43(f).*
2. A supplier and its agents engaged in door-to-door marketing or sales shall comply with the federal cooling off period requirements. See Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations; 16 CFR Part 429 (FTC). Section 54.5 gives customers a 3-business day right of rescission following receipt of the disclosure statement. See 52 Pa. Code § 54.5 (d).
3. Section 54.5 gives customers a 3-business day right of rescission following receipt of the disclosure statement. See 52 Pa. Code § 54.5 (d). This 3 business day right of rescission is to run concurrently with the federal 3-day cooling off period. A supplier and its agents engaged in door-to-door marketing or sales must comply with the federal cooling off period requirements. See Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations; 16 CFR Part 429 (FTC).

**O. NO CALL / NO VISIT LIST:**

1. A supplier marketing agent or sales agent ~~should shall~~ immediately leave the premises of a customer when requested to do so by the customer or the owner or an occupant of the premises.
2. Suppliers ~~should shall~~ respect any individual's request to be exempted from further door-to-door marketing or sales contacts and should annotate any existing marketing or sales databases to reflect this request. This does not apply to the eligible customer lists maintained and provided by the distribution companies, for which separate customer exemption requirements apply. *See* 52 Pa. Code § 54.8 (relating to privacy of customer information).

**P. COMPLAINTS:**

1. Suppliers ~~should shall~~ provide a single point of contact and a list of designated escalation contacts for Commission staff to resolve consumer inquiries or complaints received by the BCS. Suppliers ~~shall should~~ respond to all consumer inquiries and any other BCS requirements, including providing all information regarding the customer and complaint as requested by Commission staff (including a copy of the contract and any audio recordings of the verification call). The BCS, per standard procedures, ~~will should~~ encourage callers to first attempt to resolve the matter with the companies involved if they have not done so already.
2. Suppliers ~~shall should~~ investigate customer inquiries and complaints concerning marketing or sales practices, and ~~shall should~~ cooperate with the relevant agencies regarding complaints about marketing or sales practices prohibited by the Commonwealth and with local law enforcement officials in investigations concerning deceptive marketing or sales practices.
3. A supplier ~~should shall~~ maintain and document an internal process for handling customer complaints and resolving disputes arising from marketing and sales activities, and should respond promptly to complaints. These documents ~~should shall~~ be made available to Commission staff upon request.
4. A supplier shall comply with the relevant dispute regulations, including:
  - 52 Pa. Code § 56.141. Dispute procedures.
  - 52 Pa. Code §§ 56.151. General rule
  - 52 Pa. Code § 56.152. Contents of the utility company report.

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- 52 Pa. Code § 54.9. Complaint handling process.
- 52 Pa. Code § 57.177. Customer dispute procedures.

## **APPENDIX**

This appendix is provided as a convenience to suppliers and their agents, and includes regulations promulgated by the Pennsylvania Public Utility Commission at Title 52 of the Pennsylvania Code, and select provisions of the Public Utility Code, Title 66 of Pennsylvania Consolidated Statutes. This appendix is not meant to be a comprehensive list of all law that may be applicable to the sale of electric generation in Pennsylvania.

### **REGULATIONS**

Regulations in the Pennsylvania Code are available electronically at [www.pacode.com](http://www.pacode.com).

#### **CUSTOMER INFORMATION, 52 Pa Code §§ 54.1 – 54.9:**

##### **§ 54.3. Standards and pricing practices for retail electricity service.**

In furnishing retail electricity service, EDCs and EGSSs or any entity that otherwise provides retail electricity service information to customers, shall comply with the following:

- (1) Use common and consistent terminology in customer communications, including marketing, billing and disclosure statements.
  - (i) Use the term EDC as described in § 54.2 (relating to definitions) as a standard term.
  - (ii) Use the terms as defined in the Commission's "Consumer's Dictionary for Electric Competition" (Dictionary), maintained on file in the Commission's Office of Communications. EDCs shall provide this dictionary upon customer request. The "Common Electric Competition Terms" as described in subparagraph (iii) shall indicate the phone number and address to request the dictionary.
  - (iii) EDCs shall distribute the "Common Electric Competition Terms," as part of its consumer education program. (52 Pa Code § 54.3)

##### **§ 54.5. Disclosure statement for residential and small business customers. (Footnote added).**

- (a) The agreed upon prices in the disclosure statement must reflect the marketed prices and the billed prices.
- (b) The EGS shall provide the customer written disclosure of the terms of service at no charge whenever:
  - (1) The customer requests that an EGS initiate service.

- (2) The EGS proposes to change the terms of service.
- (3) Service commences from a default service provider.
- (c) The contract's terms of service shall be disclosed, including the following terms and conditions, if applicable:
  - (1) Generation charges shall be disclosed according to the actual prices.
  - (2) The variable pricing statement, if applicable, must include:
    - (i) Conditions of variability (state on what basis prices will vary).
    - (ii) Limits on price variability.
  - (3) An itemization of basic and nonbasic charges distinctly separate and clearly labeled.
  - (4) The length of the agreement, which includes:
    - (i) The starting date.
    - (ii) The expiration date, if applicable.
  - (5) An explanation of sign-up bonuses, add-ons, limited time offers, other sales promotions and exclusions, if applicable.
  - (6) An explanation of prices, terms and conditions for special services, including advanced metering deployment, if applicable.
  - (7) The cancellation provisions, if applicable.
  - (8) The renewal provisions, if applicable.
  - (9) The name and telephone number of the default service provider.
  - (10) An explanation of penalties, fees or exceptions, printed in type size larger than the type size appearing in the terms of service.
  - (11) Customer contact information that includes the name of the EDC and EGS, and the EGS's address, telephone number, Commission license number and Internet address, if available. The EGS's information shall appear first and be prominent.
  - (12) A statement that directs a customer to the Commission if the customer is not satisfied after discussing the terms of service with the EGS.
  - (13) The name and telephone number for universal service program information.

(d) Customers shall be provided a 3-day right of rescission period following receipt of the disclosure statement.

- (1) The 3-day right of rescission is 3 business days.
- (2) The 3-day right of rescission begins when the customer receives the written disclosure.
- (3) The customer may cancel in writing, orally or electronically, if available.
- (4) Waivers of the 3-day right of rescission are not permitted.

(e) Definitions for generation charges and transmission charges, if applicable, are required and shall be defined in accordance with the “Common Electric Competition Terms.” Definitions for each of the nonbasic services, if applicable, are required. The definition section of the bill must be distinctly separate.

(f) The EGS shall include in the customer’s disclosure statement the following statements which may appear together in a paragraph:

- (1) “Generation prices and charges are set by the electric generation supplier you have chosen.”
- (2) “The Public Utility Commission regulates distribution prices and services.”
- (3) “The Federal Energy Regulatory Commission regulates transmission prices and services.”

(g) Disclosure statements must include the following customer notification:

(1) “If you have a fixed term agreement with us and it is approaching the expiration date or whenever we propose to change our terms of service in any type of agreement, you will receive written notification from us in each of our last three<sup>1</sup> bills for supply charges or in corresponding separate mailings that precede either the expiration date or the effective date of the proposed changes. We will explain your options to you in these three advance notifications.”

(h) If the default service provider changes, the new default service provider shall notify customers of that change, and provide customers with its name, address, telephone number and Internet address, if available.

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<sup>1</sup> Note that the Commission reduced the number of bill notices that must be provided to a customer before the expiration of the contract or a change in service from three to two. See *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service*, order entered March 9, 2001 at Docket No. M-00001437.

**§ 54.6. Request for information about generation supply.**

- (a) EGSSs shall respond to reasonable requests made by consumers for information concerning generation energy sources.
  - (1) EGSSs shall respond by informing consumers that this information is included in the annual licensing report and that this report exists at the Commission. Providers shall explain that the report is available to them and offer to provide it, if requested.
  - (2) The default service provider shall file at the Commission the annual licensing report as required by the Commission's licensing regulations in this chapter and shall otherwise comply with paragraph (1).
  - (3) EGSSs operating for less than 1 year may respond to customer inquiries about generation energy sources by furnishing the information as described in subsection (b).
- (b) Verification of the anticipated generation energy source, of the identifiable resources (if and when they have been "claimed") and the fact that energy characteristics were not sold more than once, shall be conducted by an independent auditor at the end of each calendar year and contained in the annual report to the Commission, relating to information disclosure requirements in subsection (a) and the licensing regulations in this chapter.
- (c) Whenever EGSSs market their generation as having special characteristics, such as "produced in Pennsylvania" or "environmentally friendly" and the like, providers shall have information available to substantiate their claims.
  - (1) Disclosure of generation energy sources shall be identifiable, which is defined as electricity transactions which are traceable to specific generation sources by any auditable contract trail or equivalent, such as a tradable commodity system, that provides verification that the electricity source claimed has been sold only once to a retail customer. If generation energy sources are not identifiable, the provider shall disclose this fact.
- (d) Electricity providers, whether they make distinguishing claims or not, shall include in their general communications with consumers that electricity is the product of a mix of generation energy sources, that is delivered over a system of wires.
- (e) Electricity providers shall respond to reasonable consumer requests for energy efficiency information, by indicating that these materials are available upon request from the Commission or the EDC.
- (f) The use of general, unsubstantiated and unqualified claims of environmental benefits, such as "green" and "environmentally friendly," is prohibited. The Commission supports the application of the Federal Trade Commission's (FTC) Guides for the Use of Environmental

Marketing Claims (see 16 CFR 260.1—260.8 (relating to guides for the use of environmental marketing claims)), in the enforcement of this section and the following specific principles:

- (1) Section 260.6(a) (relating to general principles) which states that qualifications or disclosure should be clear, prominent, and of relative type size and proximity to the claim being qualified. In addition, contrary assertions which undercut the qualifications should not appear.
  - (2) Section 260.6(c) which states that environmental claims should not overstate the environmental attribute or benefit, expressly or by implication.
  - (3) Section 260.6(d) which suggests that marketing materials which make comparative claims should clearly state the basis for the comparison, be able to be substantiated, and be accurate at the time they are made.
  - (4) Section 260.7(a) (relating to environmental marketing claims) which labels unqualified claims of environmental benefit as deceptive.
  - (5) Section 260.7(f) which addresses claims regarding source reduction, such as reduced toxicity or reductions of other environmentally negative effects.
- (g) Residential and small business customers are entitled to receive at no charge and at least once a year, historical billing data from whomever reads the meter for billing purposes.
- (1) The EDC is only obligated to provide information that is readily available in its billing system.
  - (2) The historical billing data shall be conveyed in terms of kWh, and kW, as applicable, and associated charges for the current billing period and for the year preceding the current billing period.
  - (3) The historical billing data will be updated with each billing cycle.
- (h) Electricity providers shall notify consumers either in advertising materials, disclosure statements or bills that information on generation energy sources, energy efficiency, environmental impacts or historical billing data is available upon request.

#### **§ 54.7. Marketing/sales activities.**

- (a) Advertised prices shall reflect prices in disclosure statements and billed prices.
- (b) Marketing materials that offer terms of service for acceptance by consumers shall include prices, as follows:

- (1) If using a fixed price, the EGS shall show in a table the price per kWh for an average customer using 500, 1,000 or 2,000 kWh of electricity.
- (2) If using a variable price mechanism, the EGS shall factor in all costs associated with the rate charged to the customer, and show the average price per kWh for usages of 500, 1,000 and 2,000 kWh of electricity in a table format.
- (3) The EGS shall note the effective date of the prices shown in the table provided under paragraph (1) or (2).

(c) Advertising materials targeted for residential and small business sales shall be made available upon request of the Commission in the event of a formal or informal complaint or investigation.

#### **§ 54.8. Privacy of customer information.**

(a) An EDC or EGS may not release private customer information to a third party unless the customer has been notified of the intent and has been given a convenient method of notifying the entity of the customer's desire to restrict the release of the private information. Specifically, a customer may restrict the release of either the following:

- (1) The customer's telephone number.
- (2) The customer's historical billing data.

(b) Customers shall be permitted to restrict information as specified in subsection (a) by returning a signed form, orally or electronically.

(c) Nothing in this section prohibits the EGS and EDC from performing their mandatory obligations to provide electricity service as specified in the disclosure statement and in the code.

#### **§ 54.9. Complaint handling process.**

EDCs and EGSs shall disclose to consumers the following with respect to the rights of consumers in the handling and resolution of complaints:

(1) Residential and small business customers shall directly contact the party responsible for the service in question as an initial step for complaint and problem resolution. If the customer mistakenly contacts the wrong entity, the customer shall be promptly referred to the appropriate contact. In the event of a power outage, the customer shall be directed to the EDC.

(2) Complaints that pertain to Chapter 56 (relating to standards and billing practices for residential utility service) matters shall be handled and resolved in accordance with the applicable standards in Chapter 56.

(3) EDCs and EGSs shall give the Commission access to disclosure statements, billing and other customer information resources for compliance reviews as deemed necessary by the Commission. When complaints arise and are brought before the Commission for resolution, the obligation of the EGS shall be extended to the provision of pricing information.

**STANDARDS FOR CHANGING A CUSTOMER'S ELECTRICITY GENERATION SUPPLIER: 52 Pa Code §§ 57.171 – 57.179:**

**§ 57.176. Valid written authorization.**

A document signed by the customer of record whose sole purpose is to obtain the customer's consent to change EGSs shall be accepted as valid and result in the initiation of the customer's request. Documents not considered as valid include, but are not limited to, canceled checks, signed entries into contests and documents used to claim prizes won in contests.

**§ 57.177. Customer dispute procedures.**

(a) When a customer contacts an EDC or an EGS and alleges that the EGS has been changed without consent, the company contacted shall:

(1) Consider the matter a customer registered dispute.

(2) Investigate and respond to the dispute consistent with §§ 56.151 and 56.152 (relating to utility company dispute procedures).

(b) When the customer's dispute has been filed within the first two billing periods since the customer should reasonably have known of a change of the EGS and the dispute investigation establishes that the change occurred without the customer's consent, the customer is not responsible for EGS bills rendered during that period. If the customer has made payments during this period, the company responsible for initiating the change of supplier shall issue a complete refund within 30 days of the close of the dispute. The refund or credit provision applies only to the generation charges.

(c) A customer who has had an EGS changed without having consented to that change shall be switched back to the original EGS for no additional fee. Any charges involved in the switch back

to the prior EGS are the responsibility of the company that initiated the change without the customer's consent.

- (d) If a customer files an informal complaint with the Commission alleging that the customer's EGS was changed without the customer's consent, the Bureau of Consumer Services will issue an informal decision that includes a determination of customer liability for any EGS bills or administrative charges that might otherwise apply, rendered since the change of the EGS.
- (e) In addition to customer-specific remedies, the Commission may, after investigation and decision, assess fines under 66 Pa.C.S. Chapter 33 (relating to violations and penalties) and initiate proceedings to revoke the license of an EGS that demonstrates a pattern of violating this subchapter. The Commission may order a particular EGS that has a pattern of violating this subchapter to obtain written authorization from every new customer as a condition of providing service in this Commonwealth. Nothing in this subchapter is intended to limit the Commission's authority.

### **ELECTRICITY GENERATION SUPPLIER LICENSING: 52 Pa Code §§ 54.31 – 43.**

Note that there is a provision under the licensing regulations that provides for suspension and revocation of an EGS license: One of the reasons for suspension or revocation is the failure to follow the principles in Section 54.43 (relating to standards of conduct and disclosure). This section reads as follows:

#### **§ 54.42. License suspension; license revocation.**

- (a) A licensee shall comply with the applicable requirements of the code and Commission regulations and orders. Consistent with due process, a license may be suspended or revoked, and fines may be imposed against the licensee for:
  - (1) The failure to pay the yearly assessment.
  - (2) The failure to furnish and maintain a bond or other security approved by the Commission in the amount directed by the Commission.
  - (3) The nonpayment of taxes under Article II of the Tax Reform Code of 1971 (72 P. S. §§ 7201—7281.2) and Article XI of the Tax Reform Code of 1971 (72 P. S. §§ 8101—8104) and any taxes imposed by Chapter 28 of the code (relating to Electricity Generation Customer Choice and Competition Act). See sections 2806(g)(3) and 2809(c)(1) of the code (relating to implementation, pilot program and performance based rates; and requirements for electric generation suppliers).
  - (4) The failure to waive confidentiality with respect to tax information in the possession of the Department. See section 2810(c)(6)(iv) of the code (relating to revenue-neutral reconciliation).

(5) The failure to provide the address of its principal office in this Commonwealth or of its registered agent.

(6) The failure to follow the principles in § 54.43 (relating to standards of conduct and disclosure for licensees).

(7) A violation of applicable provisions of the code, this title and lawful Commission orders. See section 2809(b) of the code.

(8) A violation of Pennsylvania consumer protection law.

(9) The transfer of a customer without the customer's consent. See section 2807(d)(1) of the code (relating to duties of electric distribution companies).

### **§ 54.43. Standards of conduct and disclosure for licensees.**

To protect consumers of this Commonwealth, licensees shall adhere to the following principles in the provision of electric generation service:

(1) A licensee shall provide accurate information about their electric generation services using plain language and common terms in communications with consumers. When new terms are used, the terms shall be defined again using plain language. Information shall be provided in a format that enables customers to compare the various electric generation services offered and the prices charged for each type of service.

(b) A licensee shall respond to reasonable consumer requests for information regarding energy sources by percentage, and plant emissions of its electric generation supply.

(c) A licensee shall provide notification of change in conditions of service, intent to cease operation as an electric generation Supplier, explanation of denial of service, proper handling of deposits and proper handling of complaints in accordance with this title.

(d) A licensee shall maintain the confidentiality of a consumer's personal information including the name, address and telephone number, and historic payment information, and provide the right of access by the consumer to his own load and billing information.

(e) A licensee may not discriminate in the provision of electricity as to availability and terms of service based on race, color, religion, national origin, sex, marital status, age, receipt of public assistance income, and exercise of rights under Subchapter IV of the Consumer Credit Protection Act (15 U.S.C.A. §§ 1691—1691f), relating to Equal Credit Opportunity. See 12 CFR 202-1—202.14 (relating to equal credit opportunity Regulation B).

(f) A licensee is responsible for any fraudulent deceptive or other unlawful marketing or billing acts performed by the licensee, its employes, agents or representatives. Licensee shall inform

consumers of state consumer protection laws that govern the cancellation or rescission of electric generation supply contracts. See section 7 of the Unfair Trade Practices and Consumer Protection Law (73 P. S. § 201-7).

- (g) A licensee shall comply with relevant Commission regulations, orders and directives that may be adopted.

**COMPETITIVE SAFEGUARDS, Pa. Code §§ 54.121 -123:**

**§ 54.122. Code of conduct.**

Electric generation suppliers and electric distribution companies shall comply with the following requirements:

- (1) An electric distribution company may not give an electric generation supplier, including without limitation, its affiliate or division, any preference or advantage over any other electric generation supplier in processing a request by a distribution company customer for retail generation supply service.
- (2) Subject to customer privacy or confidentiality constraints, an electric distribution company may not give an electric generation supplier, including without limitation its affiliate or division, any preference or advantage in the dissemination or disclosure of customer information and any dissemination or disclosure shall occur at the same time and in an equal and nondiscriminatory manner. “Customer information” means all information pertaining to retail electric customer identity and current and future retail electric customer usage patterns, including appliance usage patterns, service requirements or service facilities.
- (3) An electric distribution company or electric generation supplier may not engage in false or deceptive advertising to customers with respect to the retail supply of electricity in this Commonwealth.
- (4) Each electric distribution company shall adopt the following dispute resolution procedures to address alleged violations of this section:
  - (i) Regarding any dispute between an electric distribution company or a related supplier, or both, and an electric generation supplier (each individually referred to as a “party” and collectively referred to as “parties”), alleging a violation of any of the provisions of this section, the electric generation supplier shall provide the electric distribution company or related supplier, or both, as applicable, a written notice of dispute which includes the names of the parties and customers, if any involved and a brief description of the matters in dispute.
  - (ii) Within 5 days of receipt of the notice by the electric distribution company or related supplier, or both, a designated senior representative of each of the parties shall attempt to resolve the dispute on an informal basis.

(iii) If the designated representatives are unable to resolve the dispute by mutual agreement within 30 days of the referral, the dispute shall be referred for mediation through the Commission's Office of Administrative Law Judge. A party may request mediation prior to that time if it appears that informal resolution is not productive.

(iv) If mediation is not successful, the matter shall be converted to a formal proceeding before a Commission administrative law judge, and the prosecuting parties shall be directed to file a formal pleading in the nature of a complaint, petition or other appropriate pleading with the Commission within 30 days or the matter will be dismissed for lack of prosecution. Any party may file a complaint, petition or other appropriate pleading concerning the dispute under any relevant provision of 66 Pa.C.S. (relating to the Public Utility Code).

(5) An electric distribution company may not illegally tie the provision of any electric distribution service within the jurisdiction of the Commission to one of the following:

(i) The purchase, lease or use of any other goods or services offered by the electric distribution company or its affiliates.

(ii) A direct or indirect commitment not to deal with any competing electric generation supplier.

(6) An electric distribution company may not provide any preference or advantage to any electric generation supplier in the disclosure of information about operational status and availability of the distribution system.

(7) An electric distribution company shall supply all regulated services and apply tariffs to nonaffiliated electric generation suppliers in the same manner as it does for itself and its affiliated or division electric generation supplier, and shall uniformly supply all regulated services and apply its tariff provisions in a nondiscriminatory manner.

(8) Every electric distribution company and its affiliated or divisional electric generation supplier shall formally adopt and implement these provisions as company policy and shall take appropriate steps to train and instruct its employes in their content and application.

(9) If an electric distribution company customer requests information about electric generation suppliers, the electric distribution company shall provide the latest list as compiled by the Commission to the customer over the telephone, or in written form or by other equal and nondiscriminatory means. In addition, an electric distribution company may provide the address and telephone number of an electric generation supplier if specifically requested by the customer by name. To enable electric distribution companies to fulfill this obligation, the Commission will maintain a written list of licensed electric generation suppliers. The Commission will regularly update this list and provide the updates to electric distribution companies as soon as reasonably practicable. The Commission will compile the list in a manner that is fair to all electric generation suppliers and that is not designed to provide any particular electric generation supplier with a competitive advantage.

(10) An electric distribution company or its affiliate or division may not state or imply that any delivery services provided to an affiliate or division or customer of either are inherently superior, solely on the basis of their affiliation with the electric distribution company, to those provided to any other electric generation supplier or customer or that the electric distribution company's delivery services are enhanced should supply services be procured from its affiliate or division. When an electric distribution company's affiliated or divisional supplier markets or communicates to the public using the electric distribution company's name or logo, it shall include a disclaimer stating that the affiliated or divisional supplier is not the same company as the electric distribution company, that the prices of the affiliated or divisional supplier are not regulated by the Commission and that a customer is not required to buy electricity or other products from the affiliated or divisional supplier to receive the same quality service from the electric distribution company. When an affiliated or divisional supplier advertises or communicates through radio, television or other electronic medium to the public using the electric distribution company's name or logo, the affiliated or divisional supplier shall include at the conclusion of any communication a disclaimer that includes all of the disclaimers listed in this paragraph.

(11) An electric distribution company which is related as an affiliate or division of an electric generation supplier or transmission supplier (meaning any public utility that owns, operates, or controls facilities used for the transmission of electric energy) which serves any portion of this Commonwealth; and any electric generation supplier which is related as an affiliate or division of any electric distribution company or transmission supplier which serves any portion of this Commonwealth, shall insure that its employees function independently of other related companies.

**STANDARDS AND BILLING PRACTICES FOR RESIDENTIAL UTILITY SERVICE:**  
**52 Pa Code §§ 56.1 – 56.231.**

**§ 56.141. Dispute procedures.**

A notice of dispute, including termination disputes, shall proceed in the first instance, according to this section:

(1) *Attempted resolution.* If, at any time prior to the actual termination of service, a ratepayer advises the utility that he disputes any matter covered by this chapter, including but not limited to credit determinations, deposit requirements, the accuracy of utility metering or billing or the proper party to be charged, the utility shall attempt to resolve the dispute in accordance with § 56.151 (relating to general rule).

(2) *Termination stayed.* Except as otherwise provided in this chapter, where a termination dispute or complaint has been properly filed in accordance with this subchapter, termination shall

be prohibited until resolution of the dispute or complaint; however, the disputing party shall pay undisputed portions of the bill.

**§ 56.151. General rule.**

Upon initiation of a dispute covered by this section, the utility shall:

- (1) Not issue a termination notice based on the disputed subject matter.
- (2) Investigate the matter using methods reasonable under the circumstances, which may include telephone or personal conferences, or both, with the ratepayer or occupant.
- (3) Make a diligent attempt to negotiate a reasonable payment agreement if the ratepayer or occupant claims a temporary inability to pay an undisputed bill. Factors which shall be considered in the negotiation of a payment agreement shall include, but not be limited to:
  - (i) The size of the unpaid balance.
  - (ii) The ability of the ratepayer to pay.
  - (iii) The payment history of the ratepayer.
  - (iv) The length of time over which the bill accumulated.
- (4) Provide the ratepayer or occupant with the information necessary for an informed judgment, including, but not limited to, relevant portions of tariffs, statements of account and results of meter tests.
- (5) Within 30 days of the initiation of the dispute, issue its report to the complaining party. The utility shall inform the complaining party that the report is available upon request.
  - (i) If the complainant is not satisfied with the dispute resolution, the utility company report shall be in writing and conform to § 56.152 (relating to contents of the utility company report). Further, in these instances, the written report shall be sent to the complaining party if requested or if the utility deems it necessary.
  - (ii) If the complaining party is satisfied with the orally conveyed dispute resolution, the written utility company report may be limited to the information in § 56.152(1), (2), and, when applicable, § 56.152(7)(ii) or (8)(ii).
  - (iii) If the complaining party expresses satisfaction but requests a written report, the report shall conform with § 56.152, in its entirety.

**§ 56.152. Contents of the utility company report.**

A utility company report shall include the following:

- (1) A statement of the claim or dispute of the ratepayer and a copy thereof if the claim or notice of dispute was made in writing.
- (2) The position of the utility regarding that claim.

(3) A statement that service will not be terminated pending completion of the dispute process, including both informal and formal complaints, so long as there is compliance with all requirements of the Commission.

(4) A statement that if the complaining party does not agree with the utility company report, an informal complaint shall be filed with the Commission within 10 days of the mailing date of the report to insure the preservation of all of his rights.

(5) The office where payment may be made or information obtained listing the appropriate telephone number and address of the utility.

(6) A full and complete explanation of procedures for filing an informal complaint with the Commission (see § 56.162 (relating to informal complaint filing procedures). If a written report is not requested by the complaining party or deemed necessary by the utility, the utility shall provide the information in § 56.162(1), (2) and (5). In addition, the utility should always provide the telephone number and address of the office of the Commission where an informal complaint may be filed.

(7) If the matter in dispute involves a billing dispute, the report shall include the following:

(i) An itemized statement of the account of the complaining ratepayer specifying the amount of credit, if any, and the proper amount due.

(ii) The date on or after which the account will become delinquent unless a settlement or payment agreement is entered into or an informal complaint is filed with the Commission. This date may not be earlier than the due date of the bill or 15 days after the issuance of a utility company report, whichever is later.

(8) If the matter involves a dispute other than a billing dispute, the report shall also state the following:

(i) The action required to be taken to avoid the termination of service.

(ii) The date on or after which service will be terminated unless the report is complied with, settlement agreement entered or an informal complaint filed. This date may not be earlier than the original date for compliance with the matter which gave rise to the dispute or 10 days from the date of issuance of the utility report, whichever is later.

## **PUC AUTHORITY TO REGULATE ACTIVITIES OF EGSS: Statutes**

(besides Section 501 General Powers)

The following provisions are from the Public Utility Code (Title 66 of Pennsylvania Consolidated Statutes). An unofficial copy of these statutes (Unofficial Purdon's Pennsylvania Statutes) may be accessed at no charge by this control-clickable link at the Pennsylvania General Assembly's web page:

[http://www.legis.state.pa.us/page\\_redirect.cfm?link=http://government.westlaw.com/linkedslice/default.asp?SP=pac-1000&display=Unofficial%20Purdon's%20Pennsylvania%20Statutes%20from%20West](http://www.legis.state.pa.us/page_redirect.cfm?link=http://government.westlaw.com/linkedslice/default.asp?SP=pac-1000&display=Unofficial%20Purdon's%20Pennsylvania%20Statutes%20from%20West)

### **Chapter 28. Restructuring of Electric Utility Industry.**

#### **§ 2802. Declaration of policy**

The General Assembly finds and declares as follows:

(14) This chapter requires electric utilities to unbundle their rates and services and to provide open access over their transmission and distribution systems to allow competitive suppliers to generate and sell electricity directly to consumers in this Commonwealth. The generation of electricity will no longer be regulated as a public utility function except as otherwise provided for in this chapter. **Electric generation suppliers will be required to obtain licenses, demonstrate financial responsibility and comply with such other requirements concerning service as the commission deems necessary for the protection of the public.**

66 Pa.C.S. § 2802 (14).

#### **§ 2807. Duties of electric distribution companies**

**(d) Consumer protections and customer service.--**The electric distribution company shall continue to provide customer service functions consistent with the regulations of the commission, including meter reading, complaint resolution and collections. Customer services shall, at a minimum, be maintained at the same level of quality under retail competition.

(1) The commission shall establish regulations to ensure that an electric distribution company does not change a customer's electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier. **[slamming]**

(2) The commission shall establish regulations to require **each electric distribution company, electricity supplier, marketer, aggregator and broker to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider.**

Information shall be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.

66 Pa.C.S. § 2807.

### **§ 2809. Requirements for electric generation suppliers.**

**(a) License requirement.**--No person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter, brokers and marketers, aggregators and other entities, shall engage in the business of an electric generation supplier in this Commonwealth unless the person or corporation holds a license issued by the commission. Consistent with 15 Pa.C.S. Ch. 74 (relating to generation choice for customers of electric cooperatives), electric cooperative corporations must possess a certificate for service to supply generation services beyond their territorial limits.

**(b) License application and issuance.**--An application for an electric generation supplier license must be made to the commission in writing, be verified by oath or affirmation and be in such form and contain such information as the commission may by its regulations require. A license shall be issued to any qualified applicant, authorizing the whole or any part of the service covered by the application, if it is found that **the applicant is fit, willing and able to perform properly the service proposed and to conform to the provisions of this title and the lawful orders and regulations of the commission under this title, including the commission's regulations regarding standards and billing practices, and that the proposed service, to the extent authorized by the license, will be consistent with the public interest and the policy declared in this chapter; otherwise, such application shall be denied.**

**(e) Form of regulation of electric generation suppliers.**--The commission may forbear from applying requirements of this part which it determines are unnecessary due to competition among electric generation suppliers. **In regulating the service of electric generation suppliers, the commission shall impose requirements necessary to ensure that the present quality of service provided by electric utilities does not deteriorate, including assuring that adequate reserve margins of electric supply are maintained and assuring that 52 Pa. Code Ch. 56 (relating to standards and billing practices for residential utility service) are maintained.**

66 Pa.C.S. § 2809.

*See Delmarva Power & Light Company, T/A Conectiv Energy v. PA Public Utility Commission,* 582 Pa. 338; 870 A.2d 901; 2005 Pa. LEXIS 632 (PA 2005) (the second sentence of section 2809(e) defines the Commission's authority to regulate EGSs).

## **Release of Information Authorization Form**

By completing and submitting the form below, you hereby authorize \_\_\_\_\_ to obtain from your Electric Distribution Company (EDC, your local utility company) customer-specific information (historical electricity consumption data, load profile information, rate class, etc.) related to your electricity accounts. **This information will be used by \_\_\_\_\_ or a licensed EGS with whom \_\_\_\_\_ has a business arrangement to price your accounts, and will be treated confidentially.**

Customer-specific information may be obtained through a variety of means, including but not limited to: manually requesting it from your EDC, retrieving it via electronic data exchange transactions with your EDC, retrieving it from your EDC's customer data management websites.

**Customer Name:** \_\_\_\_\_  
(as written on utility bill)

**Customer Address:** \_\_\_\_\_

**Contact Name/Title:** \_\_\_\_\_

**Utility Company:** \_\_\_\_\_

**Account Number & Corresponding Zip Code:**

1. \_\_\_\_\_      \_\_\_\_\_

2. \_\_\_\_\_      \_\_\_\_\_

3. \_\_\_\_\_      \_\_\_\_\_

Indicate if more than 3 accounts; a spreadsheet will be sent over.

I hereby authorize \_\_\_\_\_ to act on our behalf to obtain such information.

Last In Scenarios for Pennsylvania	Allegheny Power
Does the utility evaluate 'last in' for the entire enrollment period or just in the case where two enrollments were received the same day?	AP evaluates last in for the entire enrollment period
If a customer calls to indicate that they were "slammed", what does the utility do?  Some EDCs drop to the active supplier (whether it be an EGS or default supply), and others (including Allegheny Power) drop back to any other possible pending suppliers for that enrollment period.	Allegheny Power drops back to a pending supplier for that enrollment period or to the active supplier if there are none pending
If a customer calls and says that they enrolled with two different suppliers, and they really wanted the first one, what does the utility do?  At least one EDC informs the customer they need to call the supplier to drop. Many believe the utility should follow the customer's wishes at the time of the call. For example, if they enrolled with A and B, and they really wanted A, the utility should put them back with A and send the reinstatement if necessary.	The customer can rescind the last supplier (B) and it goes back to the first one (A) so long as they are in the 10 day window for the last supplier (B). If they are outside the 10 day rescission window, they must take service for at least a month from supplier (B) and have supplier (A) re-enroll them
How is last in determined? Is it the last enrollment received before the 16 day blackout period or is it based on contract date.	Allegheny will take the last enrollment received prior to the 16 day blackout period. The contract date is only used if two or more enrollments are received on the same day.

Duquesne Light	First Energy
We evaluate the 'last in' for the entire enrollment period / if within the 10 day recession period.	FE uses First-In so the customer must stay with the first supplier to send in the enrollment for at least one billing period.
If we are notified within the 10 days, we cancel the pending switch and the customer is defaulted back to the "current" EGS of record. If the 10 day recession period has expired, we advise the customer they will remain with the supplier for one billing cycle and should contact them to cancel.	The account is refer to our Supplier Services group to investigate. If needed, Supplier Service personnel will contact the supplier to determine resolution.
Within the 10 day recession period, we would cancel/drop the second supplier and ask the customer to call the first supplier and ask them to send in a new enrollment.	This cannot occur in FE since we use First-In and the customer must stay with the original supplier for at least one billing period. After that, if a customer switches suppliers then the first supplier is dropped. Customer can rescind if they make a mistake within the rescission period then the original supplier is reinstated.

PECO	PPL EU
"Last in" is evaluated with regard to a specific enrollment period; If enrollments are received more than one day apart but still project to the same effective date, then 'last in' evaluation will commence; Please note that PECO is currently reviewing implementation of its 'last-in' evaluation rules within its systems, to verify that associated scenarios are being handled appropriately; Some fixes may be implemented over the next 6 to 9 months based upon findings	Entire Period PPL evaluates the entire enrollment period for last in.
PECO customers typically don't overtly state that they were slammed; However, if PECO determines based on customer feedback that the customer is implying a slam has occurred, then PECO will open a slam dispute and immediately drop the supplier that the customer believes "slammed" them; Depending on timing, this can be done via a rescind (if within the 10-day confirmation period), meaning the customer could return to the previous ACTIVE ( <u>not</u> pending active) supplier on the account, OR via a return-to-PECO (if the 10-day confirmation window has already passed)	If the account is within the recission period, the account is returned to the previous supplier or POLR. Otherwise, the account is referred to Supplier Coordination for resolution.
Depends on timing of transactions and customer's wishes; PECO cannot always directly fulfill the customer's wishes; See examples below	If the account is within the recission period, the account is returned to the previous supplier. Otherwise, the customer must contact the first supplier to re-enroll.
(1) PECO receives two enrollments on same day for non-shopping customer, Supplier A and Supplier B; Assume both enrollments would have the same effective date per rolling/switching rules; PECO accepts enrollment with the most recent contract effective date (assume Supplier B); Customer calls PECO and says they really wanted Supplier A; PECO drops Supplier B and informs customer to contact Supplier A for re-enrollment (regardless of whether ten-day confirmation window has passed); Drop of Supplier B & re-enrollment from Supplier A will follow rolling-switching rules	
(2) For customer shopping with Supplier A, PECO receives two enrollments on same day, Supplier B and Supplier C; Assume both enrollments would have the same effective date per rolling/switching rules; PECO accepts enrollment with the most recent contract effective date (assume Supplier C), resulting in drop being sent to Supplier A; Customer calls PECO and says they really wanted Supplier B; If call is within the ten-day confirmation window, PECO can rescind switch to Supplier C (resulting in sending drop to C) which causes reinstatement of Supplier A; PECO would also advise customer to then contact Supplier B and request re-enrollment; If call is received after the ten-day confirmation window, the same actions occur with the only difference is that the customer returns to PECO instead of to Supplier A; Drops & re-enrollments will follow rolling-switching rules, but reinstatement is effective immediately assuming receiving supplier accepts it	
(2) For customer that is active with Supplier A and "pending active" (about to shop) with Supplier B, PECO receives enrollment for Supplier C; Assume both enrollments would have the same effective date per rolling/switching rules; PECO accepts enrollment with the most recent contract effective date (assume Supplier C), resulting in drops being sent to Suppliers A and B; Customer calls PECO and says they really wanted Supplier B; If call is within the ten-day confirmation window, PECO can rescind switch to Supplier C (resulting in sending drop to C); However, this does NOT cause reinstatement of Supplier B's pending active enrollment, but rather returns customer to the last ACTIVE supplier, which is Supplier A; PECO would also advise customer to then contact Supplier B and request re-enrollment, but depending on timing, this does not guarantee that Supplier B enrollment will have the same date as the previously pending active enrollment; If call is received after the ten-day confirmation window, the same actions occur BUT customer returns to PECO instead of to Supplier A; Drops & re-enrollments will follow rolling-switching rules	
<p><b>NOTE: THESE SCENARIOS ARE NOT ALL-INCLUSIVE</b></p> <p><b>NOTE ALSO:</b> If the enrollments from the various suppliers are received on different days such that they become effective on different dates based upon rolling/switching rules, then the above scenarios change; For instance, in Scenario 1, if enrollments from Supplier A &amp; Supplier B were received days apart such that they become effective on different dates (A first, then B), then the customer will not be able to select Supplier B for that initial billing period by the time that they call based on rolling/switching rules; They can only be returned to PECO for that particular billing period</p>	

**UGI**

If the enrollments are not received on the same day, the 2nd enrollment will be effective the next bill period after the 1st enrollment. If the enrollments are received the same day, the last one processed is who the customer is enrolled with.

The enrollment generates a letter. The customer has 10 days to call and say they should not have been enrolled, during this time the supplier is pending. When the customer calls we drop the pending supplier and notify the supplier through EDI.

We would follow the wishes of the customer. If the 1st supplier is active, we would drop the pending 2nd supplier and notify the 2nd supplier through EDI. If the 2nd supplier is already active, we'll switch the customer immediately to the 1st supplier and notify them with a phone call, the 2nd supplier would be notified of the drop through EDI.