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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** |  |

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|  | Public Meeting held July 15, 2010 |
| Commissioners Present: |  |

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| James H. Cawley, Chairman | |  |
| Tyrone J. Christy, Vice Chairman, Statement | |  |
| John F. Coleman, Jr. | |  |
| Wayne E. Gardner | |  |
| Robert F. Powelson | |  |
|  |  |
| Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers | M-2010-2185981 |

**TENTATIVE ORDER**

**BY THE COMMISSION:**

Before us for our consideration are proposed interim guidelines applicable to the marketing and sales practices of electric generation suppliers (EGSs) and natural gas suppliers (NGSs). These proposed interim guidelines were developed by the Office of Competitive Market Oversight (OCMO) as a result of meetings held with the working groups, CHARGE (Committee Handling Activities for Retail Growth in Electricity) and SEARCH (Stakeholders Exploring Avenues to Remove Competitive Hurdles). With this Tentative Order, we issue for public comment these proposed interim guidelines.

**DISCUSSION**

**Background**

With the expiration of the electric generation rate caps of PPL Electric Utilities at the beginning of 2010, and those of the First Energy Companies (Metropolitan Edison Company, Pennsylvania Electric Company), PECO and West Penn Power Company in 2011, greater numbers of electric generation suppliers (EGSs) have entered, and will enter Pennsylvania’s retail electric generation supply market. As a result, consumers are being exposed to unfamiliar marketing strategies and sales techniques. One particular sales technique, direct sales or door-to-door sales, has created confusion for some customers, who have contacted this Commission with their concerns.

In a Secretarial Letter issued at Docket No. M-2009-2082042 on December 10, 2009, the Commission first addressed the topic of third parties who provide marketing and sales support to licensed EGSs. <http://www.puc.state.pa.us//pcdocs/1062483.docx> The specific issue was whether these third parties also needed to obtain EGS licenses.

The Commission determined that third parties, working directly for an EGS, as an employee or independent contractor, and providing marketing and sales support services, are not engaged in the sale of electricity or related services to consumers and do not need to be licensed. This determination was based on past Chief Counsel opinion letters interpreting the definition of “EGS” in 66 Pa.C.S. § 2803, and on the exemptions from licensing for third parties performing marketing and sales activities for NGSs established in 52 Pa. Code §§62.101.

The Commission then reminded EGSs of their responsibilities for the actions of unlicensed third parties with whom they contract to provide marketing and sales support services, *i.e.*, door-to-door sales and telemarketing. *See* 52 Pa. Code § 54.43(f) (relating to standards of conduct and disclosure for licensees) and § 54.32 (relating to license suspension; revocation).

In addition, the Commission recognized that third party marketers have caused customer service concerns in other states, and determined that it would monitor the issue in Pennsylvania. The Commission also determined that by November 30, 2010, it would evaluate the suppliers’ use of unlicensed third parties for marketing and sales support to determine if the practice should be restricted or prohibited.

**OCMO/CHARGE/SEARCH**

On January 9, 2009, the Pennsylvania Public Utility Commission announced the formation of the Office of Competitive Market Oversight (OCMO) to oversee the development and functioning of the competitive retail natural gas supply market. Since then, OCMO has been handling issues under the leadership of the Director of Operations with the assistance of a group of legal, technical and policy staff members from various Commission bureaus and offices.

Initially, the OCMO had been created to oversee the development and functioning of the competitive retail natural gas supply market. Subsequently, the Commission expanded the role of the OCMO to serve as the Commission’s electric retail choice ombudsman, as described in the *Default Service and Retail Electric Markets Policy Statement* at 52 Pa. Code §69.1817. *See* *Secretarial Letter* issued December 10, 2009 at Docket No. M-2009-2082042.

The OCMO first met with electric industry stakeholders on December 18, 2009. These stakeholders would ultimately include electric distribution companies, electric generation suppliers, and consumer advocates and representatives. For ease of reference, this working group became known as CHARGE.

CHARGE took up the issue of third party marketing and sales support at its January 7, 2010 meeting. Because of continuing consumer concerns and informal complaints about EGS marketing practices and the use of third party contractors for marketing and sales support, it was determined that CHARGE would develop marketing guidelines. OCMO Staff prepared the initial draft for group discussion.

CHARGE continued to meet to discuss and review various drafts of the interim guidelines prepared by OCMO staff. The group met on January 22; February 4 and 18; March 4 and 18; April 08 and 29; May 13 and 27; and, June 10. During the discussions, CHARGE asked OCMO staff to consider expansion of the draft marketing guidelines to include NGS marketers.  On April 29, 2010, OCMO circulated the guidelines to SEARCH, seeking feedback from natural gas stakeholders about the feasibility of that suggestion. A joint meeting of CHARGE and SEARCH was held on May 13, 2010, June 7, 2010, and on June 24, 2010, the group met on the final OCMO staff draft of the guidelines.

**Proposed Interim Guidelines**

The Proposed Interim Guidelines for Marketing and Sales Practices, contained in Annex A of this order, were drafted by OCMO staff. Various drafts of the guidelines were reviewed by both CHARGE and SEARCH. The proposed interim guidelines cover a wide range of topics and recommend best practices for direct (door-to-door) marketing and telemarketing and sales. Note as well that when a guideline is based on, or is consistent with, duties, requirements or prohibitions established in the Public Utility Code, Commission regulations or orders, or other applicable Pennsylvania, federal or municipal law, compliance with the guideline is expected.

These proposed interim guidelines will apply to both EGSs and NGSs, and to any person or entity that is conducting marketing or sales activities, or both, on their behalf. The term “agent” is used as a generic term in these proposed guidelines, and is defined to include an employee, a representative, an independent contractor, or a vendor. For natural gas suppliers, the term “agent” also includes “marketing services consultant” or “nontraditional marketer” as those terms are defined at 52 Pa. Code § 62.101 (definitions).

The proposed guidelines are very detailed, and as such, there is no need to explain each one individually for the purpose of soliciting public comment. However, we will highlight those guidelines on door-to-door marketing and sales since customer concerns alerted us to the need to issue guidance for these activities.

A number of the proposed guidelines specifically apply to the supplier’s agents that go door-to-door: background checks (proposed guideline B); training (proposed guideline C); appearance and identification (proposed guideline F); monitoring and quality control (proposed guideline D) and discipline (proposed guideline E).

Proposed guideline J addresses compliance with local ordinances that may restrict the agent’s activities. Some local (municipal) ordinances may completely prohibit door-to-door marketing or sales, or may require an agent to obtain a permit from local authorities prior to engaging in such activities. Proposed guideline J-2 restricts an agent’s door-to-door activities to the hours between 9:00 a.m. to 7:00 p.m. When a local ordinance is more stringent, the local ordinance controls. *See also* proposed guideline O (relating to no call/ no visit list).

Other guidelines address agent-customer interactions. Proposed guideline G prohibits misrepresentation and requires, *inter alia*, that an agent engaged in door-to door marketing or sales identify the supplier that he or she represents and provide the customer with a business card or other written material with the agent’s name and the name of the supplier. Proposed guideline F-1 requires that the agent present a valid picture identification to the customer.

To lessen the chance of customer confusion, proposed guideline G-1 also requires that the supplier or its agent explain to the customer that the supplier is not affiliated with the local distribution company if that is indeed the case. If the supplier is affiliated with a distribution company and the supplier’s trade name is similar to the distribution company, the supplier must also explain that it is not the distribution company; that its prices are not regulated by the Commission; and that the customer is not required to buy its supply or other products to receive the same quality of service from the distribution company. This guidance is consistent with Commission regulations at 52 Pa. Code §54.122 (relating to EDC code of conduct) and § 62.142 (relating to NGDC standard of conduct).

Other guideline provisions drafted to lessen customer confusion are the prohibition against a supplier or its agent wearing uniforms or other apparel that contain any branding elements that are deceptively similar to the distribution company. Proposed guideline F-3. A supplier or its agent is also prohibited from using marketing materials or consumer education materials of another supplier, distribution company or a government agency in a way that infers a relationship that does not exist. Proposed guideline F-5. *See also* proposed guideline M (marketing/sales activities and materials).

Finally, of particular note are the provisions in the proposed guidelines that help prevent, and failing that, help document the unauthorized transfer of a customer’s account, *i.e.*, slamming. Sections 2206 (b) and 2807(d)(1) of the Public Utility Code; 66 Pa.C.S. § 2206(b) & § 2807(d)(1), specifically prohibit this activity. These provisions may be found in proposed guideline D (monitoring /quality control/ documentation), proposed guideline E (discipline)[[1]](#footnote-1), and proposed guideline L-1 (disclosure statements/contract terms)[[2]](#footnote-2).

Proposed interim guideline D provides for documentation and verification of sale transactions. Paragraph D-1 provides that there be a notation that indicates that the enrollment was the result of a door-to-door sale with a unique identifier for the agent involved on enrollment documentation. Paragraph D-2 provides for monitoring of an appropriate sample of all sales and marketing calls, both telephonic and door-to-door, to ensure accuracy, completeness, courtesy and compliance with all of the suppliers rules for conducting such activities.

In order to detect whether slamming has occurred, paragraph D-3 provides that all transactions be verified by an appropriate method that confirms the customer’s consent to the transaction, *i.e.*, the transfer of his or her account. Paragraph D-4 provides that the verification process is to take place after the agent has physically separated himself from the customer by exiting the customer’s residence. This physical separation ensures that there is a clear demarcation point between the sale/enrollment transaction completed by the agent, and the verification process to confirm that the customer has given his or her consent for the account transfer or enrollment.

Proposed guideline D-3 also provides that a record of the verification of a sale or enrollment transaction be maintained in a system that is capable of retrieving that record by customer name for a period of time equivalent to at least six billing cycles (to enable compliance with 52 Pa. Code § 57.177 and § 59.97 (relating to customer dispute procedures). These documents are to be made available to Commission staff upon request.

The availability of this documentation to the supplier is key to the detection of slamming among its marketing and sales agents and to the identification of the agents involved. This also permits the supplier to correct this problem by the re-training or replacement of these agents. In the event the supplier fails to act, the documentation will be available to appropriate Commission staff who can step in to protect customers by prosecuting these slamming incidents as violations of the Public Utility Code.

**Monitoring Marketing and Sales Activities**

**Of Unlicensed Independent Contractors**

Proposed interim guideline Q implements the Commission’s direction to the OCMO to monitor the practice of suppliers using third party independent contractors for marketing and sales support, and to evaluate this practice to determine whether it should be restricted or prohibited. The evaluation will be based on statistics gathered on complaints regarding both supplier marketing and sales practices as well as proven incidents of unauthorized customer enrollments and transfers of customer accounts. *See* proposed interim guidelines D-3 (relating to monitoring / quality control / documentation) and P (relating to complaints). The evaluation shall be completed before November 30, 2010. This direction was given in the December 10, 2009 Secretarial Letter referenced previously. <http://www.puc.state.pa.us//pcdocs/1062483.docx>

**Non-Consensus Items**

The Commission understands that the proposed guidelines represent consensus positions of CHARGE and SEARCH working group members with three exceptions. The first exception is in proposed guideline D-4, and involves the guidance that the door-to-door agent is to physically exit a customer’s residence before the verification process confirming the customer’s consent to the sale takes place. Some suppliers suggest that physically exiting a customer’s residence before the sales transaction is completed may not always be practical, and may prevent the agent from providing assistance in responding to any customer concerns during the verification process.

The second exception involves the designation of the hours of operation for door-to-door marketing and sales activities from 9:00 a.m. to 7:00 p.m. In proposed guideline J-2, the 9:00 a.m. to 7:00 p.m. time period is to be followed when local ordinances are silent or less restrictive on the issue. At issue is the end point for this designated time period. Some parties have suggested that “dusk” should be the appropriate time for ending all door-to-door sales. Others have suggested that requiring the cessation of sales before 9:00 p.m. is too restrictive.

The third exception where consensus could not be reached is in proposed guideline K-2. The issue involves the need for the supplier to contact the distribution company prior to the supplier initiating marketing or sales activities that the supplier anticipates may result in telephone calls to the Commission. While suppliers generally agree that they should make this contact with distribution companies as a courtesy, some do not wish to be required to do so while consumer representatives believe that it is critical for this contact to occur so that consumer interests can be adequately protected.

For the purpose of soliciting comments, we have accepted OCMO’s resolution of these non-consensus items along with the consensus positions reached by the members of the working groups CHARGE and SEARCH as set forth in these proposed interim guidelines. We encourage comments from all who have differing positions.

**CONCLUSION**

These proposed 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. 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. For this reason, it is important that all parties who will be affected by these proposed guidelines provide input into the process before they are finalized.

To facilitate public comment to these proposed interim guidelines, a thirty (30) day comment period is established from the entry date of this order. Reply comments may be filed no later than fifteen (15) days thereafter. We urge that all interested persons file comments as soon as possible; **THEREFORE,**

**IT IS ORDERED:**

1. That the Proposed Interim Guidelines for Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers as set forth in this Tentative Order and in Annex A are issued for comment.

2. That comments to this Tentative Order and Annex A are due no later than thirty (30) days of the entry date of this order. Interested parties may submit written comments, an original and 5 copies, to the Secretary, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265. Comments may also be filed electronically through the Commission e-File System. A copy of the comments shall be submitted to the Office of Competitive Market Oversight at [ra-OCMO@state.pa.us](mailto:ra-OCMO@state.pa.us). Reply comments may be filed no later than fifteen 15 days thereafter.

3. That this Tentative Order and Annex A shall be served on all Electric Distribution Companies, Natural Gas Distribution Companies, all licensed Electric Generation Suppliers, all licensed Natural Gas Suppliers, the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate and the Energy Association of Pennsylvania.

4. That the Office of Competitive Market Oversight shall electronically serve a copy of this Tentative Order and Annex A on all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity (CHARGE) and Stakeholders Exploring Avenues to Remove Competitive Hurdles (SEARCH).

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

6. That the contact persons for this matter are Daniel Mumford, Bureau of Consumer Services, 717-783-1957, and Patricia Krise Burket, Law Bureau, 717-787-3464.

7. That the Office of Competitive Market Oversight, in consultation with the Law Bureau, shall prepare a final order and revise the proposed guidelines consistent with the comments submitted.  Staff shall also prepare a proposed rulemaking based on the final guidelines for consideration at the same public meeting.  Staff is directed to expedite the preparation of the final guidelines and the proposed regulations after comments and reply comments are received.



**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: July 15, 2010

ORDER ENTERED: **July 16, 2010**

**ANNEX A**

**PROPOSED INTERIM GUIDELINES**

**FOR**

**MARKETING AND SALES PRACTICES FOR**

**ELECTRIC GENERATION AND NATURAL GAS SUPPLIERS**

**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, Electric Generation Suppliers (EGSs) and Natural Gas Suppliers (NGSs) (collectively, suppliers) and Electric Distribution Companies (EGSs) and Natural Gas Distribution Companies (NGDCs) (collectively distribution companies) alike. A competitive energy market can provide a positive experience for all 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. For natural gas suppliers, the term “agent” also includes “marketing services consultant” or “nontraditional marketer” as those terms are defined at 52 Pa. Code § 62.101 (definitions).

EGSs and NGSs may use employees to conduct marketing[[3]](#footnote-3) or sales[[4]](#footnote-4) 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 agents, representatives, 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 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) (standards of conduct for licensees). Section 62.102 of the NGS licensing regulations has similar language. *See* 52 Pa. Code § 62.102 (d) & (e) (scope of licensure) and § 62.114(e) (standards of conduct for licensees).

**B. BACKGROUND CHECKS**

1. The suppliers performing door-to-door marketing 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. This includes checking the sex offender registry commonly referred to as the “Megan’s Law” registry maintained by the Pennsylvania State Police. Suppliers 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 shall confirm that the contractor or vendor has performed criminal background checks and appropriate screenings of its employees, agents and independent contractors in accordance with these guidelines and with the standards of the licensed supplier.

**C. TRAINING**

1. Suppliers shall ensure, and maintain appropriate documentation indicating, that the training of their marketing agents or sales agents includes:
2. Knowledge and awareness of applicable Pennsylvania laws and regulations governing marketing, consumer protection and door-to-door sales.
3. Knowledge and understanding of responsible and ethical sales practices.
4. Knowledge of the supplier’s products and services.
5. Knowledge of supplier’s rates, rate structures and payment options.
6. Knowledge of the customers’ right to rescind and cancel contracts.
7. Knowledge of the applicability of an early termination fee for contract cancellation if the supplier has one.
8. Knowledge of and adherence to supplier-developed scripts.
9. Knowledge on the proper completion of contract and enrollment documents.
10. Knowledge of the supplier’s disclosure statement.
11. Knowledge of relevant terms and definitions.
12. Knowledge of how customers may contact the supplier to obtain information about billing, disputes, and complaints.
13. Advance review and approval of training documents and programs by the Commission is not required. However, these documents along with records concerning training activities and completion of the training by agents shall be made available to Commission staff upon request.

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

1. On customer enrollment documentation, there 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 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, 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 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 a system that is capable of retrieving that record by customer name for a period of time equivalent to at least six billing cycles (to enable compliance with 52 Pa. Code § 57.177 and § 59.97 (relating to customer dispute procedures). These documents shall be made available to Commission staff upon request.
4. The transaction verification process shall occur after the agent has physically separated himself from the potential customer by exiting the customer’s residence. The transaction verification process shall conclude by reminding the customer of the 3-business day right of rescission pursuant to 52 Pa. Code § 54.5(d) and § 62.75 (relating to disclosure statements for residential and small business customers).
5. If the supplier detects a problem with an enrollment, the customer shall be contacted by phone, email or by letter explaining the issue and offering help with a resolution. If the supplier detects a problem with the enrollment and the agent who enrolled the customer is still within the vicinity of the customer’s residence, the supplier may contact the customer by telephone and ask if the customer would like to have the agent return to answer the customer’s questions. The agent may return to the customer’s residence only if the customer responds in the affirmative.

**E. DISCIPLINE**

When developing internal agent discipline policies, all parties should be aware of the Commission’s long-standing “zero-tolerance” policy concerning “slamming[[5]](#footnote-5)” 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 and § 62.113 (relating to license suspension; license revocation).

**F. APPEARANCE / UNIFORMS / IDENTIFICATION**

1. Door-to-door sales agents or marketing agents shall immediately present valid identification issued by the supplier for whom they are seeking to enroll customers. The identification shall be visible at all times, and shall accurately identify the supplier, including its legitimate trade name and logo. Additionally, the identification 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 shall immediately 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. However, when an agent’s name is handwritten on such materials, it shall be printed and legible.
3. The door-to-door sales agent or marketing agent shall not dress in uniforms or wear any apparel 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 shall provide the agent’s first name and shall state the name of the supplier on whose behalf the call is being made. Upon request of the customer, the agent shall provide his or her identification number.
5. A supplier shall not use bills, marketing materials or consumer education materials of another supplier, distribution company, or government agency in any way that infers a relationship that does not exist.

**G. MISREPRESENTATION**

1. An agent shall identify the supplier that he or she represents as an independent energy supplier, and shall identify himself or herself as a representative of that specific supplier immediately upon first contact with the potential customer. The agent shall 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. A door-to-door sales agent shall offer a business card or other material that states the agent’s identity and supplier name, and includes the supplier’s contact information. In addition, a valid identification shall be visible at all times and shall accurately identify the supplier, its trade name and logo, and shall display a photograph of the agent and the full name of the agent in reasonably sized type.
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) and at 52 Pa. Code § 62.142 (relating to the standards of conduct). When the supplier’s trade name is similar to that of its affiliated distribution company, the agent shall inform a customer that the supplier is not the same company as the distribution company, that its prices are not regulated by the Commission, and that a customer is not required to buy its supply or other products to receive the same quality service from the distribution company.
3. When an affiliated supplier advertises or communicates through radio, television or other electronic medium to the public and its name or logo is similar to that of 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 paragraph G- 2. *See* 52 Pa. Code § 54.122 (relating to the code of conduct) and 52 Pa. Code § 62.142 (relating to the standards 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) and § 62.114 (e) (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) and § 62.114 (e) (relating to standards of conduct and disclosure for licensees).
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](http://www.law.cornell.edu/uscode/15/ch87.html)] and **Telemarketing Sales Rule,** 16 CFR Part 310 [[link](http://www.ftc.gov/os/2002/12/tsrfinalrule.pdf)]. 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 agent, representative, 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 door-to-door sales, as a courtesy, should notify the local municipal officials of its locations and schedule of door-to-door marketing or door-to-door sales 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 limit door-to-door marketing or door-to-door sales activity to the hours between 9:00 am and 7:00 pm. When 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 shall notify Dan Mumford and Matt Hrivnak at the Commission’s Bureau of Consumer Services (BCS) at [dmumford@state.pa.us](mailto:dmumford@state.pa.us) and [mhrivnak@state.pa.us](mailto:mhrivnak@state.pa.us) no later than the morning of the day the marketing or sales activities commence. The notification shall include general, non-proprietary information as to the extent of the marketing or sales effort, for what period of time, and a description of the geographical area involved. 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 should also provide the local distribution company with general information about the marketing or sales activity that caused the supplier to provide notice to BCS in accordance with paragraph K-1. The supplier should provide this general information to the distribution company no later than the morning of the day that the marketing or sales activities commence. 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 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 and § 62.142. In responding to customer inquiries about price and service, the local distribution company may provide factual information about its own price and terms but shall refer the customer to the supplier for questions about the supplier’s prices and terms.

**L. DISCLOSURE STATEMENTS / CONTRACT TERMS**

1. When 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 and § 62.75 (relating to disclosure statement for residential and small business customers).
2. A supplier’s marketing agent or sales agent shall offer to provide the customer with written information regarding the supplier products and services. This information shall include the supplier’s name, website, and telephone number for inquiries, verification and complaints.

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

1. When 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 when 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 shall:
3. Not engage in misleading or deceptive conduct as defined by State or Federal law, or by Commission rule, regulation or order;
4. Not make false or misleading representations including misrepresenting rates or savings offered by the supplier;
5. Provide the customer with written information about the products and services being offered, upon request, or with contact information (phone number, website address, etc.) at which information can be obtained.
6. Provide accurate and timely information about services and products being offered. Such information shall include information about the rates being offered, contract terms, early termination fees and right of cancellation and rescission.
7. 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:

* 52 Pa. Code § 54.3. Standards and pricing practices for retail electricity service.
* 52 Pa. Code § 62.73. Standards and pricing practices for retail natural gas service.
* 52 Pa. Code § 54.6. Request for information about generation supply.
* 52 Pa. Code § 62.76. Request for information.
* 52 Pa. Code § 54.7.  Marketing/sales activities.
* 52 Pa. Code § 62.77. Marketing/sales activities.
* 52 Pa. Code § 54.43. Standards of conduct and disclosure for licensees.
* 52 Pa. Code § 62.114. Standards of conduct and disclosure for licensees.
* 52 Pa. Code § 57.176. Valid written authorization.
* 52 Pa. Code § 59.96. Valid written authorization.

**N. RESCISSION PERIOD**

1. The supplier 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). *See also* 52 Pa. Code § 54.43(f), and § 62.114 (e).
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).
3. Sections 54.5 and 62.75 give customers a 3-business day right of rescission following receipt of the disclosure statement. *See* 52 Pa. Code § 54.5 (d) and § 62.75(d). This 3 business day right of rescission may run concurrently with the federal 3-day cooling off period.

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

1. A supplier marketing agent or sales agent 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 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 and § 62.78 (relating to privacy of customer information).

**P. COMPLAINTS**

1. Suppliers 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 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 encourage callers to first attempt to resolve the matter with the companies involved if they have not done so already.
2. Suppliers shall investigate customer inquiries and complaints concerning marketing or sales practices, and shall 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 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 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.
* 52 Pa. Code § 54.9. Complaint handling process.
* 52 Pa. Code § 62.79. Complaint handling process.
* 52 Pa. Code § 57.177.  Customer dispute procedures.
* 52 Pa. Code § 59.97. Customer dispute procedures.

**Q. MONITORING MARKETING AND SALES ACTIVITIES OF UNLICENSED INDEPENDENT CONTRACTORS**

The Commission will gather and maintain statistics concerning complaints regarding both supplier marketing and sales practices as well as proven incidents of unauthorized customer enrollments and transfers of customer accounts. This information will enable the Commission to monitor supplier activities, including the practice of using of unlicensed independent contractors or vendors for marketing and sales support. This information will also provide a basis for the Commission to evaluate this practice and to determine whether this practice should be permitted to continue. *See* Secretarial Letter issued December 10, 2009 at Docket No. M-2009-2082042. <http://www.puc.state.pa.us//pcdocs/1062483.docx>

1. Proposed guideline E requires the supplier, when establishing internal procedures for agent discipline, to take into account the Commission’s “zero tolerance” policy on slamming. [↑](#footnote-ref-1)
2. Proposed guideline L-1 is based on Section 54.5 and 62.75 of the Commission regulations, and requires an agent to provide the customer with a copy of the disclosure statement when the supplier successfully signs-up the customer. *See* 52 Pa. Code § 54.5 and § 62.75 (relating to disclosure statement for residential and small business customers). [↑](#footnote-ref-2)
3. “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). *See also* 52 Pa. Code § 62.101 (relating to definitions [natural gas]). [↑](#footnote-ref-3)
4. 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.”*See* 52 Pa. Code § 54.31 (definitions [electric]) § 62.101 (definitions [natural gas]). [↑](#footnote-ref-4)
5. “Slamming” is changing a customer’s supplier without prior authorization. [↑](#footnote-ref-5)