

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Interim Guidelines on Marketing and Sales)
Practices for Electric Generation Suppliers) Docket No. M-2010-2185981
and Natural Gas Suppliers)

**COMMENTS OF THE PENNSYLVANIA ENERGY MARKETERS COALITION:
AGWAY ENERGY SERVICES, LLC, ENERGY PLUS HOLDINGS LLC, GATEWAY
ENERGY SERVICES CORPORATION, INTERSTATE GAS SUPPLY, INC.,
PENNSYLVANIA GAS & ELECTRIC, AND VECTREN RETAIL, LLC**

INTRODUCTION

Pursuant to Docket No. M-2009-2082042¹, the Pennsylvania Public Utility Commission (“PUC,” or “Commission”) seeks comments on a comprehensive set of Interim Guidelines on Marketing and Sales Practices which have been developed over the past several months through the ongoing dialogue and discussion emanating from a series of collaborative meetings being conducted by the Office of Competitive Market Oversight (“OCMO”) and as part of two primary industry working groups – The Committee Handling Activities for Retail Growth in Electricity (“CHARGE”), and Stakeholders Exploring Avenues to Remove Competitive Hurdles (“SEARCH”).

The Pennsylvania Energy Marketers Coalition (“PEMC”)², consisting of Agway Energy Services, LLC (“Agway”), Energy Plus Holdings LLC (“Energy Plus”), Gateway Energy Services Corporation (“Gateway”), Interstate Gas Supply, Inc. (“IGS”), Pennsylvania Gas & Electric (“PAG&E”), and Vectren Retail, LLC (“Vectren”), appreciate the opportunity to comment on these proposed Interim Guidelines and the value they will bring to assure the protection of consumer rights while creating a more competitive marketplace. PEMC is a group of like-minded energy

¹ See December 10, 2009 Secretarial Letter expanding the role of the PUC’s Office of Competitive Market Oversight (“OCMO”).

² This group of energy marketers, which supply electricity, natural gas, and various other energy services to residential and commercial customers across a large number of utility markets throughout several states, works together collaboratively on non-competitive, regulatory issues to advance competitive markets and consumer choice.

marketing companies that serve residential and small commercial natural gas and electricity customers in deregulated markets located throughout the United States.

Under the guidance and leadership of Commission Staff, these Interim Guidelines were developed in close collaboration with a broad stakeholder group consisting of utilities, suppliers, the Office of Consumer Advocate, and others. Active participation in face-to-face meetings and bi-weekly conference calls between December 2009 and June 2010 allowed for significant opportunity for comment, discussion, and debate on this subject matter. The resulting set of Guidelines that are included in the above-referenced Tentative Order (“Order”) seek 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.”³ We believe these Guidelines promote that goal.

As participants in competitive electricity and/or natural gas markets, PEMC has a strong interest in the consistent development and formation of an efficient marketplace in Pennsylvania. For this reason, we were intimately involved in the process that led to the development of these Interim Guidelines. On balance, we believe the Commission Staff has done an exceptional job of addressing the issue of consumer protection related to competitive energy sales and marketing, while at the same time allowing participants in competitive marketplace enough latitude to develop their own unique approach to their business model. In particular, PEMC is very sensitive to the Commission’s concerns regarding door-to-door marketing (“D2D”), and has made an emphatic commitment – both individually, for those members who utilize this sales channel, as well as for the PEMC as a coalition – to advocate the best D2D practices in the industry regardless of any regulatory requirement to do so. This issue is that important to us and our reputation as consumer-minded suppliers.

Therefore, we support and applaud the development of these Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers, and

³ Tentative Order, Commission Comments, p. 10.

urge the Commission to adopt them as expeditiously as possible subject to minor modifications as appropriately identified through this Proceeding.

We are pleased that these Interim Guidelines are intended to apply consistently to sales and marketing of both electricity and natural gas. PEMC advocated for this uniform application and believes it will be best for the marketplace that a common set of Guidelines will be in place for both electricity and natural gas.

While supportive of all provisions of the Interim Guidelines as presented, PEMC offers the following limited Comments for consideration by the Commission to help assure consistent application of these Guidelines to the industry as a whole.

SPECIFIC COMMENTS AND SUGGESTED REVISIONS

SECTION A -- GENERAL

A typographical error exists on line four of the General section of the Interim Guidelines: a reference to Electric Distribution Companies is followed by an incorrect abbreviation "EGSs." This should be changed to EDCs.

SECTION D – MONITORING/QUALITY CONTROL/DOCUMENTATION

PEMC suggests a minor addition to the language contained in paragraph 2 of this provision of the Interim Guidelines to allow for position descriptors that some suppliers utilize for their approach to quality control. We suggest the paragraph read as follows:

"An appropriate, representative sample of all sales or marketing calls, both telephonic and door-to-door, shall be monitored by the supplier's **sales, marketing and/or quality assurance managers** or by the vendor's managers using appropriate methods to ensure accuracy, completeness, courtesy and compliance with applicable rules."

SECTION D – MONITORING/QUALITY CONTROL/DOCUMENTATION

Paragraph 4 of this Section requires that the D2D transaction verification process not occur until after the sales agent has physically separated himself from the potential customer by

exiting the customer's residence.⁴ The premise behind requiring this physical separation is to ensure that the pending customer enrollment is informed and consensual without any undue pressure or coaching from the sales and marketing agent. However, PEMC offers that a customer may have additional and legitimate questions of the sales agent during the verification process which cannot be answered by the verification agent. In such instances, a customer may in fact even prefer that the sales agent remain in the customer's home during the verification as a potential resource to ensure an informed decision.

PEMC would therefore suggest that the following **three modifications** be made to this Section to help ensure consumer protection while recognizing the practical implementation of these Interim Guidelines.

First, we suggest that a specific question be posed to customers by verification agents that is also recorded and affords proof of no undue influence and coaching (i.e., "Can you verify that you are entering into this sales agreement voluntarily without any undue influence or pressure by the sales agent who visited your home?" A reply of "yes" or "no" would be required... with "no" being an automatic termination of the verification process without interaction between the verification agent and sales agent).

Second, a "safe harbor" provision of the Guidelines whereby marketers can adopt an internal policy pursuant to which the sales agent provides the clear option to the customer that the sales agent is to ask if the customer would like the sales agent to step outside the home and physically separate himself from the verification process. If requested, the sales agent would be required to do so immediately. This "safe harbor" provision would create a rebuttable presumption that the customer enrollment is voluntary and consensual.

Finally, a requirement that sales agents are not to have any interaction with verification agents once the verification process begins. In other words, once the verification starts, it is the

⁴ Tentative Order, Section D, paragraph 4, p. 4

customer who controls the conversation, including whether the sales agent is to remain or separate himself from the premises at the request of the customer.

Therefore, we would suggest that paragraph 4 in this Section read as follows:

“The transaction verification process must be executed in such a manner that the customer is in control of the sales and marketing environment at all times. Upon completion of the sale and the initiation of the verification process, the verification agent must ask the customer to acknowledge that they are entering into the sales agreement voluntarily without any undue influence or pressure by the sales agent or supplier. Once the verification process begins, there shall be no contact between the sales agent and the verification agent. If the verification agent has reason to believe that the customer does not wish to proceed with the verification process or that the sales agent is exerting undue influence or pressure over the enrollment process, the verification agent has the responsibility to immediately terminate the enrollment. 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).”

SECTION J – LOCAL ORDINANCES (HOURS FOR D2D)

During the collaborative sessions, debate surrounded the appropriate time which should be designated as the end point for D2D sales activities when local ordinances are silent or less restrictive on this issue. The Interim Guidelines have designated the hours of operation for D2D marketing and sales activity from 9:00 a.m. to 7:00 p.m.

PEMC observes that daily work schedules and family commitments are such that a 7 p.m. cessation may be too early in that a restriction on sales activity at this hour might preclude a significant group of potential customers from having an opportunity to engage in discussion with sales representatives. Thus, the PEMC suggests that the hour by which sales solicitation activity must cease be extended to 9 p.m. local time, unless a more restrictive local ordinance exists.

SECTION K – DISTRIBUTION COMPANY INVOLVEMENT

PEMC strongly believes that the development of a highly-functioning competitive marketplace requires ongoing dialogue with the Commission (through the Bureau of Consumer

Services) and distribution utilities. We believe our conduct throughout the CHARGE and SEARCH process, as well as through individual company activity, supports that commitment to dialogue and cooperation.

However, we believe that suppliers should be *encouraged* – not mandated – to provide information to distribution utilities regarding marketing efforts in a given territory. At this juncture in the development of a competitive marketplace, utilities often remain in the role of true competitor with alternative suppliers. Therefore, providing confidential, proprietary and potentially trade-secret information regarding a supplier’s marketing plans (including specific geography) could put the supplier and the utility at risk for divulging private information which is competitively sensitive.

This is not to say that suppliers should not be engaged in dialogue with individual utilities. On the contrary, we believe that it is in our best interest to help utility customer service representatives understand who we are and what we do. We do not believe, however, that this should include details about specific offers, duration of sales activities, prices, or other terms and conditions of sales. As stated on numerous occasions during the CHARGE and SEARCH collaborative meetings, ongoing dialogue with utilities is of critical importance for all parties – but it should not be mandated to include specific offers or notifications on the morning of a program launch.

Therefore, we believe the language in paragraph 2 of Section K should be revised to include the following opening: “Suppliers **are encouraged** to provide the local distribution utility...” We believe this accomplishes the goal and that successful suppliers will be in regular dialogue with utilities on a regular basis regardless of the requirements of these Interim Guidelines.

Finally, with regard to paragraph 2 of this Section, PEMC again emphasizes that utilities also have an important responsibility in handling inquiries from customers regarding the

competitive marketplace as defined in the Code of Conduct delineated in 52 Pa. Code § 54.122 and § 62.142. In this regard, it is critical that local distribution utility personnel refer any and all questions regarding competitive supplier offers back to the supplier for clarification. At no time should utility customer service representatives be offering opinions about the nature or effect of any supplier's offers or marketing and sales efforts and should not encourage or discourage customers from choosing service by any supplier.

SECTION Q – MONITORING MARKETING AND SALES ACTIVITIES

In the Commission's discussion of monitoring the practice of suppliers using third party independent contractors for marketing and sales support, the Commission has directed OCMO to evaluate these practices with the ultimate intent of determining whether the use of unlicensed independent contractor should be restricted or prohibited. This proposed evaluation is to be completed before November 30, 2010.⁵ PEMC agrees that a specific evaluation protocol should be put in place to monitor this activity – particularly with regard to D2D.

We do, however, strongly believe that more time will be needed to determine the true effectiveness of these Interim Guidelines, especially with regard to their impact on "third party independent contractors," as outlined in Section Q. From a practical standpoint, however, we feel that reviews of the effectiveness of these Interim Guidelines should be conducted in June 2011, December 2011, and June 2012 to give these Guidelines a chance to work and to track resulting trends for all marketing and sales activities covered in these Guidelines, not just third party independent contractors. This does not mean that we disagree with a review in December 2010; simply that we think more time is needed to more fully evaluate progress.

CONCLUSION

PEMC believes that the development of these Interim Guidelines is a very important step in the further development of the competitive natural gas and electricity marketplace in the

⁵ Tentative Order, Commission Comments, p. 8.

Commonwealth of Pennsylvania. More than any other component of energy choice, it is critical that these Interim Guidelines are approached with a continued commitment to empowering consumers so that they have the ability to take control of their energy purchases with products that they believe best fit their individual needs. If implemented properly with a strong commitment by all parties, consumers will have access to more choices for natural gas and electricity supply – and more control over their energy future.

We recognize that more work remains to be done on this topic and others related to competition and pledge to the Commission our continued support to help with these efforts.

August 13, 2010

Respectfully submitted



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(See PEMC distribution list attached)

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