

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Interim Guidelines on Marketing and Sales)
Practices for Electric Generation Suppliers)
and Natural Gas Suppliers)

Docket No. M-2010-2185981

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AUG 13 2010

Comments of the
National Energy Marketers Association

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

The National Energy Marketers Association (NEM)¹ hereby submits its comments on the Commission's Tentative Order which sets proposed interim guidelines applicable to the marketing and sales practices of electric generation suppliers (EGSs) and natural gas suppliers (NGSs) [hereinafter "Proposed Guidelines"]. The Proposed Guidelines in large part represent the consensus workproduct of stakeholders involved in the Staff-led CHARGE and SEARCH workgroups. It bears noting upfront Staff's significant efforts to craft consumer protection guidelines that adequately protect the consumer while also recognizing the practical and logistical business concerns expressed by marketers. Staff is to be commended for bringing together diverse participants into consensus with respect to so many elements of the Proposed Guidelines. NEM appreciated the opportunity to participate in the working group and strongly supports the Proposed Guidelines subject to the limited modifications suggested in these comments.

¹ The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

This document reflects the views of the National Energy Marketers Association and does not necessarily reflect the views of any specific member of the Association.

NEM submits that the most effective consumer protection rules are premised on the fundamental requirement of informed consumer consent derived from accurate, affirmative statements from marketers that disclose the attributes of contracted-for products and services and likewise require accurate, affirmative statements of marketer identification. Consumer protection regulations can and should be narrowly tailored to accomplish this objective. Rules that are unnecessarily prescriptive of marketer behavior result in increased costs being borne by the competitive marketplace and restrict marketers ability to offer innovative products in response to consumer preferences. The Proposed Guidelines, subject to the modifications suggested herein, have been crafted in a manner that appropriately strikes this balance.

Coincident with the initiation of the workgroup to develop the Proposed Guidelines, NEM adopted a Consumer Bill of Rights² evincing marketers' commitment to ethically serve energy consumers. With the expiration of the rate cap in PPL, we have seen exponential growth in consumer shopping. Other electric utilities are soon to follow suit. Likewise, with the resolution of significant issues in the gas SEARCH process, such as POR, price to compare and capacity allocation, similar consumer participation in choice should follow. NEM's Consumer Bill of Rights as well as the Proposed Guidelines proactively address the need for clear marketer responsibilities and consumer expectations with respect to appropriate marketing practices.

² The full text of the NEM's Consumer Bill of Rights is attached hereto and also available at: http://www.energymarketers.com/Documents/Consumer_Bill_of_Rightsfinal_formatted.pdf.

By illustration, NEM's Consumer Bill of Rights specifically states that:

We believe that all consumers should have the right to choose their energy supplier, receive delivery of their energy supply from a reliable utility delivery system, and be provided information which entitles them to the following:

- 1) Access to energy products and services that provide what they promise and are presented and described in clear and understandable language.
- 2) Accurate price and usage information, from both the utility and competitive energy supplier, that is expressed in simple and straightforward terms.
- 3) Terms and conditions written in plain language that set forth contractual obligations for both the consumer and energy supplier.
- 4) Specific information about savings claimed in any offer.
- 5) How a consumer may terminate a contract and the cost, if any, of doing so.
- 6) A clear understanding of when price changes may occur and what happens when the contract term expires.
- 7) An enrollment process that verifies a consumer's acceptance of a product offer
- 8) Verbal and written offers that identify the competitive energy supplier as operating independently of the utility delivering natural gas or electricity to the consumer.
- 9) Consumer education on energy, energy conservation, and technology available to help control energy costs.
- 10) A fair and timely complaint resolution process.

The concepts expressed in NEM's Consumer Bill of Rights are mutually reinforcing with the concepts expressed within the provisions of the Proposed Guidelines. We believe consumers will be well-served in the marketplace by the concepts expressed therein. We also note our support for the Commission's adoption of a consistent set of standards to apply to both natural gas and electric marketing.

I. NEM Comments on Non-Consensus Items in the Tentative Guidelines

The following issues were identified by the Commission as having been non-consensus items for which the Commission expressed a proposed resolution. NEM offers comments on these issues as follows:

- A. Section D-4 – The Commission should recognize a safe harbor for marketers that choose to have door-to-door agents physically exit a customer's residence before the verification process establishing the customer's consent to the sale rather than require marketers to adopt this practice.**

NEM disagrees with the provision in Section D.4. of Proposed Guidelines that would require the door-to-door agent to physically exit the customer's residence prior to initiation of the verification process confirming the consumer's consent to the sale. As contemplated by the related Section D.5., requiring the agent to leave the residence may result in costly follow up measures to respond to customer questions that may arise during the verification. NEM submits that the appropriate focus for door-to-door sales is obtaining the consumer's informed and consensual enrollment. Marketers utilize different processes to ensure that this occurs. In recognition of these factors, NEM suggests an alternative approach to this section that would not require the door-to-door agent to leave the residence prior to the verification but rather would recognize a safe harbor for marketers that choose to do so. The safe harbor would establish a rebuttable presumption that the sales agent had obtained the consumer's consensual enrollment if the sales agent left the residence before the verification took place. However, if the sales agent stays in the consumer's residence during the verification, then the voice verification must include a statement that the consumer was not unduly influenced in order to demonstrate the consensual nature of the enrollment.

Marketers that prefer to have the agent readily available in the residence believe it is useful in ensuring continuity of the customer contact should questions occur. Importantly, these marketers employ other methods to ensure and demonstrate that the consumer's consent is obtained in an appropriate manner. Consistent with the verification requirement set forth in Section D.3. these marketers may include a taped statement to the effect that the consumer's consent to the sale was not obtained through the exercise of undue influence or coaching. In other words, the Proposed Guidelines already require informed consumer consent and marketer collection and retention of records to prove that informed consumer consent was obtained. Recognizing the sales agent's exit of the premises prior to the verification as a safe harbor practice, while likewise permitting other methods to obtain a consumer's consensual enrollment, will adequately protect the consumer while permitting marketers to utilize different approaches consistent with their internal business practices.

B. Section J-2 – Door-to-door marketing and sales activities should be permitted from 9:00a.m. to 9:00 p.m.

NEM recommends that Section J.2. of the Proposed Guidelines should permit door-to-door marketing from 9:00AM to 9:00PM. NEM members also recognize and are committed to abiding by the local ordinances that may include further restriction of the permissible hours for door-to-door marketing. NEM is concerned that restricting door-to-door activity to in the Proposed Guidelines to 7:00PM in the evening would significantly restrict the effectiveness of this sales channel as many working families may not arrive home until after that hour. We believe that allowing door-to-door activity until 9:00PM is a generally reasonable timeframe within which to contact consumers and increase the

likelihood that consumers will in fact be home. We do also recognize that certain localities have taken a stricter approach in their ordinances to door-to-door sales and will conform to those requirements as applicable.

C. Section K-2 - A supplier in its business discretion may choose to contact the distribution company prior to initiating marketing or sales activities but should not be required to do so.

With respect to Section K.2., while the Commission may want to encourage suppliers to provide utilities with general, non-proprietary information related to their marketing and sales efforts, it should be emphasized that it be within the individual supplier's discretion as to whether or not they choose to provide a utility with general, non-proprietary information related to their marketing and sales efforts. With respect to Section K in its entirety, NEM is concerned with the type of information that the rules contemplate disclosing, including "the extent of the sales or marketing effort, for what period of time, and a description of the geographical area involved" as NEM believes this type of detail would entail provision of proprietary information - information which would definitely not be appropriate for disclosure to utilities. Therefore, NEM suggests that should any individual supplier decide to share information as to its marketing and sales efforts whether with the Commission or any utility, that it should be able to decide what specific information it wishes to share. Finally, in Section K.2., NEM suggests that the two instances of "general information" be changed to "general, non-proprietary information" as appears in Section K.1.

D. Section B-1 – Marketer background checks of door-to-door sales and marketing agents should include reference to the Megan's Law registry.

We support the proposal in Section B.1. that would require to marketers to consult Megan's Law registry when conducting background checks for door-to-door sales and marketing agents. The potential safety issues associated with door-to-door sales justify such a requirement and this requirement is narrowly tailored to achieving an important goal of protecting consumers from these types of situations.

E. Section D-3 - Verification of customer consent should be maintained by a marketer for at least 6 billing cycles.

Section D-3 was modified to include a requirement that verification of customer consent be maintained for 6 billing cycles instead of the previously discussed 3 billing cycles. NEM agrees with this modification. Members report that this will not significantly increase the recordkeeping requirements and is consistent with current marketer business practices associated with retaining these types of records.

II. NEM Recommendations and Points of Clarification of Additional Elements in the Tentative Guidelines

A. Section K-2 - Utilities should refrain from offering information about marketer product offerings.

NEM strongly supports the language in Section K.2. that provides that, "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." In NEM's view, this Section appropriately recognizes the importance of competitively neutral

communications from the utility to customers, which is particularly important because of consumers' perception of the utility's role in the marketplace. This proposal would come into play, for instance, in the case where a consumer is switching to a competitive supplier and the utility customer service agent observes that the marketer price is higher than the utility price. The problem is that the utility agent does not know, and has no reason to know, the terms of the marketer offering, whether it be fixed, variable, etc. The utility agent simply is not in a position to evaluate the marketer offering or offer an opinion thereon. Moreover, even if the utility agent were to limit its statement to noting that the utility price is \$X and the marketer price is \$Y, without an express statement that the utility price is variable and subject to monthly fluctuation, it leads to an inaccurate basis for comparison for the consumer. The best course of action that provides the most accurate information and minimizes consumer confusion, in NEM's opinion, is for the utility agent to restrict its comments to the utility product only and to refer that consumer to the marketer to discuss its relevant price and other terms.

B. Section Q – NEM requests clarification of the presentation and use of the complaints statistics.

NEM requests that the Commission clarify the manner in which the complaint statistics to be gathered pursuant to Section Q will be presented and used. NEM understands the Commission's need to collect and maintain this data. Our concern lies in the fact that the information is potentially commercially sensitive and proprietary in nature as it could reveal, or be construed to reveal, information about marketer's individual business plans, customer base, areas of operation, types of customers served, etc. Additionally, depending on how the data is maintained and presented, it may not be reflective of a

marketer's overall practices. In other words, what was the basis for the complaint, was the customer's issue appropriately identified as a complaint, and the manner and speed with which the complaint was resolved are qualitative factors that may be difficult to reflect in the statistics but have a strong bearing on the marketer's conduct. NEM urges the Commission to clarify that this information will not be made available other than for the specific purpose of monitoring supplier activities as stated in Section Q and that said information will not be disclosed to other entities.

C. Door-to-door sales to residential and small commercial customers serves a valuable purpose in the marketplace and is consistent with ensuring informed consent.

In his Statement in connection with the Tentative Order on the Proposed Guidelines, Vice Chairman Christy expressed his belief that door-to-door sales of electric and natural gas supply to residential and small commercial customers should be prohibited. Vice Chairman Christy expressed concern about deceptive sales practices and suggested that consumers would not be afforded adequate time in a door-to-door contact to perform the "homework" necessary to make an educated choice. NEM likewise believes that informed consumer consent and adequate disclosures must serve as the cornerstone for marketing activities with consumers. We do not believe, however, that eliminating door-to-door sales, particularly on the eve of the adoption of the subject marketing standards, is necessary or appropriate. Indeed, merely expressing this suggestion imposes a large degree of regulatory risk upon market participants that utilize door-to-door to sales techniques to reach customers. NEM submits that the Proposed Guidelines will provide market participants with clear rules of the road for obtaining necessary informed consumer consent. Until these rules have had adequate time to be in effect, we believe it

is premature to even consider the need to impose such a draconian restriction on the marketplace.

The extensive participation by numerous marketers in the working group to develop the Proposed Guidelines is strong evidence of their intention to ethically and honestly treat energy consumers and conduct themselves in a manner that forms the basis for long-lasting consumer relationships. Make no mistake, marketers are keenly interested in providing a superior level of customer service and satisfaction to consumers. This is one of the many ways in which marketers offer added value. Marketers must be acutely aware of and focused on identifying and serving their customer needs. Indeed, a sustainable, long-term marketer business plan can be founded upon nothing less.

NEM notes that with the existence of federal and state do not call lists, the avenues available for marketers to effectively reach consumers - in terms of message, content and cost - has been dramatically limited. Door-to-door sales remains a viable and effective method for contacting residential and small commercial customers. In fact, these types of in-person contacts are an excellent venue for consumers to become educated about product offerings.

III. Conclusion

NEM appreciates this opportunity to comment on the Commission's proposed Proposed Guidelines as well as the opportunity to engage with Staff and other stakeholders in the working group process to develop a set of marketing standards and consumer protection rules that safeguard consumers consistent with marketers ability to cost-effectively and efficiently operate and serve consumers.

Sincerely,



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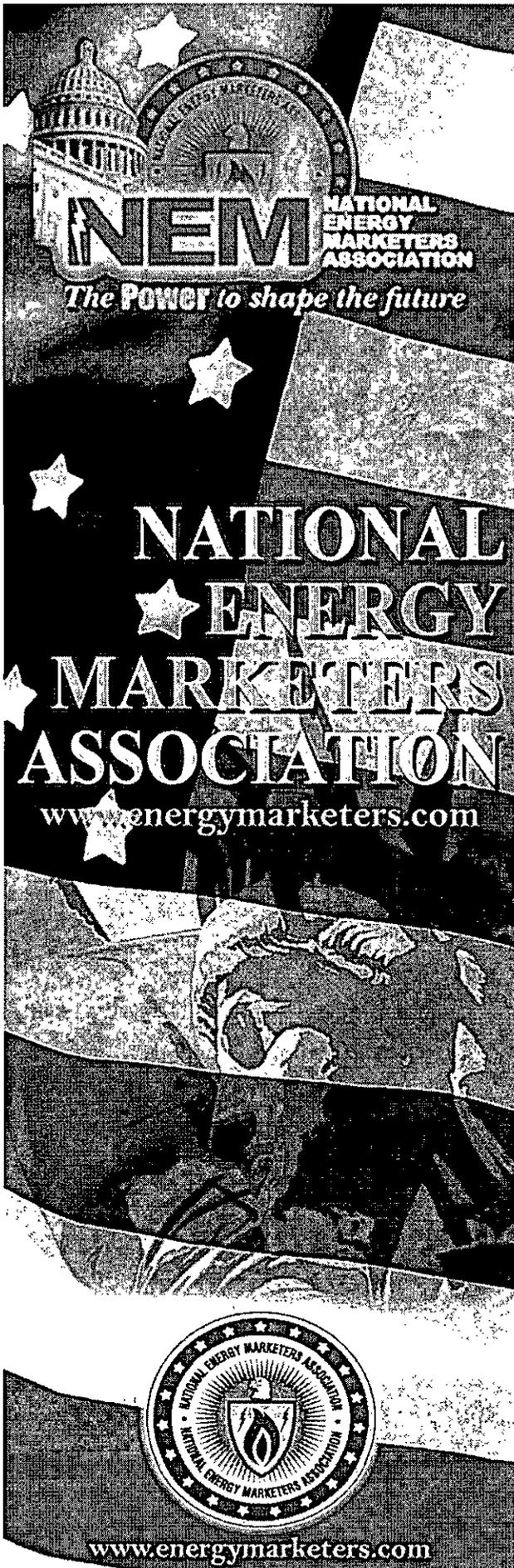
Consumer Bill of Rights

This Consumer Bill of Rights has been developed by members of the National Energy Marketers Association ("NEM") to emphasize the commitment being made by competitive energy suppliers to act responsibly and treat every residential, commercial, and industrial customer with the highest level of respect as they consider the growing number of energy-related products and services available to them in today's evolving marketplace.

Energy suppliers, regulators, and utilities alike are urged to consider these basic consumer rights as a foundation for doing business, and as a common ground for public policy development.

We believe that all consumers should have the right to choose their energy supplier, receive delivery of their energy supply from a reliable utility delivery system, and be provided information which entitles them to the following:

- 1) Access to energy products and services that provide what they promise and are presented and described in clear and understandable language.
- 2) Accurate price and usage information, from both the utility and competitive energy supplier, that is expressed in simple and straightforward terms.
- 3) Terms and conditions written in plain language that set forth contractual obligations for both the consumer and energy supplier.
- 4) Specific information about savings claimed in any offer.
- 5) How a consumer may terminate a contract and the cost, if any, of doing so.
- 6) A clear understanding of when price changes may occur and what happens when the contract term expires.
- 7) An enrollment process that verifies a consumer's acceptance of a product offer
- 8) Verbal and written offers that identify the competitive energy supplier as operating independently of the utility delivering natural gas or electricity to the consumer.
- 9) Consumer education on energy, energy conservation, and technology available to help control energy costs.
- 10) A fair and timely complaint resolution process.



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