

PENNSYLVANIA UTILITY LAW PROJECT

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August 31, 2010

Via E-Filing

Rosemary Chiavetta
Secretary
Pa. Public Utility Commission
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PO Box 3265
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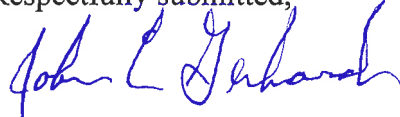
**Re: Interim Guidelines on Marketing and Sales Practices for Electric Generation
Suppliers and Natural Gas Suppliers
Docket No. M-2010-2185981**

Dear Secretary Chiavetta:

Enclosed for filing and pursuant to the Pennsylvania Public Utility Commission's Tentative Order in the above-captioned proceeding, please find the Reply Comments of the Pennsylvania Utility Law Project.

Please contact me directly if you have any questions. Thank you.

Respectfully submitted,



John C. Gerhard, Esq.

Cc: Office of Competitive Market Oversight (via e-mail only)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY COMMENTS OF THE
PENNSYLVANIA UTILITY LAW PROJECT**

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Dated: August 31, 2010

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I. INTRODUCTION

The Pennsylvania Utility Law Project (“PULP”) submits these reply comments pursuant to the Commission’s July 15, 2010 Tentative Order Regarding Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers, Docket Number M-2010-2185981. PULP provides information, assistance, and advice about residential utility and energy matters affecting low-income consumers. PULP is the designated statewide project of the Pennsylvania Legal Aid Network of civil legal aid programs. PULP acts in coordination with PLAN programs and their clients, other nonprofit agencies, and community groups that serve the low income. PULP thanks the Commission for this opportunity.

II. PRELIMINARY REMARKS

In our original comments at this docket, PULP submitted that permitting door-to-door sales methods “places vulnerable consumer populations at too great a risk and improperly violates consumer privacy.”¹ After submitting our comments, a direct and unsolicited door-to-door sales contact, about which PULP became aware, occurred. An affidavit prepared by Karen Stokes describing this contact is attached. This actual door-to-door event is illustrative.

PULP’s offices are located at 118 Locust Street, Harrisburg, PA, the same building which houses the Pennsylvania Legal Aid Network (“PLAN”), the administrative offices for the state’s coordinated system of organizations providing civil legal aid to the low income. On or about August 17, 2010, three men stopped unannounced at PLAN’s office, indicated that they were associated with PPL and that PLAN had forgotten to respond to something in a bill about the

¹ The term “vulnerable consumers” or “vulnerable populations” as used herein includes low-income customers, the elderly, sick or disabled customers, and customers for whom English is not their primary language.

ability to choose an alternative generation supplier.² They spoke directly to Karen Stokes, PLAN's Controller, the individual responsible for overseeing PLAN's expenses, including its electric utility costs. The men informed Ms. Stokes they were from Gateway Energy but never provided her with their names nor with any business cards or contact information to confirm their affiliation.³ They implied that PLAN had missed some deadline and informed Ms. Stokes that the "deal" for switching providers was good only through the end of the day. If she wanted more time to make a decision, they informed Ms. Stokes they could come back later that day but that Ms. Stokes would not be able to contact them. They had a contract which they started filling out for her based on her last bill, which they requested to see. The contract was multiple pages, in small print, and no obvious new rate was listed. The contract was for Champion Energy Services. They repeatedly referred to the part of the bill designated as the competitive transition charge as the price to compare, calling it the generation charge. The transition charge was \$.13625 per kWh, and their quote was for \$.0968 per kWh. They did not make it easy to follow the prices they were referring to, and it was hard to see on the bill. The agents informed Ms. Stokes that she had three days to cancel, but if she wanted to cancel after signing up, then there would be a cancellation fee. However, the agents refused to specify the exact amount of the cancellation fee. When Ms. Stokes refused to sign the contract, the men exited PLAN's offices, again without leaving any card or identifying information.

While PLAN is a nonprofit organization, a small commercial and not a residential customer, it seems quite evident that this is exactly the type of situation PULP and Public Utility

² Neither Ms. Stokes nor PULP allege that these "marketers" actually were employees, agents, or affiliates of PPL Electric, nor does Ms. Stokes or PULP allege that PPL Electric was or is in any way aware of or condones the activity of these "marketers."

³ Neither Ms. Stokes nor PULP allege that these "marketers" actually were employees, agents, or affiliates of Gateway Energy, nor does Ms. Stokes or PULP allege that Gateway Energy was or is in any way aware of or condones the activity of these "marketers."

Commission's Consumer Advisory Council ("CAC") predicted and about which they were worried. Using high pressure sales practices, perhaps even misleading tactics, these salesmen sought to coerce a customer into switching supplier on the spot. There was no attempt to educate or inform, as is anticipated by the Choice Acts, merely an attempt to hard sell the customer on that company's product. This is exactly what has happened with door-to-door sales in the past and in other jurisdictions, and it is exactly what PULP feared would happen should the PUC permit door-to-door sales and marketing of alternative energy supply to occur in Pennsylvania.

It is clear that no matter what good intentions are expressed by market participants, there are entities involved that will victimize customers. The question is not whether these practices will occur; the question is how often they will occur and what level of damage they will inflict on residential and other customers. The Commission should ensure that residential and other customers are clearly protected in this era of competition, and the only way to do that, to really protect consumers, is to prohibit the practice of door-to-door sales for electric generation and natural gas alternative suppliers.

III. REPLY COMMENTS

Most of the comments filed by interested parties supporting the guidelines permitting door-to-door marketing and sales were by entities with a financial interest in being permitted to engage in the practice. Since door-to-door sales will, purportedly, make it easier and cheaper for EGSs and their agents to gain access to potential customers, it is no surprise they support it. Two parties exclusively representing consumer interests, PULP and the CAC, specifically opposed the institution of door-to-door sales. Neither of these two parties has a financial interest in the outcome of this proceeding. Two other entities without a financial interest, the Office of Consumer Advocate and AARP, expressed only qualified support for the guidelines.

PULP maintains and reiterates its original comments: door-to-door sales and marketing of alternative electric generation supply and natural gas supply is not appropriate and should be prohibited by the Commission. However, should the Commission choose to permit door-to-door sales and marketing, then PULP makes the following reply comments:

A. Physical Presence of Agent

The Commission's proposed Section D.4 requires agents physically to leave the customer's premises during the third party verification ("TPV") process. A number of parties, including PULP, supported this requirement in their comments;⁴ others objected to or requested a revision of it, suggesting that the agent either be allowed to remain within the residence or be restricted to somewhere on the premises but outside the home where the agent could be accessible to answer customer questions that arise due to the TPV process.⁵

Should the Commission choose to permit door-to-door sales and marketing, then PULP continues to support the Commission's inclusion of a rule requiring agents to leave the customer's premises (meaning the customer's entire property, not just the home) during the TPV process. Removing the agent from the property reduces the chances that a customer will be unduly swayed or pressured by the agent's presence. Since the agent will be required to leave specific information to enable follow-up contacts by the consumer, any question a consumer may have can then be addressed reflectively and thoughtfully at a time and method of the customer's choosing, rather than immediately without reflection and in a possibly pressured situation.

⁴ Consumer Advisory Council; Pennsylvania Energy Association; Office of the Consumer Advocate, AARP, and Direct Energy jointly; PPL Electric; and Retail Energy Supply Association.

⁵ Direct Energy Services, LLC; MXenergy Electric Inc.; National Energy Marketers Association; Pennsylvania Energy Marketers Coalition.

B. Hours of Operation

The Commission's proposed Section J.2 limits door-to-door sales activity to between the hours of 9:00 AM and 7:00 PM. Where local ordinances are stricter, Section J.2 requires those local ordinances to govern. A number of parties, including PULP, supported this requirement in their comments.⁶ Other parties either recommended eliminating this requirement or softening it to allow for longer hours of solicitation.⁷

Should the Commission choose to permit door-to-door sales and marketing, then PULP continues to support proposed Section J.2, which limits door-to-door sales activity to between the hours of 9:00 AM and 7:00 PM, or to fewer hours where local ordinances are stricter. It seems clear that customers' concern for privacy and peace and tranquility in their homes during the evening hours is sufficient grounds for limiting the hours of door-to-door marketing and sales to between the hours of 9:00 AM and 7:00 PM, the generally accepted "solicitation" periods, or to fewer hours where local ordinances require.

C. Prior Notice of Activity That May Cause Complaints

The Commission's proposed Section K.2 requires suppliers to contact the local distribution companies prior to the supplier engaging in activities the supplier anticipates may cause consumer questions or complaints to the Commission. A number of parties supported this requirement in their comments;⁸ others objected to or requested a revision of it.⁹

Should the Commission choose to permit door-to-door sales and marketing, then PULP continues to support proposed Section K.2 requiring suppliers to contact the local

⁶ Pennsylvania Energy Association; Office of the Consumer Advocate, AARP, and Direct Energy jointly; PPL Electric; and Retail Energy Supply Association.

⁷ National Energy Marketers Association and Pennsylvania Energy Marketers Coalition.

⁸ Pennsylvania Energy Association; Office of the Consumer Advocate, AARP, and Direct Energy jointly; PPL Electric; and Retail Energy Supply Association.

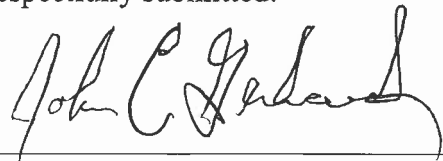
⁹ Nat. Energy Marketers Assoc., PA Energy Marketers Coalition, and the PA Independent Oil & Gas Assoc.

distribution companies prior to the supplier engaging in activities the supplier anticipates may cause consumer questions or complaints to the distribution company. Prior notification to the distribution company would give the company an opportunity to ensure sufficient staff are available to handle any inquiries and/or follow-up calls to the distribution company which the solicitation may generate. This approach has the benefit of avoiding problems before they create confusion for consumers, public relations difficulties for the distributors, and additional contacts or complaints to the Commission.

IV. CONCLUSION

In conclusion, PULP respectfully reiterates its original comments: door-to-door sales and marketing of alternative electric generation supply and natural gas supply is not appropriate and should be prohibited by the Commission. However, should the Commission choose to permit door-to-door sales and marketing, PULP respectfully requests the Commission modify its guidelines pursuant to the recommendations made in its initial comments and within the body of these reply comments.

Respectfully submitted:



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Dated: August 31, 2010

STATEMENT OF KAREN STOKES

My name is Karen Stokes, and I am the Controller for the Pennsylvania Legal Aid Network ("PLAN"), the administrative offices for the state's coordinated system of organizations providing civil legal aid to the low income. My office at PLAN is located at 118 Locust Street, Harrisburg, PA.

On or about August 17, 2010, I was working in my office when I received a call from the receptionist informing me that three men wished to meet with me about PLAN's electric service because I had missed a deadline. This was an unsolicited contact. I had not prearranged or scheduled the appointment. They did not call ahead for a meeting. I met with them because I am responsible for overseeing PLAN's bills, including its electric utility bill.

There were three salesmen. They informed me they were with PPL and that PLAN had forgotten to respond to something in a bill about the ability to choose an alternative electric generation supplier. They did not provide me with a business card or contact information to confirm their affiliation, nor did they wear any uniforms or identity tags. They said that PLAN had missed a deadline and informed me that they had a deal for switching electric providers that was good only through the end of the day. The salesmen, while polite, did use high pressure sales tactics. I asked them to confirm they worked for PPL, and they then confirmed they worked with PPL but were actually with Gateway Energy Services – a supplier to PP&L.

They asked to see PLAN's most recent electric bill, which I provided to them. They then began to fill out a contract based on PLAN's bill. The contract was multiple pages, in small print, and no obvious new rate was listed that I could see. The contract was for Champion Energy Services. The salesmen repeatedly pointed to a charge on the bill as the price to compare. They referred to it as the generation charge and said it was \$.13625 per kWh, and their quote was for \$.0968 per kWh. Only after they left did I realize the rate they had pointed out was not the generation rate but the competitive transition rate. They did not make it easy to follow the prices they were referring to as they were holding the bill and it was hard to see.

They also told me there was a three day period in which to cancel the contract. They said if PLAN were to cancel after that three day period, then there would be a cancellation fee. However, the salesman refused to say exactly what the fee would be and the cancellation fee was not addressed in the contract. I told the salesmen I could not make a decision at that time as I wanted to do some research into this and asked for a business card. They said the deal was for that day only. When I refused to sign the contract at that time, the salesmen exited PLAN's offices, again, without leaving any card or identifying information and refusing to provide any information about how to contact them or the company they worked for.

AFFIDAVIT

I, Karen Stokes, (Affiant) being duly sworn (affirmed) according to law, depose and say that the facts above set forth in the document titled "Statement of Karen Stokes" are true and correct (or are true and correct to the best of my knowledge, information and belief) and (I or corporation) expect to be able to prove the same at any hearing hereof.

Karen Stokes
Signature of Affiant

Joyce A. Tomboles
Signature of Notary

Sworn and subscribed before me this 31st day of August, 2010

