

Marketing Guidelines

Pennsylvania Public Utility Commission

November 2010



Marketing:

- The Commission has marketing regulations that have been in place for many years. These rules remain in effect and are not superseded by the new marketing guidelines.
- Much of what is in the new marketing guidelines is based upon these long-standing, existing rules.

Existing Marketing Rules, 52 Pa Code:

- Customer Information – Chapter 54.
- 54.3: Standards and Pricing Practices for Retail Electricity Service: Use common and consistent terms, including “EDC.”
- 54.6: Request for Information About Generation Supply: Must be able to support marketing claims of “renewable”, “produced in PA” etc. Cannot use general, unsubstantiated claims such as “green.”

Existing Marketing Rules:

54.7 Marketing/Sales Activities:

- Advertised prices = disclosure prices = billed prices.
- Marketing materials that offer terms of service should include a table showing what the price will be for an average customer using 500, 1,000 or 2,000 kWh of electricity.
- Effective date of prices must be shown.
- Suppliers have to provide the PUC with copies of marketing materials upon request.

Existing Marketing Rules:

54.5 DISCLOSURE STATEMENTS:

- Price: fixed or variable... if variable... conditions of variability and limits on variability.
- Length of agreement.
- Special offers, incentives, etc.
- Cancellation provisions.
- Penalties, fees, exceptions in a larger print size.
- 3-day right of rescission.
- How customer will be billed.
- Definitions and contact information.
- Renewal provisions for electric have been superseded by subsequent guidelines (M-2010-2195286).

Existing Marketing Rules:

54.43: Standards of Conduct and Disclosure for Licensees:

- (1) A licensee shall provide accurate information about their electric generation services using plain language and common terms in communications with consumers. When new terms are used, the terms shall be defined again using plain language. Information shall be provided in a format that enables customers to compare the various electric generation services offered and the prices charged for each type of service.
- (b) A licensee shall respond to reasonable consumer requests for information regarding energy sources by percentage, and plant emissions of its electric generation supply.

Existing Marketing Rules:

§ 57.176. Valid written authorization.

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

New Marketing Guidelines:

Intended:

- To prevent complaints and problems as all rate caps are removed in January 2011.
- To provide guidance on matters the current regulations do not fully address; specifically door-to-door marketing.
- To provide some “rules of the road” on an interim basis while permanent rules are pending (the regulatory review process can take 1-2 years).

History: How the Guidelines Were Developed:

- Numerous stakeholder meetings and discussions in 2010. Included suppliers, utilities and consumer groups (including OCA).
- July 16, 2010 Tentative Order with proposed guidelines; inviting parties to comment.
- 17 parties filed comments, 5 parties filed reply comments.
- After review and careful consideration of the comments, on November 4, 2010 the Commission issued a Final Order .
- Guidelines are now in place and in effect.

Marketing Guidelines:

- Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers.
- M-2010-2185981
- Public Meeting of November 4, 2010.

Marketing Guidelines:

These guidelines are intended to facilitate the effective operation of a vigorous, dynamic, yet fair, competitive residential energy market, to the benefit of consumers, EGSs, NGSs, EDCs and NGDCs alike.

Marketing Guidelines:

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.

Marketing Guidelines:

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

Scope and Applicability:

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).

Scope and Applicability:

- 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 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.” 62.102 of the NGS licensing regulations has similar language.

B. Background Checks:

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.

B. Background Checks:

- Background checks include checking the sex offender registry commonly referred to as the “Megan’s Law” registry maintained by the Pennsylvania State Police. There is a presumption that anyone on this list presents a threat to public health and safety.
- Suppliers shall exercise good judgment in developing standards and qualifications and shall not hire an individual that fails to meet these standards.

B. Background Checks:

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 .

C. Training:

- Laws and regulations governing marketing, consumer protection and door-to-door sales;
- Responsible and ethical sales practices;
- Supplier's products and services; rates, rate structures and payment options;
- Customers' right to rescind and cancel contracts;
- Termination fee for contract cancellation (if applicable);
- Adherence to scripts; proper completion of contract, enrollment documents and disclosures;
- Terms and definitions;
- How customer can contact the supplier.

C. Training:

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/QC/Documentation:

- 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.
- 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.

D. Monitoring/QC/Documentation:

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.

D. Monitoring/QC/Documentation:

- 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 per 52 Pa. Code § 54.5(d) and §62.75.
- The sales and verification process should be separate (a "bright line") regardless of sales method (door to door, phone, etc.). A clear record is important in case the customer later disputes the transaction.

D. Monitoring/QC/Documentation:

If a supplier is informed that a transaction could not be verified, the customer shall only be contacted by phone, email or by letter explaining that the transaction could not be verified and offering assistance to resolve any outstanding issues.

E. Discipline:

“Zero-tolerance” policy on slamming/enrollment.

- [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.

(Pennsylvania Public Utility Commission v. Total Gas & Electric Inc., Order entered September 26, 2001 at Docket No. M-00011529, page 5)

E. Discipline:

- Section 3301 of the Public Utility Code provides for penalties of \$ 1000.00 per violation per day for any infraction of the rules and PUC regulations.
- 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, regulations, and orders pursuant to 52 Pa. Code § 54.42 and § 62.113.

F. Appearance/Uniforms/I.D.

- Immediately present valid identification
- The identification shall be visible at all times, and identify supplier, trade name and logo.
- Photograph of the agent and name.
- Immediately offer a business card or other material that states the agent's identity and supplier name, and includes the supplier's contact information.

F. Appearance/Uniforms/I.D.

- Shall not dress in uniforms or wear any apparel that contain any branding elements that are deceptively similar to that of the local distribution company (including logo).
- Telemarketing agents shall provide the agent's first name and name of the supplier. Upon request, the agent shall provide identification number.
- Shall not use bills, company name, marketing materials or consumer education materials of another supplier, distribution company, or government agency in any way that implies a relationship that does not exist.

G. Misrepresentation:

An agent shall:

- Identify the supplier 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.
- 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.

G. Misrepresentation:

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) or 52 Pa. Code § 62.142 (relating to the standards of conduct) as is appropriate.
- 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.

G. Misrepresentation:

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 mentioned on the previous slide.

H. Federal Consumer Protection Law

A supplier, its employees, representatives and agents shall not discriminate in the provision of electricity and natural gas 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).

H. Federal Consumer Protection Law

- “DO NOT CALL LIST” applies to a supplier, its employees, representatives and agents (Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C Sec. 6101, *et seq.* Telemarketing Sales Rule, 16 CFR Part.) The Act is administered by the Federal Trade Commission (FTC).
- “COOLING OFF PERIOD” applies to a supplier and its employees, independent contractor or vendor companies, agents and representatives engaged in door-to-door marketing or sales. (*See Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*; 16 CFR Part 429 (FTC)).

I. State Consumer Protection Laws

- Per the PA 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.
- 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).

I. State Consumer Protection Laws

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:

- Suppliers performing door-to-door activity, as a courtesy, should notify the local municipal officials of its locations and schedule of door-to-door activities.
- Suppliers shall comply with all local ordinances regarding door-to-door solicitations.
- 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.

J. Local Ordinances: HOURS:

- Suppliers shall limit door-to-door activity to the hours:
 - October 1 – March 31: 9:00 am - 7:00 pm
 - April 1 –September 30: 9:00 am - 8:00 pm
- Local ordinances may restrict the hours for door-to-door solicitations. When the local ordinance is stricter, suppliers shall comply with the local ordinance.

K. Distribution Co. & PUC Involvement

- Suppliers engaging in any marketing or sales activities, which the supplier anticipates, may generate phone calls to the Commission shall notify Dan Mumford and Matt Hrivnak at the Commission's Bureau of Consumer Services (BCS) at dmumford@state.pa.us and 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.

K. Distribution Co. & PUC Involvement

- The notification to Commission staff is intended to assist the Commission in preparing call center resources to respond to possible calls from consumers about the marketing campaign.
- This notification is NOT a review/approval process of marketing materials. Any information or materials submitted under this provision will not be reviewed or screened for compliance with applicable laws and regulations.

K. Distribution Co. & PUC Involvement

- Suppliers should also provide the local distribution company with general, non-proprietary 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.

K. Distribution Co. & PUC Involvement

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:

- When the supplier successfully signs-up the customer, the supplier shall provide the customer with a copy of the disclosure statement . (*See 52 Pa. Code § 54.5 and § 62.75*).
- 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 Materials:

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, the agent shall:

- Either find another agent who is fluent in the customer's language to continue the sales activity or shall terminate contact with the customer.
- The use of translation services, electronic translation devices and language identification cards is permitted only to identify the language spoken by the customer.

M. Marketing Materials: Suppliers Shall:

- Not engage in misleading or deceptive conduct.
- Not make false or misleading representations including misrepresenting rates or savings.
- Provide the customer with written information about the products and services being offered or with contact information at which information can be obtained.
- 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.
- 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.

M. Marketing Materials: Suppliers Shall Comply with the Following 52 Pa Code Provisions:

- § 54.3. Standards and pricing practices for retail electricity service.
- § 62.73. Standards and pricing practices for retail natural gas service.
- § 54.6. Request for information about generation supply.
- § 62.76. Request for information.
- § 54.7. Marketing/sales activities.
- § 62.77. Marketing/sales activities.
- § 54.43. Standards of conduct and disclosure for licensees.
- § 62.114. Standards of conduct and disclosure for licensees.
- § 57.176. Valid written authorization (to change supplier).
- § 59.96. Valid written authorization (to change supplier).

N. Rescission Period:

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:

- 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.
- 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.
- Sales and verification should be separate (a "bright line"). A clear record is important in case the customer later disputes the transaction.

P. Complaints:

- Suppliers shall provide a single point of contact and a list of designated escalation contacts for Commission staff to resolve consumer complaints received by the BCS.
- Suppliers shall respond to all BCS requirements, including providing all information regarding the customer and complaint as requested (including a copy of the contract and any audio recordings of the verification call).
- Suppliers shall investigate customer complaints concerning marketing practices, and shall cooperate with the relevant agencies regarding complaints about marketing practices and with local law enforcement officials in investigations concerning deceptive marketing or sales practices.

P. Complaints:

- A supplier shall maintain and document an internal process for handling customer complaints arising from marketing activities, and should respond promptly to complaints.
- These documents shall be made available to Commission staff upon request.

P. Complaints:

A supplier shall comply with the relevant 52 Pa. Code dispute regulations, including:

- § 56.141. Dispute procedures.
- § 56.151. General rule
- § 56.152. Contents of the utility company report.
- § 54.9. Complaint handling process.
- § 62.79. Complaint handling process.
- § 57.177. Customer dispute procedures.
- § 59.97. Customer dispute procedures.

Q. Monitoring Marketing Activities:

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.

Next?

- **RULEMAKING:** Ordering paragraph 5 directs the Office of Competitive Market Oversight (OCMO) to submit a rulemaking order in time for consideration at the February 1, 2011 Public Meeting. This Notice of Proposed Rulemaking (NOPR) will invite parties to submit comments as to what should be included in the “permanent” rules.

Next?

- **REPORT:** Ordering paragraph # 6 requires OCMO and the Bureau of Consumer Services to monitor the employment by suppliers of independent marketing and sales contractors and to prepare a report and recommendation on whether each independent contractor should also be licensed as a supplier. Due April 30, 2011.

QUESTIONS?

- Office of Competitive Market Oversight:
ra-OCMO@state.pa.us
- Dan Mumford, Bureau of Consumer Services (technical):
dmumford@state.pa.us (717) 783-1957
- Patricia Burket, Law Bureau (legal):
pburket@state.pa.us (717) 787-3464
- Matt Hrivnak, Bureau of Consumer Services (informal complaints): mhrivnak@state.pa.us (717) 783-1678

