

# PENNSYLVANIA UTILITY LAW PROJECT

118 LOCUST STREET  
HARRISBURG, PA 17101-1414

JULIE GEORGE, ESQ.  
JGEORGEPULP@PALEGALAID.NET

PHONE: (717) 236-9486, EXT. 214  
FAX: (717) 233-4088

August 16, 2010

**Via E-Filing**

Rosemary Chiavetta  
Secretary  
Pa. Public Utility Commission  
400 North Street, 2<sup>nd</sup> Floor North  
PO Box 3265  
Harrisburg, PA 17105-3265

**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 Comments of the Pennsylvania Utility Law Project. All parties of record have been served according to the attached Certificate of Service.

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

Respectfully submitted,

  
Julie George, Esq.

Cc: Certificate of Service

**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

**CERTIFICATE OF SERVICE**

I hereby certify that I have today served a true copy of the foregoing document upon the parties of record in this proceeding listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Via E-Filing**

Rosemary Chiavetta  
Secretary  
Pa. Public Utility Commission  
400 North Street, 2<sup>nd</sup> Floor North  
PO Box 3265  
Harrisburg, PA 17105-3265

**Via E-Mail**

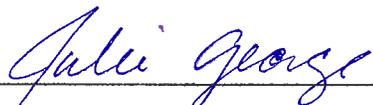
Irwin A. Popowsky, Esquire  
Office of Consumer Advocate

William R. Lloyd, Jr., Esquire  
Office of Small Business Advocate

John Simms, Esquire  
Office of Trial Staff

Office of Competitive Market Oversight  
Public Utility Commission

Donna M.J. Clark, Esquire  
Energy Association of PA

  
\_\_\_\_\_  
Julie George, Esq.  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101

Dated: August 16, 2010

**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                  :**

**COMMENTS OF THE  
PENNSYLVANIA UTILITY LAW PROJECT**

Harry S. Geller, Esquire  
John C. Gerhard, Esquire  
Julie George, Esquire  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
717-236-9486  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)

Dated:            August 16, 2010

## TABLE OF CONTENTS

<b>I.</b>	<b>BACKGROUND.....</b>	<b>1</b>
<b>II.</b>	<b>INTRODUCTION.....</b>	<b>2</b>
<b>III.</b>	<b>COMMENTS IN RESPONSE TO INTERIM GUIDELINES.....</b>	<b>3</b>
	THE COMMENTS PROVIDED BELOW ARE OFFERED ACCORDING TO THE SPECIFIC SECTIONS, SECTIONS A THROUGH Q, INCLUDED IN THE INTERIM GUIDELINES.....	3
A.	GENERAL.....	3
1.	<i>Door-to-door marketing places vulnerable customers at heightened risk of unfair and deceptive trade practices.....</i>	3
2.	<i>Door-to-door marketing runs counter to the intent of the Choice Acts. ....</i>	6
3.	<i>The prohibition of door-to-door marketing would not unduly burden alternative suppliers or undermine the creation of a competitive marketplace.....</i>	7
4.	<i>If door-to-door sales of electric generation and natural gas supply service are permitted by the Commission, then the practice should be limited to consumers who specifically request such solicitations.....</i>	8
B.	BACKGROUND CHECKS .....	9
C.	TRAINING .....	9
D.	MONITORING/QUALITY CONTROL/DOCUMENTATION .....	10
E.	DISCIPLINE .....	11
F.	APPEARANCE/UNIFORMS/IDENTIFICATION.....	12
G.	MISREPRESENTATION .....	13
H.	FEDERAL LAW/CONSUMER PROTECTION.....	13
I.	STATE LAW/OAG/CONSUMER PROTECTION .....	14
J.	LOCAL ORDINANCES .....	14
K.	DISTRIBUTION COMPANY AND COMMISSION INVOLVEMENT.....	15
L.	DISCLOSURE STATEMENTS/CONTRACT TERMS .....	16
M.	MARKETING/SALES ACTIVITIES AND MATERIALS .....	16
N.	RESCISSION PERIOD.....	17
O.	NO CALL/NO VISIT LIST.....	17
P.	COMPLAINTS .....	18
Q.	MONITORING MARKETING AND SALES ACTIVITIES OF UNLICENSED INDEPENDENT CONTRACTORS .....	18
<b>IV.</b>	<b>OTHER COMMENTS .....</b>	<b>18</b>
A.	SALARY BASED EMPLOYMENT .....	19
B.	MARKETING MATERIALS.....	19
<b>V.</b>	<b>CONCLUSION.....</b>	<b>20</b>

## **I. BACKGROUND**

The Pennsylvania Public Utility Commission (“Commission”) first addressed the issues of third party marketing and sales efforts for electric generation suppliers in a Secretarial Letter issued at Docket No. M-2009-2082042 on December 10, 2009. Then, on January 9, 2010, the 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, which would consider third party marketing and sales efforts for alternative natural gas suppliers.

Over the course of the ensuing months, OCMO met with both electric and natural gas industry stakeholders to discuss issues and challenges in the respective industries. During the course of these discussions, OCMO staff drafted, reviewed, and revised interim guidelines to govern the activities of third party marketers. These Interim Guidelines have been published with the Commission’s Tentative Order on July 15, 2010 and comments requested from interested parties.

The Pennsylvania Utility Law Project (“PULP”) submits these comments pursuant to the Commission’s July 15, 2010 Tentative Order. 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 to provide these comments.

## II. INTRODUCTION

Since the passage of the *Natural Gas Choice and Competition Act* and the *Electricity Generation Customer Choice and Competition Act*<sup>1</sup> (“Choice Acts”) the Commission has taken an active role in promoting the development of competitive electric generation and natural gas supply markets in the hopes of providing lower cost energy options to Pennsylvania consumers. The Commission should be commended for these efforts. However, PULP respectfully submits that the Commission should proceed cautiously to ensure that the development of competitive markets does not come at the expense of other important consumer concerns, such as the safety of vulnerable customer populations and the protection of privacy.

As proposed, the Interim Guidelines for Marketing and Sales Practices for Electric Generation and Natural Gas Suppliers do not include sufficient consumer protections, particularly for low-income customers, the elderly, sick or disabled customers, and customers for whom English is not their primary language.<sup>2</sup> The proposed use of door-to-door marketing for electric and natural gas supply constitutes “unsafe, inadequate and unreasonable service” as it places vulnerable consumer populations at too great a risk and improperly violates consumer privacy. Door-to-door marketing should be prohibited by the Interim Guidelines. In the alternative, should the Commission choose to permit door-to-door marketing, then additional consumer protections should be incorporated into the Interim Guidelines. PULP makes recommendations regarding these additional consumer protections in the body of these comments.

---

<sup>1</sup> 66 Pa.C.S. §§ 2200 *et seq.* and 2800 *et seq.*

<sup>2</sup> For the remainder of these comments the term “vulnerable consumers” or “vulnerable populations” will be used to include low income customers, the elderly, sick or disabled customers, and customers for whom English is not their primary language.

### III. COMMENTS IN RESPONSE TO INTERIM GUIDELINES

The comments provided below are offered according to the specific sections, Sections A through Q, included in the Interim Guidelines.

#### A. General

PULP respectfully submits that door-to-door marketing of electric generation and natural gas service should be prohibited because such marketing places vulnerable consumers at heightened risk of unfair and deceptive trade practices, because such marketing runs counter to the intent of the Choice Acts, and because the prohibition of such marketing would not unduly burden alternative suppliers or undermine the creation of a competitive marketplace. If the Commission chooses to allow door-to-door sales, then the practice should be limited to consumers who affirmatively request such solicitations.

1. *Door-to-door marketing places vulnerable customers at heightened risk of unfair and deceptive trade practices.*

The complaints of unfair and deceptive trade practices cited most often regarding door-to-door sales are of five kinds: “(1) Deception by salesmen in getting inside the door; (2) high-pressure sales tactics; (3) misrepresentation as to the quality, price, or characteristics of the product; (4) high prices for low-quality merchandise; and (5) the nuisance created by the visit to the home by the uninvited salesmen.”<sup>3</sup> Vulnerable customers are particularly susceptible to these kinds of tactics and are often targeted for door-to-door sales.<sup>4</sup>

---

<sup>3</sup> 37 C.F.R. 22937.

<sup>4</sup> Comments of the National Consumer Law Center, et al. Regarding the Cooling-Off Rule Regulatory Review, 16 C.F.R. § 429, September 25, 2009, at 3. Retrieved on 8/11/10 from: <http://www.consumerfed.org/elements/www.consumerfed.org/File/NCLC%20Cooling%20Off%20Comments%209-25-09%281%29.pdf>.

Vulnerable consumers face unique challenges that heighten their susceptibility to unfair and deceptive trade practices and exacerbate the damage caused by these practices. Vulnerable consumers are often poorer than other consumers, with limited cash flow and little or no savings. This poverty makes promises of cheaper natural gas or cheaper electricity almost impossible to resist, even if the promises are not altogether true or guaranteed. Vulnerable customers frequently are under enormous pressure due to unpaid bills, including bills for utility service. This financial distress makes these households more susceptible to high-pressure sales tactics which offer “a way out from under” some of these bills; given their financial distress, the consumers may make hasty or uninformed decisions in their desire to solve their immediate financial problems. Vulnerable customers oftentimes lack the education or access to information that more affluent populations have, which makes them less equipped to determine whether a high-pressure sales pitch has any real substance. Elderly customers, particularly those with deteriorating mental capacities associated with dementia or Alzheimer’s disease, may be ill equipped to or uncomfortable fending off unwanted attention from persistent salespeople. Elderly or sick customers who can not easily reduce usage may be susceptible to overstated promises of cheaper fuel and lower energy bills.

Lest some might doubt the reality of these concerns, a brief review of the recent predatory lending epidemic in Pennsylvania is instructive in just how damaging door-to-door sales practices can be to vulnerable populations. “Predatory lending practices are characterized as routinely charging exorbitant fees and high interest rates, adding unneeded credit and life insurance to monthly mortgage payments, promoting loans that negatively amortize, and regularly providing loans with prepayment penalties and balloon payments.”<sup>5</sup>

---

<sup>5</sup> Michelle W. Lewis. *Perspectives on Predatory Lending: The Philadelphia Experience*, Journal of Affordable Housing, Volume 12, Number 4, Summer 2003 at 491-492. Retrieved from [www.philatask.com/ABAart03.pdf](http://www.philatask.com/ABAart03.pdf) on

Lenders and home repair peddlers, the purveyors of predatory loans, often go door-to-door selling their products.<sup>6</sup> They specifically and intentionally target for their activities poor communities, minority communities, those communities populated by the most vulnerable citizens.<sup>7</sup> What is even more troubling about predatory lending is that the perpetrators are “reputable” businesses and banks in our community. The result of this targeted practice is that Pennsylvania now has the fourth highest sub-prime foreclosure rate in the nation.<sup>8</sup> And since these practices were targeted toward the most vulnerable communities, those communities have suffered disproportionately the rise in foreclosures.<sup>9</sup>

As the predatory lending example illustrates, low-income, elderly, disabled, non-English speaking communities are particularly susceptible to unfair and deceptive trade practices that often take place in door-to-door sales. They are “easy marks” who are targeted. As the predatory lending example also illustrates, the danger to vulnerable populations is real. It is a real danger the Commission can address by prohibiting the use of door-to-door sales.

---

8/11/10.

<sup>6</sup> *Perspectives on Predatory Lending* at 494.

<sup>7</sup> Ira J. Goldstein. *Lost Values: A Study of Predatory Lending in Philadelphia*, Report for The Reinvestment Fund, 2007, at 14-15. Retrieved on 8/11/10 from [www.trfund.com/resource/downloads/policypubs/Lost\\_Values.pdf](http://www.trfund.com/resource/downloads/policypubs/Lost_Values.pdf). Also see *Losing the American Dream: A Report on Residential Mortgage Foreclosures and Abusive Lending Practices in Pennsylvania*, Report by the Pennsylvania Department of Banking, March 15, 2005 at 17-18. Retrieved on 8/11/10 from <http://www.portal.state.pa.us/portal/server.pt?open=512&objID=14319&mode=2&PageID=607131>.

<sup>8</sup> *Losing the American Dream* at 3.

<sup>9</sup> *Lost Values* at 14-15.

2. *Door-to-door marketing runs counter to the intent of the Choice Acts.*

Another problem with door-to-door sales is that it does not support customers in making an informed choice. This is a serious deficiency since the Choice Acts, as one might suspect from their names, are built upon the assumption that customers will make choices, *informed choices*. The General Assembly explicitly included in each law a requirement that information be provided to customers to support an informed decision making process.<sup>10</sup> As such, consumers will need to do homework as part of the process of choosing an alternative supplier. This homework includes researching a range of options and companies to have sufficient data on which to base a reasoned decision. The Commission and the Office of the Consumer Advocate (“OCA”) clearly recognize this because both the Commission and OCA have created detailed websites to guide consumers and provide pertinent information on which to make an informed choice. The OCA also will provide a free paper copy of its shopping guide to consumers who call the OCA’s toll-free number at 800-684-6560.

Door-to-door sales methods are diametrically opposed to the kind of informed decision making contemplated by the Choice Acts and the General Assembly. Door-to-door sales are high-pressure, one-sided presentations intended to persuade a customer that the agent’s product is “the right” one, perhaps the only one, certainly the only one that makes sense. Agents do not provide a range of options, a set of data to be contemplated and considered. Obviously, they are not required to. They provide their company’s products as the “only” option with their own forceful slant on the “facts.” This kind of interaction is more likely to result in a consumer being swayed by a good sales pitch rather than making a well informed decision, as we would all desire and the Choice Acts expect. Given that door-to-door sales do not lead a

---

<sup>10</sup> See 66 Pa.C.S. §§ 2206(c) and 2807(d)(2).

consumer to make an informed choice, they run counter to the intent of the Choice Acts and should not be permitted.

3. *The prohibition of door-to-door marketing would not unduly burden alternative suppliers or undermine the creation of a competitive marketplace.*

The prohibition of door-to-door marketing would not unduly burden alternative suppliers or undermine the creation of a competitive marketplace. We live in a world that is awash with wireless connection and multiple channels of communication – radio, television, print media, the Internet, e-mail, etc. Millions of businesses use these channels to market their products successfully. It seems difficult to understand why electric generation and natural gas suppliers can not do the same. While it may be convenient for these companies to go door-to-door using lists of private customer information provided by local distribution companies, and while certainly it will save these companies money, it is unclear that it is necessary to use door-to-door sales in order for competition to take hold. It seems particularly questionable when it will come at the expense of consumer safety and privacy.

Door-to-door sales are not needed since there are ample other resources consumers can use to learn about alternative suppliers. For instance, both the Commission and the OCA maintain easily accessible websites with ample information regarding alternative suppliers, both gas and electric.<sup>11</sup> These websites provide consumers with a range of information from which the consumer can make an informed choice, unlike the high-pressure sale of a single

---

<sup>11</sup> See <http://www.oca.state.pa.us/Industry/Electric/elecomp/ElectricGuides.htm> , [http://www.oca.state.pa.us/Industry/Natural\\_Gas/gascomp/GasGuides.htm](http://www.oca.state.pa.us/Industry/Natural_Gas/gascomp/GasGuides.htm) , <http://www.papowerswitch.com/> , [http://www.puc.state.pa.us/naturalgas/naturalgas\\_suppliers\\_list.aspx](http://www.puc.state.pa.us/naturalgas/naturalgas_suppliers_list.aspx) , and <http://www.puc.state.pa.us/utilitychoice/whatis.aspx?ut=nc> .

option that occurs during an agent's visit to their door. Given superior resources like these websites, the prohibition of door-to-door sales will not unduly burden alternative suppliers and not undermine the development of a healthy market.

4. *If door-to-door sales of electric generation and natural gas supply service are permitted by the Commission, then the practice should be limited to consumers who specifically request such solicitations.*

If the Commission chooses to allow door-to-door sales and marketing, then the marketing should only be directed to those customers who opt in to receive such activity. In a related proceeding, the Commission is considering rules regarding Eligible Customer Lists ("ECLs"), lists of private consumer information that will be provided by local distribution companies to alternative suppliers to facilitate the suppliers' marketing efforts.<sup>12</sup> In that proceeding, PULP took the position that consumers have a reasonable expectation that their private, personal information will not be shared by a local distribution company with a commercially-oriented third party unless the consumer gives prior, affirmative consent in writing. PULP respectfully submits that the same principal adheres in the case of door-to-door sales and marketing: an alternative supplier or their agent should not be permitted to use the private information on an ECL to pursue door-to-door sales unless a customer has given a prior, written affirmation agreeing to receive door-to-door solicitations.

---

<sup>12</sup> See *Tentative Order Re: Interim Guidelines for Eligible Customer Lists for Electric Distribution Companies*, Docket No. M-2010-2183412 (Order entered July 15, 2010).

B. Background Checks

Should the Commission choose to permit door-to-door marketing of electric generation and natural gas supply service, then PULP supports the Commission's requirement that complete background checks be performed for all persons who will be conducting door-to-door sales, including criminal activity and sexual misconduct background checks. Any individual for whom there is evidence of a conviction of a felony offense or any offenses involving sexual abuse or sexual misconduct should be prohibited from conducting door-to-door sales. Any expenses incurred to conduct these background checks should be borne by the alternative suppliers and should not be included in rates paid by consumers.

C. Training

Should the Commission choose to permit door-to-door marketing of electric generation and natural gas supply service, then PULP supports the Commission's requirement that appropriate training take place for marketing and/or sales agents. However, PULP respectfully disagrees with Interim Guideline Section C.2, in which the Commission refrains from requiring the advanced review and approval of training materials and documentation by Commission staff. Given the technical and confusing nature of the subject matter, it seems appropriate that the Commission would verify the accuracy and clarity of training materials before they are used by sales people who will come into contact with the public. A prior verification of the training material's content will prevent misinformation by sales agents, rather than having to correct misinformation after the fact.

D. Monitoring/Quality Control/Documentation

Should the Commission choose to permit door-to-door marketing of electric generation and natural gas supply service, then PULP supports several protective measures included in the Interim Guidelines. PULP supports proposed Section D.1, which requires,

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.

In the event of an enrollment discrepancy or consumer complaint, the inclusion on enrollment documentation of a notation that an enrollment was the result of a door-to-door interaction and a unique sales agent identifier should enable the Commission to identify quickly the parties responsible and rectify the consumer complaint.

PULP also supports proposed Section D.3, which requires,

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.

Given the history of slamming in the Commonwealth, it seems reasonable and prudent to require companies to be able to verify a consumer provided consent to the transaction. However, PULP respectfully submits that these documents should be available upon request to both the consumer and the Commission. This requirement would prove helpful to a consumer who suspects that an

alternative supplier has switched the consumer's service without consent. Therefore, PULP recommends the following change be made to Section D.3:

All transactions shall be verified [...]. These documents shall be made available to Commission staff or the customer upon request.

PULP also supports proposed Section D.4, which requires,

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).

PULP respectfully submits that it is essential the sales representative separates himself physically from the potential customer's residence at the time the transaction verification takes place. This separation will improve the chances that the customer's decision will not be influenced unduly by the representative's presence. Furthermore, PULP supports the requirement that consumers be notified of the 3-business day right of rescission, an important protection that affords customers time to reflect upon and consider their decision.

#### E. Discipline

Should the Commission choose to permit door-to-door marketing of electric generation and natural gas supply service, PULP supports vigorous disciplinary measures to discourage and punish unfair or deceptive trade practices. In particular, PULP supports the Commission's "zero-tolerance" policy concerning slamming. Slamming is more than an inconvenience for consumers; it is an inherently dishonest act, a serious infringement upon the

consumer's peace of mind, a significant disruption to essential utility service, and a time-consuming situation to remedy. PULP supports the Commission's strong position against this practice. In the event of an allegation of slamming, PULP respectfully submits the Commission should exercise its right to suspend a supplier's license during the duration of the investigation and then revoke the license upon the establishment of slamming.

F. Appearance/Uniforms/Identification

Should the Commission choose to permit door-to-door marketing of electric generation and natural gas supply service, then PULP supports the requirement that suppliers and/or their agents wear uniforms and use materials that are designed to indicate clearly that the marketer is not affiliated with or an employee of the consumer's local distribution company and is therefore not subject to the same kind of regulatory oversight as is an employee of the local distribution company.

PULP respectfully submits that Section F.4 should be amended slightly to strengthen consumer protections contained therein. Section F.4 reads,

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.

PULP submits that upon telephoning a consumer the sales or marketing agent should be required to provide his/her name, the name of his/her employer, **and** a unique identification number. This information will enable a customer to rectify more easily problems with an enrollment. Also, should the contact result in a consumer complaint, the consumer will have the information s/he

needs to ensure the complaint can be resolved and the agent retrained to avoid further consumer complaints. A customer should not be required to remember to ask for any of this critical information (or even know that s/he can ask for that information); it should be provided by the sales or marketing agent without the need for a consumer prompt. As such, PULP submits the following language for inclusion in the Interim Guidelines:

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, **shall provide his/her identification number**, 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.~~

G. Misrepresentation

Should the Commission choose to permit door-to-door marketing of electric generation and natural gas supply service, PULP supports Section G's guidelines intended to prevent misrepresentation by a supplier or its agents.

H. Federal Law/Consumer Protection

Should the Commission choose to permit door-to-door marketing of electric generation and natural gas supply service, PULP endorses the Commission's incorporation of Federal consumer protections in these Interim Guidelines and requirement that alternative suppliers meet the obligations of those Federal consumer protections. In particular, PULP supports the inclusion of protections under the Consumer Credit Protection Act,<sup>13</sup> the Telemarketing and Consumer Fraud and Abuse Prevention Act,<sup>14</sup> and the Telemarketing Sales

---

<sup>13</sup> 15 U.S.C. §§ 1601—1693.

<sup>14</sup> 15 U.S.C §§ 6101, et seq.

Rule.<sup>15</sup> PULP also supports the Commission's requirement that a supplier and its employees, independent contractor or vendor companies, agents and representatives engaged in door-to-door marketing or sales must comply with the Federal cooling off period requirements.<sup>16</sup>

I. State Law/OAG/Consumer Protection

Should the Commission choose to permit door-to-door marketing of electric generation and natural gas supply service, PULP endorses the Commission's incorporation of state consumer protections in the Interim Guidelines and requirement that alternative suppliers meet the obligations of those state consumer protections. In particular, PULP supports the inclusion of protections under the Telemarketer Registration Act.<sup>17</sup> PULP also supports Section I.3's assertion that "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."<sup>18</sup>

J. Local Ordinances

Should the Commission choose to permit door-to-door marketing of electric generation and natural gas supply service, PULP endorses the Commission's decision to incorporate local consumer protections in these Interim Guidelines and require alternative suppliers to meet the obligations of local ordinances. PULP particularly supports the Commission's inclusion of Section J.2, which requires suppliers to comply with local ordinances when those ordinances are stricter than the Commission's own Interim Guidelines.

---

<sup>15</sup> 16 CFR Part 310.

<sup>16</sup> 16 CFR Part 429.

<sup>17</sup> 73 P.S. §§ 2241-2249.

<sup>18</sup> See 73 P.S. § 2242.

K. Distribution Company and Commission Involvement

Should the Commission choose to permit door-to-door marketing of electric generation and natural gas supply service, PULP encourages the Commission to strengthen the protections currently included in Section K. Section K.1 deals with marketing or sales activity which the supplier anticipates may cause phone calls or inquiries to the Commission, and it reads, in part,

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.

PULP submits that this protection should be strengthened by requiring the supplier to provide this information to the Commission one week prior to its anticipated use (or some other time period the Commission finds reasonable). This would give the Commission an opportunity to ensure that the notification is actually received and that sufficient staffing and time are available to review the marketing materials for any serious miscommunications or other problems. If problems are detected, then the Commission can require the supplier to correct the deficiencies in the marketing materials prior to their use. This approach has the benefit of correcting a problem before it has a chance to confuse consumers and create additional complaints to the Commission.

L. Disclosure Statements/Contract Terms

Should the Commission choose to permit door-to-door marketing of electric generation and natural gas supply service, PULP supports the requirements of Section L.

M. Marketing/Sales Activities and Materials

Should the Commission choose to permit door-to-door marketing of electric generation and natural gas supply service, PULP encourages the Commission to strengthen the consumer protections contained in Section M. Section M.1 reads,

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.

PULP supports the Commission's requirement that a supplier or its agent must communicate with a consumer in the language in which the consumer is proficient. When an agent becomes aware that the customer is not fluent in English, then the Interim Guidelines appropriately instruct the agent to break off the sales effort and locate either a translation service or another agent who is fluent in the consumer's language. However, PULP submits it is unreasonable to expect, as Section M.1 proposes, that "language identification cards" are a satisfactory way in which to communicate to a non-English speaker the complex materials associated with electric generation and natural gas supply. Such an approach is more likely to lead to misinformation and an improper transfer of service. PULP recommends the use of language cards be eliminated from the Interim Guidelines.

PULP supports the inclusion of consumer protections in Sections M.2 and M.3 which prohibit a supplier from engaging in any misleading or deceptive conduct as defined by state or Federal law or by Commission rule, regulation, or order.

N. Rescission Period

Should the Commission choose to permit door-to-door marketing of electric generation and natural gas supply service, PULP endorses the Commission's decision to incorporate Federal and Commission cooling off period requirements. In particular, PULP supports the inclusion of protections under Section 7 of the Unfair Trade Practices and Consumer Protection Law,<sup>19</sup> the Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations,<sup>20</sup> and the Commission's own 3-business day right of rescission rule at 52 Pa. Code Sections 54.5 and 62.75. However, PULP recommends, in contrast to what is proposed in the Interim Guidelines at Section N.3, that the Commission's 3-business-day period should run consecutive to, not concurrent with, the Federal cooling off period.

O. No Call/No Visit List

Should the Commission choose to permit door-to-door marketing of electric generation and natural gas supply service, PULP submits the Interim Guidelines provide insufficient protection for consumer privacy. First, if a customer chooses not to have their information shared as part of an Eligible Customer List, then that should be sufficient to indicate a customer does not want to receive marketers or suppliers at his/her home in a door-to-door sales pitch. Second, no local distribution company should be permitted to share any private customer

---

<sup>19</sup> 73 P. S. § 201-7.

<sup>20</sup> 16 CFR Part 429.

information with an alternative supplier or marketer unless the consumer opts in and provides prior, written consent to that information sharing. Finally, any time a consumer indicates to a marketer the desire to be exempted from further marketing activities, then the supplier should be required to communicate that information to both the Commission and the local distribution company.

P. Complaints

Should the Commission choose to permit door-to-door marketing of electric generation and natural gas supply service, PULP supports the Interim Guideline's requirement that suppliers comply with existing Commission consumer-complaint procedures.

Q. Monitoring Marketing and Sales Activities of Unlicensed Independent Contractors

Should the Commission choose to permit door-to-door marketing of electric generation and natural gas supply service, PULP supports the Commission's decision to collect data on and monitor supplier activities, including the practice of using unlicensed independent contractors or vendors for marketing and sales support.

**IV. OTHER COMMENTS**

In addition to the responses to specific sections of the Interim Guidelines, PULP has brief comments regarding miscellaneous topics.

A. Salary Based Employment

Should the Commission choose to permit door-to-door marketing of electric generation and natural gas supply service, then PULP recommends suppliers and their agents only be permitted to use salaried employees to go door-to-door and not be permitted to use commissioned or bonus based employees to go door-to-door. Given the considerable detail of these Interim Guidelines and Pennsylvania's past problems with slamming, there are clearly dangers of overreaching, unfair trade practices, and improper conduct by salespeople in door-to-door sales. If an agent is working on a commission basis, then the urgency of each sale is heightened by his/her own pecuniary interest, and the chance of a misstep increased. By requiring these employees to be salaried, then perhaps the urgency of the individual sale and the likelihood of abuse will be reduced.

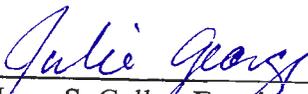
B. Marketing Materials

Should the Commission choose to permit door-to-door marketing of electric generation and natural gas supply service, then PULP recommends limiting the distribution of marketing materials in certain situations. Specifically, where an agent visits a residence and no one answers the door, then the salesperson should be prohibited from leaving literature, such as door knob hangers, at the residence. Clearly visible marketing materials or door hangers can be an indication that no one is home, raising the risk of vandalism or burglary at the residence. For safety purposes, marketers should be prohibited from leaving marketing materials in these situations.

**V. CONCLUSION**

In conclusion, PULP respectfully submits that the Interim Guidelines for Marketing and Sales Practices for Electric Generation and Natural Gas Suppliers do not include sufficient consumer protections, particularly for vulnerable customers. The proposed use of door-to-door marketing for electric generation and natural gas supply places vulnerable consumer populations at too great a risk, runs counter to the intent of the Choice Acts, and should be prohibited by the Interim Guidelines. In the alternative, should the Commission decide to permit door-to-door marketing, then additional consumer protections should be included in the Interim Guidelines as outlined in the body of these comments.

Respectfully submitted:

  
\_\_\_\_\_  
Harry S. Geller, Esquire  
John C. Gerhard, Esquire  
Julie George, Esquire  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
Tel. 717-236-9486  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)

Dated: August 16, 2010