

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 27 2010

Reply Comments of the
National Energy Marketers Association

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

The National Energy Marketers Association (NEM)¹ hereby submits these reply comments as permitted by the July 15, 2010, Tentative Order issued in the above-referenced docket. At the outset, we note that the majority of stakeholders submitting initial comments, including NEM and other marketer organizations, OCA, AARP and the utilities, supported the Commission's adoption of the proposed interim guidelines applicable to the marketing and sales practices of electric generation suppliers (EGSs) and natural gas suppliers (NGSs) [hereinafter "Proposed Guidelines"]. We therefore submit these limited reply comments to respond to the comments of PULP and the Pennsylvania Consumer Advisory Council (CAC) that both recommended the prohibition of door-to-door sales. We urge the Commission to reject PULP and CAC's suggestion to prohibit door-to-door sales. Indeed, upon the Commission's adoption of the marketing standards, *the industry will have clear guidance on ethical conduct, appropriate marketing*

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.

practices and adequate consumer protections. It is only after these standards have been in practical use and effect for a reasonable time period that the Commission should even consider imposing such a severe restriction in the marketplace.

Like PULP and CAC, NEM also believes that informed consumer consent and adequate disclosures must serve as the cornerstone for marketing activities with consumers. Where we differ, however, is that NEM believes that door-to-door sales can be accomplished consistent with the goals of informed consent and consumer protection. Eliminating door-to-door sales, particularly on the eve of the adoption of the subject marketing standards, is neither necessary nor appropriate. We believe that the proposed marketing standards represent the best practices and best guidance on door-to-door marketing practices that have been adopted in the various jurisdictions. As such, we strongly urge the Commission to allow marketers the opportunity to incorporate these standards into their marketing practices before it considers restricting this important and viable sales venue. As we stated in our initial comments in this proceeding, NEM submits that until marketers are allowed to demonstrate compliance with the new standards that it is premature to even consider the need to impose such a draconian restriction on the marketplace such as a prohibition on door-to-door sales.

NEM submits that the experience in New York provides this Commission with evidence of the impact of the adoption and implementation of strong marketing standards in the competitive energy marketplace. The New York Public Service Commission adopted a new provision into its Uniform Business Practices² establishing marketing standards in

² The New York Public Service Commission's Uniform Business Practices document can be viewed at: http://www.dps.state.ny.us/ubp_manual_9-2009.pdf

October 27, 2008.³ The New York marketing standards are substantially similar to those being considered in the instant proceeding.⁴ Consumer experience with marketers, as detailed in complaint statistics maintained by the New York Public Service Commission, tells a compelling story of the effect of the marketing standards. At the end of 2008 when the marketing standards were adopted, the number of initial complaints against marketers was 2238 and the number of escalated complaints was 435.⁵ By the end of 2009 when the New York marketing standards had been in place for a year, the number of initial complaints against marketers had declined to 1444 and the number of escalated complaints had declined to 298.⁶ The most up-to-date statistics as of July 2010 shows a trend of a further decline in initial complaints against marketers to 505 and a decline in escalated complaints to 56.⁷ In other words, with data for seven months of 2010, the number of initial and escalated complaints is significantly less than half that in comparison with 2009. To put these statistics in better context, this is the level of complaints experienced with 1,280,000 electric customer accounts migrated⁸ and 828,479 natural gas accounts migrated⁹ in New York, which translates into .00024% of migrated customers making an initial complaint and .000027% having an escalated complaint. We

³ New York Public Service Commission, Cases 98-M-1343 et. al., Order Adopting Amendments to the Uniform Business Practices, Granting in Part Petition on Behalf of Customers and Rejecting National Fuel Gas Distribution Corporation's Tariff Filing, issued and effective October 27, 2008.

⁴ *Id.*

⁵ New York Public Service Commission, Office of Consumer Services, Monthly Report on Consumer Complaint Activity, December 2008, available at: http://www.dps.state.ny.us/Dec08_Finalrev_complaint_rate.pdf. The report does not distinguish the nature of the underlying complaint.

⁶ New York Public Service Commission, Office of Consumer Services, Monthly Report on Consumer Complaint Activity, December 2009, available at: http://www.dps.state.ny.us/MR_Dec2009Final.pdf.

⁷ New York Public Service Commission, Office of Consumer Services, Monthly Report on Consumer Complaint Activity, July 2010, available at: http://www.dps.state.ny.us/July_2010_MR.pdf

⁸ New York Electric Retail Access Migration Data for April 2010, available at: http://www.dps.state.ny.us/Electric_Migration_apr10.pdf.

⁹ New York Natural Gas Retail Access Migration Data for April 2010, available at: http://www.dps.state.ny.us/Gas_Migration_Web_Report_apr10.pdf.

believe these statistics are strong proof of the willingness of the marketer community to conform its conduct in compliance with Commission-approved marketing standards that provide robust consumer protections. We likewise believe that a similar experience will be realized upon this Commission's adoption of its proposed marketing standards.

Conclusion

NEM appreciates this opportunity to submit reply comments in opposition to the suggestion of PULP and CAC to prohibit door-to-door sales. We believe the proposed marketing standards will lay a strong foundation for consumer protection and ethical conduct in the marketplace. Door-to-door sales should not be prohibited until the marketer community, consumers and the Commission have all had an adequate opportunity to evaluate the efficacy of the marketing standards in ensuring compliant door-to-door sales and marketing practices.

Sincerely,



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