

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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August 31, 2010

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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 are an original and five (5) copies of the Reply Comments of the Office of Consumer Advocate, AARP, and Dominion Retail, in the above-referenced proceeding.

Should you have any questions, please contact our office at the number above.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Tanya J. McCloskey".

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044

Enclosures

cc: Daniel Mumford, BCS
Patricia Krise Burket, LAW

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE,
AARP, AND DOMINION RETAIL

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DATED: August 31, 2010

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I. INTRODUCTION

On August 16, 2010, the Office of Consumer Advocate, AARP, and Dominion Retail (OCA/AARP/Dominion Retail) filed Comments on the proposed Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers. In the Comments, the OCA/AARP/Dominion Retail supported the Commission's efforts to establish clear guidelines related to the use of door-to-door sales techniques if such sales techniques are to be permitted given the potential for customer confusion, fraud and abuse that can be particularly prevalent with this business practice. As OCA/AARP/Dominion Retail pointed out, the use of this sales technique has proven controversial in other states, and presents particular concerns when such sales practices are used with senior citizens or vulnerable customer populations.

Several parties filed Comments in response to the Commission's Tentative Order. The OCA/AARP/Dominion Retail would note the Comments of the Pennsylvania Utility Law Project (PULP) and the Commission's Consumer Advisory Council (CAC). Both PULP and CAC raised significant issues regarding the use of door-to-door sales techniques for the sale of an essential service, such as electric and natural gas, that requires significant consumer education and informed comparisons for consumers to make the best decisions. CAC Comments at 2-3; PULP Comments at 3-4. PULP and CAC also raised significant concerns about the use of such sales techniques with senior citizens and vulnerable consumers. CAC Comments at 4-5; PULP Comments at 3-5. PULP and CAC both recommended that door-to-door sales techniques not be allowed in Pennsylvania given these concerns.

The OCA/AARP/Dominion Retail share these concerns. As noted, electric and natural gas service are essential services necessary to the health and safety of the public.

Selecting an alternative supplier for such a service requires thoughtful consideration and informed comparisons. The high pressure technique of door-to-door sales may not allow sufficient time for the customer to secure the necessary information for comparison to make an informed choice. Because of this, the OCA/AARP/Dominion Retail submit that if door-to-door sales are to be permitted, a strong set of clear guidelines should be adopted by the Commission and the Commission should continue to adhere to its “zero tolerance” policy.

A review of the Comments of the stakeholders shows support for a strong set of guidelines regarding door-to-door marketing. The stakeholders generally supported the Commission Staff proposed Interim Guidelines, but showed a difference of position on the non-consensus items. In the OCA/AARP/Dominion Retail view, the non-consensus items regarding the verification process, the hours for marketing, and the notification requirements regarding marketing activity are critical components of establishing strong guidelines designed to provide necessary protection to consumers and preserve the integrity of the competitive retail market. The OCA/AARP/Dominion Retail urge the Commission to consider the need for a strong set of guidelines as it reviews the comments and makes its final decision.

The OCA/AARP/Dominion Retail would also note that some stakeholders offered an addition or clarification to Guideline B regarding “Background Checks” to further strengthen that provision. Several parties requested that the Commission specify additional concrete steps for background checks, including the need to check the “Megan’s Law” registry. PPL Comments at 3; NEM Comments at 7. The OCA/AARP/Dominion Retail support such comprehensive criminal background checks for door-to-door sales agents and would welcome additional detail from the Commission in this regard.

As to the contested issues, the OCA/AARP/Dominion Retail set forth their position in detail in their Comments. The OCA/AARP/Dominion Retail will provide some limited response to the Comments of other parties on these contested issues for consideration by the Commission when finalizing the Guidelines.

II. REPLY COMMENTS

A. Guideline D-4 Regarding The Need For The Sales Agent To Physically Exit The Customer's Residence Before The Transaction Verification Process Should Be Adopted As Proposed By Staff.

1. Introduction

Proposed Guideline D-4 requires that the transaction verification process occur after the sales agent has physically separated himself from the potential customer by exiting the customer's residence. The OCA/AARP/Dominion Retail strongly support this Guideline and view it as an essential consumer protection. Door-to-door sales techniques are high pressure sales techniques as a sales agent makes an unannounced visit to a customer's home and has a physical presence in the customer's home that is not typical with regard to a purchasing decision by a customer. The potential for fear, intimidation, and even an agreement to a contract just to get the sales agent out of the home are all very likely outcomes of a door-to-door sales visit. Given the high pressure nature of this contact, it is absolutely essential that the verification process for any sale be truly independent and conducted in a manner that ensures that the consumer has given willing consent. Having the agent physically separate from the customer and depart from the customer's residence is a necessary component of an independent verification designed to confirm a willing consent to the purchase.

Objections have been raised by several EGSs to the Staff proposal. The EGSs raise four points to which the OCA/AARP/Dominion Retail wish to respond.

2. Clarification Of The Phrase “Exiting the Customer’s Residence” May Help To Alleviate The Concerns Raised About Guideline D-4.

Certain EGSs have asked the Commission to define or clarify what constitutes “exiting the customer’s residence.” See, Retail Energy Supply Association (RESA) Comments at 3; Direct Energy Comments at 2; MXenergy at 6-7. The EGSs question whether this language allows the sales agent to remain on the customer’s premise. RESA Comments at 3; Direct Energy Comments at 2. The OCA/AARP/Dominion Retail recognize that properties can be very different whether they be an apartment building, a row home or town home, a rural home, or a suburban home. It is evident that some common sense will need to be exercised when applying this guideline to different customer residences. For purposes of clarification, though, the OCA/AARP/Dominion Retail submit that the need to physically separate from the potential customer by exiting the customer’s residence requires that, at a minimum, the sales agent be out of the home so that the customer can close and secure the door to the home. Unless the permission of the homeowner is given for the sales agent to remain on the property during the verification process, the sales agent also should not linger or loiter on any part of the premise. The OCA/AARP/Dominion Retail would not object to the Commission providing this clarification in its Final Order. Guideline D-4 provides an essential consumer protection, though, and should be adopted as proposed by the Staff.

3. Additional Verification Questions Regarding Intimidation Are Not A Substitute For Guideline D-4.

Several EGSs suggest that rather than require the sales agent to leave the home while the verification is conducted, the sales agent could remain in the home and the verification process could add a question as to whether there was undue influence or pressure by the sales

agent. See, Pennsylvania Energy Marketers Coalition (PEMC) Comments at 4-5; MXenergy Comments at 6-7. While the OCA/AARP/Dominion Retail agree that such questions should be part of the verification process for door-to-door sales, these questions are not a substitute for the requirement that the sales agent physically exit the customer's residence. A customer who is too intimidated to give willing consent to a transaction cannot be expected to simply answer a question regarding intimidation when the sales agent is still standing there. Adding questions to a verification process but still allowing the sales agent to remain in the home fails to address the underlying problem and cannot serve as a substitute for Guideline D-4.

4. The "Safe Harbor" Proposal For Marketers Is Unsound Public Policy.

PEMC and the National Energy Marketers Association (NEM) have suggested that there be a "safe harbor" provision where the sales agent asks the customer if they should step outside of the home during the verification process. PEMC Comments at 4; NEM Comments at 4. If the customer is given this option, PEMC and NEM suggest that there is a rebuttable presumption created of consensual enrollment. The OCA/AARP/Dominion Retail submit that such a practice, and the creation of a legal standard of a rebuttable presumption against the consumer, would be unsound public policy and contrary to the public interest. The door-to-door sales practice presents a myriad of problems and concerns regarding customer understanding as well as customer intimidation. It is wholly inappropriate and unreasonable to create a legal presumption against a consumer based on such a contact. The proposal regarding the creation of a "safe harbor" for marketers and sales agents against consumers is exactly the wrong direction for the Commission to take if the goal is to promote the integrity of the retail market in Pennsylvania.¹

¹ Such a proposal also seems to be at odds with the Commission's "zero tolerance" policy as set forth in its Tentative Order.

5. Numerous Procedures Can Be Employed To Address Questions Or Confusion Detected During The Verification Process.

Several EGSs object to the requirement for a sales agent to physically exit the home based on the concern that questions may arise during the verification contact that the sales agent will need to answer. PEMC Comments at 4; MXenergy Comments at 3, 6-7. The EGSs argue that it may be difficult for the sales agent to return to the home or gain re-entry to the home to answer these questions. As the OCA/AARP/Dominion Retail set forth in their Comments, there are numerous procedures that could be used to address questions that arise during the verification process, including a return to the customer's home with customer consent or transfer to a sales agent that can handle the questions telephonically. The fact remains that if questions arise at the time of verification, then it is clear that that sales contact did not result in the willing consent of the customer to the terms of the contract. The purpose of verification is to make this determination. If there is confusion or question, the EGSs should develop the appropriate procedures to address such questions within the parameters of these guidelines.

B. Guideline J-2 Establishing A Time Period Of 9 A.M. to 7 P.M. For Door-To-Door Sales Calls Is A Reasonable Compromise.

The proposed Interim Guidelines adopt a compromise proposal for the hours when door-to-door sales can be conducted, in the absence of a local ordinance that is more restrictive. The hours for door-to-door sales are set from 9 A.M. to 7 P.M. The OCA/AARP/Dominion Retail noted in its Comments that it can accept this compromise. In its Tentative Order, the Commission noted that there was an alternative proposal to set the end point for sales visits at dusk. The OCA/AARP/Dominion Retail saw no comments that argued in support of this alternative proposal. Several EGSs, however, have argued that the hours should be extended to an end point of 9 P.M. MXenergy at 7-8; NEM at 5; PEMC at 5.

The OCA/AARP/Dominion Retail submit that the Commission should adopt the time frame of 9 A.M. to 7 P.M. as set forth in proposed Guideline J-2, unless the local ordinance is more restrictive. Extending the hours to 9 P.M. allows intrusions into the home into the later hours of the evening when many customers are preparing for the next day, preparing for bed, or trying to spend time together as a family. Such unwelcome intrusions late into the night can also engender fear and distrust of the process.

The hours of 9 A.M. to 7 P.M. provide ample opportunity for sales visits that accommodate all types of customer schedules. The hours are available during the weekdays and on the weekends, providing sufficient opportunity for door-to-door sales agents to meet with customers. The OCA/AARP/Dominion Retail submit that the Guideline J-2 should be adopted.

C. Guideline K-2 Regarding Notice To The Local Distribution Company Should Be Strengthened.

Guideline K-2 states that suppliers should provide the local distribution company with general information about the marketing and sales activity that may be occurring in the local distribution company service territory. Several EGSs propose that it be made clear that this is not a requirement by changing the language to state that suppliers are “encouraged” to provide this information. See, PEMC Comments at 6. The EGSs argue against any requirement to inform the local distribution company of such activity, citing competitive concerns. See, NEM Comments at 6. The OCA/AARP/Dominion Retail disagree with the arguments of the EGSs in this regard and recommend that the Commission strengthen Guideline K-2 so that notice to the local distribution company, in a manner that does not reveal competitively sensitive marketing strategy information, is required.

The Comments of PPL Electric are instructive on this point. PPL Electric’s rate cap expired on January 1, 2010 and there has been much sales activity, including door-to-door

sales activity, in its service territory. As the OCA/AARP/Dominion Retail noted in their Comments, the local distribution company, such as PPL Electric, is on the “front lines” of fielding calls when sales activities are on-going in their service territory. PPL Electric confirms this point and explains the importance of a notice requirement as follows:

PPL Electric fully supports the Commission’s decision to require suppliers to contact distribution companies prior to the supplier initiating marketing or sales activities that the supplier anticipates may result in telephone calls to the Commission. PPL Electric believes that this requirement is very important. PPL Electric has received many calls when suppliers conduct door-to-door sales activities or when they conduct marketing activities in general. Advance notice will give PPL Electric and other distribution companies the opportunity to prepare for calls from customers regarding these activities. Advance notice will also allow PPL Electric and other distribution companies to proactively contact the supplier when complaints are received from targeted regions of their service territory.

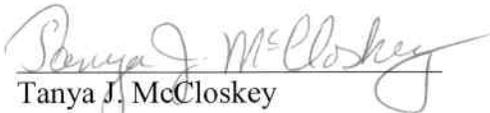
PPL Electric Comments at 5.

The OCA/AARP/Dominion Retail submit that PPL Electric’s Comments confirm the need for notice to be provided to the local distribution company when door-to-door sales activity is going to occur. EDCs and their customer service representatives should not have to guess which marketers are conducting door-to-door activity, particularly when they must handle calls and complaints. Competitive concerns can be addressed through the form of notice, timing of the notice, and code of conduct requirements.

III. CONCLUSION

The OCA/AARP/Dominion Retail again commend the Commission on its efforts to develop guidelines to protect consumers and assist NGSs and EGSs in the development and implementation of sales and marketing efforts. A strong set of guidelines on door-to-door marketing activity will greatly assist in the goal of providing Pennsylvania consumers with the opportunity for choice and savings through development of competitive markets for energy supply.

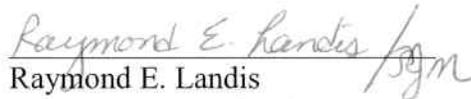
Respectfully Submitted,



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