



595 Summer Street, Suite 300
Stamford, CT 06901-1407
Tel: 203.356.1318
Fax: 203.425.9562
www.mxenergy.com

August 31, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building,
400 North Street, 2nd Floor
Harrisburg, PA 17120

**RE: Interim Guidelines on Marketing and Sales Practices for Electric Generation
Suppliers and Natural Gas Suppliers, Docket M-2010-2185981**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Reply Comments of MXenergy in the above
reference proceeding,

Sincerely,

Diana Serna for
Sandra Minch Guthorn
Sandra Minch Guthorn
Senior Counsel Regulatory Affairs

Enclosure
Copy to: Office of Competitive Market Oversight

**BEFORE THE
PENNSYLVANIA PUBLIC SERVICE COMMISSION**

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

Reply Comments of MXenergy Inc.

MXenergy Electric Inc. (MX or MXenergy) hereby submits its reply comments pursuant to the Pennsylvania Public Service Commission's July 15, 2010 Tentative Order in Docket M-2010-2185981, "Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers" ("Tentative Order"). The Office of Competitive Market Oversight (OCMO) developed these proposed interim guidelines working with both CHARGE (Committee Handling Activities for Retail Growth in Electricity) and SEARCH (Stakeholders Exploring Avenues to Remove Competitive Hurdles). The stakeholders filed initial comments on August 16, 2010 wherein a majority of the stakeholders, including MXenergy, recommended¹ the adoption of the Commission's Proposed Interim Guidelines for Retail Energy Suppliers. MXenergy submits these reply comments to respond to the comments of the Pennsylvania Utility Law Project (PULP) and the Pennsylvania Consumer Advisory Council (CAC), both whom recommended a ban on door-to-door retail marketing and sales, and the comments of the Interstate Gas Supply, Inc. (IGS) who, for the first time,

¹ MXenergy Inc. strongly supports the Commission's Proposed Interim Guidelines for Retail Energy Suppliers and with a few minor edits that were outlined in its Initial Comments believes the guidelines represent industry "best practices" and will help produce informed and consensual consumer enrollments.

argued that a door-to-door agent certification/licensing process is warranted so that the supplier is certified and the individuals that participate in door-to-door marketing and sales are licensed as “qualified” and accountable for direct solicitation performance.

As the Commission is aware, with the expiration of the electric generation rate caps of PPL Electric Utilities at the beginning of 2010, many electric generation suppliers (EGSs) have entered and will enter the Pennsylvania retail electric generation supply market. In December, 2009, within its Secretarial Letter, the Commission first addressed third parties who provide marketing and sales support to licensed EGSs and found that these third parties who work directly for EGSs as employees or independent contractors, and are not engaged in the sale of electricity or related services to consumers do not need to be licensed. The Commission recognized that third party marketers have caused service concerns in other state and agreed to monitor third party marketing practices in Pennsylvania and by November 30, 2010 evaluate the suppliers’ use of unlicensed third parties for marketing and sales support to determine if the practice should be restricted or prohibited. Subsequently, the stakeholders worked toward crafting these proposed interim guidelines that were written to reflect “best practices” for direct (door-to-door) marketing and telemarketing and sales.

Termination of door to door marketing and sales would be the easy solution to solve the problem of the new unfamiliar marketing strategies and sales techniques utilized by energy generation suppliers whose sales and marketing channel utilize door to door solicitations. MX, like Direct Energy Services, LLC, uses telemarketing, direct sales, and door-to-door sales practices to reach customers. We enthusiastically agree that customer’s consumer rights should be protected but at the same time this protection

should not unreasonably inhibit direct sales of retail energy. Instead of prohibiting door-to-door marketing and sales practices, the Commission should adopt the proposed guidelines on marketing and sales practices for EGSs and Natural Gas Suppliers (NGS). Best practices, as evidenced by the draft guidelines, will do more to accomplish the goal of an informed consumer with adequate disclosure and informed consent than terminating door-to-door marketing and sales. Review of the compliance with these practices, a sufficient time after they have been approved, will allow the Commission to review the evidence and evaluate whether EGSs and NGSs are complying with these marketing and sales guidelines. If there is a problem with energy supplier compliance with the guidelines, then is the time to discuss any next steps, not before the guidelines have even been approved.

MXenergy further respectfully disagrees with Interstate Gas Supply's belief that the proposed rules do not go far enough to provide necessary oversight and accountability on door-to-door solicitations and that the licensing of door to door agents is warranted. IGS' recommendation is unnecessary. The Commission has previously found that EGSs are responsible for the actions of unlicensed third parties with whom they contract to provide marketing and sales support services, i.e., door-to-door sales and telemarketing. (52 Pa. Code § 54.43(f) and § 54.32). Therefore licensing of door to door agents is redundant and unnecessary. Suppliers are already responsible for "any fraudulent deceptive or other unlawful marketing or billing acts performed by the licensee, its employees, agents, or representatives."² In its December, 2009 Secretarial Letter, the Commission also reminded EGSs that if an independent marketing services provider under contract with an EGS misrepresents an offer to a consumer or uses deceptive

² Section 62.102 of the NGS licensing regulations has similar language.

practices to attract the customer to the EGS, the Commission will hold the EGS responsible and further that such third party marketing service provider actions could result in the imposition of civil penalties on EGSs, including fines, license suspension or license revocation.

The Retail Energy Supply Association (RESA) in their comments stated that several of their members use door to door marketing and further, like MX in their initial comments, RESA stated its members “understand the critical importance that substantive, practical, fair and workable consumer protection and marketing practices play in creating robust and sustainable competitive retail market that provides value-added products and services to customers”.³ Several of the RESA members, as well as MX⁴, have first hand real world experience in door to door marketing and sales, as opposed to IGS or Dominion Retail who do not utilize the direct marketing and sales channel. The proposed consensus guidelines represent retail energy supplier “best practices” for direct (door-to-door) marketing and telemarketing and sales and are supported by many stakeholders who in fact participate in door to door marketing and sales. Suppliers, or other parties, who do not use door to door sales are likely unaware of the best practices used by several suppliers for door to door sales and the consumer protections these practices embody. These parties typically only see or hear about the consumer protection issues that arise where best practices are not employed, and thus draw an incorrect conclusion that door to door sales can not be properly controlled. This is clearly a case where we should not throw the baby out with the bath water. The proposed marketing standards do represent today’s best practices for door to door sales and will clean up the bath water.

³ RESA Comments at 1.

⁴ MXenergy Inc. is not a member of RESA.

MXenergy appreciates the opportunity to provide reply comments on the Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers. MXenergy strongly supports the Commission's Proposed Interim Guidelines for Retail Energy Suppliers, and with a few minor edits believes the guidelines will be "best in class" of all state consumer protection guidelines that will help produce informed and consensual consumer enrollments. With the Commission's adoption of the guideline marketing and sales standards, Pennsylvania, like New York, will have a gold plate standard for the marketing and sales practices for retail energy suppliers. MXenergy looks forward to working with stakeholders and the Pennsylvania Public Utility Commission Staff to provide a positive experience to all consumers. A vigorous, dynamic, yet fair competitive residential energy market that benefits consumers, retail energy suppliers and electric distribution companies is paramount to the fairness and integrity of the competitive market.

Respectfully submitted,

*Diana Serna for
Sandra Minch Guthorn*

Sandra Minch Guthorn
Senior Counsel-Regulatory Affairs
MXenergy
10010 Junction Drive
Suite 104-S
Annapolis Junction, Maryland 20701
sguthorn@mxenergy.com
(240)456-0505 (ext 5520)