



**PENNSYLVANIA**

**PUC**

**PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

June 2013

# MARKETING REGULATIONS



# The usual disclaimers...

- ◆ These are not the actual regulations. For the regulations, look for Title 52 on [www.pacode.com](http://www.pacode.com).
- ◆ Pursuant to 52 Pa Code §1.96, informal opinions are provided solely as an aid to you. They are not binding upon the Commonwealth or the Commission. Informal opinions are subject to withdrawal or change at any time to conform with new or different interpretations of the law.
- ◆ While we may not have time today for in-depth discussions or questions – staff is available for follow-up questions, discussions, etc. See contact information at the end of this presentation.

# Marketing:

- ◆ The Commission has some marketing regulations that have been in place for many years. These rules remain in effect.
- ◆ Some of the new marketing regulations are based upon or refer to 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. Use glossary of terms on [PaPowerSwitch.com](http://PaPowerSwitch.com).
- ◆ 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.
- ◆ 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- ◆ Renewal provisions for electric have been superseded by subsequent guidelines (M-2010-2195286).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.

## History: How the Regulations Were Developed:

- ◆ Numerous stakeholder meetings and discussions in 2010. Included suppliers, utilities and consumer groups.
- ◆ July 16, 2010 Tentative Order with proposed interim guidelines; inviting parties to comment.
- ◆ After review and careful consideration of the comments, on November 4, 2010 the Commission issued a Final Order .
- ◆ M-2010-2185981
- ◆ Guidelines have been in place and in effect.

# Rulemaking History:

- ◆ L-2010-2208332
- ◆ Proposed Rulemaking Order: February 10, 2011.
- ◆ Published in PA Bulletin October 22, 2011.
- ◆ 12 parties filed comments.
- ◆ Final Rulemaking Order: October 24, 2012.
- ◆ Reconsideration Order: April 4, 2013.
- ◆ Approved by IRRC: May 16, 2013.
- ◆ Will be effective upon publication in the Pennsylvania Bulletin. ([www.pabulletin.com](http://www.pabulletin.com))

## § 111.1. General.

The purpose of this chapter is to establish standards and practices for marketing and sales activities for EGSs and NGSs and their agents to ensure the fairness and the integrity of the competitive residential energy market. EGSs and NGSs and their agents shall comply with these standards and practices when engaged in sales and marketing activities involving residential customers. **When these standards and practices do not address a specific situation or problem, the supplier shall exercise good judgment and use reasonable care in interacting with customers, and members of the public.**

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.

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

## § 111.2: Definitions: AGENT

*Agent—*

A person who conducts marketing or sales activities, or both, on behalf of a licensed supplier or suppliers. The term includes an employee, a representative, an independent contractor or a vendor. It also includes subcontractors, employees, vendors and representatives not directly contracted by the supplier who conduct marketing or sales activities on behalf of the supplier.

## § 111.2: Definitions: CUSTOMER

*Customer*- a natural person in whose name a residential EDC, NGDC, EGS, or NGS service account is listed and who is primarily responsible for payment of bills rendered for the service.



## § 111.2: Definitions:

- ◆ ***Door-to-door sales***—A solicitation or sales method whereby an agent proceeds randomly or selectively from residence to residence.
- ◆ ***Sales and marketing*** —The extension of an offer to provide services or products communicated orally, electronically or in writing to a customer.

## § 111.2: Definitions:

- ◆ *TRANSACTION* – A process by which a customer authorizes the transfer of his or her account to the supplier.
- ◆ *TRANSACTION DOCUMENT* – Contracts and forms used by a supplier to enroll a customer for service.
- ◆ *VERIFICATION* – Customer validation of his or her intent to enter into a contract and receive service from a supplier.
- ◆ *VERIFICATION PROCESS* – an action via written, audio or electronic documentation by which a customer validates his or her intent to enter into a contract and receive service from a supplier.

## § 111.3: Supplier liability for its agent:

(b) In accordance with § 54.43(f) (relating to standards of conduct and disclosure for licensees) for an EGS and § 62.114(e) (relating to standards of conduct and disclosure for licensees) for an NGS, a supplier is responsible for fraudulent, deceptive or other unlawful marketing acts performed by its agent.

(c) Consistent with due process, for violations committed by the supplier's agent, the Commission may:

(1) Suspend or revoke a supplier's license.

(2) Impose fines for fraudulent acts, violations of Commission 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.” 62.114(e) of the NGS licensing regulations has similar language.)

**§ 111.4: Agent qualifications and standards;  
criminal background investigations:**

A supplier may not permit a person to conduct door-to-door sales and marketing activities until it has obtained and reviewed a criminal history record from the Pennsylvania State Police and from every other state in which the person resided for the last 12 months.

## § 111.4: Agent qualifications and standards; criminal background investigations:

For a current employee or agent who conducts sales and marketing activities, a supplier must obtain a criminal history record not later than 90 days after the effective date of this regulation.

The criminal background investigation shall include checking the sex offender registry commonly referred to as the “Megan’s Law” registry maintained by the Pennsylvania State Police.

## § 111.4: Agent qualifications and standards; criminal background investigations:

- ◆ A supplier may not hire a person as an employee or an agent for door-to-door marketing or sales who was convicted of a felony or misdemeanor when the conviction reflects adversely on the person's suitability for such employment.
- ◆ When a 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 investigations on its agents in accordance with this section and with the standards set by the supplier.

# § 111.5: Agent 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 as found on [PaPowerSwitch.com](http://PaPowerSwitch.com);
- ◆ How customer can contact the supplier;
- ◆ Customer confidentiality and protection of information.

## § 111.5: Agent training:

(b) A supplier shall document the training of an agent and maintain a record of the training for 3 years from the date the training was completed.

(c) A supplier shall make training materials and training records available to the Commission upon request. A supplier is not required to submit training materials and programs for advance Commission review and approval.



## § 111.5: Agent training:

(d) When a supplier contracts with an independent contractor or vendor to perform marketing or sales activities on the supplier's behalf, the supplier shall confirm that the contractor or vendor has provided supplier-approved training to agents and independent contractors in accordance with this section.

(e) The supplier shall monitor telephonic and door-to-door marketing and sales calls to:

- (1) Evaluate the supplier's training program.
- (2) Ensure that agents are providing accurate and complete information, complying with applicable rules and regulations and providing courteous service to customers.

## § 111.6: Discipline:

In developing internal agent discipline practices and procedures, a supplier shall consider the Commission's regulations regarding the unauthorized transfer of customer accounts at 52 pa. code §§ 57.171 – 179 (relating to standards for changing a customer's electricity generation supplier) and §§ 59.91 – 99 (relating to standards for changing a customer's natural gas supplier) and the violation of other consumer protections.

◆ **SLAMMING : ZERO TOLERANCE.**

## § 111.7: Customer authorization to transfer account; transaction; verification; documentation.:

### TRANSACTION DOCUMENTATION:

- ◆ A supplier shall establish a written, oral, or electronic transaction process for a customer to authorize the transfer of the customer's account to the supplier.
- ◆ Transaction documentation shall include identity of agent (if agent involved) and what type of transaction (door to door, telephone, etc.).
- ◆ Documentation provided to Commission upon request.

## § 111.7: Customer authorization to transfer account; transaction; verification; documentation.:

### VERIFICATION:

(b) A supplier shall establish a process to verify a transaction that involved an agent. The process shall confirm that the customer authorized the transfer of the customer's account to the supplier. This subsection does not apply to a transaction that was completed solely by the customer as set forth in subsection (a)(1)(iii) and (iv).

(1) A supplier may use a third party to verify transactions.

(2) The verification process shall be separate from the transaction process and initiated only after the transaction has been finalized.

## § 111.7: Customer authorization to transfer account; transaction; verification; documentation.:

When verifying a transaction that resulted from an agent's contact with a customer at the customer's residence, the verification process shall be initiated only after the agent has physically exited the customer's residence, unless the customer agrees that the agent may remain in the vicinity of the customer during the verification process. Prior to initiating the verification process, the agent shall inform the customer that the agent will not be in the vicinity during the verification unless the customer agrees to the agent's presence.

## § 111.7: Customer authorization to transfer account; transaction; verification; documentation.:

### VERIFICATION:

(3) A customer shall be informed of the 3-business-day right of rescission of the transaction under §§ 54.5(d) and 62.75(d) (relating to disclosure statement for residential and small business customers) and the customer's rights under 73 p.S. § 201-7 (Relating to Pennsylvania's unfair trade practices and consumer protection law) at the end of the verification process contact.

(4) A supplier shall maintain a record of a verification in a system that is capable of retrieving the record by customer name and customer account number for a period of time equivalent to at least six billing cycles to enable compliance with § 57.177 (relating to customer dispute procedures) for an EGS and § 59.97 (relating to customer dispute procedures) for an NGS.

## § 111.7: Customer authorization to transfer account; transaction; verification; documentation.:

### VERIFICATION:

- ◆ The verification record shall include the transaction documents and the date that the transaction was completed; identification of the agent; date of the verification; the individual that conducted the verification; results of the verification; date that the disclosure statement was provided to the customer and the method by which it was provided.
- ◆ A supplier shall provide copies of verification records to the Commission upon request.
- ◆ When a supplier is informed that a transaction could not be verified, the supplier shall contact the customer by telephone, e-mail or letter and explain that the transaction could not be verified. The supplier may offer assistance to correct the problem so that the transaction can be resubmitted to the verification process.

## § 111.8. Agent Identification; misrepresentation.

(a) A supplier shall issue an identification badge to agents who conduct door-to-door activities or appear at public events. The badge must:

- (1) Accurately identify the supplier, its trade name and logo.
- (2) Display the agent's photograph.
- (3) Display the agent's full name.
- (4) Be prominently displayed.
- (5) Display a customer-service phone number for the supplier.



## § 111.8. Agent Identification; misrepresentation.

(b) Upon first contact with a customer, an agent shall identify the supplier that he represents. The agent shall state that he is not working for and is independent of the customer's local distribution company or other supplier. This requirement shall be fulfilled by both an oral statement by the agent and by written material provided by the agent.

When conducting door-to-door activities or appearing at a public event, an agent may not wear apparel or accessories or carry equipment that contains branding elements, including a logo, that suggests a relationship that does not exist with any EDC, NGDC, government agency or another supplier.

## § 111.8. Agent Identification; misrepresentation.

(d) A supplier may not use the name, bills, marketing materials or consumer education materials of another supplier, EDC, NGDC or government agency in a way that suggests a relationship that does not exist.

(e) An agent of a supplier that is an affiliate of a distribution company shall comply with the rules regarding affiliate marketing in § 54.122 (relating to code of conduct) for an EGS and in § 62.142 (relating to standards of conduct) for an NGS.

(f) A supplier or supplier agent may not say or suggest to a customer that utility customers are required to choose a competitive energy supplier.

## § 111.9. Door-to-door sales.

(a) A supplier and its agents shall comply with local ordinances regarding door-to-door marketing and sales activities.

(1) A supplier shall limit door-to-door marketing or sales activities to the hours between 9 a.m. and 7 p.m. during the 6 months beginning October 1 and ending March 31, and to the hours between 9 a.m. and 8 p.m. during the months beginning April 1 and ending September 30. When a local ordinance has stricter limitations, a supplier shall comply with the local ordinance.

## § 111.9. Door-to-door sales.

(d) When engaging in door-to-door sales or marketing activities, an agent shall comply with the following:

(1) After greeting the customer, the agent shall immediately identify himself by name, the supplier the agent represents and the reason for the visit. The agent shall state that he is not working for and is independent of the local distribution company or another supplier.

(2) The agent shall offer a business card or other material that lists the agent's name, identification number and title and the supplier's name and contact information, including telephone number. This information does not need to be preprinted on the material. When the information is handwritten, it shall be printed and legible.

(e) When a customer's language skills are insufficient to allow the customer to understand and respond to the information being conveyed by the agent, or when the customer or a third party informs the agent of this circumstance, the agent shall terminate contact with the customer.

## § 111.9. Door-to-door sales.

(f) When an agent completes a transaction with a customer, the agent shall:

(1) Provide a copy of each document that the customer signed or initialed relating to the transaction. A copy of these documents shall be provided to the customer before the agent leaves the customer's residence. If requested by the customer, a copy of the materials used by the agent during the call shall be provided to the customer as soon as practical.

(2) Explain the supplier's verification process to the customer.

(3) State that the supplier shall send a copy of the disclosure statement about the service to the customer after the transaction has been verified if the disclosure statement has not been previously provided.

## § 111.9. Door-to-door sales.

(4) State that the customer may rescind the transaction within 3 business days after receiving the disclosure statement.

(g) An agent shall immediately leave a residence when requested to do so by a customer or the owner or an occupant of the premises or if the customer expresses no interest in what the agent is attempting to sell.

(h) A supplier shall comply with an individual's request to be exempted from door-to-door marketing and sales contacts and annotate its existing marketing or sales databases consistent with this request within 2 business days of the individual's request.

## § 111.10. Telemarketing.

(a) A supplier and its agents shall comply with regulations that govern marketing, consumer protection and telemarketing sales including consumer protection regulations in Chapters 54 and 62 (relating to electricity generation customer choice; and natural gas supply customer choice) and applicable provisions in Chapters 56, 57 and 59 (relating to standards and billing practices for residential utility service; electric service; and gas service).

(1) A supplier that is licensed by the Commission and engages in telemarketing is not required to register as a telemarketer under section 3(a) of the act (73 P. S. § 2243(a)), regarding registration requirement, but shall comply with other provisions of the act.

(2) An agent that contracts with a supplier to conduct telemarketing and sales activities on behalf of the supplier shall register as a telemarketer and comply with the act.

## § 111.10. Telemarketing.

(3) A supplier and its agents shall comply with the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C.A. §§ 6101—6108) and 16 CFR Part 310 (relating to telemarketing sales rule).

(4) Customer consent to the release of customer information by the distribution company to the supplier to enable competitive solicitations does not constitute an express request to receive telephone solicitation calls. See section 5 of the act (73 P. S. § 2245), regarding unlawful acts and penalties. See the definition of "Do Not Call List" in section 2 of the act (73 P. S. § 2242).



## § 111.10. Telemarketing.

(b) An agent who contacts customers by telephone shall, after greeting the customer, immediately identify himself by name, identify the supplier the agent represents and the reason for the telephone call. The agent shall state that he is not working for and is independent of the local distribution company or another supplier. The agent may not say or suggest to a customer that utility customers are required to choose a competitive energy supplier.

## § 111.10. Telemarketing.

(c) When an agent completes a transaction with a customer, the agent shall explain the supplier's verification process to the customer and state that the supplier will send a copy of the disclosure statement and other material about the service to the customer after the transaction has been verified. At the end of the telephone contact, the agent shall state that the customer may rescind the transaction within 3 business days after receiving the disclosure statement.

## § 111.12. Consumer protection.

(a) A supplier and its agents may not discriminate in the provision of electric generation and natural gas as to availability and terms of service to a customer 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.A. §§ 1601—1693r) and 12 CFR Part 202 (relating to Equal Credit Opportunity Act (Regulation B)). This requirement is consistent with § 54.43(e) (relating to standards of conduct and disclosure for licensees) for EGSs and § 62.114(e) (relating to standards of conduct and disclosure for licensees) for NGSs.

## § 111.12. Consumer protection.

(b) A supplier and its agents that engage in door-to-door marketing or sales shall comply with the Federal cooling-off period requirements. See 16 CFR Part 429 (relating to rule concerning cooling-off period for sales made at homes or at certain other locations).

(c) A supplier and its agents shall comply with the 3-business-day cooling off period requirement in §54.5(d) (relating to disclosure statement for residential and small business customers) that applies to EGSs and §62.75(d) (relating to disclosure statement for residential and small business customers) that applies to NGSs. This cooling off period may run concurrently with the federal cooling off period cited in subsection (b).

## § 111.12. Consumer protection.

A supplier shall:

- ◆ Not engage in misleading or deceptive conduct.
- ◆ Not make false or misleading representations including misrepresenting rates or savings offered by the supplier.
- ◆ Provide the customer with written information about the products and services being offered.
- ◆ Provide accurate and timely information about services and products being offered.
- ◆ Ensure that any product or service offerings made by a supplier contain information, verbally or written, in plain language designed to be understood by the customer.

## § 111.13. Customer complaints.

A supplier...

- ◆ Shall investigate customer inquiries, disputes and complaints concerning marketing or sales practices.
- ◆ Shall cooperate with the Commission and other government agencies that are investigating complaints.
- ◆ Shall implement an internal process for responding to and resolving customer inquiries, disputes and complaints.
- ◆ Shall retain the record for a time period equivalent to six billing cycles

## § 111.13. Customer complaints.

- ◆ Shall comply with the applicable dispute regulations including:
  - ◆ (1) Section 54.9 (relating to complaint handling process).
  - ◆ (2) Section 56.141 (relating to dispute procedures).
  - ◆ (3) Section 56.151 (relating to general rule).
  - ◆ (4) Section 56.152 (relating to contents of the public utility company report).
  - ◆ (5) Section 57.177 (relating to customer dispute procedures).
  - ◆ (6) Section 59.97 (relating to customer dispute procedures).
  - ◆ (7) Section 62.79 (relating to complaint handling process).
- ◆ **Shall provide a single contact and a list of designated escalation contacts for the Commission staff to access to address consumer inquiries and resolve complaints.**

## § 111.14. Notification regarding marketing or sales activity.

(a) When a supplier engages in door-to-door sales and marketing activity, the supplier shall notify the Bureau of Consumer Services no later than the morning of the day that the activity shall begin. The notification shall include general, nonproprietary information about the activity, the period involved and a general description of the geographical area.



## § 111.14. Notification regarding marketing or sales activity.

- ◆ Residential door-to-door activity ONLY.

- ◆ Email notifications to:

[RA-PCDOORTODOOR@pa.gov](mailto:RA-PCDOORTODOOR@pa.gov)

- ◆ Only one notice is required. No later than “morning of the day” marketing begins.

- ◆ Time period: approximately XX/XX/XX – XX/XX/XX; or “Month(s) of X” are acceptable.

- ◆ Geographic area: municipalities (city, borough, township).

- ◆ Contact Information: who should we contact if we have questions about what was submitted?

- ◆ Questions? Contact Annette Falcone at [anfalcone@pa.gov](mailto:anfalcone@pa.gov) or (717-783-9088).

## § 111.14. Notification regarding marketing or sales activity.

(b) A supplier shall provide the local distribution company with general, nonproprietary information about the door-to-door sales and marketing activity that caused the supplier to provide notice to the Commission in accordance with subsection (a). The supplier shall provide this general information to the distribution company no later than the morning of the day that the sales and marketing activities begin. The distribution company shall use this information only for acquainting its customer service representatives with sales and marketing activity occurring in its service territory so that they may knowledgably address customer inquiries. Consistent with § 54.122 (relating to code of conduct) for an EDC and § 62.142 (relating to standards of conduct) for an NGDC, a distribution company may not use the information for other purposes.

## § 111.14. Notification regarding marketing or sales activity.

(c) In responding to a customer inquiry about price and service, a distribution company may provide information about its own price and terms but shall refer the customer to the supplier for questions about the supplier's prices and terms. This subsection does not apply in the context of a commission-approved program that requires a distribution company to provide information about a supplier's prices and terms.

# Contacts re: Marketing Rules

- ◆ Office of Competitive Market Oversight:  
[RA-OCMO@pa.gov](mailto:RA-OCMO@pa.gov)
- ◆ Dan Mumford, Bureau of Consumer Services (technical):  
[dmumford@pa.gov](mailto:dmumford@pa.gov) (717) 783-1957
- ◆ Patricia Wiedt, Law Bureau (legal):  
[pwiedt@pa.gov](mailto:pwiedt@pa.gov) (717) 787-5755
- ◆ Matt Hrivnak, Bureau of Consumer Services (informal complaints): [mhrivnak@pa.gov](mailto:mhrivnak@pa.gov) (717) 783-1678
- ◆ To report door-to-door activity: Annette Falcone, Bureau of Consumer Services: [anfalcone@pa.gov](mailto:anfalcone@pa.gov) (717-783-9088).



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