Prepared Testimony of

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Introduction

Greetings Chairman Matzie, Chairman Marshall, and members of the House Consumer Protection, Technology & Utilities Committee. On behalf of the Commission, I offer this testimony to inform the Committee on the Commission's review of House Bill 1578 (HB 1578). At the outset, I note that the Commission takes a neutral stance on the legislation. We use this testimony to convey some key areas of concern and questions as you deliberate.

House Bill 1578

Generally speaking, HB 1578 proposes two key requirements for retail suppliers operating in the Commonwealth. First, it would require that any natural gas suppliers (NGSs) and electric generation suppliers (EGSs) (collectively "suppliers") engaging in door-to-door, in-person marketing at the homes of residential customers furnish an additional bond or other security with the Commission in the amount of $1,000,000. Second, the bill would direct the Commission to develop and implement a mandatory training and education program to ensure that designated representatives of NGSs and EGSs demonstrate, through online training and examination, an understanding of the Commission's regulations regarding energy sales and consumer protection.

Existing Commission Bond Requirements

The Commission has always required EGSs to post security with the Commission as a condition of being licensed and for maintaining that license. This bonding is required under Section 2809(c) of the Electricity Generation Customer Choice and Competition Act and is intended to ensure the recovery of taxes due to the Commonwealth, the EGS's obligations under the Alternative Energy Portfolio Standards Act (AEPS), as well as other energy delivery obligations. The amount of the security for each supplier is reviewed annually and modified primarily based on the licensee's reported annual gross receipts and the scope of the licensee's operations.

For NGSs the bonding situation is different. The Commission does not collect any security from NGSs. Instead, NGSs post security with the local Natural Gas Distribution Company (NGDC), pursuant to Section 2208(c) of the Natural Gas Choice and Competition Act. One of the reasons for this difference is that the Commonwealth's Gross Receipts Tax (GRT) does not apply to natural gas utility service, therefore there is no need for security to ensure its payment. As such, the

bonding requirement in HB 1578 would be a "new" requirement for NGSs who have never in the past provided the Commission with any bonds or security.

Existing Commission Sales and Marketing Regulations

Before discussing the supplier training requirements in HB 1578, I would first like to note that the Commission has regulations governing the sales and marketing of competitive energy services. Pennsylvania was one the first states to adopt regulations governing supplier marketing to residential customers, including door-to-door marketing. Our Chapter 111 residential marketing rules have served as a model for other states with competitive energy markets.[1] The requirements found in these regulations concerning door-to-door sales include:

- Agents must have background checks performed before they are allowed to sell.
- A supplier has to ensure the training of its agents on consumer protection rules, ethical sales practices, the suppliers' products and services, disclosure statements, customer confidentiality, and commonly used energy supply terms. Suppliers must retain a record of this training for three years and make these records available to the Commission. Suppliers also are obligated to monitor marketing efforts to evaluate the effectiveness of the training program. If the supplier is using a vendor or contractor, the supplier must confirm that the vendor has provided training to its agents.
- Any sale performed by an agent must be later verified by the supplier.
- Agents must wear identification badges and have business cards available.
- Agents must, when first meeting a potential customer, identify themselves, who they are working for, and the purpose of the visit.
- Agents must not suggest they are affiliated with a local utility or government agency and cannot wear any clothing or possess any material that suggests such an affiliation.
- Agents and suppliers must comply with all local municipal ordinances (such ordinances supersede our rules if the rules conflict).
- Agents can only be in the field between 9 a.m. and 8 p.m. in the warm months or until 7 p.m. in the cold months. Again, if the local ordinance is stricter, the local ordinance applies.
- Agents must leave when told to do so and suppliers must honor requests not to be visited again.

[1] 52 Pa. Code §§ 111.1-111.14.

- Suppliers that plan on selling residential door-to-door must first inform the Commission's Bureau of Consumer Services (BCS) of the dates and locations of their sale efforts. These reports assist the Commission in monitoring the amount of door-to-door activity and which suppliers are engaged in it. These reports can also assist us in identifying possible suppliers in instances where the Commission receives a consumer complaint, but the complainant is not sure of the identity of the supplier at issue.

The Commission enforces these rules through a variety of methods, primarily by monitoring informal complaints filed with BCS. BCS reviews complaints and works informally with suppliers to resolve any deficiencies. If informal efforts are not effective, BCS may refer matters to the Commission's independent prosecutorial arm, the Bureau of Investigation and Enforcement (I&E). The Commission also monitors the market via our Office of Competitive Market Oversight (OCMO) that receives information from utilities, suppliers, local officials, and the General Assembly and has the same enforcement mechanisms available as BCS.

Commission Position on HB 1578

The Commission takes a neutral position on HB 1578. However, we would like to share some information, potential clarifications, and questions the Commission has as a result of our initial review.

I want to first address the bonding requirements. We believe the bill could be improved by clarifying its applicability to suppliers already engaged in door-to-door marketing practices. While it is reasonably clear that this bonding requirement applies to those suppliers that intend to perform residential door-to-door marketing going forward, it's applicability to those that are already licensed and engaged in door-to-door marketing might be questioned. The language is not clear that existing EGSs and NGSs that have been, are, or intend to use door-to-door marketing techniques would be required to maintain the additional security and some suppliers may argue that those EGSs and NGSs in existence at the effective date of the bill need not comply with the new requirement as they are "grandfathered in." If the intent is that the additional $1,000,000 bond should apply to suppliers who are already licensed and engaged in person-to-person residential sales marketing, then we suggest that the statute so state and define a deadline for existing suppliers engaging in door-to-door sales to provide the Commission with the additional $1,000,000 bond.

Another question about HB 1578 regards what these new bonds are intended to cover. The legislation does not address what would constitute a breach of the instruments' terms. Thus, it leaves open the question of what actions or omissions on the part of the supplier would allow the Commission to make a claim against the bond. Is the bond intended to solely cover annual fees owed to the Commission, Gross Receipts Tax owed to the PA Department of Revenue, and/or alternative compliance payments under AEPS? Is it meant to cover Commission-issued civil penalties for violations of door-to-door sales regulations? Or is the bond meant to cover refunds to retail customers for violations of door-to-door sales regulations that directly impact customers (such as unauthorized switching, commonly known as "slamming")? Also, if the bonds are meant to cover amounts owed to customers, there is an open question as to how the Commission is to make such claims and administer refunds when the Commonwealth Court has held that the Commission lacks authority to direct an EGS to issue refunds. *See Blue Pilot Energy v. PUC,* 241 A.3d 1254, 1268. (Pa. Cmwlth. 2020)

Concerning the training program requirements in HB 1578, should this bill be enacted, the Commission will have to undertake a stakeholder process to develop and implement an online training course and examination. This will likely require substantial time and resources of Commission staff and could result in significant costs that might not be sufficiently covered by the licensing fee, annual fee, and assessments. Because the Commission has never employed such an intensive supplier training program, the Commission may not have the resources to design and implement such a program and may need to contract with an outside entity for such an effort.

Much of this impact upon the Commission and its resources will be dependent upon the scope of the training and how many individuals and suppliers the Commission is expected to train and test. The proposed legislation specifies that the Commission "shall require that a designated representative" participate in the program. However, it is unclear which and how many supplier employees (marketing manager, compliance managers, etc.) will be required to complete the training and certification. The more "designated representatives," the greater the possible demand upon Commission resources. Furthermore, suppliers often contract with independent vendors to handle their door-to-door activities. While these entities' employees or contractors may be agents of the suppliers per our regulations (the supplier is held fully responsible for the actions of their contractors and

vendors[2]), the proposed legislation does not require the training of any of these independent contractors. The legislation appears to rely upon the trained supplier's management to in turn train the independent contractor it hires to handle its marketing affairs. In the Commission's experience, the arms-length supervision of licensed EGSs and NGSs over their vendors who are actually conducting the marketing results in many of the issues experienced by customers. Improving training among the actual marketers and requiring training updates for those marketers on an annual basis may have a greater positive effect than training EGSs and NGSs.

Concerning the scope of this proposed training requirement, if the bill is intended to specifically target problems created by person-to-person sales to residential retail customers, the proposed legislation appears rather broad in that it is directed to all entities licensed by the Commission that engage in electric supply or natural gas supply. Not all suppliers are licensed to serve residential customers. Some serve residential and small business customers. Some serve only commercial and/or industrial customers. Notably, the supplier marketing regulations already discussed apply only to residential consumers. Under the current language of HB 1578, even suppliers that only serve commercial and industrial customers would be required to participate in the supplier education program. Absent clarifying language, commercial and industrial suppliers could argue that having no residential customers renders the training program irrelevant to their business operation and seek exemption. The bill is also silent on whether the training is required for suppliers utilizing the broker/marketer business model.[3]

Also related to the scope of this training requirement, while much of the language in HB 1578 appears to involve suppliers who are seeking a Commission license, it is unclear whether the proposed training requirements also apply to currently licensed suppliers. If so, how much time will these suppliers be given to designate representatives to complete the training and pass the examination, and what are the penalties for failure to do so?

In addition to the above concerns with the language of the bill and items that we suggest need to be clarified, the Commission also has some broader, more general concerns with this training and testing requirement. The Commission, as a regulatory agency, *regulates* utilities and suppliers. We do not manage or operate

[2] 52 Pa. Code § 111.3.

[3] Presently there are 458 licensed EGSs (which 324 are licensed solely as broker/marketers) As well, presently there are 333 licensed NGSs.

utilities. HB 1578 inserts the Commission into the personnel training process of suppliers – with personnel training long being considered a function of utility or supplier management. This risks placing the Commission in the awkward and possibly untenable position of being both the "trainer" and the "enforcer." As such, this training provision may in effect shift the responsibility for agent training from the supplier and their management team – where we think it belongs – to the Commission.

If the General Assembly does wish to adopt the training program, we would recommend at least one amendment. It should be made clear that any training the Commission provides is an aid to compliance, but does not substitute for EGSs' and NGSs' affirmative duty to know and follow the law. Any perceived or alleged conflict between the training materials and law must always be resolved in favor of the provisions of the Public Utility Code, Commission regulations, Commission orders and relevant case precedent. An NGS or EGS should not be able to cite to the informal statements made or training materials provided in training sessions as part of a defense against either a complaint filed by a customer or an enforcement action brought against them by Commission staff for violations of the Code, regulations or orders of the Commission. Nor should the training status of an existing NGS or EGS be used as a defense. It will take some time to set up and implement the program for the several hundred existing suppliers. We would be happy to work with your staff to draft such an amendment.

I want to note before closing that regardless of the above, the Commission does serve as a resource for the supplier community when it comes to understanding and complying with our rules and expectations. BCS, through its complaint handling, interacts with suppliers on an informal level to educate them on our rules and to get any deficiencies addressed. OCMO serves as a contact for all suppliers about any questions or problems they may have while serving the market and interacting with the Commission. The Commission holds semi-annual online events where representatives from the Commission's various bureaus review our rules, procedures and expectations and make themselves available for questions – this year's event is scheduled for September 14th.

When new residential suppliers go through the licensing process, they must submit a sample residential disclosure statement to BCS – which then works with the applicant to ensure the disclosure complies with our regulations. BCS also makes itself available at any time to review disclosure statements upon request from suppliers. Our website has pages dedicated to suppliers and filled with

information they need. Thus, the Commission currently plays a role in educating and "training" suppliers and recognizes the importance of doing so. However, as I noted earlier, we are concerned that the expanded training requirement in this legislation may create a conflict of interest.

Conclusion

In conclusion, the Commission appreciates the efforts of the Committee to foster healthy and robust competitive retail electricity and natural gas markets. We hope our input here is informative as you deliberate HB 1578. We stand ready to answer any questions and work with you on the legislation.