

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**License Application of Just Energy
Pennsylvania Corp.**

**Public Meeting December 17, 2009
2097544-OSA
Docket No. A-2009-2097544**

DISSENTING STATEMENT OF VICE CHAIRMAN TYRONE J. CHRISTY

On November 9, 2009, the Commission issued an order denying the above-captioned electric generation supplier (EGS) license application of Just Energy Pennsylvania Corp. (Just Energy) for lack of fitness. Before the Commission today for disposition is Just Energy's petition for reconsideration filed on November 20, 2009. Just Energy seeks to act as a broker/marketer and aggregator to supply electricity to residential and commercial customers in the service territory of Duquesne Light Company.

Just Energy is one of several affiliates of the Energy Savings Income Fund (ESIF), which was established as a limited purpose trust in the Canadian Province of Ontario in 2001. In its application, Just Energy stated that ESIF is utilizing 560 independent contractors to market electricity and gas door-to-door in four Canadian provinces and the states of Illinois, Indiana, New York and Texas. Just Energy also proposed using independent contractors for door-to-door marketing in Pennsylvania. The Commission found that the conduct of Just Energy's affiliates in other states raised consumer protection concerns, which led the Commission to deny Just Energy's application for lack of fitness.¹ Specifically, the Commission found that Just Energy "is not able to properly perform the service proposed in conformance with the applicable provisions of the Public Utility Code and lawful Commission orders and regulations." Order at 7.

In its petition for reconsideration, Just Energy proposes several license conditions for a period of a limited period of 12 months. Among these conditions are commitments

¹ In Illinois, the Attorney General filed a lawsuit against Just Energy's Illinois affiliate in 2008, alleging that the company used misleading sales tactics that falsely promised significant consumer savings. In May, the ESIF Illinois affiliate agreed to pay Illinois customers \$1 million in restitution and to allow hundreds of customers to terminate their contracts. Other complaints remain open in Illinois, including an action filed with the Illinois Commerce Commission in 2008 by the Citizens Utility Board (CUB) and other complainants, alleging that the affiliate violated the Illinois Alternative Gas Supplier Law and other statutes. Previously, in 2006, CUB filed a complaint against the affiliate, which was settled by a confidential agreement. The Illinois Attorney General also was a party to that complaint proceeding. For the three year period 2006 – 2008, the Illinois Commerce Commission received between 418 and 654 complaints and inquiries per year against the ESIF Illinois affiliate. In contrast, the number of complaints and inquiries about other suppliers ranged between only 2 and 95 per year. In New York, the Attorney General opened an inquiry into the ESIF New York affiliate, which resulted in an agreement by ESIF to pay \$200,000 to the State of New York. The New York Public Service Commission consistently reports that the ESIF affiliate is the subject of a high number of complaints. In Texas, the ESIF affiliate consistently is the subject of a "higher than average rate of complaints."

to submit marketing materials to the Commission staff for comment; meet monthly with Commission staff and provide a monthly report on complaints; conduct background checks of all employees and provide the background check criteria to the Commission staff; and provide a single point of contact and escalation contacts to the Commission for resolution of consumer complaints. Just Energy also proposes to use only employees, as opposed to independent contractors, during this 12-month period. Sixty days prior to the conclusion of the probationary period, Just Energy proposes to submit a report to the Commission staff of any license violations in other jurisdictions. At the end of the probationary period, Just Energy proposes that it be released from these conditions if it meets certain standards and obtains the concurrence of the Commission. The Commission's order extends the 12-month probationary period to 18 months.

I respectfully dissent from the majority's decision today to grant Just Energy's petition for reconsideration. Given this company's track record in other jurisdictions, I believe that the better course would be to deny the petition and affirm our decision to deny its license application for lack of fitness. We are not in such short supply of EGSs that we should be swayed to issue a license to a company with a questionable track record on the basis of some temporary license conditions. Numerous other companies are filing EGS license applications as rate cap expirations draw closer. Just today, at one public meeting, we are approving 11 EGS and two NGS license applications. Accordingly, there is no compelling public need for one more licensed EGS. There is, however, a substantial risk in issuing a license to a company that we determined to be unfit just last month. I am concerned that, the temporary license conditions notwithstanding, the issuance of this license to Just Energy needlessly will expose Pennsylvania residents and small businesses to potential misleading and predatory sales practices. I also object to the Commission's acquiescence in Just Energy's proposed license conditions, which will require a substantial amount of staff resources to implement and monitor. We do not have sufficient staff resources to hold monthly meetings with EGSs, review monthly reports, review EGS marketing materials and background check criteria, conduct a review of EGS performance at the conclusion of a probationary period, and then conduct a decision-making process as to whether licensing conditions should be continued or terminated. In my view, the prudent course of action would have been to deny this petition for reconsideration. For these reasons, I dissent from the majority's decision today.

I also would like to register my disagreement with the attached Secretarial Letter that was issued on December 10, 2009, which announced that independent contractors that provide marketing and sales support services under contract to EGSs are not required to be licensed by the Commission. The exemption from the licensing requirement applies to entities and individuals that provide marketing services to an EGS via telemarketing, direct mail, newsletters, brochures and , most significantly, door-to-door marketing. As stated above, Just Energy originally planned to market electricity door-to-door to residential customers using independent contractors, and currently plans to do so at the conclusion of its probationary period. Several other companies whose license applications we are approving today also plan to use independent contractors to market electricity to customers. The orders pertaining to these companies have been revised to

reflect last week's determination that independent contractors providing marketing services to EGSs are not required to be licensed.

Although I disagree with the December 10, 2009, Secretarial Letter on several grounds, my primary concern is the potential for fraudulent sales practices and the danger to the public created by sanctioning the door-to-door sales of electricity by unlicensed entities and individuals. We will not be reviewing these entities and individuals for fitness, and will have no record of their names or addresses. We will have no ability to monitor their activities, and likely would have no recourse against them even in cases where their identity is known. Although the Secretarial Letter states that the Commission will hold EGSs responsible for the fraudulent and deceptive sales practices of its independent contractors, this may not be easy to enforce given our limited jurisdiction over EGSs themselves.

The decision to sanction the door-to-door sales of electricity by unlicensed individuals creates the opportunity for criminal activity by imposters who claim to be marketing electricity. Recently, a man posing as a utility worker forced himself into a Philadelphia home after telling the homeowner he needed to check for an illegal hook-up. Once inside the home, he showed a weapon and demanded money. In response, the Commission issued a press release on September 25, 2009 (attached), reminding the public to be aware of individuals posing as utility employees. The Commission urged consumers to be aware of these attempts to violate their trust, and to take necessary precautions to stay safe. Specifically, the Commission urged people to ask to see the identification that utility workers are required to carry before allowing a stranger inside their homes. The Commission also advised people to call the utility to verify employee identity if in doubt, to look for clearly marked company vehicles and company clothing identifying the individual as a utility employee, and to report any suspicious activity to the utility or to the police. In contrast to the ability of a homeowner to verify the identity of a utility worker through personal identification, company uniforms, company vehicles, and telephone calls to the utility, a homeowner will not be able to verify the identity of an unlicensed individual.

In my opinion, the Commission should ban the practice of door-to-door sales of gas and electricity by unlicensed *and* licensed individuals and entities. The potential for deceptive sales practices that is created by door-to-door sales is too great. In addition, sanctioning the practice creates opportunities for criminal activity. Legitimate marketing activities should be confined to telemarketing, direct mailings, media advertisements and the like. At the very least, the Commission should require all individuals who conduct door-to-door marketing to be licensed, to undergo criminal background checks, and to carry a PUC-issued photo identification.

12-17-09

DATE

Tyrone J. Christy
TYRONE J. CHRISTY, VICE CHAIRMAN



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

December 10, 2009

To: Electric Generation Suppliers

Docket No.: M-2009-2082042

The Commission, through the Office of Competitive Market Oversight, has become aware of an issue that has been raised in the context of some applications filed by electric generation suppliers, which has the potential to hinder development of a competitive market, particularly in the PPL Electric Utilities service territory where rate caps are expiring at the end of this month.

A question has arisen as to whether entities or individuals under contract with electric generation suppliers (EGSs) must be licensed by the Commission in order to provide marketing services, such as telemarketing, direct mail, newsletters, brochures or door-to-door activities. Due to uncertainty on the part of some EGSs as to the potential licensing requirements for entities or individuals with whom they have contracted to provide these services, and their resulting reluctance to proceed with marketing activities in PPL's service area, the Commission is providing this clarification.

The Electricity Generation Customer Choice and Competition Act (Act) requires EGSs, including brokers, marketers and aggregators, to obtain a license from the Commission to sell electricity or related services to retail customers in Pennsylvania. 66 Pa. Code §2803. The Commission's regulations further provide that an EGS may not engage in marketing prior to being licensed. 52 Pa. Code §54.32.

Since the Act went into effect, EGSs have frequently relied upon independent third parties to market their services especially to residential and small business consumers. These marketing services providers have solicited customers to purchase electricity from the EGS with whom they are under contract. While numerous Chief Counsel opinion letters have been provided over the past 12 years indicating that entities providing such services need not be licensed, many active EGSs are not aware of those opinions; and in those instances, the Commission itself was not asked to clarify these matters.

Similar questions have been clearly addressed by the Commission for the natural gas industry. Specifically, the Commission has expressly exempted from licensing those entities that provide marketing and sales support services to licensed natural gas suppliers (NGSs) under a contract. 52 Pa. Code §62.101. Just as the Commission would not require an NGS's own employees to be individually licensed to perform such functions, independent third parties providing marketing services on behalf of the NGS have not been required to obtain a license.

As long as third parties entities are working directly for an EGS, as an employee or independent contractor, and their activities are limited to providing marketing and sales support services, they are not engaged in the sale of electricity or related services to consumers. As marketing services providers, these entities need not be licensed by the Commission under the

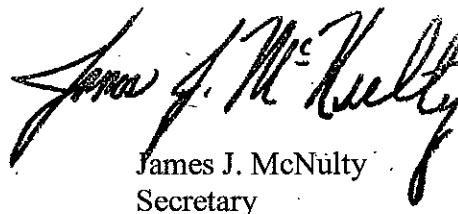
Act. Before these entities would become involved in arranging for electric service to be provided to end users, including the collection or payment of supply costs, they would be required to obtain a license. Going forward, as necessary, the Commission will not hesitate to further clarify activities requiring a license.

EGSs are reminded of their responsibility for any fraudulent, deceptive or other unlawful marketing or billing acts performed by their employees, agents or representatives. *See* 52 Pa. Code §54.43. For instance, if an independent marketing services provider under contract with the EGS misrepresents an offer to a consumer or uses deceptive practices to attract the customer to the EGS, the Commission will hold the EGS responsible. Such actions of the third party marketing services provider could result in the imposition of civil penalties on EGSs, including fines, license suspension or license revocation.

The Commission is aware that the business model of using independent contractors for marketing and sales support has caused customer service concerns in some states. Through OCMO, the Commission will be closely monitoring the issue in Pennsylvania and will evaluate this business model by November 30, 2010 to determine if steps are necessary to restrict or prohibit this practice.

Any questions about this letter should be directed to the Office of Competitive Market Oversight by email at ra-OCMO@state.pa.us or by calling the Director of Operations at 717-783-5331.

Very truly yours,

A handwritten signature in black ink, appearing to read "James J. McNulty". The signature is fluid and cursive, with a large initial "J" and "M".

James J. McNulty
Secretary

cc: Office of Competitive Market Oversight



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PUC Urges Consumers, Utility Companies to be Vigilant about Spotting Imposter Utility Workers

September 25, 2009

HARRISBURG – The Pennsylvania Public Utility Commission (PUC) today reminded the public to be aware of individuals posing as utility employees.

"Unfortunately, incidents where consumers are victimized by people posing as utility employees are not new," said PUC Chairman James H. Cawley. "The PUC urges consumers to be aware of these attempts to violate their trust and take the necessary precautions to stay safe."

On Sept. 23, 2009, a man posing as a utility worker forced himself into a Philadelphia home. According to police, the man told a homeowner he needed to check for an illegal hook up, then showed a weapon and demanded money.

Customers can protect themselves by:

- Asking to see identification before allowing a stranger inside. Utility workers are required to carry identification and many wear clothing identifying them as part of the company;
- Calling the company to verify work and employee identities if there is any doubt;
- Looking for clearly marked service vehicles; and
- Reporting any suspicious activity to the police and their respective utility companies.

The Pennsylvania Public Utility Commission balances the needs of consumers and utilities to ensure safe and reliable utility service at reasonable rates; protect the public interest; educate consumers to make independent and informed utility choices; further economic development; and foster new technologies and competitive markets in an environmentally sound manner.

For recent news releases, audio of select Commission proceedings or more information about the PUC, visit our website at www.puc.state.pa.us.

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Contact: Jennifer Kocher
 Press Secretary
 717-787-5722
jekoche@state.pa.us

Pennsylvania Public Utility Commission
 Press Office
 P.O. Box 3265, Harrisburg, PA 17105-3265
 (717) 787-5722 FAX (717) 787-4193

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