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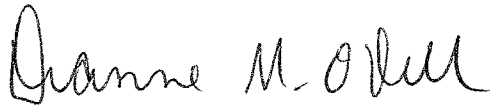
August 31, 2010

Via Electronic FilingRosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265Re: Interim Guidelines on Marketing and Sales Practices for Electric Generation
Suppliers and Natural Gas Suppliers, Docket No. M-2010-2185981

Dear Secretary Chiavetta:

On behalf of the Retail Energy Supply Association ("RESA") enclosed please find the original of its Reply Comments along with the electronic filing confirmation with regard to the above-referenced matter.

Very truly yours,



Deanne M. O'Dell, Esq.

DMO/lww
Enclosure

cc: Office of Competitive Market Oversight (via email only)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY COMMENTS OF
RETAIL ENERGY SUPPLY ASSOCIATION**

I. INTRODUCTION

As retail competition in the electricity and gas markets continues to evolve, the purpose of this proceeding is to establish the appropriate guidelines for competitive suppliers to follow when engaging in sales and marketing activities to residential consumers. In Annex A of its July 16, 2010 Tentative Order, the Commission proposed Interim Guidelines containing seventeen different sections intended to provide guidelines to competitive suppliers serving residential customers. With three substantive exceptions, the proposed guidelines set forth the consensus of a diverse group of interested stakeholders – including Commission staff, market participants and consumer advocates – who have been meeting regularly to focus on these issues.

In response to the Tentative Order, fifteen parties filed Comments. As explained further below, the Commission should reject some of the parties' attempts to reinstitute positions that were discarded in the interest of reaching consensus, and, make clear that, until the rulemaking process is finalized, the Interim Guidelines are just that – guidelines – and not regulations. The Commission should also adopt a reasonable alternative to address concerns about the presence of a sales agent during the Third Party Verification ("TPV") process. The Retail Energy Supply

Association (“RESA”)¹ appreciates the efforts of the Commission and its staff in working with interested stakeholders to develop these guidelines and looks forward to continued collaboration on issues related to developing a robust retail electricity market which provides the benefit of greater choice and alternatives for all consumers.

II. REPLY COMMENTS

A. The Commission Should Not Disrupt The Consensus To Restrict These Guidelines To Residential Customers

As explained in its Tentative Order, the concept and drafts of the interim guidelines to address sales and marketing activities have been discussed among various stakeholders under the guidance of the Commission staff of the Office of Competitive Market Oversight (“OCMO”). Since January 2010 these guidelines have been discussed over the course of thirteen meetings. Tentative Order at 14. In the context of these meetings, Staff’s initial draft of the guidelines was revised and changed as the group worked toward reaching a consensus. In this process, two overarching issues were addressed and resolved: (1) the Commission should not prohibit door-to-door marketing activities; and, (2) the guidelines should be limited to residential customers. Despite the consensus resolution on these two issues, some of the parties ask the Commission to reverse these determinations and (1) prohibit all sales and marketing activities; and, (2) expand the Interim Guidelines to commercial customers. As explained below, RESA does not support either of these outcomes and urges the Commission to adopt the Interim Guidelines as proposed on these two points.

¹ RESA’s members include ConEd Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Gexa Energy; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; PPL EnergyPlus; Sempra Energy Solutions LLC. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

1. The Commission should not prohibit sales and marketing activities either outright or through the imposition of overly restrictive consent requirements

The Pennsylvania Utility Law Project (“PULP”) and the Pennsylvania Consumer Advisory Council (“CAC”) advocate that the Commission should prohibit the use of door-to-door marketing. PULP Comments at 2, CAC Comments at 2. Both advocates express concern that door-to-door marketing leaves consumers exposed to potential “bad behavior” by the sales agent who, according to CAC, is focused on making a sale rather than properly educating the consumer. Neither advocate believes that the built-in protections of the Interim Guidelines intended to address such concerns nor the various state and federal laws already in place to make such “bad behavior” unlawful are sufficient to warrant permitting door-to-door sales activity for electricity and gas. While there may be legitimate concerns regarding the use of door-to-door marketing, there is no ability of “bad actors” to sustain such practices over the long term for the following reasons.

First, the structure of the competitive market will ensure that any consumer who may have been victimized by a bad actor has alternatives and remedies. As stated in its initial Comments, RESA does not endorse “bad behavior” by member companies and all members of RESA are committed to ensuring that they and their agents do not engage in such practices. In fact, reliance on such “bad behavior” would be contrary to a supplier’s interests. Developing a “bad reputation” in a competitive market leads to a loss of customers and an inability to acquire new ones, destroying the ability of the supplier to provide service. Thus, the discipline of the competitive market – even without the guidelines proposed by the Commission – will ensure that “bad behavior” will not be able to sustain itself.

Second, door-to-door marketing is not a new marketing technique and, in fact, has been used by many industries for years. The concerns related to this form of marketing have been

addressed at all levels of government including local, state and federal, and all door-to-door marketers, regardless of the product they are selling, are required to follow these laws. In its proposed Guideline H, the Commission references a few of these laws including the Consumer Credit Protection Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Telemarketing Sales Rule, the Telemarketer Registration Act, federal and state do not call lists and local ordinances. As door-to-door marketing is permitted in other industries subject to compliance with the various laws governing the practice, there is no valid reason to prohibit suppliers from using this technique in the sale of energy.

Finally, regarding the sale of energy, Commission staff and all interested stakeholders have discussed concerns related to door-to-door marketing and have crafted reasonable guidelines to ensure appropriate consumer protections. In fact, the entire purpose of this process was to identify and reasonably address concerns through narrowly tailored guidelines. To that end, the Interim Guidelines have been successful as they include many restrictions intended to protect residential consumers who may be subjected to door-to-door marketing, including:

- background checks are addressed in Proposed Guideline B
- training of agents is addressed in Proposed Guideline C
- monitoring and quality control are addressed in Proposed Guideline D
- internal policies regarding discipline are addressed in Proposed Guideline E
- the appearance and identification of agents are addressed in Proposed Guideline F
- representations by the agent are addressed in Proposed Guideline G

The legislature has already determined that “it is now in the public interest to permit retail customers to obtain direct access to a competitive generation market.” 66 Pa. C.S. § 2802(3). To provide this “direct access,” competitive suppliers need the ability to reach consumers

through all available and legitimate marketing tools, to include door-to-door marketing. In their comments, neither PULP nor CAC provide any new information or reasoning as to why the Commission's proposed Interim Guidelines do not sufficiently address their concerns. In RESA's view, the Interim Guidelines are narrowly tailored to reasonably address concerns related to door-to-door marketing while still ensuring that consumers are not foreclosed from the opportunity of learning about competitive offers through door-to-door marketing.

As an alternative to prohibiting the sales technique, PULP and CAC ask the Commission to impose restrictions above and beyond those set forth in the Interim Guidelines which would have the practical effect they want – the cessation of all door-to-door marketing and sales activity. More specifically, both parties advocate that customers should be required to give “prior, written affirmation agreeing to receive door-to-door solicitations.” PULP Comments at 8, CAC Comments at 5. Going further, PULP also recommends that “non-consent” should be inferred when a customer chooses not to permit a distribution company to share his or her information with a competitive supplier as part of the Eligible Customer List (“ECL”). PULP at 17-18.

As explained previously, the Commission's proposed Interim Guidelines effectively place reasonable restrictions on door-to-door marketing activities negating the need to either prohibit the practice or impose these additional restrictions offered by PULP and CAC. PULP's recommendations regarding the ECL are not appropriately applied here. The ECL and door-to-door marketing are two separate issues. The ECL is a tool used by competitive suppliers solely for the purpose of enabling them to receive customer information critical to developing competitive price offers tailored to the consumer's needs and uses. Door-to-door marketing is about how the competitive supplier markets its offers to the consumer. PULP's suggestion of

tying these two distinctly different issues – information gathering vs. marketing – is not appropriate and should be rejected. Moreover, like these sales and marketing issues, issues related to ECL have been comprehensively addressed and generally resolved through consensus.² The Commission’s proposed Interim Guidelines addressing ECL issues is pending and this proceeding should not be used as a vehicle to disrupt that process.

In sum, the Commission’s proposed Interim Guidelines offer a reasonable balance between permitting competitive suppliers to market their products and services while ensuring that consumers are protected from potential “bad behavior” by rogue sales agents.

2. The Commission should not expand its Interim Guidelines to commercial customers

Some parties question whether the proposed Interim Guidelines are intended to apply to residential customers only or also to commercial customers. Both Duquesne Light Energy (“DLE”) and Constellation NewEnergy, Inc. (“CNE”) express confusion, and the Energy Association of Pennsylvania (“EAP”), without explanation, offers a revision to expand the applicability of the guidelines to “small commercial/industrial” customers. DLE Comments at 2-3, CNE Comments at 3. The Office of Small Business Advocate (“OSBA”) specifically requests that the Interim Guidelines be expanded to a more broadly defined class of “small business customers.” EAP Comments at Annex A, OSBA Comments at 2-3.

RESA does not support expanding the Interim Guidelines to commercial customers because such expansion was not the intent of the guidelines and, as the consensus correctly determined, it is not necessary. In the early stages of drafting these proposed guidelines, Commission Staff stated their initial intent to recommend that the guidelines apply to small

² See *Interim Guidelines For Eligible Customer Lists*, Docket No. M-2010-2183412, Tentative Order entered July 15, 2010.

commercial customers.³ Subsequently, there were discussions among the interested stakeholders on this issue and, ultimately, Commission Staff chose to revise their earlier recommendation and made clear that the proposed Interim Guidelines should apply only to residential customers.⁴ This outcome is the correct one. Door-to-door marketing to commercial customers is not akin to door-to-door marketing of residential customers. For commercial customers, the agents visit a place of business, rather than a person's residence. Further, commercial customers are generally more knowledgeable about their business' energy consumption and usage than residential customers. Finally, as pointed out by DLE, maintaining this distinction between residential and commercial customers "would substantially coincide with existing Commission regulations" related to the different customer classifications. DLE Comments at 3. The Commission recently confirmed this distinction in denying OSBA's request that Chapter 56 provisions be applied to small commercial customers.⁵ Thus, while RESA does not oppose a clarification on this point, such clarification should make clear that these Interim Guidelines apply only to suppliers engaging in door-to-door marketing of residential customers.

B. Interim Guidelines Are Not Mandatory Regulations

Several parties advocate that the guidelines should be "mandated" such that suppliers failing to comply with them should be subject to civil penalties and, if any allegation of "slamming" is made, the supplier should have its license immediately suspended. PULP

³ See CHARGE May 18, 2010 Conference Call Discussion Recap available at http://www.puc.state.pa.us/electric/pdf/OCMO/CHARGE_Recap031810.pdf

⁴ See CHARGE May 13, 2010 Conference Call Discussion Recap available at http://www.puc.state.pa.us/electric/pdf/OCMO/CHARGE_Recap051310.pdf

⁵ *Petition of PECO Energy Company for Approval of its Revised Electric Purchase of Receivables Program (Office of Small Business Advocate Petition for Clarification of 06/18/10 Commission Opinion and Order)* Docket No. P-2009-2143607, Opinion and Order entered August 24, 2010 at 5 n.1 ("Only residential accounts are protected under Chapters 14 and 56. These Chapters do not apply to Commercial and Industrial accounts.")

Comments at 12, PPL Comments at 6, EAP Comments at 3. RESA does not agree that “guidelines” – which are not based on already existing law – may be imposed as “mandatory” legal requirements that could result in fines or the suspension of a license. While violations of existing laws are certainly enforceable consistent with those laws and some of the restrictions of the guidelines are derived from these existing laws, as stated by the Pennsylvania Independent Oil & Gas Association (“PIOGA”) the “[n]on-statutory requirements are imposed by regulations promulgated under the Commonwealth Documents Law.” PIOGA Comments at 3. RESA notes that ordering paragraph number 7 of the Tentative Order directs Commission staff to “prepare a proposed rulemaking based on the final guidelines.” Only after that rulemaking process is finalized could enforcement of the non-statutory requirements set forth in the Interim Guidelines result in the types of penalties proposed by some of the parties now.

C. The Commission Should Clarify Or Adopt Reasonable Alternatives Proposed To Address An Agent’s Presence During The Third Party Verification Process

One of the non-consensus items the proposed Interim Guidelines address is the presence of door-to-door sales agent at the consumer’s residence during the TPV process. Tentative Order at 9. In its resolution of this issue, the Commission proposes to require “the agent [to] physically separate[] himself from the potential customer by existing the customer’s residence.” Proposed Guideline D-4. In its comments, RESA noted that some of its members who use door-to-door marketing request clarification of the intent of proposed Guideline D-4. For example, Direct Energy Services, LLC (“Direct Energy”) asked the Commission to clarify that the agent could remain outside the front door of the residence but still on the premises during the TPV. Direct Energy Comments at 2-3. Other commenters likewise sought clarification of this requirement. MXenergy Electric Inc. (“MXenergy”) and the Pennsylvania Energy Marketers Coalition (“PEMC”) suggested that the TPV process include an additional mandated question to verify

whether or not the potential customer has been intimidated or coached. MXenergy Comments at 6-7, PEMC Comments at 4-5. The National Energy Marketers Association (“NEM”) suggests that agents who choose to leave the residence prior to the TPV should create a rebuttable presumption that the sales agent obtained the consumer’s consent before the verification took place. NEM at 4. Each of these parties note that there are valid reasons to permit the agent to remain accessible to the potential customer during the TPV process and each alternative presents a reasonable way to accommodate this need while still addressing potential concerns about undue influence or coercion. RESA submits that any one or all of these proposed alternatives is a reasonable way to address this issue in lieu of requiring an agent to completely leave the premises.

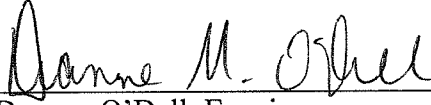
III. CONCLUSION

In conclusion, RESA recommends that the Commission’s final interim guidelines be issued consistent with the consensus reached by the participating stakeholders. Parties requesting that the Commission prohibit door-to-door marketing activity should be rejected as the Interim Guidelines – consistent with their intent and purpose – are reasonably designed to address concerns related to this type of legitimate activity. Further, RESA recommends that until the guidelines are codified as regulations, the Commission be clear that unless otherwise prohibited or governed by existing law, the Interim Guidelines have the effect of guidelines and not regulations. Finally, RESA recommend that the Commission clarify its proposal requiring the door-to-door sales agent to leave the premises during the TPV process.

RESA appreciates all the efforts of the Commission, its staff and other stakeholders in working together to craft reasonable guidelines intended to balance the concerns of all the parties

and looks forward to continuing to work with all interested parties on other issues related to developing a robust and fully functional competitive retail energy market in Pennsylvania.

Respectfully submitted,



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