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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** |  |

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|  | Public Meeting held November 4, 2010 |
| Commissioners Present: |  |

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| --- | --- | --- |
| James H. Cawley, Chairman | |  |
| Tyrone J. Christy, Vice Chairman, Dissenting Statement | |  |
| John F. Coleman, Jr. | |  |
| Wayne E. Gardner | |  |
| Robert F. Powelson | |  |
|  |  |
| Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers | Docket No. M-2010-2185981 |

**FINAL ORDER**

**BY THE COMMISSION:**

Before us are the comments that were submitted in response to the proposed interim guidelines for marketing and sales activities of electric generation suppliers (EGSs) and natural gas suppliers (NGSs). The interim guidelines were developed by the Pennsylvania Public Utility Commission’s Office of Competitive Market Oversight (OCMO) as a result of meetings held with the working groups, CHARGE (Committee Handling Activities for Retail Growth in Electricity) and SEARCH (Stakeholders Exploring Avenues to Remove Competitive Hurdles). With this order, we finalize these interim guidelines consistent with the discussion below.

**DISCUSSION**

**BACKGROUND**

With the expiration of the electric generation rate caps of PPL Electric Utilities at the beginning of 2010, and those of the First Energy Companies (Metropolitan Edison Company, Pennsylvania Electric Company), PECO Energy Company (PECO) and Allegheny Power (West Penn Power Company) in 2011, greater numbers of electric generation suppliers (EGSs) have entered, and will enter Pennsylvania’s retail electric generation supply market. As a result, consumers are being exposed to unfamiliar marketing strategies and sales techniques. One particular sales technique, direct sales or door-to-door sales, has created confusion for some customers, who have contacted this Commission with their concerns.

In a Secretarial Letter issued at Docket No. M-2009-2082042 on December 10, 2009 (*December 10, 2009 Secretarial Letter*), the Commission first addressed the topic of third parties who provide marketing and sales support to licensed EGSs. <http://www.puc.state.pa.us//pcdocs/1062483.docx>. In this letter, the Commission determined that third parties, who work directly for an EGS as an employee or an independent contractor, and who provide marketing and sales support services, are not engaged in the sale of electricity or related services to consumers and do not need to be licensed. This determination was based on past Chief Counsel opinion letters interpreting the definition of “EGS” in 66 Pa. C.S. § 2803, and on the exemptions from licensing for third parties performing marketing and sales activities for NGSs established in 52 Pa. Code §§ 62.101.

However, the Commission recognized that third party marketers have caused customer service concerns in other states, and determined that it would monitor the issue in Pennsylvania. The Commission also determined that by November 30, 2010, it would evaluate the suppliers’ use of unlicensed third parties for marketing and sales support to determine if the practice should be restricted or prohibited. *December 10, 2009 Secretarial Letter*, p. 2.

**OCMO/CHARGE/SEARCH**

The interim guidelines were developed by a working group comprised by members of CHARGE and SEARCH. CHARGE and SEARCH members included natural gas and electric utilities, electric generation suppliers (EGSs), natural gas suppliers (NGSs), industry trade organizations, consumers, and statutory consumer advocates.

CHARGE took up the issue of third party marketing and sales support at its January 7, 2010, meeting. Because of continuing consumer concerns and informal complaints about EGS marketing practices and the use of third party contractors for marketing and sales support, it was determined that CHARGE would develop marketing guidelines. OCMO Staff prepared the initial draft for group discussion.

CHARGE continued to meet to discuss and review various drafts of the interim guidelines prepared by OCMO staff. The group met on January 22; February 4 and 18; March 4 and 18; April 08 and 29; May 13 and 27; and June 10. During the discussions, CHARGE asked OCMO staff to consider expansion of the draft marketing guidelines to include NGS marketers.  On April 29, 2010, OCMO circulated the guidelines to SEARCH, seeking feedback from natural gas stakeholders about the feasibility of that suggestion. A joint meeting of CHARGE and SEARCH was held on May 13, 2010, June 7, 2010, and on June 24, 2010, the group met on the final OCMO staff draft of the guidelines.

On July 16, 2010, the Commission issued a *Tentative Order* with proposed interim guidelines on marketing and sales practices for EGSs and NGSs. The *Tentative Order* set forth 17 proposed interim guidelines and established a 30-day comment period and a subsequent 15-day reply comment period.

Comments were timely filed to the Tentative Order by MX Energy (MX); Pennsylvania Energy Marketers Coalition (PEMC); Pennsylvania Utility Law Project (PULP); PPL Electric Utilities Corporation (PPL); Duquesne Light Energy (DLE); Direct Energy LLC (Direct); Consumer Advisory Council (CAC); Retail Energy Marketers Association (RESA); joint comments by Office of Consumer Advocate (OCA), American Association of Retired Persons (AARP), and Dominion Retail (Dominion); Pennsylvania Independent Oil and Gas Association (PIOGA); Interstate Gas Supply, Inc. (IGS); Constellation New Energy Inc. (CNE); National Energy Marketers Association (NEM); Energy Association of Pennsylvania (EAP); and Office of Small Business Advocate (OSBA). Reply comments were filed by NEM; PEMC; joint reply comments from OCA, AARP and Dominion; PULP; RESA; MX; and Washington Gas Energy Services (WGES). On August 16, 2010, Dominion filed a request to withdraw comments it inadvertently filed electronically on August 13, 2010[[1]](#footnote-1).

**TENTATIVE ORDER**

The proposed interim guidelines covered a wide range of topics and recommended best practices for door-to-door marketing and telemarketing and sales. They were drafted to apply to both EGSs and NGSs, and to any person or entity that would be conducting marketing or sales activities, or both, on a supplier’s behalf. The term “agent” was used in the guidelines as a generic term, and was defined to include an employee, a representative, an independent contractor, or a vendor. For natural gas suppliers, the term “agent” also includes “marketing services consultant” or “nontraditional marketer” as those terms are defined at 52 Pa. Code § 62.101 (definitions).

A number of the proposed guidelines specifically apply to the supplier’s agents that engage in door-to-door marketing: background checks (proposed guideline B); training (proposed guideline C); appearance and identification (proposed guideline F); monitoring and quality control (proposed guideline D) and discipline (proposed guideline E). Proposed guideline J addressed compliance with local ordinances that may restrict the agent’s hours of operation or may completely prohibit door-to-door soliciting. Proposed guideline J-2 restricted an agent’s door-to-door activities to the hours between 9:00 a.m. to 7:00 p.m. unless the local ordinance is more stringent.

Other guidelines addressed agent-customer interactions. Proposed guideline G prohibited misrepresentation and required, *inter alia*, that an agent engaged in door-to-door marketing or sales identify the supplier that he or she represents and provide the customer with a business card or other written material with the agent’s name and the name of the supplier. Proposed guideline F-1 required that the agent present a valid picture identification to the customer.

To lessen the chance of customer confusion, proposed guideline G-1 also required that the supplier or its agent explain to the customer that the supplier is not affiliated with the local distribution company if that is indeed the case. Additionally, affiliated suppliers must explain that it is not the distribution company; that its prices are not regulated by the Commission; and that the customer is not required to buy its supply or other products to receive the same quality of service from the distribution company. This guidance is consistent with Commission regulations at 52 Pa. Code §54.122 (relating to EDC code of conduct) and § 62.142 (relating to NGDC standard of conduct).

Another proposal drafted to lessen customer confusion was the prohibition against a supplier or its agent wearing uniforms or other apparel that contain any branding elements that are deceptively similar to the distribution company. Proposed guideline F-3. A supplier or its agent was also prohibited from using marketing materials or consumer education materials of another supplier, distribution company or a government agency in a way that infers a relationship that does not exist. Proposed guideline F-5.

Finally, of particular note were the provisions that strive to prevent, and failing that, help document the unauthorized transfer of a customer’s account, *i.e.*, slamming. Sections 2206 (b) and 2807(d)(1) of the Public Utility Code, 66 Pa. C.S. § 2206(b) & § 2807(d)(1), specifically prohibit this activity. These provisions can be found in proposed guideline D (monitoring /quality control/ documentation), proposed guideline E (discipline)[[2]](#footnote-2), and proposed guideline L-1 (disclosure statements/contract terms)[[3]](#footnote-3).

Proposed interim guideline D provided for documentation and verification of sale transactions. The availability of this documentation would permit the supplier to detect possible slamming among its marketing and sales agents and will help to identify the agents involved. This would permit the supplier to correct this problem by the re-training or replacement of these agents. In the event the supplier fails to act, the documentation would also be available to appropriate Commission staff who can step in to protect customers by prosecuting these slamming incidents as violations of the Public Utility Code.

**INTERIM GUIDELINES**

The comments are discussed and resolved below under the corresponding guideline. The interim guidelines as revised[[4]](#footnote-4) appear in the annex to this order.

**A. GENERAL**

Guideline A explains the purpose of the marketing and sales activities guidelines. It states that such activities may be done by the supplier’s employees or by third party vendors. The guideline defines the term “agent” to apply to “any person who is conducting marketing or sales activities, or both, on behalf of a licensed supplier or suppliers.” Also, the guideline states that sales and marketing activities must be conducted in accordance with the guidelines and in compliance with federal, state and municipal (local) law, and applicable Commission rules, regulations and orders. It also reminds suppliers that Section 54.43(f) and Section 62.114(e) of the licensing regulations for EGSs and NGSs state 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.”

**Comments**

In their joint comments, OCA/AARP/Dominion Retail strongly support the proposed interim guidelines and state that in general, the guidelines provide a sound framework and timely guidance to assure marketers and suppliers sales practices comply with Pennsylvania law and standards. There are concerns about the use of door-to-door sales as a marketing strategy, especially when these tactics are used with senior citizens and vulnerable customer populations, whose health and safety may be at stake if they are unable to pay their energy bills and face termination.

PULP urges the Commission to proceed cautiously to ensure that the development of competitive markets does not come at the expense of important consumer concerns. As proposed, PULP believes the interim guidelines do not include sufficient consumer protections, particularly for low-income, elderly, sick or disabled customers and those customers for whom English is not their primary language.

OSBA believes the proposed interim guidelines should protect small business customers as well as residential customers due to the complaints they have received regarding slamming, misrepresentation by agents and other issues. Small business customers are not afforded all of the protections under federal and state laws cited in the guidelines, *e.g*., “Do Not Call” law; therefore, it is important that they be covered by the proposed interim guidelines. The interim guidelines should also include a procedure for handling complaints from small business customers and a definition of a “small business customer” is included in the guidelines. OSBA suggests using the definition for “small business customer” in the Commission regulations at Section 54.2 and expanding it to apply to non-residential electric customers with a peak load greater than 25kW.

CNE believes that encouraging retail choice will benefit consumers and that the proposed interim guidelines ensure appropriate consumer protections. They support the proposed guidelines, but request that the final guidelines include an “Applicability Section” that clearly sets forth that the guidelines are applicable only to EGSs serving residential and small commercial customers.

NEM strongly supports the proposed interim guidelines subject to a few limited modifications and believes that the most effective consumer protection rules stem from informed consumer consent. NEM believes the concepts expressed in its Consumer Bill of Rights are mutually reinforcing with the concepts expressed within the provisions of the proposed guidelines. NEM believes that consumer protection regulations can, and should be narrowly tailored and that unnecessarily prescriptive rules result in increased costs to the competitive marketplace and restrict the ability to offer innovative products in response to consumer preferences. NEM notes its support for the adoption of a consistent set of standards to apply to both natural gas and electric.

PEMC is pleased the proposed interim guidelines apply to sales and marketing of both electricity and natural gas and they are in favor of the Commission adopting the interim guidelines subject to minor modifications.

PIOGA agrees with the premise that supports the issuance of the guidelines – that third parties providing marketing and sales support services to licensed suppliers are not, themselves, required to be licensed as suppliers. However, PIOGA questions whether the Commission may prohibit a lawful activity – the use of third party marketers – by licensed suppliers as referenced in the Tentative Order.

EAP agrees with the proposed interim guidelines for the most part, but has offered minor modifications, *e.g.*, applying the guidelines to small commercial/industrial customers. EAP also believes that no utility should be required to assume additional responsibilities with respect to a supplier’s marketing or sales activities and supports the use of mandatory language in the guidelines.

PPL is fielding calls on a daily basis regarding EGS activity in its service territory due to the expiration of rate caps on January 1, 2010. PPL believes that customer perceptions of EGS activities can influence customer perceptions of PPL, other EGSs and electric competition in general. Therefore, PPL has a strong interest in ensuring that EGSs market their services in a reasonable manner that protects the reputation of all parties and fully supports the Commission’s efforts to establish guidelines.

DLE believes the Commission should establish clear expectations for EGSs and NGSs and generally supports the proposed interim guidelines with a few exceptions. DLE states that it should be made clear that the guidelines apply to residential customers, and not to small business customers.

In its reply comments, RESA takes the position that the Commission should not expand the interim guidelines to commercial customers, since the consensus of the working group correctly determined that this was not necessary. RESA does not agree that the guidelines may be imposed as “mandatory” legal requirements that could result in fines or the suspension of a license. RESA states that only after the 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 parties.

**Resolution**

OCA, Constellation, NEM, PEMC, PIOGA, EAP, PPL, and DLE generally support the proposed guidelines, and state that they provide the appropriate level of consumer protection while not unduly restricting the marketing and sales activities of suppliers. RESA, however, disagrees 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. RESA adds that only after the guidelines are promulgated as regulations in the rulemaking process could enforcement of the non-statutory requirements set forth in the Interim Guidelines result in such penalties.

We agree with the commenters that the proposed guidelines provide an appropriate level of consumer protection while not unduly restricting the marketing and sales activities of the suppliers. In regard to RESA’s position, the majority of the interim guidelines are based on statutory law and regulations that have been properly promulgated through the rulemaking process. We expect full compliance with these guidelines, and will impose penalties as required.

In response to NEM and DLE’s concern with interim guidelines’ applicability, Guideline A-1 clearly states that they apply to the residential market. We are aware that OSBA and EAP would like us to expand the scope of the interim guidelines to include small business customers. While we understand, and even share, many of the concerns expressed by OSBA, we must decline this request.

This proceeding concerns guidelines that were the result of an extensive stakeholder process. As noted by RESA, consensus on most of the issues contained herein was possible only after the stakeholders agreed to limit the guidelines to residential consumers. Expanding the applicability of the guidelines to other customer classes at this point would undermine the stakeholder process.

Another fundamental reason that we decline to expand these guidelines to nonresidential consumers is that many of the guidelines refer to door-to-door marketing. While there may be some concerns that are common to residential and commercial customers, the need to address privacy, public health, safety and security concerns that are inherent with door-to-door marketing is more urgent for residential customers. For example, while privacy is a paramount concern in one’s home, a commercial establishment is usually open to the “public” with a very limited expectation of privacy. The fact is most business people routinely deal with the public, including vendors and salespersons, and should be experienced with, and capable of handling such situations. This is not the case with homeowners, especially when the homeowner belongs to a vulnerable class, such as the elderly or the disabled.

We are also concerned with the practical problems that might arise for suppliers and customers alike if the guidelines were made applicable to small business customers. For example, if the guidelines were made to apply to small business customers “whose maximum registered peak load was less than 25 kW within the last 12 months” (definition of “small business customer” at 52 Pa. Code § 54.2), how would a sales agent know that he needs to follow the guidelines for a particular business he was planning to solicit if he does not know the business’s maximum peak load? In reality, many small business customers do not know the size of their maximum registered load peak, and would not know whether they fell within the 25 kW limit. Likewise, suppliers may not know this information until after they enroll the customer and find this out from the distribution company.

While we decline to expand the scope of these guidelines to include small business customers at this time, this is not to say that we would not reconsider this decision should the need be demonstrated. Accordingly, small business customers that experience problems with supplier marketing are encouraged to bring such incidents to our attention either by filing a formal or informal complaint. Small business customers may also report such incidents in conjunction with our monitoring of the door-to-door marketing issue, or in the anticipated rulemaking that will promulgate many of these guidelines as regulations. Reporting such incidents will help the Commission evaluate this issue, and may support a future expansion of the scope of the guidelines to include small business customers.

In the meantime, we will point out that there is some measure of protection for small business customers under current regulations. For example, the same disclosure (contract) regulations that apply to residential customers at 52 Pa. Code § 54.5 also apply to small business customers with less than 25 kW peak load. This includes the three-day right to rescind a contract, and they get the same contract renewal notices that residential consumers receive. Moreover, the regulations at 52 Pa. Code §§ 54.6 – 54.9 all apply to small businesses. This includes:

* Marketing rules regulating claims of environmental benefits or attributes of generation sources (52 Pa. Code § 54.6).
* Advertised prices must reflect disclosure prices and billed prices, and marketing materials must include information on prices and billed amounts for various usage levels (52 Pa. Code § 54.7).
* Small business customers have the right to restrict the release of their historical billing data and telephone numbers to the same extent as a residential customer (52 Pa. Code § 54.8).

Additionally, small business customers are protected by prohibitions against misrepresentation and fraud the same as any other customer. Having said all of this, we believe that these guidelines set forth sound business practices that could generally apply to all customers. We hope suppliers will be mindful of these sound practices when dealing with all of their customers, and will keep in mind their responsibility to interact with all of their customers and potential customers in good faith and with fair dealing.

**B. BACKGROUND CHECKS**

Guideline B provides for comprehensive background checks and screenings of employees or other agents engaged in door-to-door sales and marketing on behalf of a licensed supplier. This check includes consulting the Megan’s Law registry. When a supplier employs a third party vendor to provide this support, the supplier is to confirm with the vendor that background checks have been conducted on its employees and/ or agents.

**Comments**

CAC and PULP agree that criminal background checks should be required of all individuals who solicit door-to-door. In addition, they are in agreement that an individual that is convicted of a felony or other serious offenses involving sexual abuse or sexual misconduct should be prohibited from conducting such sales. CAC believes that in order to insure “safe” service, the Commission must not permit convicted felons or persons convicted of sexual offenses to solicit consumers at their homes. CAC is of the opinion that the utility is responsible for the management, administration and payment of fees for the background checks. However, PULP believes that any expenses incurred should be paid by the alternative suppliers and not included in distribution company service rates paid by consumers.

NEM supports the proposal that would require suppliers to conduct background checks of door-to-door sales and marketing agents, including reviewing the Megan’s Law registry.

EAP supports the requirement of comprehensive criminal background checks to determine if an individual presents a possible threat to the health and safety of the public. However, EAP believes that the Commission should add specific parameters to guideline B rather than allowing suppliers to develop varying checklists for employment. EAP suggests that the guidelines should require the following background checks: a seven- year criminal check; a Social Security number verification; an authorization to work in the United States; a proof of a valid driver’s license; a credit check for those involved with, or having access to monetary assets, financial data or customer information; a physical examination with a psychological examination, if needed; a drug test; and an education verification.

PPL believes that conducting criminal background checks, including a check of the Megan’s Law registry, is a good first step, but requests that the Commission develop other specific, concrete steps that suppliers must take to conduct background checks and screenings. PPL notes that 18 Pa.C.S. § 9125[[5]](#footnote-5) addresses the use of criminal history information when hiring individuals and suggests that the Commission clarify that the use of criminal history information must be consistent with applicable law.

**Resolution**

CAC, PULP, NEM, EAP and PPL support our proposal to require “comprehensive criminal background checks” including a check of the “Megan’s Law” registry. In keeping with the Commission’s obligation to protect public health and safety, we will retain the requirement that “comprehensive criminal background checks and screenings” including checking the sex offender registry commonly referred to as the “Megan’s Law” be conducted for all potential door-to-door agents. We also retain the requirement that suppliers must ensure that the third party vendors and independent contractors with whom the suppliers contract for marketing and sales support also conduct such background checks on employees and agents. As we noted earlier, door-to-door sales is a particularly sensitive issue given the obvious privacy and safety issues. Everyone has a right of security and privacy in the sanctity of one’s own home.

EAP provides a list of possible background checks and asks us to specify that they should all be required. We must disagree; this level of specificity is not needed and some of the checks mentioned, such as educational verification, are of questionable relevance. We will, as noted above, specify that the “Megan’s Law” registry must be consulted. However, we decline to list the more specific checks as proposed by EAP, PPL, CAC and PULP. Instead, we prefer to adhere to our expectation – that the suppliers will conduct background checks and screenings sufficient to determine whether the individual presents a possible threat to public health and safety. If the background check indicates that an individual is a possible threat to public health and safety, the individual shall not be employed for a position that places him in contact with the public. We believe our appropriate role is to set the standard, and then defer to the suppliers that must abide by these guidelines to decide how they will meet this standard.

We do agree with PPL that any information obtained during the background check -screening process must be handled in accordance with applicable federal and state laws, including 18 Pa. C.S. § 9125(relating to use of records for employment). However, this matter does not concern utility service or utility customers. Accordingly, we do not believe that it is necessary to add a provision on the handling of criminal history information of potential job applicants to these guidelines.

Likewise, it is not necessary to revise the guidelines to address PULP and CAC’s concerns about the costs of screenings and background checks. We will state, however, that we believe that these costs are the responsibility of the supplier and/or its vendor or independent contractor, not the distribution company.

**C. TRAINING**

Guideline C addresses the training of agents and sets forth various issues and subject matter that the training should cover. It also states that training material is to be made available to the Commission upon request.

**Comments**

PULP is in favor of the Commission requiring advanced review and approval of the training materials used by marketing and/or sales agents. Because of the technical nature of the subject matter, PULP believes that the Commission should verify the accuracy of training materials before they are used by sales people who will come into contact with the public.

EAP recommends that suppliers ensure that the training of their marketing or sales agents includes the knowledge and awareness of applicable Pennsylvania laws and regulations governing marketing, consumer protection and door-to-door sales.

PPL believes it may be appropriate for the Commission to develop specific training criteria for NGS and EGS marketing employees. This training should include requiring newly hired individuals to pass a written test; the shadowing of a senior sales agent or marketing agent for a two-week period; and/or requiring a signed training certificate from a senior agent. Also, PPL believes the Commission should consider requiring marketing employees to attend annual refresher training.

**Resolution**

We decline to adopt PULP’s suggestion that suppliers be required to seek Commission review and approval of materials used to train their agents. We believe that this level of oversight is unnecessary. It would also require significant Commission resources to perform such reviews. For these reasons, we will retain the original guideline that states that the Commission can request and review training materials at any time. We anticipate that such reviews will occur, if and when, customer complaints that might have resulted from inadequate training of a supplier’s agents are brought to our attention.

We also will not adopt PPL’s suggestion to specify training methods. While many of PPL’s suggestions do make sense and are good training practices, we believe this level of specificity in these guidelines is not necessary. We prefer instead to set forth our expectations and leave it to the individual supplier’s discretion as to how to meet them.

**D. MONITORING / QUALITY CONTROL / DOCUMENTATION**

Guideline D sets forth provisions designed to help prevent the authorized transfer of a customer’s account, i.e., “slamming,” and failing that, help document the alleged slamming incident. Sections 2206 (b) and 2807(d)(1) of the Public Utility Code, 66 Pa. C.S. § 2206(b) & § 2807(d)(1), specifically prohibit this activity.

Because of the contentious nature of some of the issues involved, we will discuss the comments and resolve the issues raised for each paragraph of the guideline.

**Paragraph D-1**

D-1 provides that there be a notation that indicates that the enrollment was the result of a door-to-door sale with a unique identifier for the agent involved on enrollment documentation.

**Comments**

PULP supports Paragraph D-1, which requires a notation that indicates that the customer enrollment was the result of a door-to-door sale with a unique sales agent identifier.

**Resolution**

No comments were filed that opposed or suggested a revision to D-1. Accordingly, we will retain its original wording.

**Paragraph D-2**

D-2 provides for monitoring of an appropriate sample of all sales and marketing calls, both telephonic and door-to-door, to ensure accuracy, completeness, courtesy and compliance with all of the suppliers rules for conducting such activities.

**Comments**

PEMC suggests a minor revision to the language in paragraph D-2, stating that the representative sample of all sales and marketing calls shall be monitored by the supplier’s “sales, marketing and/or quality assurance managers.”

**Resolution**

We agree with PEMC’s suggested revision and will revise paragraph D-2 accordingly.

**Paragraph D-3**

In order to detect whether slamming has occurred, D-3 provides that all transactions be verified by an appropriate method that confirms the customer’s consent to the transaction, *i.e.*, the transfer of his or her account. It also provides that a record of the verification of a sale or enrollment transaction be maintained in a system for at least six billing cycles.

**Comments**

For door-to-door sales of electric generation and natural gas supply service, CAC recommends that independent third-party verification (TPV) of the transaction be required, without the sales agent present, before the sale can be completed.

Joint Commenters OCA/AARP/Dominion Retail also express strong support for an independent verification of sales.

PULP also supports paragraph D-3, with the recommendation that the consent verification documents be made available to the consumer as well as to Commission staff. This requirement would be helpful to a consumer who suspects that a supplier has switched his service without consent. PULP also implied support for TPV in its reply comments.

NEM states that it agrees with the requirement that verification of a customer’s consent to a transaction be kept for six billing cycles. Its members report that keeping the records for six rather than three billing cycles will not significantly increase record keeping requirements and is consistent with current marketer business practices.

**Resolution**

The CAC, OCA/AARP/Dominion and PULP recommend an independent third-party verification (TPV) of sales transactions be required. While we agree that TPV can be a valuable method of verifying sales transactions and preventing slamming allegations, we are not convinced that we need to require that sales verification be done by a third party. Instead, we will again state that all transactions are to be verified by some appropriate method that confirms the customer’s consent to the transaction and that creates a record of that verification. This protects the customer by providing for the verification of the sale but allows for flexibility in how the supplier handles the process.

We note that we did not require TPV in the proposed guidelines because during the stakeholder process, some suppliers expressed concern about the cost of a TPV process. We do not want to preclude suppliers from implementing more economical, but still effective, verification practices. However, suppliers should be aware that they may need to demonstrate, in response to future complaints or inquiries, that their verification process, whether conducted by an independent party or by another employee, is objective and accurate.

In regard to maintaining a record of sales verifications, we drafted proposed paragraph D-3 to include a requirement that verification of customer consent to a transaction be maintained for six billing cycles and NEM states its agreement with this proposal. The availability of this documentation to the supplier is key for detecting slamming among its marketing and sales agents and to identifying the agents involved. This also permits the supplier to correct this problem by the re-training or replacement of these agents. Additionally, in the event the supplier fails to act, the documentation will be available to appropriate Commission staff who can step in to protect customers by prosecuting these slamming incidents as violations of the Public Utility Code.

In response to PULP’s request, we do not see the need to make this documentation available to customers outside the complaint process.

**Paragraph D-4**

D-4 provides that the verification process is to take place after the agent has physically separated himself from the customer by exiting the customer’s residence.

**Comments**

PULP supports proposed Paragraph D-4 and believes that it is essential that the sales representative separate himself physically from the potential customer’s residence while the verification takes place. In its reply comments, PULP states that the sales agents must leave the customer’s entire property, not just the home, during the verification process. Since the agent will leave specific contact information with the customer, any follow-up question can be raised by the customer and addressed by the supplier at the time of the customer’s choosing, instead of in a possibly pressured situation of the verification process.

Joint commenters OCA/AARP/Dominion Retail strongly support the proposal that the sales agent physically depart the consumer’s home before the verification process begins. They believe that the verification process is to be an independent process without the influence of the sales agent. They believe that many customers, including senior citizens or persons living alone, may feel intimidated or influenced when answering the verification questions in the presence of the sales agent.

In their joint reply comments, OCA/AARP/Dominion Retail reiterate their strong support for Paragraph D-4 and view it as an essential consumer protection. They state the potential for fear, intimidation and even the customer agreeing to a contract just to get the sales agent out of the home are very likely outcomes of a door-to-door sales visit. They believe having the agent physically separate from the customer and depart the residence is a necessary component of an independent verification of consent to the purchase. They submit that the need to physically separate from the residence requires, at a minimum, that the sales agent be out of the home so the customer can close and secure the door to the home and the agent should not linger or loiter on any part of the premise.

PPL fully supports the Paragraph D-4, requiring a sales agent to exit physically a customer’s residence before initiating the process to confirm a customer’s consent to the sale. PPL states this should minimize high-pressure sales tactics and eliminate any impression by the customer that he or she must sign up to get a sales agent to leave the residence. PPL also believes it is essential for sales agents to obtain express confirmation from customers regarding a sales transaction.

EAP supports requiring the door-to-door sales agent to exit physically an individual’s residence before the initiation of the sales verification process.

RESA believes the Commission should clarify or adopt reasonable alternatives proposed to address a sales agent’s presence during the verification process. RESA submits that any or all of the proposed alternatives that it proposed is a reasonable way to address the issue in lieu of requiring a sales agent to leave the customer’s premises.

Direct believes requiring a door-to-door sales agent to completely leave the consumer’s premises disrupts the sales process and deprives the customer of the ability to immediately ask additional questions. Direct’s current policy is that the door-to-door sales agent are not to enter a customer’s home. Also, Direct completes the third-party verification call using the agent’s cell phone in addition to a wet signature on the contract. Using the agent’s cell phone number acts as a double check against the assigned Agent ID number ensures that the enrollment is valid, and that a false identification number was not given by the agent. For this reason, Direct requests clarification to proposed Paragraph D-4 stating that “physically separated” from the prospective customer and “exiting the customer’s residence” includes the agent being outside the front door of the residence, but still on the premises.

PEMC believes that during the verification process customers may have additional questions that cannot be answered by the verification agent and they may prefer to have the sales agent remain in their home during the verification. Therefore, they suggest three modifications to Guideline D: (1) a specific question be posed to the customer by the verification agent that is recorded, providing proof there was no undue influence; (2) a ‘safe harbor’ provision where the sales agent is to ask if the customer would like the sales agent to step outside the home and physically separate himself from the verification process; and (3) a requirement that sales agents are not to have any interaction with verification agents once the verification process begins. PEMC has provided suggested revisions to the language in Paragraph D-4 to reflect these modifications.

NEM disagrees with Paragraph D-4, requiring the door-to-door sales agent to exit physically the customer’s residence prior to the initiation of the verification process, believing that this may result in costly follow-up measures to respond to customer questions. NEM suggests an alternative that would not require the sales agent to leave the residence prior to the verification but would recognize a “safe harbor” for marketers that choose to do so. The “safe harbor” would establish a rebuttable presumption that the agent had obtained the consumer’s consensual enrollment if the agent left the residence before the verification took place. If the agent stays in the consumer’s residence during the verification, the voice verification must include a statement that the consumer was not unduly influenced in order to demonstrate the enrollment was consensual.

RESA requests clarification of the intent of Paragraph D-4, allowing a sales agent to remain on the customer’s premise during the verification process but outside the home. MX believes that Paragraph D-4 should be amended so that door-to-door sales agents are not required to exit the premise before the verification process confirms the customer’s consent to the sale as this practice does not recognize the practicalities of the exchange nor how “real life” door-to-door sales are conducted.

MX’s policy is not to allow the sales agent to enter the consumer’s home but to conduct the sale outside the door. At the conclusion of the sale, the consumer consents to the enrollment through a verification, which begins and ends with the sales representative on the line with the independent verifier. The sales agent will not be given a confirmation number until the verification call is successfully completed. Based on the proposed version of Paragraph D-4, the sales agent would have to go back to the customer’s location to confirm the call was successfully completed. Instead, MX strongly supports the incorporation of the following required question at the end of the verification process: “Did you experience any evidence of coaching or intimidation by the agent during the sales or this TPV process?” In addition, they support a mandatory Quality Assurance program for at least ten percent of all door-to-door sales, which will determine if any intimidation or coaching occurred during the sales or verification process.

Joint commenters OCA/AARP/Dominion Retail recognize that properties can be very different and common sense will need to be exercised when applying this guideline to different addresses. They also state that simply adding a question as to whether there was undue influence or pressure by the sales agent in the verification process is not a substitute for the requirement that the sales agent physically exit the residence. A customer who is too intimidated to give willing consent to a transaction cannot be expected to answer a question regarding intimidation while the sales agent is standing there. They propose there are numerous procedures that can be used to address customer questions during the verification process, including a return to the customer’s home with customer consent. In addition, OCA/AARP/Dominion Retail states the “safe harbor” proposal for marketers is unsound public policy and is exactly the wrong direction for the Commission to take if the goal is to promote the integrity of the retail market in Pennsylvania.

**Resolution**

CAC, PULP, OCA/AARP/Dominion, PPL, and EAP support the proposal in D-4 that requires sales agents to exit the customer’s residence before the transaction verification process begins. Direct, PEMC, RESA, NEM and MX either oppose or question this proposal. We acknowledge that this is a difficult issue, and that it was a significant point of contention during the stakeholder process.

However, the purpose of having the supplier’s agent leave the customer’s premises before the initiation of the verification process was to create a bright line between the sales and the confirmation of that sale. This allows there to be a clear record of a customer authorizing the transfer of his or her account to the supplier, a record that will be very useful in investigating any future “slamming” complaints. We also agree with OCA/AARP/Dominion and PPL that many customers, especially senior citizens and people living alone, may feel too intimated to express their honest preference while in the physical presence of the sales agent. This is also the reason that we doubt the effectiveness of the “safe harbor” procedures that were suggested by NEM and PEMC.

We acknowledge the concerns expressed by Direct and MX about the practicalities of the sales agent’s physical exit from the customer’s premises, and how this can be accomplished when the salesperson never enters the residence, or when the customer lives in an apartment building and not a single-family residence. In response, we believe that joint commenters OCA/AARP/Dominion make a good point - that properties can be very different and common sense will need to be exercised when applying these guidelines to different situations. Because it is not possible to tailor guidelines to address every possible dwelling situation, suppliers and their agents will have to be flexible and adopt their practices to implement the intent of the guideline – to prevent the agent’s physical presence from intimidating the customer during the verification process.

Direct, NEM, and PEMC comments to the effect that the agent should be available to answer any customer questions that may arise during the verification process give us pause. The obvious time for an agent to answer any questions from the customer is before the transaction or sign-up has been completed, and most certainly, prior to the verification stage. In other words, if the agent has done his or her job correctly and provided all of the information required by these guidelines and other applicable rules, the customer who has agreed to the transaction should not have any questions at the verification stage.

We also are not persuaded by the need for an agent to remain on the customer’s premises because the agent’s cell phone or the cell phone number is used in the verification process. Alternate means of identifying the agent and of verifying a sale are available. If an agent’s cell phone number is used as an additional identifier for an agent, the number can be written or printed on the agreement, and the customer can read the last four or five digits of the number to the individual who verifies the sales. In regard to the communications method used to verify a sale, the individual who is conducting the verification may call the customer to initiate the process, or the supplier’s agent that made the sale can provide the customer with a toll-free number so the customer can initiate the verification process at a time of his or her choosing. Employing these alternatives will permit the supplier to have a second form of identification for the sales agent (the agent’s mobile phone number) and will permit the sales agent to physically leave the customer’s home without leaving his or her mobile phone behind.

Finally, OCA/AARP/Dominion and PULP has requested that we prohibit the agent from “loitering” on any part of the customer’s premises after the transaction has been completed, while RESA has requested that we clarify the intent of permitting a sales agent to remain on the customer’s premises during the verification process, but outside the home. In response, we will state that we have reconsidered this position and will continue the discussion of these requests under D-5 immediately below.

**Paragraph D-5**

D-5 states that if the supplier detects a problem with an enrollment, the supplier contacts the customer by phone, email or by letter to explain the issue and to offer help with a resolution. If the supplier detects a problem with the enrollment and the agent who enrolled the customer is still within the vicinity of the customer’s residence, the supplier may contact the customer by telephone and ask if the customer would like to have the agent return to answer the customer’s questions. The agent may return to the customer’s residence only if the customer responds in the affirmative.

**Comments**

OCA/AARP/Dominion and PULP has requested that we prohibit the agent from “loitering” on any part of the customer’s premises after the transaction has been completed, while RESA has requested that we clarify the intent of permitting a sales agent to remain on the customer’s premises during the verification process, but outside the home. Direct requests changes to proposed Paragraph D-5 to conform to its existing sales practices, and offers specific language.

**Resolution**

Our intent in drafting this proposal was to minimize customer inconvenience by allowing the supplier’s agent, if he was in the vicinity, to return to the customer’s residence, at the customer’s request, to answer additional questions after a failed verification. However, it appears that we may have inadvertently created an opportunity for the sales agent to “loiter in the vicinity” of the customer’s residence, and for another employee or agent of the supplier to contact the customer to get his or her permission for the sales agent to return and answer the customer’s questions to try to “save the sale.” The confusion seems to have arisen because of the last two sentences in D-5 coupled with the vague language used in the first sentence, to wit, “when a supplier detects a problem with an enrollment.”

While we cannot prohibit a sales agent from loitering outside a customer’s home while the transaction is being verified, we will revise the guideline to minimize the incentive for doing so. Accordingly, we will revise the first sentence in D-5 to make it clear that we are referring to the supplier’s contact with the customer after the verification process had been completed, and the transaction was not verified. We will also delete the last two sentences so that paragraph D-5 in its entirety now reads as follows:

If a supplier is informed that a transaction could not be verified, the customer shall be contacted by phone, email or by letter explaining that the transaction could not be verified and offering assistance to resolve any outstanding issues.

This final revision should make it very clear that the sales activity must end and the transaction completed before the verification process can be initiated. The separation of these two events will ensure that there is created an unambiguous record that can be consulted when a complaint alleging the unauthorized transfer of a customer account is filed. Once again, sections 2206 (b) and 2807(d)(1) of the Public Utility Code, 66 Pa.C.S. § 2206(b) and § 2807 (d)(1), prohibit slamming.

**E. DISCIPLINE**

Guideline E states that suppliers when developing internal policies on agent discipline should be aware of the Commission’s zero tolerance policy on “slamming” and related customer enrollment issues. The guideline discusses penalties that may be imposed against a supplier that engages in slamming – fines up to $1000 per violation per day and possible license suspension or revocation.

**Comments**

Joint Commenters OCA/AARP/Dominion Retail strongly support the Commission’s “zero tolerance” policy concerning slamming and related customer-enrollment issues. PULP also supports the Commission’s “zero-tolerance” policy concerning slamming. In the event of an allegation of slamming, PULP believes the Commission should exercise its right to suspend a supplier’s license during the investigation and then revoke the license if slamming is proven.

EAP supports the use of mandatory language in the guidelines and understands that the Commission will strictly prosecute violations as permitted under the Public Utility Code and PUC regulations.

PPL notes that the Tentative Order provides that the procedures set forth are “guidelines,” but also notes that the “guidelines” are written as mandatory requirements for all EGSs and NGSs that perform sales and marketing activities. In order to avoid any uncertainty, PPL requests that the Commission expressly provide that the guidelines are mandatory requirements and that violations could result in the imposition of civil penalties under Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301. Given the importance of the guidelines and the potential impact on customers if suppliers and their agents violate the guidelines, PPL believes it is important that the Commission strictly enforce the guidelines.

**Resolution**

As joint commenters OCA/AARP/Dominion and PULP point out, the Commission has a long-established zero-tolerance policy concerning slamming (the unauthorized switch of a customer’s supplier) and the enrollment of customers. As such, even a single incident of slamming is sufficient to invoke penalties in situations where the Commission deems it appropriate. As mentioned in the proposed guidelines, this can even include the revocation of a supplier’s license.

PULP’s proposal that a supplier’s license be suspended while a slamming allegation is investigated is a bit problematic because Section 54.42(a)[[6]](#footnote-6) and Section 62.113(a)[[7]](#footnote-7) of the EGS and NGS licensing regulations, respectively, require that due process protections be observed prior to license suspension or revocation. However, due process does not require the Commission to wait the conclusion of a proceeding if immediate interim measures are needed to protect the public interest. *See* 52 Pa. Code §§ 3.1, *et. seq.* As such, the Commission has the authority to act to restrain supplier practices that it believes are harmful to the market and to consumers, and will move to do so with due deliberate speed when the situation warrants.

**F. APPEARANCE / UNIFORMS / IDENTIFICATION**

Guideline F provides that an agent engage in door-to-door sales or marketing activity is to show his or her identification badge to a customer and that the badge is to remain visible at all times. The agent is not to dress in a uniform or wear any apparel that contains any branding elements that are deceptively similar to that of the local Pennsylvania distribution company. An agent that contacts customers by telephone is to state his or her first name and the name of the supplier on whose behalf he or she is calling. The supplier may not use bills, marketing materials or consumer education materials of another supplier or distribution company in any way that infers a relationship that does not exist.

**Comments**

CAC believes the Commission should make it clear that the Consumer Protections Law and Pennsylvania Unfair Trade Practices apply to all door-to-door sales. CAC also supports the following: (1) picture identification cards should be issued with company logos; (2) companies engaged in these sales should be required to have a publicly available phone number for consumers to verify the solicitation is legitimate; (3) sales agents conducting door-to-door sales, regardless of whether they are employees or independent contractors, should be salaried, not commissioned; and (4) sales agents should be required to direct consumers to the Commission and OCA resources (PA Power Switch website, Residential Consumer’s Shopping Guide, etc.) to secure genuine PTC comparisons.

PULP supports the requirement that suppliers and/or their sales agents wear uniforms and use materials that are designed to indicate clearly that the marketer is not affiliated with, or an employee of the customer’s local distribution company. In addition, PULP believes that when a sales or marketing agent telephones a consumer, he or she should be required to provide his or her name and unique identification number and the name of their employer. PULP also recommends that suppliers and their agents only be permitted to use salaried employees, not commissioned or bonus-based employees, to go door-to-door. PULP believes for an agent working on a commission basis, the urgency of each sale is heightened by the agent’s own pecuniary interest, and the chance of a misstep is increased. PULP states that requiring these employees to be salaried will reduce the likelihood of abuse.

With respect to proposed guideline F, EAP believes that generic identifiers should not be allowed in communications by telephone or internet or on printed materials. Also, EAP states its understanding that the use of intellectual property held/or owned by a utility or another supplier for any purpose is not permitted without first entering into an appropriate licensing agreement specifying such rights.

**Resolution**

In regard to CAC’s concern about the identification badge, guideline F-1 already provides for the agent’s photograph and the company logo to appear on the badge along with the legitimate trade name of the supplier. Additionally, a supplier’s phone number is already publically available on the Commission’s website and at [www.papowerswitch.com](http://www.papowerswitch.com).

We understand CAC’s concerns with salaried versus commissioned sales agents. The suspicion is that an agent, who is compensated based on commissions, will have too great an incentive to obtain sales by any means – whereas an agent who receives the same salary regardless of sales will have less of an incentive to cut corners to obtain sales. We believe this is a legitimate concern. Consequently, we urge all suppliers to reconsider their agent compensation programs to ensure that they are not inadvertently promoting and rewarding behavior than runs counter to the practices established in the guidelines and to the general obligation of fair dealing and good faith that suppliers should exercise when they interact with customers and potential customers.

Likewise, we also find CAC’s suggestion that we require suppliers to refer potential customers to the PUC and OCA resources in regard to supplier price comparisons inappropriate. While suppliers are free to refer customers to these websites, and we encourage suppliers to alert consumers to the education resources available to them; requiring suppliers to refer potential customers to the pricing information of other suppliers is not a reasonable obligation to impose on businesses in a competitive market.

Finally, we note that EAP has suggested three language changes to guideline F. One EAP suggestion was to prohibit the use of “generic identifiers” in telephonic or internet communications or in printed materials. We assume this suggestion is meant to eliminate customer confusion by ensuring that the supplier uses its full business name. We understand the concern, but are reluctant to adopt this suggestion as doing so may cause an infringement of constitutionally protected rights.

EAP’s other two suggested revisions can be found in its ‘marked up’ version of the guidelines in the appendix attached to its comments. The first is the deletion of the word “branding” before the word “elements” in the second line of paragraph F-3. Considering EAP’s concern about protecting intellectual property, such as trademarks, company logos and trade dress, from unauthorized use, removal of the word “branding” seems unwise. Therefore, we will not accept this revision.

EAP also suggests including in guideline F-5 “company name” after “marketing materials” in the list of items belonging to the distribution company that a supplier shall not use to infer a non-existent relationship with the distribution company. We agree, and have adopted this revision.

**G. MISREPRESENTATION**

Guideline G discusses misrepresentation by an agent. The guideline states, *inter alia*, that an agent should identify himself or herself as a representative of that supplier immediately upon contact with a potential customer, and should make it clear that he or she does not work for the distribution company. A valid identification badge containing a photograph of the agent is to be visible at all times. The guideline also states that a supplier affiliate of a distribution company is to comply with applicable regulations concerning affiliate marketing at 52 Pa. Code § 54.122 or § 62.142 (relating to the standards of conduct).

**Comments**

PULP supports the guidelines to prevent misrepresentation by a supplier or its agents.

**Resolution**

There was little discussion of this guideline in the working group sessions. Given the support of PULP and receiving no specific objections or comments in opposition, we will retain the original language in the proposed guideline.

**H. FEDERAL LAW/CONSUMER PROTECTION**

Guideline H sets forth specific provisions of federal consumer protection law with which a supplier and its agents must comply. These laws include the *Consumer Credit Protection Act* (15 U.S.C. § §  1601—1693c), specifically, 15 U.S.C. §§  1691—1691f (relating to equal credit opportunity) and 12 CFR Part 202 (relating to equal credit opportunity)(Regulation B); the *Telemarketing and Consumer Fraud and Abuse Prevention Act*, 15 U.S.C § 6101, et seq.; ***Telemarketing Sales Rule*,** 16 CFR Part 310;and *Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*; 16 CFR Part 429 (FTC).

**Comments**

CAC believes that compliance with state and federal “Do Not Call Laws” and compliance with state and federal Unfair Trade Practices laws must be required.

PULP supports the Commission’s requirement that alternative suppliers meet the obligations of Federal consumer protections (Consumer Credit Protection Act, Telemarketing and Consumer Fraud and Abuse Prevention Act, Telemarketing Sales Rule). PULP also supports the requirement that those engaged in door-to-door sales must comply with the Federal cooling off period requirements.

In the appendix to its comments, EAP suggests adding “and natural gas” to the second line in H-1.

**Resolution**

Given the support of CAC and PULP and no serious objections or comments filed in opposition, we will retain the original language in the proposed guideline, but will adopt the addition of “and natural gas” in H-1 as suggested by EAP.

**I. STATE LAWS / OAG / CONSUMER PROTECTION**

Guideline I states advice provided by Pennsylvania’s Office of Attorney General that a supplier and its agents must comply with Pennsylvania’s *Telemarketer Registration Act* at 73 P.S. §§ 2241-2249. A supplier does not need to register as a telemarketer but must follow other provisions of the Act when engaged in telemarketing. An agent, representative or independent contractor or third party vendor shall follow all of the provision of this Act. Most importantly, the guideline states that a customer’s consent to the distribution company to release customer information does not constitute an express intent by the customer to receive telephone solicitation calls.

**Comments**

CAC believes that, should the Commission authorize the door-to-door sale of electric generation and natural gas utility service, compliance with state and federal “Do Not Call Laws,” state and local door-to-door sales laws, and state and federal Unfair Trade Practices laws must be required.

If the Commission authorizes door-to-door marketing of electric generation and natural gas supply service, PULP endorses the incorporation of state consumer protections in the interim guidelines and the requirement that alternative suppliers meet the obligations of those state protections.

**Resolution**

Given the support of CAC and PULP and no serious objections or comments in opposition filed, we will retain the original language in the proposed guideline.

**J. LOCAL ORDINANCES**

Guideline J states that suppliers shall comply with local ordinances that relate to door-to-door marketing and sales activity. Depending on the ordinance, a supplier may be prohibited from engaging in door-to-door marketing and sales may need to obtain a permit or may have its activity restricted to certain hours. The guideline also provides that door-to-door marketing or sales activity should be limited to the period from 9:00 am to 7:00 pm unless the local ordinance is more restrictive.

**Comments**

PULP endorses the Commission’s decision to incorporate local consumer protections in the interim guidelines and particularly supports the inclusion of J-2, which requires suppliers to comply with local ordinances when those ordinances are stricter than the Commission’s own interim guidelines.

Should the Commission choose to permit door-to-door sales, in reply comments, PULP continues to support limiting door-to-door sales activity to the period between the hours of 9:00 am and 7:00 pm. PULP states it seems clear that customers’ concern for privacy and peace in their homes during the evening hours is sufficient grounds for limiting the hours of door-to-door marketing activities.

OCA/AARP/Dominion Retail supports J-2 as drafted. The staff recommendation for a window for door-to-door marketing from 9:00 am to 7:00 pm, unless the local ordinance is more restrictive, strikes a reasonable balance and should be adopted. The alternative proposal, which would fix the end of the door-to-door marketing window by “dusk,” suffers from a lack of certainty and consistency.

In their joint reply comments, OCA/AARP/Dominion Retail state that extending the hours for door-to-door sales to 9:00 pm allows intrusions into the home into the later hours of the evening when customers are preparing for the next day, preparing for bed or trying to spend time together as a family. The joint commenters also state that unwelcome intrusions late into the night can engender fear and distrust of the process. They believe that the hours of 9:00 am to 7:00 pm provide ample opportunity for sales visits that should accommodate all types of customer schedules. They also point out that the hours are available during the weekdays and on the weekends, providing sufficient opportunity for door-to-door sales agents to meet with customers.

NEM and PEMC both recommend that J-2 be revised to allow door-to-door marketing from 9:00 am to 9:00 pm. NEM states that requiring door-to-door sales to cease at 7:00 pm in the evening will significantly restrict the effectiveness of this sales channel, as many working families may not arrive home until after that hour. PEMC states the restriction on sales activity at this hour might preclude a significant group of potential customers from having an opportunity to engage in discussion with sales representatives.

MX states that door-to-door sales are being utilized by many industries, with some sales forces selling multiple products, and it would be illogical and discriminatory to impose time restrictions on the energy industry but not on others. They are in favor of revising J-2 to designate the hours of operation for door-to-door marketing from 9:00 am to 7:00 pm during the winter period and 9:00 am to 9:00 pm during the summer period. MX states, in its experience, the period from 7:00 pm to 8:00 pm is the best time for most consumers because they have completed their evening meals and are available to spend time discussing energy.

EAP supports the designation of the hours from 9:00 am to 7:00 pm for permissible door-to-door sales activities as this would limit unwelcome intrusions at times traditionally regarded as non-public and reserved for family interaction.

PPL fully supports the limitation of door-to-door sales to the period between 9:00 am to 7:00 pm. This provision is especially important for families with young children who are preparing their children for bed in the evening, as it will prevent unannounced sales agents for EGSs and NGSs from disturbing families after 7:00 pm.

**Resolution**

The hours when door-to-door marketing and sales activities could be conducted was a subject of much contention in the working groups and continues to be hotly debated in this proceeding. We first must emphasize that when a local ordinance is stricter than the timeframes allowed in these guidelines, suppliers must comply with the local ordinance. In no way are these guidelines intended to pre-empt or supersede local ordinances. However, many municipalities may not have ordinances that regulate this activity, and many that do, may have very limited means of enforcing such ordinances. These municipalities are the ones with which we are most concerned, and are the basis for addressing this topic in these guidelines.

In their comments, NEM, PEMC, and MX expressed concerns that the hours in the proposed guideline are too restrictive considering the hours that people work, dine, go to bed, etc. On the other hand, joint commenters OCA/AARP/Dominion raise a very good point – that in addition to the weekdays, the suppliers do have weekend hours that they can use to reach customers who work during the weekday.

On reflection, we do acknowledge that our original proposal may have been too restrictive, and we believe the “middle-ground” position offered by MX may be more reasonable, *i.e.*, -- that there be different time periods depending on the time of year. This makes sense as the summer months feature more daylight, diminishing the security concerns that after-dark sales during the fall and winter months present.

As to appropriate hours for each time period, MX’s suggestion to allow sales until 9:00 pm in the summertime seems to be too expansive, especially when we take into account OCA/AARP/Dominion, PULP, EAP and PPL’s positions that 9:00 pm, even in summer, is too late in the day and is intrusive. Splitting the difference, 8:00 pm would seem to be a reasonable compromise. Therefore, we will revise our guideline to permit door-to-door sales activity to take place between the hours of 9:00 am and 8:00 pm during the six months between April 1 and September 30, while keeping the hours of 9:00 am and 7:00 pm during the six months between October 1 and March 31. This additional hour for six months during the spring and summer months will allow more marketing without compromising the safety and privacy concerns expressed by many of the parties.

**K. DISTRIBUTION COMPANY AND COMMISSION INVOLVEMENT**

Guideline K states that a supplier who is planning marketing or sales activities that could generate telephone calls and inquiries to the Commission shall notify the Bureau of Consumer Services no later than the morning of the day when the activity is scheduled to begin. The supplier is to provide general, non-proprietary information about the activity – the extent of the activity, the time-period and a description of the geographical area involved. The supplier should also provide the distribution company with the same information. The purpose of providing this information is to permit the Commission and the distribution company to staff call centers to handle increased call volume.

**Comments**

PPL fully supports the Commission’s decision to require suppliers to contact distribution companies prior to the supplier initiating marketing activities that the supplier anticipates may result in telephone calls to the Commission. PPL has received many calls from customers when suppliers conduct door-to-door sales or when they conduct marketing activities in general. Advance notice will give distribution companies the opportunity to prepare for calls from customers and will allow distribution companies to be proactive, and to contact the supplier when complaints are received from the targeted regions of their territories.

Joint commenters OCA/AARP/Dominion Retail support paragraph K-1 and believe it is important that the Commission receive notice from the supplier of planned marketing activities, because calls to the Commission from consumers with questions or complaints may increase because of these activities. They also believe that suppliers need to notify the distribution company of planned marketing activity so the distribution company can adjust staffing of call centers to meet anticipated call volume, which will in turn minimize consumer frustration.

The distribution company is often on the “front lines” in receiving consumer calls and the notice will confirm that marketing and sales are being conducted by licensed suppliers or their agents so that information can be shared with consumers. In the past, criminals have attempted to gain access to homes by posing as a utility representative. A door-to-door marketing or sales campaign by supplier’s agents who are selling a “utility type” service may lead to additional opportunities for criminal imposters to enter the home and victimize residents. Required notification of marketing and sales activities by the supplier will allow the distribution company to share information with consumers, which in turn will help consumers detect and protect against these situations. For these reasons, OCA/AARP/Dominion Retail recommends that K-2 be revised to make such notice to distribution companies mandatory.

PULP submits K-1 should require the supplier to provide information regarding its marketing and sales activities to the Commission one week prior to its anticipated use. This would give the Commission an opportunity to ensure the notification is received and that sufficient staffing and time are available to review the marketing materials for any problems. PULP also supports paragraph K-2 that requires suppliers to contact the local distribution company has the benefit of avoiding problems before they create confusion for consumers, public relations difficulties for the distributors and additional contacts or complaints to the Commission.

NEM, PEMC and PIOGA all have taken the position that suppliers should be encouraged, but not mandated, to provide information to distribution utilities regarding marketing efforts. NEM and PEMC believe providing confidential, proprietary information could put the supplier and utility at risk for divulging private information that is competitively sensitive and they are not in favor of sharing details about specific offers, prices or duration of sales activities. Both NEM and PEMC believe it is critical that the distribution utilities refer all customer questions regarding supplier offers back to the supplier for clarification.

PIOGA states that advance notice of confidential competitive information provides an opportunity for the utility to engage in impermissible anticompetitive behavior. PIOGA does support advance notice to the Commission, however, and favors directing customers to contact the Commission if they have questions or concerns.

NEM suggests that the references to “general information” in paragraph K-2 be changed to “general, non-proprietary information” as appears in K.1. PEMC requests paragraph K-2 be revised to state “Suppliers are encouraged…” and PIOGA requests that the Commission clearly state that the advance notice to the utility under the proposed guideline is a courtesy and not mandatory.

**Resolution**

In the working group and in the comments of the parties, there were no serious objections to suppliers notifying the PUC’s Bureau of Consumer Services (BCS) about marketing efforts that may generate consumer calls. However, in response to PULP’s comment that this notification will allow the BCS “to review marketing materials for any problems,” we wish to clarify that this is not the intent of this notification. Suppliers are not required to have their marketing materials reviewed or approved by the Commission. The intent of this notification is simply to prepare the Commission’s call center for possible calls about door-to-door marketing and sales campaigns. Having said this, we remind all parties that Commission regulations at 52 Pa. Code § 54.7 and § 62.77 require suppliers to make advertising materials available to the Commission upon request.

While notification to the Commission of marketing and sales efforts is not controversial, there continues to be a great deal of contention over the proposal that suppliers should likewise notify the local utility of such marketing efforts. While we understand the concerns of NEM, PEMC, and PIOGA who object to providing information to entities that they may see as competitors (or at least affiliated with competitors), we continue to believe that these concerns are overstated. The notification to the distribution company (paragraph K-2) is triggered when the supplier notifies the BCS (paragraph K-1). However, the notification to the BCS is initiated by the *supplier* – at the time when “*the supplier anticipates*” that its sales and marketing activities may generate phone calls to the Commission (emphasis added). Therefore, the determination of the need to notify BCS, and in turn, the distribution company, resides totally with the supplier.

PPL states that it receives calls from customers when suppliers conduct marketing activity. We believe this is inevitable and that it is in everyone’s best interest that the distribution company at least be aware of marketing activity in its area. As joint commenters OCA/AARP/Dominion point out, the utility is often on the “front lines” of receiving customer calls and the notification will allow the utility to confirm with callers that the marketing is being performed by licensed suppliers. This is important because, as they also point out, criminals have attempted to gain access to homes by posing as utility representatives. However, we reject OCA/AARP/Dominion’s call to change “should” to “shall” and likewise reject PEMC’s call to change “should” to “are encouraged.” We believe “should” is a reasonable compromise that strongly suggests the notification to the distribution company should occur, but does not require it.

Finally, we will adopt NEM’s suggestion to change “general information” to “general, non-proprietary information” in paragraph K-2. The term “general, non-proprietary information” already appears in paragraph K-1 so we will add it to paragraph K-2 for the sake of internal consistency and parallel construction.

**L. DISCLOSURE STATEMENTS / CONTRACT TERMS**

Guideline L states that a supplier shall provide the customer with a copy of the disclosure statement when the suppliers signs up the customer for service. The supplier shall offer to provide the customer with written information regarding the supplier’s products and services.

**Comments**

PULP supports the requirements of Guideline L.

**Resolution**

Given the support of PULP and the fact that no comments that raised any serious objections or suggested revisions to this proposed guideline were filed, we will retain our proposed language.

**M. MARKETING /SALES ACTIVITIES AND MATERIALS**

Guideline M provides general rules for suppliers and their agents interacting with customers, and lists applicable Commission regulations with which suppliers and their agents must comply. The guideline also allows for the use by the agent of a translation service or language identification cards to identify the language of a customer whose English language skills appear to be insufficient to allow the customer to understand the information that the agent being conveyed.

**Comments**

PULP believes it is unreasonable to expect that language identification cards are a satisfactory way to communicate to a non-English speaker individual the complex information associated with electric generation and natural gas supply. PULP recommends the use of language card be eliminated from M-1 and supports inclusion of consumer protections in M-2 and M-3 to prohibit a supplier from engaging in misleading or deceptive conduct.

**Resolution**

We agree with PULP that the use of language cards to conduct an entire sales transaction would be inappropriate and probably not even possible from a practical perspective. Our intent here is to permit their use by the agent to identify the potential customer’s language, thus allowing him or her to obtain the necessary translation service or appropriate written materials. We will revise the guideline to clarify this point. To account for the advance of technology, we have also provided for the use of electronic language translation devices by the agent to identify a potential customer’s language.

**N. RESCISSION PERIOD**

Guideline N discusses the three-business day rescission period that governs cancellation or rescission of contracts under state and federal law. There is also a reference to Commission regulations at 52 Pa. Code § 54.5 (d) and § 62.75(d) that provide a three-business day right of rescission and cancellation after a customer receives the disclosure statement.

**Comments**

In its comments, PULP recommends that the Commission’s three-business-day period should run consecutive to, not concurrent with, the Federal cooling off period. In the appendix to its comments, EAP suggests the deletion of the words “electric generation” in regard to “supply contracts.”

**Resolution**

The three business day cancellation period was incorporated in the Commission regulations at 52 Pa. Code § 54.5 (electric) and 52 Pa. Code § 62.75 (gas) when these regulation were first promulgated[[8]](#footnote-8). The three-business day period was adopted as being consistent with section 201-7 of the Unfair Trade Practices and Consumer Protection Law, 73 P. S. §§ 201.1--201-9.2. Under Commission regulations, the three-business day period of rescission begins to run when the customer receives a copy of the disclosure notice, i.e., when the customer requests that the supplier initiate service. The three-business day rescission period under federal law begins to run from the date of the transaction, *i.e*., the date the customer signs the contract. *See* 16 CFR 249.1 (relating to the rule). Because both rescission periods start to run essentially at the same time, we must reject PULP’s suggestion that the two periods should run consecutively.

Again, to clarify, we have cited other Commission regulations and related state and federal law in Guideline N and in the other guidelines for two reasons. The first is to provide legal support for some of the decisions that were made in developing the guidelines, and the second is to provide a reference guide for use by suppliers and their employees and other agents who engage in marketing and sales activities.

In regard to EAP’s suggested deletion of “electric generation” as a modifier of “supply contracts” in paragraph N-1, we have revised the language by inserting the words “and natural gas” to clarify that the guideline applies to the cancellation or rescission of both electric generation and natural gas supply contracts.

**O. NO CALL / NO VISIT LIST**

Guideline O states that a sales or marketing agent is to leave the premises of the customer when asked to do so by the customer, the owner or another occupant of the premises. The Guideline also states that a supplier is to respect an individual’s request to be exempted from further door-to-door marketing or sales contacts and should annotate existing marketing and sales databases to reflect this request.

**Comments**

CAC believes that consumers should have the opportunity to advise suppliers, either through the Commission, or through their current distribution company, that they do not wish to be solicited door-to-door by registering on a list similar to the Office of Attorney General’s Do Not Call List. CAC proposes the BCS serve as a central repository for a “Do Not Visit” list and that every company engaged in door-to-door sales consult such lists. In addition, solicitors should be prohibited from leaving door hangers or other marketing literature at the residence of consumers who are not home or who fail to respond to a call, as this poses a safety concern

OSBA states that it has received complaints from small business customers about receiving written and oral contacts from agents after being informed that the customer is not interested in service. As the federal and state “Do Not Call” statutes do not apply to small business customers, OSBA believes the interim guidelines should be made applicable to small business customers and should be expanded to prohibit suppliers from sending unwanted written materials and e-mail communications after a customer requests that he or she not be sent any such material.

In its comments, PULP states that it does not believe the interim guidelines provide sufficient protection for consumer privacy. If a customer chooses not to have his information shared as part of an Eligible Customer List that should be sufficient to indicate a customer does not want marketers at his home. PULP believes no distribution company should be permitted to share private customer information with a supplier or marketer unless the consumer opts in and provides prior, written consent to share his or her information. In addition, PULP feels that when a consumer requests that he or she be exempted from further marketing activities, the supplier should be required to inform the Commission and the distribution company.

RESA, in its reply comment, states that PULP’s recommendations regarding Eligible Customer List (ECL) are not appropriately applied here and that tying together two distinctly different issues – information gathering vs. marketing – is not appropriate and should be rejected.

**Resolution**

We must agree with RESA that we should not confuse these marketing guidelines with the ECL, which is the subject of a separate, pending proceeding[[9]](#footnote-9). The ECL addresses what information an EDC should share with suppliers. Being included on the ECL does not necessarily mean that a customer will receive marketing materials or sales solicitations; likewise not being on the ECL does not mean that the customer will not receive marketing materials or sales solicitations.

As a practical matter, it is unlikely that door-to-door sales agents will have access to ECL information, and even if they do, using this information to determine which doors to knock on and which doors to pass by would be burdensome. We also must decline to adopt CAC’s suggestion that the Commission, or more specifically BCS, serve as a clearinghouse for a “do not visit” list. Collecting and managing such a database would not be a small job and would pose a significant demand on this important Commission resource.

As we have discussed earlier, we must decline OSBA’s request to expand these guidelines to cover small business customers. However, we urge suppliers to exercise common sense and respect the wishes of all customers who express a desire to be exempted from further marketing efforts. Filtering those who have already identified themselves as not being interested from the pool of potential customers should result in a more targeted marketing campaign and should reduce customer acquisition costs.

Likewise, in response to CAC’s concerns, we urge suppliers to use common sense when determining whether to leave marketing materials outside a customer’s residence. Uncollected marketing material, like accumulating mail and newspapers, outside of a residence is a signal that no one is home, and can create a safety risk. Refraining from this uneconomical practice should diminish such risks and should result in decreased marketing costs for the supplier.

**P. COMPLAINTS**

Guideline P addresses consumer complaints and other inquiries. The guideline provides that suppliers provide a single point of contact and a list of designated escalation contacts that BCS will use resolve customer complaints or inquiries. The guideline also provides for the supplier to investigate customer complaints and inquiries, and to maintain and document an internal process for handling and resolving customer complaints. The guideline also lists various regulations at 52 Pa. Code Chapter 56 with which suppliers and their agents must comply.

**Comments**

PULP supports the Commission’s requirement that suppliers comply with existing Commission consumer-complaint procedures.

DLE opposes and disagrees with the language provided in paragraph P-4, which requires strict compliance with the existing regulations found at 52 Pa. Code § 56.141, § 56.151, and § 56.152. DLE believes that these references should be deleted. DLE feels that these regulations impose regulatory requirements that are outside of its control, or that are not applicable to them. DLE does not support the Commission issuing guidelines referencing existing regulatory requirements when the EGS is unable to achieve strict compliance due to the inapplicability of the regulatory requirement or when the requirements are outside of the EGSs control. It is DLE’s position that references to 52 Pa. Code §§ 56.141, 56.151, and 56.152 should be deleted from Guideline P.

**Resolution**

In its comments, DLE states that various Chapter 56 regulations do not apply to suppliers and should be deleted from the guidelines. These regulations set forth procedures that must be followed in the event one of its customer calls with a dispute: § 56.141 (relating to dispute procedures), § 56.151(relating to general rule [dispute procedures]), and § 56.152 (relating to contents of the utility company report).

We disagree with DLE that the residential dispute regulations in Chapter 56 do not apply to suppliers. The obligation for residential suppliers to comply with Chapter 56, entitled *Standards and Billing Practices For Residential Utility Service* (*Standards and Billing Practices*), is rooted in the requirements for electric generation suppliers at Section 2809(b) & (e) of the Public Utility Code.

Section 2809(b) reads in pertinent part as follows:  
 § 2809. Requirements for electric generation suppliers.

\* \* \* \*

(b) **License application and issuance.**- . . . A license shall be issued to any qualified applicant . . . . if it is found that the applicant is fit, willing and able to perform properly the service proposed and to conform to the provisions of this title and the lawful orders and regulations of the commission under this title, including the commission’s regulations regarding ***standards and billing practices***, and the proposed service . . . will be consistent with the public interest and the policy declared in this chapter; otherwise the application shall be denied.

66 Pa. C.S. § 2809(b)(emphasis added).

Additionally, Section 2809(e) reads in pertinent part as follows:

(e) **Form of regulation of electric generation suppliers.**- . . . In regulating the service of electric generation suppliers , the commission shall impose requirements necessary to ensure that the present [circa 1996] quality of service provided by electric utilities does not deteriorate, including assuring that 52 Pa. Code Ch. 56 (relating to standards and billing practices for residential utility service) are maintained.

66 Pa.C.S. § 2809(e) (parenthetical added).

Reading these two sections together, it is clear that EGSs are required to comply with Chapter 56 billing standards and practices. Specifically, in regard to licensing a EGS, the Commission cannot approve a license application unless the EGS demonstrates that it is “fit, willing and able to perform properly the service proposed and to conform to the provisions of this title and the lawful orders and regulations,” including “those concerning *standards and billing practices*” -- in other words, Chapter 56. Moreover, in regulating EGSs, the Commission may impose requirements necessary to ensure that service quality does not deteriorate, including standards and billing practices under Chapter 56. *See Delmarva Power & Light Co. v. Commonwealth of PA and PA Public Utility Commission*, 870 A.2d 901(Pa. 2005). *See also* 66 Pa.C.S. §102 (definition of “public utility” expressly excludes “electric generation suppliers” except for the limited purposes described in Section 2809 (relating to requirements for electric generation suppliers) and 2810(relating to revenue-neutral reconciliations).

Chapter 22, the Natural Gas Choice and Competition Act, which was enacted approximately 2 ½ years later on June 22, 1999, has parallel provisions imposing compliance with Chapter 56 on NGSs. *See* 66 Pa. C.S. § 2208(b)(relating to license application and approval) and (e)(relating to form of regulation of natural gas suppliers).

The Commission recognizes that some Chapter 56 regulations may not apply to a supplier. For example, Chapter 56 regulations at Subchapter E that address the physical termination of service to a customer may not apply to a supplier because the distribution company, and not the supplier, physically turns off the service to the customer meter.

On the other hand, the supplier is expected to comply with Chapter 56 regulations that are applicable to the realities of the supplier’s interactions with the customers. One of these realities is that customers will contact the supplier with questions and disputes.

Chapter 56 sets forth procedures that the supplier must follow when it receives a customer dispute. These procedures ensure that the supplier maintains a record of the customer dispute, including its subsequent contacts with the customer and the manner in which it attempted to resolve the dispute. As such, the record may be examined in the event that the customer files a subsequent complaint with the Commission.

More importantly, from a policy standpoint, the universal use by suppliers of Chapter 56 procedures ensures that all of the disputes filed by residential and small business customers are processed in the same way so that customer service quality can be maintained. For these reasons, we wish to clarify that Chapter 56 procedures, especially those that involve the handling of disputes, are applicable to suppliers. Accordingly, we will not adopt DLE’s request to delete Sections 56.141, 56.151 and 56.152 from the guideline.

Finally, we will note again, the inclusion in these guidelines of citations to various federal and Pennsylvania statutes and regulations, to Commission orders and to local ordinances does not make compliance with these laws optional. Suppliers must comply with all laws that are applicable to their provision of service to consumers in the Commonwealth. As a general proposition, we believe that providing utility service to customers that complies with applicable federal, state and municipal law as well as with our orders and regulations is consistent with the public interest.

**Q. MONITORING MARKETING AND SALES ACTIVITIES OF UNLICENSED INDEPENDENT CONTRACTORS**

Guideline Q sets forth the Commission plans to monitor by gathering and maintaining statistics on marketing and sales activities conducted by unlicensed third party contractors or vendors. The purpose for this monitoring is to evaluate this practice to determine whether these third parties should be required to be licensed as EGSs or NGSs.

**Comments**

PULP supports the Commission’s decision to collect data on and monitor supplier activities, including the practice of using unlicensed independent contractors.

Joint commenters OCA/AARP/Dominion Retail request that the Commission clarify that its initiative in proposed Guideline Q does not end on November 30, 2010 as had been the deadline for the staff report set by the Commission in the *December 10, 2009 Secretarial Letter*. They state that the Commission may have information from several months of marketing activity in the PPL service territory by that date, but that marketing activity in other service territories will only begin in earnest in Fall 2010. Additionally, they do not believe the proposed guidelines will be in place for a sufficiently long period of time to determine whether they have served their intended purpose.

PEMC strongly believes that more time will be needed to determine the true effectiveness of the interim guidelines, especially with regard to their impact on “third party independent contractors” and reiterated this position in their reply comments. PEMC believes it would be prudent and practical to consider additional reviews in June 2011, December 2011, and June 2012 to give the Guidelines a chance to work.

NEM requests the Commission clarify the manner in which the complaint statistics will be presented and used. NEM believes that the information is potentially commercially sensitive and proprietary in nature. NEM urges the Commission to clarify that this information will be used only for monitoring supplier activities as stated in Guideline Q, and that the information will not be disclosed to other entities.

**Resolution**

We agree with OCA/AARP/Dominion and PEMC that we may not have sufficient information by November 30, 2010 to make a final determination on whether third party contractors who conduct marketing and sales activities on the behalf of licensed EGSs and NGSs should also be licensed. For this reason, we will extend this deadline until April 30, 2011 for Staff to provide us with a preliminary report on the issue.

In regard to NEM’s characterization of complaint data gathered as a result of our market monitoring as “proprietary,” we must disagree. Traditionally, the Commission has reported supplier complaint data, *i.e*., the number of complaints for each supplier, in the Commission’s annual *Utility Consumers Report and Evaluation*. For an example, see page 64 of the 2008 report at <http://www.puc.state.pa.us/General/publications_reports/pdf/UCARE_2008.pdf>). We also note that supplier complaint data is publicly reported in other jurisdictions. For example, the New York State Public Service Commission publishes extensive complaint data, including supplier complaint data, monthly on their website (<http://www.dps.state.ny.us/ocs_stats.html>).

The number of complaints involving suppliers has been minimal in recent years perhaps due to the low level of retail customers shopping for natural gas or electric generation. The manner that we will use to present complaint data may need to be reevaluated if complaint numbers start to rise, which may happen as shopping activity increases with the further opening of the retail competitive markets. We do not believe that we need to make that decision at this proceeding.

**DOOR-TO-DOOR SALES**

A number of parties filed extensive comments on issues relating specifically to door-to-door sales.

CAC believes strongly that the door-to-door sale of electric generation and natural gas utility services constitutes “unsafe, inadequate and unreasonable service” and should be prohibited. They state that the door-to-door sale of utility service does not permit consumers to make real “informed and comparative” purchase decisions and the use of door-to-door sales contravenes the consumer education efforts engaged in by the PUC and OCA. CAC states that consumers, particularly the elderly, infirm and uneducated, may be victimized through door-to-door sales by unfair and deceptive trade practices and are put at increased risk of physical harm due to the “physical invasion” of consumer privacy. CAC suggests that if door-to-door sales of electric generation and natural gas utility service are authorized, it should be limited to those consumers who specifically request such solicitations.

OCA/AARP/Dominion Retail believe shopping for energy supply requires thoughtful consideration of a wide range of information and in a door-to-door sales contact a customer may not have access to the necessary information for making an informed choice and may feel pressured to make a quick decision. They report that concerns about customer confusion and the potential for fraud or abuse in door-to-door sales contacts have been documented in other states where this technique has been used.

PULP believes door-to-door marketing for electric and natural gas supply should be prohibited, as it places vulnerable consumer populations at heightened risk of unfair and deceptive trade practices, and improperly violates consumer privacy. PULP submits that vulnerable consumers often live in poverty, which makes promises of cheaper utility bills almost impossible to resist, even if the promises are not altogether true or guaranteed. PULP believes that financial distress makes these households more susceptible to high-pressure sales tactics. Should the Commission choose to permit door-to-door sales for electric generation and natural gas supply service, PULP believes the practice should be limited to consumers who specifically request such solicitations in writing.

IGS believes that the creation of a separate door-to-door certification/licensing process where a supplier is certified and each individual agent is licensed is warranted.

MX states that electricity choice is a complicated concept for many consumers and has found that a face-to-face explanation of choice is the best way to educate consumers and door-to-door sales has proven to be the best way to reach consumers who otherwise would not explore electricity choice. MX believes that limiting a consumer’s exposure to door-to-door sales will lead to less understanding and to more consumer confusion.

In reply comments, MX states they are not in favor of banning door-to-door sales or certification/licensing of suppliers or marketing agents. They believe that instead of prohibiting door-to-door marketing and sales, the Commission should adopt the proposed guidelines on marketing and sales practices for EGSs and NGSs. In their opinion, 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 sales.

NEM notes that with the existence of federal and state do not call lists, the avenues available for marketers to effectively reach consumers – in terms of message, content and cost – has been dramatically limited. They believe door-to-door sales remains a viable and effective method for contacting residential and small commercial customers and state that these types of in-person contacts are an excellent venue for consumers to become educated about product offerings.

In their reply comments, NEM urges the Commission to reject PULP and CAC's suggestion to prohibit door-to-door sales. In NEM’s opinion, upon the Commission's adoption of the marketing standards, the industry will have clear guidance on ethical conduct, appropriate marketing practices and adequate consumer protections. It is only after these standards have been in use and effect for a reasonable period that the Commission should even consider imposing such a severe restriction in the marketplace.

PEMC states that it is sensitive to the Commission’s concerns regarding door-to-door marketing and has made a commitment to advocate the best door-to-door practices in the industry regardless of any regulatory requirement to do so. In their reply comments, PEMC urges the Commission to reject PULP and CAC’s suggestion that door-to-door sales be prohibited. PEMC states that the adoption of these Interim Guidelines on Marketing and Sales Practices will provide a clear pathway for natural gas and electricity supplier conduct, as they were strongly supported by members of the supplier community during their development. PEMC states that the elimination of door-to-door marketing would set a dangerous precedent relative to competitive marketing practices as a whole and would send mixed messages to potential market entrants.

In its reply comments, RESA states the Commission should reject some of the parties’ attempts to reinstitute positions that were discarded in order to reach a consensus, and make clear that the interim guidelines are just that, and not regulations. RESA states that door-to-door marketing is not a new marketing technique and is permitted in other industries subject to compliance with various laws governing the practice and believes there is no valid reason to prohibit suppliers from using this technique in the sale of energy.

WGES believes the door-to-door sales channel stands alone as the single most effective way to educate consumers about customer choice and the options available to them. Consumers have the ability to ask questions and learn about their options from a sales agent without having to leave their home. WGES fully supports the proposed guidelines and believes that they will serve as a strong guidepost for suppliers and their agents to curb questionable supplier and/or agent behavior and to protect consumers.

**Resolution**

We were surprised at the number of comments that were submitted concerning the door-to-door marketing issue. In general, the comments ran the gamut from banning door-to-door sales because of customer confusion and the potential for fraud or abuse to praising door-to-door sales as the best way to reach consumers who otherwise would not explore electricity choice.

We want to state that we understand the concerns expressed by OCA/ AARP/Dominion, CAC and PULP that vulnerable customers (the elderly, low-income households, etc.) could be exploited by unscrupulous actors engaged in door-to-door sales. We also understand that consumers, instead of making an informed, deliberate decision, may be pressured into making an impulsive, ill-informed decision. However, we believe the best way to address these concerns is through these guidelines.

In fact, we are gratified that many in the supplier community share this viewpoint and have expressed their support for the interim guidelines. We specifically agree with NEM and WGES that these guidelines will provide clear guidance to the industry as to ethical conduct and appropriate marketing practices. We also agree that only after the *Interim Guidelines* have been in place should the Commission even consider further restrictions on suppliers’ marketing and sales practices.

We have already postponed the due date for our evaluation of the marketing and sales activities undertaken by unlicensed third parties on behalf of suppliers because we did not believe that we would have collected sufficient data by the November 30, 2010. Because we do not believe that we will have sufficient information to initiate a rulemaking at this time, we also have reconsidered our previous direction in Ordering Paragraph 7 of the *Tentative Order*. Accordingly, we will extend the date for Staff to prepare a proposed rulemaking based on these interim guidelines until February 1, 2011.

**CONCLUSION**

The *Interim Guidelines*, as herein finalized, apply to both EGSs and NGSs, and provide important guidance on best practices for marketing and sales activities for the residential market. That said, these guidelines should not be used as a shield as it is expected that suppliers shall always conduct these activities in good faith and with fair dealing when interacting with individual customers; **THEREFORE,**

**IT IS ORDERED:**

1. That the Interim Guidelines for Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers as set forth in this Order and in Annex A are adopted.

2. That this Order and Annex A shall be served on all Electric Distribution Companies, Natural Gas Distribution Companies, all licensed Electric Generation Suppliers, all licensed Natural Gas Suppliers, the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate and the Energy Association of Pennsylvania.

3. That the Office of Competitive Market Oversight shall electronically serve a copy of this Order and Annex A on all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity (CHARGE) and Stakeholders Exploring Avenues to Remove Competitive Hurdles (SEARCH).

4. That a copy of this Order and Annex A shall be posted on the Commission’s website at the Office of Competitive Market Oversight’s web page.

5. That the Office of Competitive Market Oversight, in consultation with the Law Bureau, shall prepare a proposed rulemaking order based on these Interim Guidelines for consideration at a public meeting no later than February 1, 2011.

6. That the Office of Competitive Market Oversight and the Bureau of Consumer Services shall monitor the employment by electric generation suppliers and natural gas suppliers of independent contractors to conduct marketing and sales activities on their behalf, and shall prepare a report and recommendation on whether each independent contractor should also be licensed as a supplier. The report should be submitted for Commission consideration no later than April 30, 2011.

 By the Commission,

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: November 4, 2010

ORDER ENTERED: November 5, 2010

**ANNEX A**

**PROPOSED INTERIM GUIDELINES**

**FOR**

**MARKETING AND SALES PRACTICES FOR**

**ELECTRIC GENERATION AND NATURAL GAS SUPPLIERS**

**A. GENERAL**

These guidelines are intended to facilitate the effective operation of a vigorous, dynamic, yet fair, competitive residential energy market, to the benefit of consumers, Electric Generation Suppliers (EGSs) and Natural Gas Suppliers (NGSs) (collectively, suppliers) and Electric Distribution Companies (EGSs) and Natural Gas Distribution Companies (NGDCs) (collectively distribution companies) alike. A competitive energy market can provide a positive experience for all consumers. 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 guidelines are important, they cannot address all of the possible issues that may arise when suppliers or their sales agents or marketing agents 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.

The use of the term “agent” in these guidelines is intended to apply to any person who is conducting marketing or sales activities, or both, on behalf of a licensed supplier or suppliers. Consequently, unless stated to the contrary, the term “agent” includes an employee, a representative, an independent contractor, or a vendor. For natural gas suppliers, the term “agent” also includes “marketing services consultant” or “nontraditional marketer” as those terms are defined at 52 Pa. Code § 62.101 (definitions).

EGSs and NGSs may use employees to conduct marketing[[10]](#footnote-10) or sales[[11]](#footnote-11) activities in accordance with the policy guidelines set forth herein and in compliance with federal, state and municipal (local) law, and applicable Public Utility Commission (PUC or Commission) rules, regulations and orders. Suppliers may employ agents, representatives, independent contractors or vendors to perform marketing or sales support services in accordance with the policy guidelines set forth herein and in compliance with federal, state and municipal (local) law, and applicable Commission rules, 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.” *See* 52 Pa. Code § 54.43(f) (standards of conduct for licensees). Section 62.102 of the NGS licensing regulations has similar language. *See* 52 Pa. Code § 62.102 (d) & (e) (scope of licensure) and § 62.114(e) (standards of conduct for licensees).

**B. BACKGROUND CHECKS**

1. The suppliers performing door-to-door marketing shall conduct, on all potential door-to-door marketing agents or sales agents, comprehensive criminal background checks and screenings necessary to determine if an individual presents a possible threat to the health and safety of the public. This includes checking the sex offender registry commonly referred to as the “Megan’s Law” registry maintained by the Pennsylvania State Police. There shall be a presumption that anyone registered on the “Megan’s Law” registry presents a threat to the health and safety of the public. Suppliers shall exercise good judgment in developing standards and qualifications and shall not hire an individual that fails to meet these standards.
2. When the 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 checks and appropriate screenings of its employees, agents and independent contractors in accordance with these guidelines and with the standards of the licensed supplier.

**C. TRAINING**

1. Suppliers shall ensure, and maintain appropriate documentation indicating, that the training of their marketing agents or sales agents includes:
2. Knowledge and awareness of applicable Pennsylvania laws and regulations governing marketing, consumer protection and door-to-door sales.
3. Knowledge and understanding of responsible and ethical sales practices.
4. Knowledge of the supplier’s products and services.
5. Knowledge of supplier’s rates, rate structures and payment options.
6. Knowledge of the customers’ right to rescind and cancel contracts.
7. Knowledge of the applicability of an early termination fee for contract cancellation if the supplier has one.
8. Knowledge of and adherence to supplier-developed scripts.
9. Knowledge on the proper completion of contract and enrollment documents.
10. Knowledge of the supplier’s disclosure statement.
11. Knowledge of relevant terms and definitions.
12. Knowledge of how customers may contact the supplier to obtain information about billing, disputes, and complaints.
13. Advance review and approval of training documents and programs by the Commission is not required. However, these documents along with records concerning training activities and completion of the training by agents shall be made available to Commission staff upon request.

**D. MONITORING / QUALITY CONTROL / DOCUMENTATION**

1. On customer enrollment documentation, there shall be a notation or other means that indicates the enrollment was the result of a door-to-door sale with a unique sales agent identifier. The record shall be made available to the Commission or its staff upon request.
2. An appropriate, representative sample of all sales or marketing calls, both telephonic and door-to-door, shall be monitored by the supplier’s sales, marketing and/or quality assurance managers ~~or marketing managers~~ or by the vendor’s managers using appropriate methods to ensure accuracy, completeness, courtesy and compliance with applicable rules.
3. All transactions shall be verified by some appropriate method that confirms the customer’s consent to the transaction. A record of the verification shall be maintained in a system that is capable of retrieving that record by customer name for a period of time equivalent to at least six billing cycles (to enable compliance with 52 Pa. Code § 57.177 and § 59.97 (relating to customer dispute procedures). These documents shall be made available to Commission staff upon request.
4. The transaction verification process shall occur after the agent has physically separated himself from the potential customer by exiting the customer’s residence. The transaction verification process shall conclude by reminding the customer of the 3-business day right of rescission pursuant to 52 Pa. Code § 54.5(d) and § 62.75 (relating to disclosure statements for residential and small business customers).
5. If a supplier is informed that a transaction could not be verified, the customer shall only be contacted by phone, email or by letter explaining that the transaction could not be verified and offering assistance to resolve any outstanding issues. ~~If the supplier detects a problem with an enrollment, the customer shall be contacted by phone, email or by letter explaining the issue and offering help with a resolution.~~ ~~If the supplier detects a problem with the enrollment and the agent who enrolled the customer is still within the vicinity of the customer’s residence, the supplier may contact the customer by telephone and ask if the customer would like to have the agent return to answer the customer’s questions. The agent may return to the customer’s residence only if the customer responds in the affirmative.~~

**E. DISCIPLINE**

When developing internal agent discipline policies, all parties should be aware of the Commission’s long-standing “zero-tolerance” policy concerning “slamming[[12]](#footnote-12)” and related customer-enrollment issues. The Commission has penalized companies that engage in inappropriate practices and has made it clear that such practices will not be tolerated. For example, in *Pennsylvania Public Utility Commission v. Total Gas & Electric Inc.*, Order entered September 26, 2001 at Docket No. M-00011529 at page 5, the Commission declared that:

[t]he Commission does not trivialize allegations of unauthorized enrollment of customers, or “slamming”, and seeks to deter such conduct by instituting firm retaliatory measures for violations of the Commission’s regulations with respect to enrollment of customers.

Section 3301 of the Public Utility Code provides for penalties of $ 1000.00 per violation per day for any infraction of the rules and regulations of the Commission. *See* 66 Pa.C.S. § 3301 (relating to civil penalties for violations). All parties should also be aware of the Commission’s Policy Statement on *Factors and Standards for Evaluating Litigated and Settled Proceedings* at 52 Pa. Code § 69.1202. This policy statement explains how the Commission will calculate and apply penalties, taking into account mitigating and aggravating factors, to address violations of the Public Utility Code, and Commission regulations, directives and orders. Suppliers should also be aware that, consistent with due process, the Commission can suspend or revoke a supplier’s license for violations of applicable provisions of the Public Utility Code and other consumer protection law, applicable Commission regulations, and orders pursuant to 52 Pa. Code § 54.42 and § 62.113 (relating to license suspension; license revocation).

**F. APPEARANCE / UNIFORMS / IDENTIFICATION**

1. Door-to-door sales agents or marketing agents shall immediately present valid identification issued by the supplier for whom they are seeking to enroll customers. The identification shall be visible at all times, and shall accurately identify the supplier, including its legitimate trade name and logo. Additionally, the identification shall display a photograph of the agent and the full name of the agent in reasonably sized type.
2. A door-to-door sales agent or marketing agent shall immediately offer a business card or other material that states the agent’s identity and supplier name, and includes the supplier’s contact information. The agent’s name does not need to be pre-printed on sales or marketing materials. However, when an agent’s name is handwritten on such materials, it shall be printed and legible.
3. The door-to-door sales agent or marketing agent shall not dress in uniforms or wear any apparel that contain any branding elements that are deceptively similar to that of the local Pennsylvania distribution company (including logo).
4. Supplier marketing agents or sales agents who contact customers by telephone for the purpose of marketing or selling a product or service offered by the supplier shall provide the agent’s first name and shall state the name of the supplier on whose behalf the call is being made. Upon request of the customer, the agent shall provide his or her identification number.
5. A supplier shall not use bills, company name, marketing materials or consumer education materials of another supplier, distribution company, or government agency in any way that implies a relationship that does not exist.

**G. MISREPRESENTATION**

1. An agent shall identify the supplier that he or she represents as an independent energy supplier, and shall identify himself or herself as a representative of that specific supplier immediately upon first contact with the potential customer. The agent shall also make clear that he or she is not working for, and is in fact independent of the local distribution company or another supplier. This requirement may be fulfilled either (a) by an oral statement by the agent, or (b) by written material left by the agent. A door-to-door sales agent shall offer a business card or other material that states the agent’s identity and supplier name, and includes the supplier’s contact information. In addition, a valid identification shall be visible at all times and shall accurately identify the supplier, its trade name and logo, and shall display a photograph of the agent and the full name of the agent in reasonably sized type.
2. Agents of a supplier that is an affiliate of a distribution company shall comply with the rules regarding affiliate marketing at 52 Pa. Code § 54.122 (relating to the code of conduct) and at 52 Pa. Code § 62.142 (relating to the standards of conduct). When the supplier’s trade name is similar to that of its affiliated distribution company, the agent shall inform a customer that the supplier is not the same company as the distribution company, that its prices are not regulated by the Commission, and that a customer is not required to buy its supply or other products to receive the same quality service from the distribution company.
3. When an affiliated supplier advertises or communicates through radio, television or other electronic medium to the public and its name or logo is similar to that of the distribution company’s name or logo, the affiliated or divisional supplier shall include at the conclusion of any communication a disclaimer that includes all of the disclaimers listed in paragraph G- 2. *See* 52 Pa. Code § 54.122 (relating to the code of conduct) and 52 Pa. Code § 62.142 (relating to the standards of conduct).
4. A supplier is responsible for any fraudulent deceptive or other unlawful marketing or sales performed by its employees, contractors, agents or representatives. *See* 52 Pa. Code § 54.43(f) and § 62.114 (e) (relating to standards of conduct and disclosure for licensees).

**H. FEDERAL LAW/CONSUMER PROTECTION**

1. A supplier, its employees, representatives and agents shall not discriminate in the provision of electricity and natural gas as to availability and terms of service 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. § §  1601—1693c). *See* 15 U.S.C. § § 1691—1691f (relating to equal credit opportunity) and 12 CFR Part 202 (relating to equal credit opportunity)(Regulation B). *See* 52 Pa. Code §54.43(e) and § 62.114 (e) (relating to standards of conduct and disclosure for licensees).
2. A supplier, its employees, representatives and agents shall comply with the federal “Do Not Call” law. Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C Sec. 6101, et seq.  [[link](http://www.law.cornell.edu/uscode/15/ch87.html)] and **Telemarketing Sales Rule,** 16 CFR Part 310 [[link](http://www.ftc.gov/os/2002/12/tsrfinalrule.pdf)]. The Act is administered by the Federal Trade Commission (FTC).
3. A supplier and its employees, independent contractor or vendor companies, agents and representatives engaged in door-to-door marketing or sales shall comply with the federal cooling off period requirements *See* *Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*; 16 CFR Part 429 (FTC).

**I. STATE LAWS / OAG / CONSUMER PROTECTION**

1. According to the Office of Attorney General, a supplier that is licensed by the PUC and engages in telemarketing does not need to register as a telemarketer pursuant to 73 P.S. § 2243 (a), but must follow all other provisions of the *Telemarketer Registration Act*. *See* 73 P.S. §§ 2241-2249.
2. An agent, representative, independent contractor or vendor shall follow all provisions of the Telemarketer Registration Act, including being registered as a telemarketer.  *See* 73 P.S. § 2243(a).
3. Customer consent to the release of customer information by the distribution company to the supplier to enable competitive solicitations does not constitute an express intent to receive telephone solicitation calls.  *See* 73 P.S. § 2242 (“do not call” list).

**J. LOCAL ORDINANCES**

1. Suppliers performing door-to-door marketing or door-to-door sales, as a courtesy, should notify the local municipal officials of its locations and schedule of door-to-door marketing or door-to-door sales activities. Suppliers shall comply with all local ordinances regarding door-to-door solicitations. These ordinances may be titled “peddling and hawking” or “transient businesses,” and may require that a permit be obtained for each agent. Permit requirements may be linked to background checks in some municipalities. Some ordinances may also prohibit all door-to-door sales or marketing. Local officials would be the contact point in these situations.
2. Local ordinances may include provisions restricting the hours of operation for door-to-door solicitations. Suppliers shall limit door-to-door marketing or door-to-door sales activity to the hours between 9:00 am and 7:00 pm during the six months beginning October 1 and ending March 31, and between 9:00 am and 8:00 pm during the months beginning April 1 and ending September 30. When the local ordinance is stricter, suppliers shall comply with the local ordinance.

**K. DISTRIBUTION COMPANY AND COMMISSION INVOLVEMENT**

1. Suppliers engaging in any marketing or sales activities, which the supplier anticipates, may generate phone calls and inquiries to the Commission shall notify Dan Mumford and Matt Hrivnak at the Commission’s Bureau of Consumer Services (BCS) at [dmumford@state.pa.us](mailto:dmumford@state.pa.us) and [mhrivnak@state.pa.us](mailto:mhrivnak@state.pa.us) no later than the morning of the day the marketing or sales activities commence. The notification shall include general, non-proprietary information as to the extent of the marketing or sales effort, for what period of time, and a description of the geographical area involved. This will benefit suppliers in that Commission staff, in answering inquiries they receive from consumers and public officials, will be able to respond with helpful information.
2. Suppliers should also provide the local distribution company with general, non-proprietary information about the marketing or sales activity that caused the supplier to provide notice to BCS in accordance with paragraph K-1. The supplier should provide this general information to the distribution company no later than the morning of the day that the marketing or sales activities commence. This information is to be used by the local distribution company only for the purpose of acquainting its customer service representatives with marketing or sales activity occurring in its service territory so that they may knowledgably address customer inquiries concerning such activity. Local distribution companies are reminded that, in handling this information, the requirements of the Code of Conduct apply. *See* 52 Pa. Code § 54.122 and § 62.142. In responding to customer inquiries about price and service, the local distribution company may provide factual information about its own price and terms but shall refer the customer to the supplier for questions about the supplier’s prices and terms.

**L. DISCLOSURE STATEMENTS / CONTRACT TERMS**

1. When the supplier successfully signs-up the customer, the supplier shall provide the customer with a copy of the disclosure statement developed in cooperation with the BCS. *See* 52 Pa. Code § 54.5 and § 62.75 (relating to disclosure statement for residential and small business customers).
2. A supplier’s marketing agent or sales agent shall offer to provide the customer with written information regarding the supplier’s products and services. This information shall include the supplier’s name, website, and telephone number for inquiries, verification and complaints.

**M. MARKETING /SALES ACTIVITIES AND MATERIALS**

1. When it is apparent that the customer’s English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the supplier’s marketing agent or sales agent, or when the customer or another third party informs the agent of this circumstance, the agent shall either find another agent who is fluent in the customer’s language to continue the sales or marketing activity or shall terminate contact with the customer. The agent may use ~~of~~ translation services, electronic language translation devices and language identification cards to identify the language spoken by the potential customer~~is permitted~~.
2. Suppliers shall:
3. Not engage in misleading or deceptive conduct as defined by State or Federal law, or by Commission rule, regulation or order;
4. Not make false or misleading representations including misrepresenting rates or savings offered by the supplier;
5. Provide the customer with written information about the products and services being offered, upon request, or with contact information (phone number, website address, etc.) at which information can be obtained.
6. Provide accurate and timely information about services and products being offered. Such information shall include information about the rates being offered, contract terms, early termination fees and right of cancellation and rescission.
7. Ensure that any product or service offerings that are made by a supplier contain information, verbally or written, in plain language that is designed to be understood by the customer. This includes providing any written information to the customer in a language in which the supplier’s representative has substantive discussions with the customer or in which a contract is negotiated.

3. Suppliers shall comply with relevant Commission regulations concerning marketing or sales including:

* 52 Pa. Code § 54.3. Standards and pricing practices for retail electricity service.
* 52 Pa. Code § 62.73. Standards and pricing practices for retail natural gas service.
* 52 Pa. Code § 54.6. Request for information about generation supply.
* 52 Pa. Code § 62.76. Request for information.
* 52 Pa. Code § 54.7.  Marketing/sales activities.
* 52 Pa. Code § 62.77. Marketing/sales activities.
* 52 Pa. Code § 54.43. Standards of conduct and disclosure for licensees.
* 52 Pa. Code § 62.114. Standards of conduct and disclosure for licensees.
* 52 Pa. Code § 57.176. Valid written authorization.
* 52 Pa. Code § 59.96. Valid written authorization.

**N. RESCISSION PERIOD**

1. The supplier shall inform consumers of state consumer protection laws that govern the cancellation or rescission of electric generation and natural gas supply contracts. *See* section 7 of the Unfair Trade Practices and Consumer Protection Law (73 P. S. § 201-7). *See also* 52 Pa. Code § 54.43(f), and § 62.114 (e).
2. A supplier and its agents engaged in door-to-door marketing or sales shall comply with the federal cooling off period requirements. *See* *Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*; 16 CFR Part 429 (FTC).
3. Sections 54.5 and 62.75 give customers a 3-business day right of rescission following receipt of the disclosure statement. *See* 52 Pa. Code § 54.5 (d) and § 62.75(d). This 3-business day right of rescission may run concurrently with the federal 3-day cooling off period.

**O. NO CALL / NO VISIT LIST**

1. A supplier’s marketing agent or sales agent shall immediately leave the premises of a customer when requested to do so by the customer or the owner or an occupant of the premises.
2. Suppliers shall respect any individual’s request to be exempted from further door-to-door marketing or sales contacts and should annotate any existing marketing or sales databases to reflect this request. This does not apply to the eligible customer lists maintained and provided by the distribution companies, for which separate customer exemption requirements apply. *See* 52 Pa. Code § 54.8 and § 62.78 (relating to privacy of customer information).

**P. COMPLAINTS**

1. Suppliers shall provide a single point of contact and a list of designated escalation contacts for Commission staff to resolve consumer inquiries or complaints received by the BCS. Suppliers shall respond to all consumer inquiries and any other BCS requirements, including providing all information regarding the customer and complaint as requested by Commission staff (including a copy of the contract and any audio recordings of the verification call). The BCS, per standard procedures, will encourage callers to first attempt to resolve the matter with the companies involved if they have not done so already.
2. Suppliers shall investigate customer inquiries and complaints concerning marketing or sales practices, and shall cooperate with the relevant agencies regarding complaints about marketing or sales practices prohibited by the Commonwealth and with local law enforcement officials in investigations concerning deceptive marketing or sales practices.
3. A supplier shall maintain and document an internal process for handling customer complaints and resolving disputes arising from marketing and sales activities, and should respond promptly to complaints. These documents shall be made available to Commission staff upon request.
4. A supplier shall comply with the relevant dispute regulations, including:

* 52 Pa. Code § 56.141. Dispute procedures.
* 52 Pa. Code § 56.151. General rule
* 52 Pa. Code § 56.152. Contents of the utility company report.
* 52 Pa. Code § 54.9. Complaint handling process.
* 52 Pa. Code § 62.79. Complaint handling process.
* 52 Pa. Code § 57.177.  Customer dispute procedures.
* 52 Pa. Code § 59.97. Customer dispute procedures.

**Q. MONITORING MARKETING AND SALES ACTIVITIES OF UNLICENSED INDEPENDENT CONTRACTORS**

The Commission will gather and maintain statistics concerning complaints regarding both supplier marketing and sales practices as well as proven incidents of unauthorized customer enrollments and transfers of customer accounts. This information will enable the Commission to monitor supplier activities, including the practice of using of unlicensed independent contractors or vendors for marketing and sales support. This information will also provide a basis for the Commission to evaluate this practice and to determine whether this practice should be permitted to continue. *See* Secretarial Letter issued December 10, 2009 at Docket No. M-2009-2082042. <http://www.puc.state.pa.us//pcdocs/1062483.docx>

1. In accordance with the request, Dominion’s comments will not be considered in this proceeding. [↑](#footnote-ref-1)
2. Proposed guideline E required the supplier, when establishing internal procedures for agent discipline, to take into account the Commission’s “zero tolerance” policy on slamming. [↑](#footnote-ref-2)
3. Proposed guideline L-1 is based on Sections 54.5 and 62.75 of the Commission regulations, and requires an agent to provide the customer with a copy of the disclosure statement when the supplier successfully signs-up the customer. *See* 52 Pa. Code § 54.5 and § 62.75 (relating to disclosure statement for residential and small business customers). [↑](#footnote-ref-3)
4. Added text is underlined and deleted text is stricken through. [↑](#footnote-ref-4)
5. Section 9125 provides that employer may use information about an applicant’s criminal history record information only to the extent that it relates to the applicant’s suitability for employment, and that the employer shall notify the applicant in writing if the decision not to hire the applicant is based in whole or in part on criminal history information. [↑](#footnote-ref-5)
6. 52 Pa. Code § 54.42(a). [↑](#footnote-ref-6)
7. 52 Pa. Code § 62.113(a) [↑](#footnote-ref-7)
8. Section 54.5 became effective on publication in the *Pennsylvania Bulletin* at 28 Pa.B. 3780 on August 8, 1998. Section 62.75 became effective on publication in the *Pennsylvania Bulletin* at 31 Pa.B. 2005 on April 14, 2001. [↑](#footnote-ref-8)
9. *Interim Guidelines for Eligible Customer Lists for Electric Distribution Companies*, Tentative Order entered August 4, 2010 at Docket No. M-2010-2183412. [↑](#footnote-ref-9)
10. “Marketing” is defined in the Commission’s regulations as “the publication, dissemination or distribution of informational and advertising materials regarding the EGS’s services and products to the public by print, broadcast, electronic media, direct mail or by telecommunication.” *See* 52 Pa. Code § 54.31 (definitions). *See also* 52 Pa. Code § 62.101 (relating to definitions [natural gas]). [↑](#footnote-ref-10)
11. The term “sales” is not defined in the regulations. However, “offer to provide service” is defined as the extension of an offer to provide services or products communicated orally, or in writing to a customer.”*See* 52 Pa. Code § 54.31 (definitions [electric]) § 62.101 (definitions [natural gas]). [↑](#footnote-ref-11)
12. “Slamming” is changing a customer’s supplier without prior authorization. [↑](#footnote-ref-12)