



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

IN REPLY PLEASE
REFER TO OUR FILE
L-2010-2208332

April 3, 2019

To: All Electric Generation Suppliers, Natural Gas Suppliers, Electric Distribution Companies, Natural Gas Distribution Companies, Bureau of Investigation and Enforcement, Office of Consumer Advocate and Office of Small Business Advocate.

Re: Guidance on Chapter 111 Residential Supplier Marketing Regulations

Docket No. L-2010-2208332

The Pennsylvania Public Utility Commission (PUC) is issuing the following reminders and guidance to all Electric Generation Suppliers and Natural Gas Suppliers (collectively, Suppliers) concerning the *Marketing and Sales Practices for the Retail Residential Energy Market* regulations at 52 Pa. Code Chapter 111 and other related marketing rules. These regulations establish standards and practices for marketing and sales activities for Suppliers and their agents to ensure the fairness and the integrity of the competitive residential energy markets. Suppliers, and their agents, are expected to comply with these standards and practices when engaged in any sales and marketing activities involving residential customers.

Failure of a Supplier, or its agents, contractors, vendors, employees or representatives to comply with PUC regulations or orders can result in the imposition of fines and penalties including the suspension or revocation of a Supplier's license. In addition, we want to remind Suppliers that the Commission has zero tolerance for marketing practices that result in unauthorized switching of customers, i.e. "slamming."

With this Secretarial Letter, the PUC is providing guidance and reminders on what is expected of suppliers when marketing in general and in relation to specific marketing practices that have recently come to the attention of the PUC's Office of Competitive Market Oversight (OCMO) and Bureau of Consumer Services (BCS).

All Sales and Marketing

We note that sales and marketing are broadly defined at 52 Pa. Code § 111.2 as the “extension of an offer to provide services or products *communicated orally, electronically or in writing* to a customer” and accordingly advise Suppliers to comply with all the Chapter 111 regulations when contacting residential customers, regardless of the marketing method, venue or technology utilized. Further, 52 Pa. Code § 111.1 notes that when these standards and practices do not address a specific situation or problem, suppliers are expected to “exercise good judgment and use reasonable care in interacting with customers and members of the public.”

We direct Suppliers to 52 Pa. Code § 111.8(b) as the standard the PUC expects Suppliers to follow when contacting residential customers in any sales and marketing activity:

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

Accordingly, the Commission reminds all Suppliers that when contacting a potential customer, regardless of the method or technology utilized, it is imperative that the supplier identify themselves immediately and that they accurately and completely state the purpose of the contact. Failure to do so can easily lead to customer confusion and misunderstanding – leading to a potential violation of the prohibitions in 52 Pa. Code § 111.12(d), against misleading, false or deceptive conduct or representations. Again, the PUC emphasizes that these standards and prohibitions apply to all sales and marketing campaigns, efforts or practices, regardless of medium or technology used by a Supplier, whenever a Supplier or its agent contacts a residential customer in this Commonwealth. Below we will reinforce the rules relating to specific types of sales and marketing methods.

Telemarketing

The PUC reminds all Suppliers that 52 Pa. Code § 111.10 addresses telemarketing and includes a number of specific requirements and cross-references to other rules – including the *Telemarketing and Consumer Fraud and Abuse Prevention Act*, 15 U.S.C.A. §§ 6101—6108) and 16 CFR Part 310 (relating to telemarketing sales rule) as well as the *Pennsylvania Telemarketer Registration Act*, 73 P.S. §§ 2241 – 2249.

We wish to highlight subsection (b) of this regulation that addresses how a sales agent is to proceed upon calling a potential customer:

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

52 Pa. Code § 111.10(b) (emphasis added).

The PUC stresses that telemarketing agents are to immediately identify themselves upon contacting a potential customer; identify the supplier they are representing; and the reason for the telephone call. We advise Suppliers that the “reason for the telephone call” is to be specific and to avoid vague and potentially misleading statements (i.e. “about an urgent matter concerning your generation service”, “about your utility bill”, “about your discount /refund /rebate /bonus” etc.). The PUC advises that these rules and expectations apply to all phone contacts to a potential customer’s household, regardless of whether it is a live agent or recorded voice (i.e. “robocalls”) and regardless a whether it is addressed to a utility customer or any member of the household or whether it involves only leaving a voice mail message.

The PUC also reminds Suppliers of the requirements of subsection (a)(4) of this regulation:

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

52 Pa. Code 111.10(a)(4).

The PUC further reminds Suppliers that the state and federal “Do Not Call” list laws and regulations apply to all Suppliers and shield all customers on the list – regardless of whether that customer appears on the distribution utility’s Eligible Customer List (ECL). (We note that customer phone numbers are **not** included on the ECL). We advise that the PUC expects Suppliers to abide by the “Do Not Call” restrictions in any sales and marketing activities involving any telephone contact, live or

recorded (i.e. “robocalls”), to a potential customer’s household, regardless of whether the agent is attempting to speak directly to a utility customer or any member of the customer’s household, or when leaving a voice mail message (including “ringless voice mail”).

The PUC urges all Suppliers to ensure that any phone-number lists they are using for sales and marketing purposes are frequently scrubbed for “Do Not Call” purposes. The “Do Not Call” program in Pennsylvania is administered by the Office of Attorney General and further information is available at these weblinks: :

<https://www.attorneygeneral.gov/resources/telemarketing-in-pa/> and
https://www.attorneygeneral.gov/Consumers/Do_Not_Call_List/.

Information on the Federal Trade Commission “Do Not Call” registry is available at these weblinks: <https://www.donotcall.gov/> and
<https://www.donotcall.gov/register/reg.aspx>.

In addition to respecting the “Do Not Call” lists, the PUC advises all Suppliers to honor individual requests by potential customers to not be contacted again by the Supplier or its agent. *See* 73 P.S. § 2245(a)(2). Suppliers should routinely scrub all telephone number lists to remove any phone number of a potential customer making this request.

The PUC also directs the attention of all Suppliers engaged in residential telemarketing to the sales verification procedures at 52 Pa. Code § 111.7. The sales verification requirements in this section do apply to telemarketing sales – and records of the verification should be provided to BCS if there is an informal complaint filed by the customer subsequent to the enrollment. *See* 52 Pa. Code § 111.7(b)(6).

We advise suppliers to have quality-control and monitoring programs in place to ensure that telemarketing activities are being conducted in accordance with state and federal telemarketing laws, the Commission’s regulations and the supplier’s standards. This is especially important if the supplier is using a contractor or vendor to perform marketing services. *See* 52 Pa. Code § 111.5(e).

Door-to-Door Sales

The PUC reminds all Suppliers that Chapter 111 includes standards for performing residential door-to-door sales. We insist that all Suppliers engaged in door-to-door sales activity exercise strict oversight of their agents to protect public safety and to ensure compliance with all regulations and local ordinances. We wish to highlight the following requirements:

- **Suppliers must obtain criminal history background checks and “Megan’s Law” checks on all door-to-door agents prior to the agent conducting any door-to-door activity.** We urge all Suppliers to have in place procedures where such background checks are reviewed by multiple compliance-related employees and managers to ensure nothing is overlooked. *See* 52 Pa. Code § 111.4.
- A supplier may not permit a person to conduct door-to-door sales and marketing activities until it has obtained and reviewed a criminal history record. *See* 52 Pa. Code § 111.4.
- When a supplier contracts with an independent contractor or vendor to perform door-to-door activities, the supplier is obligated to confirm that the contractor or vendor has performed criminal background investigations on an agent in accordance with the regulations and with the standards set by the supplier. Suppliers will be held responsible for the actions of contractors and vendors. *See* 52 Pa. Code §§ 111.4 and 111.3.
- Upon first contact with a customer, a Supplier’s agent must identify the supplier that he or she represents and state that he or she is not working for and is independent of the customer’s local distribution company. *See* 52 Pa. Code § 111.8(b).
- Supplier agents must have an identification badge that identifies the supplier, its trade name and logo, and include the agent’s photograph and full name. The badge must be prominently displayed and include a customer-service phone number for the supplier. *See* 52 Pa. Code § 111.8(a).
- **Supplier agents must comply with local ordinances regarding door-to-door marketing and sales activities – including local permitting requirements.** Suppliers are to limit door-to-door marketing or sales activities to the hours between 9 a.m. and 7 p.m. during the 6 months beginning October 1 and ending March 31, and to the hours between 9 a.m. and 8 p.m. during the months beginning April 1 and ending September 30. When a local ordinance has stricter limitations, Suppliers are to comply with the local ordinance. Regardless of local permitting requirements, we urge all suppliers to reach out to the officials in *all* of the municipalities they are operating in to let them know who you are, what your agents will be doing, and how to contact you if needed. *See* 52 Pa. Code § 111.9(a).
- Supplier agents are to immediately leave a residence when requested to do so by a potential customer or any occupant of the premises or if the potential customer does not express an interest in what the agent is attempting to sell. *See* 52 Pa.

Code § 111.9(g).

- When a Supplier engages in door-to-door sales and marketing activity, the supplier is to notify BCS no later than the morning of the day that the activity begins. The notification is to include the municipalities (or postal codes) the Supplier's agents will be operating in and the dates the sales activity will occur. These notifications should be sent to: RA-PCDOORTODOOR@pa.gov and questions about this reporting can be directed to Annette Falcone in BCS at anfalcone@pa.gov or 717-783-9088. Also, as a reminder, Suppliers should also be providing similar notice to the local distribution company at the same time. *See* 52 Pa. Code § 111.14(a) & (b).
- The PUC also directs the attention of all Suppliers engaged in residential door-to-door activity to the sales verification procedures at 52 Pa. Code § 111.7, stressing that the verification process shall be initiated only after the agent has physically exited the customer's residence, unless the customer agrees that the agent may remain in the vicinity of the customer during the verification process. Prior to initiating the verification process, the agent shall inform the customer that the agent may not be in the vicinity during the verification unless the customer agrees to the agent's presence. Again, records of the verification should be provided to BCS if there is an informal complaint filed by the customer subsequent to the enrollment. *See* 52 Pa. Code § 111.7.
- We advise suppliers to have quality-control and monitoring programs in place to ensure that door-to-door activities are being conducted in accordance with the Commission's regulations and the supplier's standards. This is especially important if the supplier is using a contractor or vendor to perform marketing services. *See* 52 Pa. Code § 111.5(e).

Direct Mail / Electronic Solicitations

The PUC reminds all Suppliers that in addition to specific rules in Chapter 111 for telemarketing and door-to-door sales; there are also consumer protection standards that apply to all sales and marketing – including direct mail and electronic solicitations. *See* 52 Pa. Code § 111.12. Specifically, we wish to highlight the following prohibitions and requirements relating to supplier sales and marketing activities:

- Suppliers may not engage in misleading or deceptive conduct as defined by State or Federal law, or by Commission rule, regulation or order.
- Suppliers may not make false or misleading representations including misrepresenting rates or savings offered by the supplier.

- Suppliers shall provide the customer with written information about the products and services being offered, or with instructions for where the information can be obtained.
- Suppliers shall provide accurate and timely information about services and products being offered. Information includes rates being offered, contract terms, early termination fees and right of cancellation and rescission.
- Suppliers shall ensure that product or service offerings made by a supplier contain information, verbally or written, in plain language designed to be understood by the customer.

We further note the Standards for Conduct for EGSs (See 52 Pa. Code § 54.43 <https://www.pacode.com/secure/data/052/chapter54/s54.43.html>) and NGSs (See 52 Pa. Code § 62.114 <https://www.pacode.com/secure/data/052/chapter62/s62.114.html>) require that suppliers use plain language and common terms in communications with consumers and that when new terms are used, the terms shall be defined again using plain language.

We caution Suppliers to avoid practices like the following in written or electronic communication:

- Failing to prominently identify the Supplier that sent the communication.
- Using references to the distribution utility improperly, including using the utility name in a manner that could suggest that the communication is from or sent on behalf of the utility.
- Failing to properly identify the purpose of the communication. We further advise against statements like “rate discount / refund / rebate notice”, “utility rate increase notice,” etc., without a more complete explanation of the purpose of the solicitation.

Use of Agents / Vendors / Contractors

Finally, the PUC wishes to emphasize that while a Supplier is free to engage agents, vendors and contractors to perform sales, marketing and other work on its behalf, the PUC will hold the licensed Supplier responsible for the actions of those agents, vendors and contractors. We also note that the definition of agent at 52 Pa. Code § 111.2 is very encompassing:

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

52 Pa. Code § 111.3(b) further specifies that a Supplier is responsible for fraudulent, deceptive or other unlawful marketing acts performed by its agents. Likewise, the standards of conduct and disclosure for EGSs at 52 Pa. Code § 54.43(f) and for NGSs at 52 Pa. Code § 62.114(e) both stipulate that Suppliers are “responsible for any fraudulent, deceptive or other unlawful marketing or billing acts performed by the licensee, its employees, agents or representatives.”

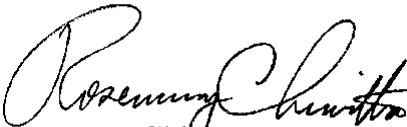
When a supplier contracts with an independent contractor or vendor to perform door-to-door activities, the supplier is obligated to confirm that the contractor or vendor has performed criminal background investigations on an agent in accordance with the regulations and with the standards set by the supplier. *See* 52 Pa. Code §§ 111.4

Failure of a Supplier, or its agents, contractors, vendors, employees or representatives to comply with the above – noted PUC regulations or orders can result in the imposition of fines and penalties including the suspension or revocation of a Supplier’s license. *See* 52 Pa. Code § 111.3(c). We urge all Suppliers to immediately perform a comprehensive review of their current and planned residential sales and marketing efforts to ensure that the standards discussed in this Secretarial Letter are complied with. A competitive energy market where suppliers provide accurate and complete information to potential customers will not only assist those customers in making informed energy choices, but will benefit the market in its entirety by improving the shopping experience for everyone.

If you have any questions about the information presented in this Secretarial Letter, please contact one of the following:

- Office of Competitive Market Oversight: RA-OCMO@pa.gov.
- Director of the Office of Competitive Market Oversight Daniel Mumford at dmumford@pa.gov or (717) 783-1957.
- Deputy Director of the Office of Competitive Market Oversight and Assistant Counsel with the Law Bureau Kriss Brown at kribrown@pa.gov or (717) 787-4518.
- Matthew Hrivnak, Manager of Compliance and Competition at the Bureau of Consumer Services at MHRIVNAK@pa.gov or (717) 783-1678.

Very truly yours,


Rosemary Chiavetta
Secretary

cc: Jan H. Freeman, Executive Director
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