

**Subpart F. COMPETITIVE MARKETS**

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<b>111.</b>	<b>MARKETING AND SALES PRACTICES FOR THE RETAIL RESIDENTIAL ENERGY MARKET ..... 111.1</b>

**CHAPTER 111. MARKETING AND SALES PRACTICES FOR THE RETAIL RESIDENTIAL ENERGY MARKET**

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**Authority**

The provisions of this Chapter 111 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504, 2206(b), 2208(b) and (e), 2807(d)(1) and 2809(b) and (e), unless otherwise noted.

**Source**

The provisions of this Chapter 111 adopted June 28, 2013, effective June 29, 2013, 43 Pa.B. 3473, unless otherwise noted.

**§ 111.1. General.**

The purpose of this chapter is to establish standards and practices for marketing and sales activities for EGSs and NGSs and their agents to ensure the fairness and the integrity of the competitive residential energy market. EGSs and NGSs and their agents shall comply with these standards and practices when engaged in sales and marketing activities involving residential customers. When these standards and practices do not address a specific situation or problem, the supplier shall exercise good judgment and use reasonable care in interacting with customers and members of the public.

**§ 111.2. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

*Act*—Telemarketer Registration Act (73 P. S. §§ 2241—2249).

*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.

*Commission*—The Pennsylvania Public Utility Commission.

*Customer*—A natural person in whose name a residential EDC, NGDC, EGS or NGS service account is listed and who is primarily responsible for payment of bills rendered for the service.

*Disclosure statement*—A written disclosure of the terms of service between a supplier and a customer that satisfies the definition of “consumer contract” in section 3 of the Plain Language Consumer Contract Act (73 P. S. § 2203) containing information as required in, and developed consistent with, § 54.5 (relating to disclosure statement for residential and small business customers) for electric generation service and § 62.75 (relating to disclosure statement for residential and small business customers) for natural gas supply service.

*Distribution company*—An EDC or an NGDC.

*Door-to-door sales*—A solicitation or sales method whereby an agent proceeds randomly or selectively from residence to residence.

*EDC*—*Electric distribution company*—The term as defined in 66 Pa.C.S. § 2803 (relating to definitions).

*EGS*—*Electric generation supplier*—The term as defined in 66 Pa.C.S. § 2803.

*Electric generation service*—Electricity and related services.

*Energy service*—Electric generation service or natural gas supply service.

*NGDC*—*Natural gas distribution company*—The term as defined in 66 Pa.C.S. § 2202 (relating to definitions).

*NGS*—*Natural gas supplier*—The term as defined in 66 Pa.C.S. § 2202.

*Natural gas supply services*—The term as defined in 66 Pa.C.S. § 2202.

*Public event*—An event in a public location which may facilitate sales and marketing activities or may result in a customer enrollment transaction.

*Sales and marketing*—The extension of an offer to provide services or products communicated orally, electronically or in writing to a customer.

*Supplier*—An EGS or an NGS.

*Telemarketing*—An activity, plan, program or campaign using one or more telephones that is conducted to induce customers to purchase goods or services. See section 2 of the act (73 P. S. § 2242), regarding definitions.

*Transaction*—A process by which a customer authorizes the transfer of his account to the supplier.

*Transaction document*—Contracts and forms used by a supplier to enroll a customer for service.

*Verification*—Customer validation of his intent to enter into a contract and receive service from a supplier.

*Verification process*—An action by means of written, audio or electronic documentation by which a customer validates his intent to enter into a contract and receive service from a supplier.

**§ 111.3. Supplier liability for its agent.**

(a) A supplier may use an agent to conduct marketing or sales activities in accordance with applicable Commission rules, regulations and orders.

(b) In accordance with § 54.43(f) (relating to standards of conduct and disclosure for licensees) for an EGS and § 62.114(e) (relating to standards of conduct and disclosure for licensees) for an NGS, a supplier is responsible for fraudulent, deceptive or other unlawful marketing acts performed by its agent.

(c) Consistent with due process, for violations committed by the supplier's agent, the Commission may:

- (1) Suspend or revoke a supplier's license.
- (2) Impose fines for fraudulent acts, violations of Commission regulations and orders.

**§ 111.4. Agent qualifications and standards; criminal background investigations.**

(a) A supplier shall develop standards and qualifications for individuals it chooses to hire as its agents. A supplier may not hire an individual that fails to meet its standards.

(b) 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 from the Pennsylvania State Police and from every other state in which the person resided for the last 12 months. For a current employee or agent who conducts sales and marketing activities, a supplier shall obtain a criminal history record by September 27, 2013.

(1) The criminal background investigation shall include checking the sex offender registry commonly referred to as the "Megan's Law" registry maintained by the Pennsylvania State Police.

(2) A supplier may not hire a person as an employee or an agent for door-to-door marketing or sales who was convicted of a felony or misdemeanor when the conviction reflects adversely on the person's suitability for this type of employment.

(c) When a 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 investigations on an agent in accordance with this section and with the standards set by the supplier.

**§ 111.5. Agent training.**

- (a) A supplier shall ensure the training of its agents on the following subjects:
- (1) State and Federal laws and regulations that govern marketing, telemarketing, consumer protection and door-to-door sales, including consumer protection regulations in Chapters 54 and 62 (relating to electricity generation customer choice; and natural gas supply customer choice), applicable provisions in Chapters 56, 57 and 59 (relating to standards and billing practices for residential utility service; electric service; and gas service) and the act.
  - (2) Responsible and ethical sales practices as described in this chapter.
  - (3) The supplier's products and services.
  - (4) The supplier's rates, rate structures and payment options.
  - (5) The customer's right to rescind and cancel contracts.
  - (6) The applicability of an early termination fee for contract cancellation when the supplier has one.
  - (7) The necessity of adhering to the script and knowledge of the contents of the script if one is used.
  - (8) The proper completion of transaction documents.
  - (9) The supplier's disclosure statement.
  - (10) Terms and definitions related to energy supply, transmission and distribution service as found in the dictionary of utility terms on the Commission's web site at [www.puc.pa.gov](http://www.puc.pa.gov).
  - (11) Information about how customers may contact the supplier to obtain information about billing, disputes and complaints.
  - (12) The confidentiality and protection of customer information and §§ 54.43(d) and 62.114 (relating to standards of conduct and disclosure for licensees).
- (b) A supplier shall document the training of an agent and maintain a record of the training for 3 years from the date the training was completed.
- (c) A supplier shall make training materials and training records available to the Commission upon request. A supplier is not required to submit training materials and programs for advance Commission review and approval.
- (d) When a supplier contracts with an independent contractor or vendor to perform marketing or sales activities on the supplier's behalf, the supplier shall confirm that the contractor or vendor has provided supplier-approved training to agents and independent contractors in accordance with this section.
- (e) The supplier shall monitor telephonic and door-to-door marketing and sales calls to:
- (1) Evaluate the supplier's training program.
  - (2) Ensure that agents are providing accurate and complete information, complying with applicable rules and regulations and providing courteous service to customers.

**§ 111.6. Discipline.**

In developing internal agent discipline practices and procedures, a supplier shall consider the Commission's regulations regarding the unauthorized transfer of customer accounts in §§ 57.171—57.179 and 59.91—59.99 (relating to standards for changing a customer's electricity generation supplier; and standards for changing a customer's natural gas supplier) and the violation of other consumer protections.

**§ 111.7. Customer authorization to transfer account; transaction; verification; documentation.**

(a) A supplier shall establish a written, oral or electronic transaction process for a customer to authorize the transfer of the customer's account to the supplier.

(1) A document used to complete a transaction must include a means to identify, when an agent is involved, the agent who completed the transaction and a notation indicating whether the transaction was the result of:

(i) A door-to-door call or other in-person contact with an agent.

(ii) A telephone contact with an agent.

(iii) A written document completed and mailed to a supplier by a customer outside the presence of, or without interaction with, an agent.

(iv) An electronic document completed and uploaded to a supplier's web site or e-mailed to a supplier by a customer outside the presence of, or without interaction with, an agent.

(2) A supplier shall provide a copy of documentation used in a customer transaction to the Commission upon request.

(b) A supplier shall establish a process to verify a transaction that involved an agent. The process shall confirm that the customer authorized the transfer of the customer's account to the supplier. This subsection does not apply to a transaction that was completed solely by the customer as set forth in subsection (a)(1)(iii) and (iv).

(1) A supplier may use a third party to verify transactions.

(2) The verification process shall be separate from the transaction process and initiated only after the transaction has been finalized. When verifying a transaction that resulted from an agent's contact with a customer at the customer's residence, 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.

(3) A customer shall be informed of the 3-business-day right of rescission of the transaction under §§ 54.5(d) and 62.75(d) (relating to disclosure statement for residential and small business customers) and the customer's rights

under section 7 of the Unfair Trade Practices and Consumer Protection Law (73 P. S. § 201-7) at the end of the verification process contact.

(4) A supplier shall maintain a record of a verification in a system that is capable of retrieving the record by customer name and customer account number for a period of time equivalent to at least six billing cycles to enable compliance with § 57.177 (relating to customer dispute procedures) for an EGS and § 59.97 (relating to customer dispute procedures) for an NGS.

(5) The verification record must include the transaction documents and the following information:

- (i) The date that the transaction was completed.
- (ii) The name or identification number of the agent that completed the transaction.
- (iii) The date of the verification.
- (iv) The name or identification number of the individual that conducted the verification.
- (v) The results of the verification.
- (vi) The date that the disclosure statement was provided to the customer and the method by which it was provided.

(6) A supplier shall provide copies of verification records to the Commission upon request.

(c) When a supplier is informed that a transaction could not be verified, the supplier shall contact the customer by telephone, e-mail or letter and explain that the transaction could not be verified. The supplier may offer assistance to correct the problem so that the transaction can be resubmitted to the verification process.

### **§ 111.8. Agent identification; misrepresentation.**

(a) A supplier shall issue an identification badge to agents who conduct door-to-door activities or appear at public events. The badge must:

- (1) Accurately identify the supplier, its trade name and logo.
- (2) Display the agent's photograph.
- (3) Display the agent's full name.
- (4) Be prominently displayed.
- (5) Display a customer-service phone number for the supplier.

(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.

(c) When conducting door-to-door activities or appearing at a public event, an agent may not wear apparel or accessories or carry equipment that contains branding elements, including a logo, that suggests a relationship that does not exist with an EDC, NGDC, government agency or another supplier.

(d) A supplier may not use the name, bills, marketing materials or consumer education materials of another supplier, EDC, NGDC or government agency in a way that suggests a relationship that does not exist.

(e) An agent of a supplier that is an affiliate of a distribution company shall comply with the rules regarding affiliate marketing in § 54.122 (relating to code of conduct) for an EGS and in § 62.142 (relating to standards of conduct) for an NGS.

(f) A supplier or supplier agent may not say or suggest to a customer that a utility customer is required to choose a competitive energy supplier.

**§ 111.9. Door-to-door sales.**

(a) A supplier and its agents shall comply with local ordinances regarding door-to-door marketing and sales activities. A supplier shall 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, a supplier shall comply with the local ordinance.

(b) A supplier and its agents shall comply with regulations that govern marketing, consumer protection and door-to-door sales including consumer protection regulations in Chapters 54 and 62 (relating to electricity generation customer choice; and natural gas supply customer choice) and the applicable provisions in Chapters 56, 57 and 59 (relating to standards and billing practices for residential utility service; electric service; and gas service).

(c) When conducting door-to-door sales or marketing activities, an agent shall display his identification badge issued by the supplier. The identification shall be prominently displayed.

(d) When engaging in door-to-door sales or marketing activities, an agent shall comply with the following:

(1) After greeting the customer, the agent shall immediately identify himself by name, the supplier the agent represents and the reason for the visit. The agent shall state that he is not working for and is independent of the local distribution company or another supplier.

(2) The agent shall offer a business card or other material that lists the agent's name, identification number and title, and the supplier's name and contact information, including telephone number. This information does not need to be preprinted on the material. When the information is handwritten, it shall be printed and legible.

(e) When a customer's language skills are insufficient to allow the customer to understand and respond to the information being conveyed by the agent, or when the customer or a third party informs the agent of this circumstance, the agent shall terminate contact with the customer.

(f) When an agent completes a transaction with a customer, the agent shall:

- (1) Provide a copy of each document that the customer signed or initialed relating to the transaction. A copy of these documents shall be provided to the customer before the agent leaves the customer's residence. If requested by the customer, a copy of the materials used by the agent during the call shall be provided to the customer as soon as practical.
- (2) Explain the supplier's verification process to the customer.
- (3) State that the supplier shall send a copy of the disclosure statement about the service to the customer after the transaction has been verified if the disclosure statement has not been previously provided.
- (4) State that the customer may rescind the transaction within 3 business days after receiving the disclosure statement.
- (g) An agent shall immediately leave a residence when requested to do so by a customer or the owner or an occupant of the premises or if the customer does not express an interest in what the agent is attempting to sell.
- (h) A supplier shall comply with an individual's request to be exempted from door-to-door marketing and sales contacts and annotate its existing marketing or sales databases consistent with this request within 2 business days of the individual's request.

**§ 111.10. Telemarketing.**

(a) A supplier and its agents shall comply with regulations that govern marketing, consumer protection and telemarketing sales including consumer protection regulations in Chapters 54 and 62 (relating to electricity generation customer choice; and natural gas supply customer choice) and applicable provisions in Chapters 56, 57 and 59 (relating to standards and billing practices for residential utility service; electric service; and gas service).

- (1) A supplier that is licensed by the Commission and engages in telemarketing is not required to register as a telemarketer under section 3(a) of the act (73 P. S. § 2243(a)), regarding registration requirement, but shall comply with other provisions of the act.
  - (2) An agent that contracts with a supplier to conduct telemarketing and sales activities on behalf of the supplier shall register as a telemarketer and comply with the act.
  - (3) A supplier and its agents shall comply with 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).
  - (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).
- (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.

(c) When an agent completes a transaction with a customer, the agent shall explain the supplier's verification process to the customer and state that the supplier will send a copy of the disclosure statement and other material about the service to the customer after the transaction has been verified. At the end of the telephone contact, the agent shall state that the customer may rescind the transaction within 3 business days after receiving the disclosure statement.

**§ 111.11. Receipt of disclosure statement and right to rescind transaction.**

(a) When a transaction is completed by a customer without the presence of or interaction with an agent and is not submitted to the verification process, a supplier shall provide the customer with a copy of its disclosure statement as soon as it is practical. A customer shall have the right to rescind the transaction within 3 business days after receiving the disclosure statement. See § 54.5(d) (relating to disclosure statement for residential and small business customers), which applies to EGSs, and § 62.75(d) (relating to disclosure statement for residential and small business customers), which applies to NGSs.

(b) After a transaction that involved an agent has been completed and verified, a supplier shall provide the customer with a copy of its disclosure statement. The disclosure statement may be provided in-person or by United States mail. The disclosure statement may be provided electronically if the customer consents to electronic delivery. A customer shall have the right to rescind the transaction within 3 business days after receiving the disclosure statement.

(c) There shall be a rebuttable presumption that a disclosure statement correctly addressed to a customer with sufficient first class postage attached shall be received by the customer 3 days after it has been properly deposited in the United States mail. If delivered in-person, the disclosure will be considered received by the customer on the date of delivery. If delivered electronically, the disclosure will be considered received by the customer on the date it was transmitted electronically.

**§ 111.12. Consumer protection.**

(a) A supplier and its agents may not discriminate in the provision of electric generation and natural gas as to availability and terms of service to a customer 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.A. §§ 1601—1693r) and 12 CFR Part 202 (relating to Equal Credit Opportunity Act (Regulation B)). This requirement is consistent

with § 54.43(e) (relating to standards of conduct and disclosure for licensees) for EGSs and § 62.114(e) (relating to standards of conduct and disclosure for licensees) for NGSs.

(b) A supplier and its agents that engage in door-to-door marketing or sales shall comply with the Federal cooling off period requirements. See 16 CFR Part 429 (relating to rule concerning cooling off period for sales made at homes or at certain other locations).

(c) A supplier and its agents shall comply with the 3-business-day cooling off period requirement in § 54.5(d) (relating to disclosure statement for residential and small business customers) that applies to EGSs and § 62.75(d) (relating to disclosure statement for residential and small business customers) that applies to NGSs. This cooling off period may run concurrently with the Federal cooling off period in subsection (b).

(d) A supplier:

(1) May not engage in misleading or deceptive conduct as defined by State or Federal law, or by Commission rule, regulation or order.

(2) May not make false or misleading representations including misrepresenting rates or savings offered by the supplier.

(3) Shall provide the customer with written information about the products and services being offered, or with instructions for where the information can be obtained.

(4) 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.

(5) 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. This includes providing written information to the customer in a language which the supplier's representative has had substantive discussions with the customer or in which a contract is negotiated.

### **§ 111.13. Customer complaints.**

(a) A supplier shall investigate customer inquiries, disputes and complaints concerning marketing or sales practices. The supplier shall cooperate with the Commission and other government agencies that are investigating complaints about marketing or sales practices prohibited by State and Federal laws and with local law enforcement officials that are investigating complaints about violations of local municipal law.

(b) A supplier shall implement an internal process for responding to and resolving customer inquiries, disputes and complaints. The process shall document as a record the customer inquiry, dispute or complaint, subsequent communications between the supplier and the customer, and the resolution of the inquiry, dispute or complaint. A supplier shall retain the record for a time period equiva-

lent to six billing cycles in a system capable of retrieving that record by customer name and account number or by other effective means to obtain access to the information.

(c) The internal process shall comply with the applicable dispute regulations including:

- (1) Section 54.9 (relating to complaint handling process).
- (2) Section 56.141 (relating to dispute procedures).
- (3) Section 56.151 (relating to general rule).
- (4) Section 56.152 (relating to contents of the public utility company report).
- (5) Section 57.177 (relating to customer dispute procedures).
- (6) Section 59.97 (relating to customer dispute procedures).
- (7) Section 62.79 (relating to complaint handling process).

(d) A supplier shall provide a single contact and a list of designated escalation contacts for the Commission staff to access to address consumer inquiries and resolve complaints.

**§ 111.14. Notification regarding marketing or sales activity.**

(a) When a supplier engages in door-to-door sales and marketing activity, the supplier shall notify the Bureau of Consumer Services no later than the morning of the day that the activity begins. The notification shall include general, nonproprietary information about the activity, the period involved and a general description of the geographical area.

(b) A supplier shall provide the local distribution company with general, nonproprietary information about the door-to-door sales and marketing activity that caused the supplier to provide notice to the Commission in accordance with subsection (a). The supplier shall provide this general information to the distribution company no later than the morning of the day that the sales and marketing activities begin. The distribution company shall use this information only for acquainting its customer service representatives with sales and marketing activity occurring in its service territory so that they may knowledgably address customer inquiries. Consistent with § 54.122 (relating to code of conduct) for an EDC and § 62.142 (relating to standards of conduct) for an NGDC, a distribution company may not use the information for other purposes.

(c) In responding to a customer inquiry about price and service, a distribution company may provide information about its own price and terms but shall refer the customer to the supplier for questions about the supplier's prices and terms. This subsection does not apply in the context of a Commission-approved program that requires a distribution company to provide information about a supplier's prices and terms.

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