

**PENNSYLVANIA PROPOSED INTERIM GUIDELINES FOR
MARKETING AND SALES PRACTICES
FOR ELECTRIC GENERATION AND NATURAL GAS SUPPLIERS**

Posting Note:

The Pennsylvania Proposed Interim Guidelines (“PA Guidelines”) are being posted for discussion purposes only within the NAESB Retail Quadrants. Readers should be aware that they are still out for comment and thus should not be considered as Ordered and Effective. This said, the PA Guidelines were developed through a collaborative process (CHARGE and SEARCH are the Pennsylvania Working Groups) and the Commission’s understanding is that there is consensus for the bulk of what is proposed. In the Notice issuing the PA Guidelines for comment, the Pennsylvania Public Utility Commission describes the non-consensus items as follows:

Non-Consensus Items

The Commission understands that the proposed guidelines represent consensus positions of CHARGE and SEARCH working group members with three exceptions. The first exception is in proposed guideline D-4, and involves the guidance that the door-to-door agent is to physically exit a customer’s residence before the verification process confirming the customer’s consent to the sale takes place. Some suppliers suggest that physically exiting a customer’s residence before the sales transaction is completed may not always be practical, and may prevent the agent from providing assistance in responding to any customer concerns during the verification process.

The second exception involves the designation of the hours of operation for door-to-door marketing and sales activities from 9:00 a.m. to 7:00 p.m. In proposed guideline J-2, the 9:00 a.m. to 7:00 p.m. time period is to be followed when local ordinances are silent or less restrictive on the issue. At issue is the end point for this designated time period. Some parties have suggested that “dusk” should be the appropriate time for ending all door-to-door sales. Others have suggested that requiring the cessation of sales before 9:00 p.m. is too restrictive.

The third exception where consensus could not be reached is in proposed guideline K-2. The issue involves the need for the supplier to contact the distribution company prior to the supplier initiating marketing or sales activities that the supplier anticipates may result in telephone calls to the Commission. While suppliers generally agree that they should make this contact with distribution companies as a courtesy, some do not wish to be required to do so while consumer representatives believe that it is critical for this contact to occur so that consumer interests can be adequately protected.

Once again, readers should be aware that the PA Guidelines are still out for comment. If an Order is issued, that can be posted for NAESB discussion also.

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**PENNSYLVANIA PROPOSED INTERIM GUIDELINES FOR
MARKETING AND SALES PRACTICES
FOR ELECTRIC GENERATION AND NATURAL GAS SUPPLIERS**

**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 (EGDCs) 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 marketing¹ or sales² 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

¹ “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]).

² 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]).

**PENNSYLVANIA PROPOSED INTERIM GUIDELINES FOR
MARKETING AND SALES PRACTICES
FOR ELECTRIC GENERATION AND NATURAL GAS SUPPLIERS**

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. 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:
 - a. Knowledge and awareness of applicable Pennsylvania laws and regulations governing marketing, consumer protection and door-to-door sales.
 - b. Knowledge and understanding of responsible and ethical sales practices.
 - c. Knowledge of the supplier’s products and services.
 - d. Knowledge of supplier’s rates, rate structures and payment options.
 - e. Knowledge of the customers’ right to rescind and cancel contracts.
 - f. Knowledge of the applicability of an early termination fee for contract cancellation if the supplier has one.
 - g. Knowledge of and adherence to supplier-developed scripts.
 - h. Knowledge on the proper completion of contract and enrollment documents.
 - i. Knowledge of the supplier’s disclosure statement.
 - j. Knowledge of relevant terms and definitions.
 - k. Knowledge of how customers may contact the supplier to obtain information about billing, disputes, and complaints.

**PENNSYLVANIA PROPOSED INTERIM GUIDELINES FOR
MARKETING AND SALES PRACTICES
FOR ELECTRIC GENERATION AND NATURAL GAS SUPPLIERS**

2. 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 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 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"³ and related customer-enrollment issues. The Commission has penalized companies that engage in

³ "Slamming" is changing a customer's supplier without prior authorization.

**PENNSYLVANIA PROPOSED INTERIM GUIDELINES FOR
MARKETING AND SALES PRACTICES
FOR ELECTRIC GENERATION AND NATURAL GAS SUPPLIERS**

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.

**PENNSYLVANIA PROPOSED INTERIM GUIDELINES FOR
MARKETING AND SALES PRACTICES
FOR ELECTRIC GENERATION AND NATURAL GAS SUPPLIERS**

5. A supplier shall not use bills, marketing materials or consumer education materials of another supplier, distribution company, or government agency in any way that infers 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 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—

**PENNSYLVANIA PROPOSED INTERIM GUIDELINES FOR
MARKETING AND SALES PRACTICES
FOR ELECTRIC GENERATION AND NATURAL GAS SUPPLIERS**

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.* [\[link\]](#) and Telemarketing Sales Rule, 16 CFR Part 310 [\[link\]](#). 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. When the local ordinance is stricter, suppliers shall comply with the local ordinance.

**PENNSYLVANIA PROPOSED INTERIM GUIDELINES FOR
MARKETING AND SALES PRACTICES
FOR ELECTRIC GENERATION AND NATURAL GAS SUPPLIERS**

J. 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 and 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 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.

K. 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 products and services. This information shall include the supplier's name, website, and telephone number for inquiries, verification and complaints.

L. 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

**PENNSYLVANIA PROPOSED INTERIM GUIDELINES FOR
MARKETING AND SALES PRACTICES
FOR ELECTRIC GENERATION AND NATURAL GAS SUPPLIERS**

customer's language to continue the sales or marketing activity or shall terminate contact with the customer. The use of translation services and language identification cards is permitted.

2. Suppliers shall:
 - a. Not engage in misleading or deceptive conduct as defined by State or Federal law, or by Commission rule, regulation or order;
 - b. Not make false or misleading representations including misrepresenting rates or savings offered by the supplier;
 - c. 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.
 - d. 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.
 - e. 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 supply contracts. *See* section 7 of the

**PENNSYLVANIA PROPOSED INTERIM GUIDELINES FOR
MARKETING AND SALES PRACTICES
FOR ELECTRIC GENERATION AND NATURAL GAS SUPPLIERS**

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 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

**PENNSYLVANIA PROPOSED INTERIM GUIDELINES FOR
MARKETING AND SALES PRACTICES
FOR ELECTRIC GENERATION AND NATURAL GAS SUPPLIERS**

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>