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DELAWARE P.S.C.

September 25, 2013

Mr. Bob Howatt, Executive Director
Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, DE 19904

RE: PSC Regulation Docket No. 49

Dear Mr. Howatt:

Please find attached AARP's comments regarding PSC Regulation Docket No. 49. If you have any questions please contact me at (302) 498-6512, or via email at bposey@aarp.org.

Sincerely,

Brian Posey

Associate State Director, Advocacy

Robert G. Romasco, President
Addison Barry Rand, Chief Executive Officer

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF ADOPTION OF
RULES AND REGULATIONS TO IMPLEMENT
THE PROVISIONS OF 26 DEL. C. CH.10
RELATING TO THE CREATION OF A
COMPETITIVE MARKET FOR RETAIL
ELECTRIC SUPPLY SERVICE

PSC REGULATION DOCKET NO. 49

DELAWARE P.S.C.

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COMMENTS OF AARP

October 1, 2013

AARP submits the following comments in Regulation Docket No. 49 relating to Rules and Regulations for the Competitive Retail Electricity Market. AARP has previously participated in workshops on this docket.

AARP is a nonprofit, nonpartisan membership organization that helps people aged 50 and older have independence, choice and control in ways that are beneficial and affordable to them and society as a whole. AARP has 172,000 members in Delaware, representing all segments of the socio-economic scale. Moreover, a substantial percentage of AARP's members live on fixed or limited incomes and depend on reliable electric service for adequate heat, lighting, and powering life-saving medical devices.

AARP's Comments have been prepared with the advice and consultation with Barbara R. Alexander, Consumer Affairs Consultant. Ms. Alexander has had extensive experience with the development of consumer protection and licensing rules applicable to electric and natural gas suppliers. In 1998, she published a seminal report on best practices for the regulation of alternative suppliers and essential consumer protections for a retail competitive market in a publication funded by the U.S. Department of Energy.¹ Since 1996, she has participated in the development of state licensing and consumer protection regulations associated with the move to retail energy competition in several states, including Maine, Texas, Pennsylvania, and Illinois. In addition, Ms. Alexander has participated on behalf of AARP in the workshops ordered by the Commission in this proceeding and that took place in 2012 and early 2013. Ms. Alexander's recommendations also reflect her experience in Delaware in her role as the expert witness on behalf of the Staff in the Delaware Commission's investigation of Horizon Power & Light in PSC Docket 10-2.

¹ Alexander, Barbara, Retail Electric Competition: A Blueprint for Consumer Protection, U.S. Department of Energy, Office of Energy and Renewable Energy, Washington, D.C., October, 1998.

INTRODUCTION

The reforms to the regulation of the retail sale of electric service to residential and small commercial customers proposed in this docket should draw upon the Commission's experiences in the implementation of its current regulations; an analysis of customer complaints concerning supplier interactions and contract terms; experiences that have occurred in other states with similar market structures; and, a review of typical consumer protection policies and programs that regulate competitive markets other than energy by both state and federal officials. The review and proposed reforms to the existing Delaware retail energy market regulations is welcome and overdue. In the last several years there has been a significant increase in the number of suppliers active in the residential and small commercial market, an increased variety in supplier offers, increased residential customer migration to suppliers, as well as some important state investigations and enforcement actions. It is appropriate to consider carefully these experiences when crafting necessary reforms to the Commission's existing regulations. While the current regulations may have responded reasonably well to supplier activity and customer experiences in the past, they have not kept pace with the need for additional reforms and the closing of loopholes that have contributed to customer complaints and led to formal investigations and actions by state commissions.

Electricity and natural gas service are essential for residential customers. The need for affordable electricity and natural gas for home heating, refrigeration, and cooling is not the equivalent of the retail market for most other consumer goods and services. The lack of affordable electricity or natural gas for heating and cooling has dire consequences for residential

customer health and safety.² If the pricing structure is not disclosed, or misleading representations made, a customer may enter into a retail contract that ends up costing much more than a standard offer service or other competitive offers. This consumer has not merely suffered economic loss, the customer's household experiences threats to its health and safety, particularly for those who are elderly, young, disabled, or medically frail.

Low income and poor customers are particularly vulnerable to high pressure marketing tactics and excessive prices. It is well documented that many families face the choice between heating and eating. It is crucial that the Commission take proactive steps to make sure that suppliers that take advantage of vulnerable households to market and sell a product that result in customers being unable to afford essential electricity and natural gas service are prevented from doing so and conduct is policed to prevent such results. This objective can be met with more carefully crafted and reformed consumer protection policies, many of which are typical of other competitive markets or that have been adopted by other states in their regulation of retail electric and gas competition.

These Comments are organized based on the sections of the regulation proposed in the Commission's Order No. 8424 and published in the September 2013 issue of the *Delaware Register of Regulations*. Overall, our comments support a number of the proposed reforms. However, AARP recommends additional significant reforms that based upon the Commission's direct experience in its investigation of Horizon Power & Light, and the experiences and resulting reforms adopted in other restructuring states with regard to essential consumer protections for the retail electric market. All of our recommendations for additional reforms and clarifications to these regulations were presented to the Staff during the workshop process.

² See, e.g., Snyder, Lynne Page, PhD, MPH, National Energy Assistance Directors' Association, Baker, Christopher A. AARP Public Policy Institute, *Affordable Home Energy and Health: Making the Connections*, AARP (June 2010).

COMMENTS ON SPECIFIC RULES

1.0 Definitions. It is important to ensure that the terms used throughout the regulation are clearly defined and that those terms are used in the rule in the appropriate manner.

The proposed rule includes a new term, "Disclosure Statement." This term is defined to refer to a supplier's "written disclosure of the terms and conditions of service." However, throughout the rule, the term "contract" and "terms of service" appear in a manner that indicates that there may be other documents involved in the retail sale of electric generation supply service to consumers. To be clear, a "contract" is the actual formal agreement between the customer and supplier. The "terms of service" are included in a "contract." It appears that the Commission's use of the term "disclosure statement" requires the supplier to prepare an additional document that sets forth the "terms of service." However, it is not clear whether the "disclosure statement" is intended to be the entire "contract" with all the terms of service or whether it is intended to summarize certain essential terms that should be highlighted to the customer at the point of sale. The lack of consistent use of these terms and the potential confusion about the nature of the "disclosure statement" should be clarified throughout the rule. In general, AARP supports the requirement that a supplier must provide a "disclosure statement," but typically this document is a summary of the essential terms of service and accompanies the more detailed contract terms. As proposed here, the "disclosure statement" contains all the terms of service and apparently would substitute for the entire contract.

The term "Price" or "Rate" was the subject of extensive discussion at the workshops. This term is crucial to the customer's understanding of the supplier's contract terms and must be stated in a manner that allows for an "apples to apples" comparison to the Standard Offer Service (SOS)

price stated on Delmarva's bill or other supplier price offers. This definition has implications for the disclosure of the Supplier's Price or Rate to customers at the point of sale and in disclosure documents. As proposed, this term is defined as the supplier's "charge(s)" for Electric Supply Service applied against the billing determinants for electricity usage of the Customer." It is not clear from this definition whether the Supplier is required to state a "price" or "rate" in a cents per kWh format in its Disclosure Statement. This term should be defined to require the Supplier to state a price in a cents per kWh format that comparable to the price to compare for SOS. To the extent that the Supplier charges a cents per kWh price without additional or recurring charges, this disclosure will be straightforward. However, this term should be revised to include all charges imposed by the Supplier, whether expressed as a minimum fixed charge or variable (per kWh) charge, and that this Price is disclosed in a uniform cents per kWh manner. If a supplier charges a fixed monthly fee in addition to a cents per kWh price (as Horizon Power & Light did), the resulting actual or effective rate is higher than the cents per kWh price promoted or advertised to potential customers. Suppliers who use such a pricing methodology should be required to disclose their actual rate using a standardized usage profile. For example, if the supplier is offering to charge 8 cents per kWh but also includes a \$10 monthly fee that is included in the fine print of the contract, the actual disclosure should be as follows:

- $500 \text{ kWh} \times \$0.08 + \$10.00 = \$50$. The actual kWh rate is $\$50 / 500 \text{ kWh}$ or $\$.10/\text{kWh}$.
- $1,000 \text{ kWh} \times \$0.08 + \$10.00 = \90.00 . The actual kWh rate is $\$90 / 1,000 \text{ kWh}$ or $\$.09/\text{kWh}$.
- $1,500 \text{ kWh} \times \$0.08 + \$10.00 = \130.00 . The actual kWh rate is $\$130 / 1,500 \text{ kWh}$ or $\$.087/\text{kWh}$.

This example shows the well-known phenomenon that fixed monthly charges have a larger impact on lower customer usage profiles compared to higher customer usage profiles.

Nonetheless, if suppliers are going to be able to charge fixed monthly fees in addition to the “nominal” energy charge, the above required disclosure will be a valuable and needed shopping tool and will have benefits in particular for lower usage customers when comparing prices.

With regard to suppliers that charge a variable rate that changes every month or based on a specific index or formula, additional disclosures are required as set forth in these comments. However, the “going in” or initial cents per kWh rate or price should be disclosed as proposed in our revised definition.

This definition should be revised as follows:

“Price” or “Rate” means the required recurring monthly charges expressed as the actual cents per kWh charged to the customer for the customer’s usage of electricity for the monthly billing period, calculated by dividing the total charge for generation service by the average usage for the customer’s class of service as determined by the Standard Offer Service Supplier (SOSS).

The term “verification process” should be amended to require that any audio recording used by a Supplier to confirm a customer’s agreement to change their supplier should be conducted by an independent third party that is not affiliated (as that term is used in the regulation) with the Supplier. The definition should be changed as follows:

“Verification Process” means an appropriately qualified and non-affiliated and independent third party operating in a location physically separate from the Supplier’s representative who has obtained the customer’s oral authorization to change to a new supplier. The authorization must include appropriate verification data, such as the customer’s date of birth and social security number or other voluntarily submitted information; provided, however, any such information or data in the possession of the third party verifier or the marketing company shall not be used, in any instance, for commercial or other marketing purposes, and shall not be sold, delivered, or shared with any other party for such purposes.

2.0 Certification of Electric Suppliers.

Throughout this section the rule requires the Applicant Supplier to provide information concerning “its affiliated interests” as part of the application for a certificate. AARP agrees with

that requirement, but suggests that the same information concerning the background and experience of the Applicant (typically a corporate entity) should also include the same background information for the directors and senior managers of the Applicant. It is typical for a Supplier in one state that has experienced an investigation or license enforcement matter to form a new corporate entity with the same directors and managers and seek a license in another state. Under the regulations as proposed, such an Applicant would not need to disclose the information from other states that involved the Applicant's directors or managers since as individuals they would not be viewed as an "affiliated interest." This is particularly important with respect to enforcement proceedings. The following provision of the Maine licensing regulation for alternative suppliers should be incorporated in the Delaware rule:

Disclosure of Enforcement Proceedings and Customer Complaints

a. **Applicability**

This paragraph applies to actions against the applicant and associated entities of the applicant. For purposes of this provision, an associated entity is any entity for which the applicant is a control person; any control person of the applicant; any entity under common control with the applicant; or any entity for which a control person of the applicant served as a control person at the time of the conduct that was the basis for the action. A control person is any person who serves as an officer or director of, or who exercises similar authority over, an entity or who possesses, directly or indirectly, voting power over 10% or more of the voting securities of the entity.

b. **Enforcement Proceedings**

An applicant must disclose all civil court or regulatory enforcement proceedings or criminal prosecutions commenced against it or an associated entity within the last six years prior to the date of the license application or currently pending that relate to or arise out of the sale of electricity, the sale of natural gas, the provision of utility services, business fraud, or unfair or deceptive sales practices.

c. **Customer Complaints**

An applicant must disclose the number of customer complaints related to the retail sale of electricity or natural gas filed against it at regulatory

bodies other than the Commission within the last 12 months prior to the date of the license application.

Maine 65-407, c. 305

The proposed rule sets forth the minimum contents of the Disclosure Statement at Section 2.1.1.9.1. AARP agrees in general with all the proposed disclosures and is particularly pleased to see that our concerns about the need for additional disclosures associated with variable price contracts has been recognized. However, there are some improvements to the proposed variable rate contract term that should be considered. First, the disclosure does not establish the minimum requirements for variable rate contracts, assuming that the only form of regulation is a disclosure requirement. AARP suggests that the Commission has the authority to mandate that certain minimum requirements be imposed on “take it or leave it” contracts for residential customers in particular. It is unfair and unreasonable for a Supplier to offer a variable rate contract that, for example, contains a “teaser rate” of “5% below the current price to compare or SOS price” for several months followed by a variable rate contract term that does not identify any means by which the price will change other than “wholesale market conditions” or “locational marginal prices as established in the wholesale market” with additional vague or technical language that is meaningless to the customer.³ While the proposed regulation appears to require additional disclosures, the proposal to disclose “the conditions of variability (stating on what basis and how often Prices may vary) and the limits on Price variability, if any,” would allow Suppliers to use a variety of vague and technical terms that in fact would not provide any means by which the customer could determine the basis for the price variability.

³ Ms. Alexander has documented contract terms similar to these in other States by licensed suppliers.

A second concern with this proposed language is that the Supplier with a variable rate contract is only required to make the new monthly price available to the customer five calendar days prior to the Price effective date. This provision does not require that the Supplier provide any publicly available materials to determine how prices will change under the contract.

Finally, the proposed rule does not require the Supplier to provide the customer with an historical presentation of how prices have changed under its proposed methodology for a recent time period, a disclosure that is required for any variable rate mortgage or other variable priced credit transaction under the Truth in Lending Act.

AARP recommends that the following requirements be added to the regulation:

If the product is a variable price product the Disclosure Statement shall identify the initial price per kWh and include an identification of the external index or formula that will be used to vary the price, the location of the published index or formula, the frequency of the price change, and an example which presents how the customer's price would have changed using the external index or formula over the last 12 month period.

It is important to note that the proposed addition to Section 2.1.1.9.1.3 that requires the Supplier to list the fees should be limited to "non-recurring" charges and any "recurring charges," such as the identified "fixed monthly charges and minimum monthly charges" should be included in the disclosure of the "Price" or "Rate." Any required monthly charge is a charge that the customer cannot avoid and that should be included in any quoted cents per kWh price by the Supplier. This type of practice, which was followed by Horizon Power & Light, allows a supplier to deceptively market a cents per kWh price, but then charge a higher price by including a separate unavoidable monthly fee or fixed monthly charge in the fine print of the contract terms. This concern is even more important to consider in light of Delmarva Power's bill that presents Supplier charges as a dollar amount and does not present the supplier's charges in any

detail.⁴ This presentation has the unfortunate result that the customer does not even realize that a fixed monthly charge or other recurring charge is included in the bill.

In Section 2.1.1.9.1.8 the proposed rule requires the Supplier to notify the customer at least 10 calendar days to change the Price of a fixed Price contract. AARP opposes this provision because it appears to allow a Supplier to make a change to a fixed price contract before its term expires. This should not be permitted. A Supplier should not be able to change a fixed Price contract during the term of the contract. That would allow the Supplier to sign up customers for one Price and then change the Price during the contract term, an unconscionable practice. If the term has expired or is about to expire, the procedure should follow the regulations applicable to contract renewal, a policy that is addressed in Section 3 and that AARP will address in more detail below.

Please note that throughout this section the rule refers to “contract,” again raising the potential confusion between the Disclosure Statement, terms of service, and other documents.

Section 2.1.1.9.1.10 allows the Supplier to obtain customer authorization of the “document” (again, the issue here is the lack of clarity as to which document the rule refers) by “written signature, Electronic Signature, or verbal consent.” AARP does not agree that a Supplier should rely on “verbal consent” to enter into a contract since there is no evidentiary record of the customer’s authorization. Rather, this provision should refer to the “third party authorization” process defined in the rule.

Section 2.1.1.9.2 requires “contracts” to include “material terms,” written in “clear plain language,” and other criteria relating to exclusions, add-ons, and penalties and procedures for

⁴ AARP recommends that Delmarva’s bills for Supplier charges include a more detailed breakdown of the Supplier’s charges to understand how the total Supplier charges were calculated.

ending contracts. It is not clear how this provision relates to the new Disclosure Statement that is required. Perhaps this general provision should be moved to the section that sets forth the minimum provisions for a Disclosure Statement.

3.0 Post-Certification Requirements

AARP objects to the issuance of a certificate that is “valid until revoked by the Commission.” [Section 3.1] Rather, certificates should be issued for a set term (1-3 years) and then require the Applicant to update its application and will trigger a Staff review of the Supplier’s complaint history and compliance issues in Delaware and other states. Such an approach shifts the burden of documenting why the certificate should be renewed to the Supplier/Applicant and not to the Staff to document or initiate why a certificate should be revoked. Most other restructuring states have implemented specific certification terms for this reason.

Section 3.3 would allow a Supplier to hold a valid certificate if the yearly compliance filing is not provided for two consecutive years. AARP questions why the Commission would allow a Supplier to continue to operate in Delaware if the yearly compliance filing is not filed and the failure to file such reports for two consecutive years is too long a period. Any failure to file required reports and updated marketing and contract materials is sufficient cause for the Commission to revoke a license and issue a show cause order to revoke the license unless the required materials are filed promptly.

Section 3.4.2 contains another provision relating to a customer’s authorization to enter into a contract with a Supplier, similar to Section 2.1.1.9.1.10. This section also refers to a “contract” and such a signature or approval should be coordinated with the required Disclosure Statement unless the Commission seeks to have two signatures and two verification procedures.

AARP again recommends that a “verbal authorization” is an insufficient means to document customer authorization that subject the customer to potential slamming. We suggest that this provision should either be eliminated or, if retained, refer to the “third party verification” process as amended by our comments as the method for an oral authorization.

Section 3.4.5 sets forth the notification requirements associated with the renewal of a contract. The proposed rule would allow a Supplier to notify the customer with a fixed price contract with a term of longer than 90 days (three months) of the expiration of the contract and notify the customer if the contract will automatically renew, any change in Price, duration of the contract or whether the contract will become a month-to-month contract. AARP objects to this provision. This appears to allow a supplier to enter into a 90-day contract and then notify the customer of price changes and other material contract changes by one notice, then treating a customer’s silence as an agreement to the new terms. AARP recommends that with regard to fixed-term contracts, the Supplier should not be able to retain the customer at the end of the term by notifying the customer of the new terms and price and then relying on the customer to take action to opt out of this contract renewal. Rather, Suppliers should notify the customer of the termination of their contract and state that unless the customer contacts the Supplier or affirmatively agrees (with a new verification process) to new contract terms, the customer will be returned to Standard Service.

With regard to contracts that contain a provision that the price can be changed upon certain notice to the customer during the contract term or with a month-to-month contract that reflects constantly changing prices or the potential for price changes, the regulation should, as recommended above, conspicuously disclose the potential for the change in price or terms and identify the methodology by which such prices may change and the notices that the customer

will receive about these changes. If the Supplier seeks to change the terms of the contract (the contract term, the pricing methodology, etc.), the regulations should require Suppliers to give a 30-day notice of the change in contract terms and require Suppliers to affirmatively disclose that the customer may terminate the contract without penalty and either select another Supplier or return to SOS to avoid the change in terms.

Renewal of an existing contract should be allowed to occur without affirmative customer consent only if the underlying terms and price do not change or if the renewal is limited to a month-to-month contract with the original terms and no termination fee. A supplier should not be able to change a fixed price contract into a variable price contract nor alter the fixed rate without obtaining affirmative customer consent.

The basis for these proposals with regard to renewal and change of contract terms is that customers who leave the utility and agree to be served by a supplier have agreed to a certain rates, terms and conditions and have affirmatively provided evidence of such agreement in the verification process. The supplier should not be able to interpret this initial agreement to allow the supplier to change the basis of this bargain without also assuring affirmative customer consent. An agreement to become a customer is not an agreement to allow the supplier to make changes that are material to the bargain based on customer silence.

Please note that Section 3.6 requires that the “copy of the contract” be supplied to the customer and then states, “The Disclosure Statement may serve as a contract.” If the newly defined Disclosure Statement is intended to operate as a formal contract, the rule needs substantial revision to ensure there are no gaps in consumer protection. If the Disclosure Statement will operate as a “contract,” it is not clear from the language of the Rule in this Section whether this document must be signed in person (a so-called “wet signature”) or

electronically pursuant to the Federal law that authorizes electronic signatures on documents. The Rule is not clear as to whether "verbal authorization" is allowed with regard to the Disclosure Statement. The rule is simply confusing on this point. AARP recommends that customers be allowed to enter into retail contracts without signature only if our recommendations with respect to a third party verification procedure is adopted. This verification process is a typical policy in other retail competition states and is also used to prevent slamming of telecommunications service in most states. However, the crucial obligation is that the Supplier cannot be permitted to submit an electronic switching order to the SOSS until after the customer has received the written Disclosure Statement/contract and the right of rescission period has expired. AARP recommends language similar to that adopted by the Maine PUC:

Each competitive electricity provider must prepare and issue a document entitled "Terms of Service" as described in this subsection within 30 calendar days of contracting for service with a customer. The Terms of Service document shall be in plain language and printed in legible type. A competitive electricity provider shall not enroll a customer until the Terms of Service document has been sent to the customer and the customer's statutory right of rescission has expired as set forth in this subsection. Competitive electricity providers must maintain sufficient records, either in writing or electronically, to demonstrate compliance with the issuance of the Terms of Service document, including the customer's right of rescission, prior to enrolling the customer.

Maine 65-407, c. 305, Section 4(B)(1)(a).

Section 3.8.1 contains specific policies applicable to telemarketing. While AARP supports the intent of these new provisions, we recommend that the regulation require an affirmative statement by the Supplier (rather than the prohibition on misleading statements) concerning the relationship between the Supplier and the SOS, Distribution Services, the Commission, or any other entity as follows:

The Supplier shall affirmatively state that the Supplier is not related to the customer's utility or any other governmental agency and that the customer should compare the

Supplier's offer with the customer's SOSS and explain where on the bill this service is identified.

Section 3.8.6.1 contains specific policies and obligations relating to the sale of electricity through door-to-door marketing. This type of marketing has been the subject of widespread complaints and enforcement actions in several states. Based on the professional experience of Ms. Alexander in enforcement proceedings, there are several reasons why door to door and telemarketing gives rise to the potential for abusive and deceptive marketing. First, the salesperson is typically not an employee of the supplier, but an independent agent compensated based on a successful sale and so has the natural incentive to use strong sales techniques to achieve this objective. Second, the customer is marketed with oral statements and information that may be contradicted by the wording of the actual printed agreement. These oral representations are not recorded, but customers rely on those statements and often view the verification statements as a formality and do not recognize the statements in the verification recording as sometimes conflicting with the details of the contract terms. While the written agreement may not promise savings, the oral representations and statements by the salesperson may be designed to imply or promise such a result. Third, the customer is typically not as knowledgeable about competitive energy markets, the role of the utility and its Price to Compare, and is often misled, either deliberately or not, that the person at the door has some "official" status, either from the utility or a government agency. Furthermore, customers are sometimes informed that they "must" choose or that their "window" to make a decision is closing, implying or deliberately misleading the customer into thinking that the utility's role in supplying power supply is temporary or about to end. Finally, enforcement actions regarding door to door salespersons have shown that a Supplier may target lower income, elderly, non-English

speaking, or disabled or frail individual who may reside in target neighborhoods and/or the fact that these customer groups may be more likely to be at home during the day.

While AARP appreciates the intent to improve Delaware's regulations and consumer protections with regard to this type of sales activity, we recommend a more detailed and far reaching set of reforms that are based on those recently adopted by the Pennsylvania Public Utility Commission. Attached to these comments are the recently adopted Pennsylvania regulations. It would be appropriate and reasonable to adopt similar regulations in Delaware. AARP has repeatedly made this recommendation to the Staff during the workshops and has not yet received any substantive reason why these regulations should not be adopted in full in the Delaware. While the proposed regulations adopt some of the reforms adopted in Pennsylvania, others are not adopted and there has been no explanation for this discrepancy. For example, the Pennsylvania regulations contain more specific disclosure requirements for salespersons conducting telemarketing and door-to-door marketing and require certain training and oversight responsibilities by licensed Suppliers that are missing from the proposed regulations in Delaware. Finally, since many of the Suppliers active in Delaware are also active marketing in Pennsylvania, the costs of compliance in Delaware should not be unreasonable.

5.0 Customer Protection

There are "customer protection" policies reflected in several other sections of the regulation and some of them conflict with or fail to properly coordinate with the proposals in Section 5. AARP recommends that the Commission carefully review the various statements throughout the rule concerning the Disclosure Statement contents, its role, methods of customer authorization, and specific requirements associated with telemarketing and door-to-door sales to ensure a more coordinated and organized set of consumer protection policies.

Section 5.1 again addresses “enrollment authorization” and allows such authorization to occur by “verbal means.” AARP objects to any oral authorization other than through an independent third party verification process for any enrollment and not, as proposed in the rule, limited to telemarketing and door-to-door marketing. In addition, AARP objects, as allowed in Section 5.1.3, that the Supplier be allowed to implement its “own audio recording system which includes the entire conversation with the Customer.” Rather, any verification that relies on audio recordings should be allowed only if implemented with an independent third party as recommended in our proposed amendment to the Definition of “Verification Process.”

The required disclosures or verifications required for the “verbal authorization” in Section 5.1.3 should be changed as follows:

5.1.3.7 Include an affirmative statement that the Customer understands that he/she is changing the Electric Supplier and will not receive Standard Offer Service (or, where applicable, the Service provided by another Supplier);

5.1.3.8 State the Price per kWh (which includes, as required, any fixed or recurring monthly charges), whether the price is fixed or variable, the term of the contract, and that termination fees, if applicable, will be charged if the customer terminates the contract prior to its end date.

5.1.3.10 Confirm that the Customer will not be switch from the current Supplier or SOSS until the Customer has received the Disclosure Statement and the right of rescission has expired.

Section 8.1.5 allows a Supplier whose authorization was not verified to contact the Customer by telephone or in writing and seek another Verification Process to correct the problem. This raises concerns that a Supplier will harass the customer or misrepresent the nature of the “correction” to obtain an agreement that the Customer may have clearly rejected or that the Supplier may have conducted without compliance with the regulations. AARP recommends that this provision is not necessary and should be eliminated from the final regulations. If eliminated, the Supplier’s conduct in attempting to contact the customer to seek another

Verification can be reviewed without any presumption that such contact was appropriate or reasonable. At the least, the regulation should not allow Suppliers to seek another Verification Process if the customer fails to answer the required disclosures in a manner that would allow the Verification to proceed.

Section 5.4 and 5.5 address Slamming and Cramming. The regulation should contain an explicit prohibition on such activity in each section, followed by the proposed remedies and investigations. As currently proposed, the regulation does not explicit prohibit Slamming and Cramming.

Section 5.6 contains "General Retail Electric Customer Protections." AARP welcomes and supports the proposed new additions to this section.

CONCLUSION

AARP appreciates the opportunity to participate in the Commission's rulemaking process. While there are several significant and welcome reforms to the current regulations reflected in the proposed rule, there is much work to be done to create a robust and enforceable set of consumer protections and certification policies that will govern the retail electric market in Delaware. AARP is hopeful that our comments and suggestions will contribute to this important objective.

RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 111]

[L-2010-2208332]

Marketing and Sales Practices for the Retail Residential Energy Market

The Pennsylvania Public Utility Commission (Commission), on October 24, 2012, adopted a final rulemaking order which sets forth regulations on marketing strategies and sales techniques for electric generation suppliers and natural gas suppliers to ensure fairness and integrity in the competitive market and eliminate confusion on behalf of consumers.

Executive Summary

The Public Utility Commission's (PUC's) Office of Competitive Market Oversight with industry working groups comprised of gas and electric utilities, suppliers, consumers and other interested parties developed draft interim guidelines on marketing and sales activities for electric generation suppliers (EGSs) and natural gas suppliers (NGSs). The draft guidelines were issued for public comment. After reviewing the comments, the interim guidelines were finalized on November 5, 2010. See Docket No. M-2010-2185981. The interim guidelines cover a wide range of topics and recommended best practices for direct (door-to-door) marketing, telemarketing and sales for the retail residential market. These interim guidelines will provide direction to EGSs and NGSs until final regulations are promulgated.

On February 14, 2011, the PUC issued a proposed regulation based on the interim guidelines that are applicable to the retail residential energy market. The proposed regulation, which was directed at EGSs and NGSs and their agents who provide sales and marketing support, was drafted to lessen customer confusion about suppliers and the sales process, and to ensure that a customer's account is not transferred to a supplier without his authorization. Specifically, the proposed regulation covered, inter alia, a supplier's liability for its agent; agent qualifications and criminal background investigations; agent training; agent compensation and discipline; and agent identification and misrepresentation. In addition, subjects relating to supplier/agent-customer interactions were addressed: customer authorization to transfer account; customer receipt of disclosure statement and right to rescind contract; consumer protection law; and customer complaints. Door-to-door (direct) marketing and telemarketing, two sales practices fairly new to Pennsylvania's retail energy market, were also addressed.

On October 22, 2011, the order and proposed regulations were published in the *Pennsylvania Bulletin*, triggering the start of a 60-day comment period. Twelve parties filed comments in response to the Proposed Rulemaking Order. On January 20, 2012 the Independent Regulatory Review Commission (IRRC) submitted comments. Additionally, the Office of Attorney General (OAG) reviewed the proposed regulations for form and legality pursuant to the Commonwealth Attorneys Act, 71 P.S. §§ 732-101—732-506.

After careful consideration of the comments filed, the PUC issued a final rulemaking order on October 24, 2012. The Commission voted 5-0 to approve the rulemaking regarding regulations that cover a wide range of topics and recommend best practices for direct (door-to-door) marketing, telemarketing and sales. The regulations will apply to both EGSs and NGSs and to any entity conducting activities on their behalf. As more EGSs and NGSs enter the state's residential retail electric and natural gas supply markets, the Commission expects suppliers to conduct themselves with the regulations in mind so that their sales and marketing activities do not call into question the fairness and integrity of the competitive market.

Many of the requirements found in the regulation are in the context of door-to-door marketing and are intended to protect public safety. Suppliers are now required to obtain criminal background checks on all of their door-to-door agents. Agents are required to immediately identify themselves to potential customers and to have identification prominently displayed. Additionally, agents are to offer written identification information to the potential customer. Agents are directed to leave immediately upon request of the customer and are to respect an individual's request not to be visited again. The regulation includes the hours that door-to-door sales are permitted; until 7:00 p.m. during the winter months; until 8:00 p.m. during the summer months. The regulation further stipulates that if a local ordinance has stricter timeframes, the local ordinance applies. Suppliers are also obligated to respect all other local ordinances governing door-to-door sales, including registration and licensing requirements where applicable.

Other requirements in the regulations are intended to ensure that potential customers are receiving the information they need to make informed choices about energy providers. This includes requirements addressing agent training and the written information they provide consumers. Suppliers are required to address the consumer in the same language used by the potential consumer. Still other requirements are intended to prevent confusion and misrepresentation. Agents are forbidden from wearing clothing or making statements that infer a relationship that does not exist with another utility, supplier or government agency. Agents are required to make affirmative statements to consumers making clear who they represent and that they are independent of both the local utility and any other supplier. Suggesting to a consumer that they are "required" to choose a supplier is forbidden. Door-to-door sales and telemarketing sales are supposed to be verified by a process that documents the customer's understanding and acceptance of the transaction.

There is a section of the regulation that specifically addresses telemarketing. This section reminds suppliers of their obligations under both state and federal telemarketing laws, including respecting the "Do Not Call" lists. Telemarketing agents must also comply with many of the same rules regarding customer information and misrepresentation as a door-to-door agent must comply with; minus those provisions that concern the physical appearance and physical interaction with the customer. Finally, telemarketing sales transactions need to be verified much the same as door-to-door transactions.

Public Meeting held
October 24, 2012

Commissioners Present: Robert F. Powelson, Chairperson;
John F. Coleman, Jr., Vice Chairperson; Wayne E.
Gardner; James H. Cawley; Pamela A. Witmer

*Marketing and Sales Practices for the Retail Residential
Energy Market; Doc. No. L-2010-2208332*

Corrected Final Rulemaking Order

By the Commission:

Before us for consideration is a final rulemaking order on marketing and sales practices for the retail residential energy market. The regulations set forth herein are based on interim guidelines that were developed on the subject 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).¹ As was the case with the interim guidelines, the proposed regulations will be applicable to both electric generation suppliers (EGSs) and natural gas suppliers (NGSs). Accordingly, with this order, we issue these final regulations.

Discussion

Background

With the expiration of the last of the remaining electric generation rate caps at the end of 2010, greater numbers of 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 contacted this Commission with their concerns. To address these concerns, the OCMO and the CHARGE working groups were assigned the task of developing interim guidelines on marketing and sales activities in the retail electric market.

CHARGE took up the issue of third party marketing and sales support at its January 7, 2010, meeting. 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 expanding 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. Joint meetings of CHARGE and SEARCH were held on May 13, 2010, and on June 7, 2010. On June 24, 2010, the group met on the final OCMO staff draft of the proposed interim guidelines.

On July 16, 2010, the Commission entered a Tentative Order with proposed interim guidelines on marketing and sales practices for EGSs and NGSs. See Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers, Docket No. M-2010-2185981, Order entered July 16, 2010 (Interim Guidelines). The Tentative Order set forth 17 proposed interim guidelines and established a 30-day comment period and a subsequent 15-day reply comment period. Fifteen comments and seven reply comments were filed.

¹ CHARGE and SEARCH members included electric distribution companies, natural gas distribution companies, EGSs, NGSs, industry trade organizations, consumers, the Office of Consumer Advocate, and the Office of Small Business Advocate.

After considering the comments, the Commission issued its final order on the Interim Guidelines on November 5, 2010.

Proposed Rulemaking

On February 10, 2011, the Commission issued a Proposed Rulemaking Order with proposed regulations on marketing and sales practices for EGSs and NGSs for comment. Rulemaking re: Marketing and Sales practices for the Retail Residential Energy Market, Docket no. L-2010-2208332 (Proposed Rulemaking Order). The proposed regulations were based on the Interim Guidelines. On October 22, 2011, the order and proposed regulations were published in the *Pennsylvania Bulletin*, triggering the start of a 60-day comment period. Twelve parties filed comments in response to the Proposed Rulemaking Order. Comments were submitted by the Consumer Advisory Council (CAC), Dominion Retail (DES), FirstEnergy Solutions (FES), Interstate Gas Supply (IGS), Met Ed, Penelec, Penn Power and West Penn Power (FirstEnergy), National Energy Marketers Association (NEM), Office of Consumer Advocate and AARP (OCA/AARP), Pennsylvania Coalition Against Domestic Violence (PCADV), Pennsylvania Energy Marketers Coalition (PEMC), Public Utility Law Project (PULP), Retail Energy Supply Association (RESA), and Washington Gas Energy Services (WGES). On January 20, 2012 the Independent Regulatory Review Commission (IRRC) submitted comments. Additionally, the Office of Attorney General (OAG) reviewed the proposed regulations for form and legality pursuant to the Commonwealth Attorneys Act, 71 P.S. §§ 732-101—732-506. The OAG's comments and our responses are discussed below where relevant.

§ 111.1. General.

PULP focused its comments on the issue of door-to-door sales and opposes this form of marketing. PULP is in favor of a ban because: door-to-door solicitation will lead to a heightened risk of unfair and deceptive trade practices to the most vulnerable members of the community; these types of marketing practices are contrary to the intent of the Choice Acts because the very nature of the door-to-door sales transaction limits consumer choice to a one-sided "good sales pitch . . . rather than . . . a well informed decision" and a ban of such marketing activities would not unduly burden competitive energy suppliers because of the myriad means of communication available to suppliers to inform consumers today. PULP suggests there are numerous ways in which a supplier can inform a customer about its product without reliance upon door-to-door sales and marketing activities, such as direct mailings, television, radio, the Commission's PAPowerSwitch.com website and OCA's Residential Electric/Natural Gas Shopping Guide websites. PULP believes that these are sufficient methods of providing consumers with information about a supplier's price and terms without resorting to door-to-door solicitation.

The PCADV agrees with PULP in its support of a ban of door-to-door sales and marketing activities. PCADV is concerned with the potential safety hazards of allowing door-to-door solicitors into the homes of victims of domestic violence and the possibility of criminal activity by those posing as door-to-door solicitors. PCADV believes that door-to-door sales "present a particularly unique and troublesome threat to victims of domestic violence and other victims of similarly insidious crime" (PCADV, p. 3.) and that "the only way to truly protect against the unique risks posed to victims of domestic violence and other crimes is to completely prohibit door-to-door sales by electric and gas suppliers." (PCADV, p. 4.) PCADV is also

concerned because they believe that victims of domestic violence are "more vulnerable to coercive tactics employed by door-to-door" salesmen and are also vulnerable because many victims struggle to meet basic expenses and it is "difficult for a financially-strapped victim to make an informed decision." (PCADV, p. 5.) And while PCADV "recognizes and commends the PUC for including safety provisions" it believes the proposed provisions are inadequate and that door-to-door activities are "impossible to effectively monitor." (PCADV, p. 6.)

The CAC agrees with PULP and PCADV about the likeliness of true customer choice during door-to-door sales and marketing activities, particularly when dealing with vulnerable groups such as the elderly, the infirm, or the uneducated. Absent an outright ban, CAC would limit door-to-door solicitations to those consumers who specifically request such solicitations.

OCA/AARP notes the potential for fraud and customer confusion in door-to-door sales that have been borne out in other states and commends the Commission for its efforts to find a way to allow door-to-door sales while addressing concerns with this sales technique. OCA/AARP suggests language in this section which would require EGSs, NGSs and their agents to comply with all federal, state, and local/municipal laws along with applicable Commission rules, regulations and orders.

IRRC notes that Pennsylvania's Office of Attorney General administers two statutes that regulate subject matter covered by certain sections of this rulemaking: telemarketing and door-to-door sales. The statutes are the Pennsylvania Telemarketer Registration Act (73 P.S. §§ 2241—2249) and the Pennsylvania Unfair Trade Practices and Consumer Protection Law (73 P.S. §§ 201-1—201-9.2). IRRC asks that the PUC explain how it will administer and enforce this rulemaking when it identifies or becomes aware of activities that violate the rulemaking and the statutes noted above.

Resolution

We acknowledge the concerns of the parties that object to the use of door-to-door sales to sell energy supply services. It is out of these concerns that we have proposed these new regulations. However, we first note that IRRC is correct that door-to-door sales are already governed by the Unfair Trade Practices and Consumer Protection Law. The Legislature has placed certain safeguards into law through that legislation. Nonetheless, there are additional protective measures we can impose to govern specifically the door-to-door sale of retail power.

We share many of the concerns expressed by the parties. We believe that the way to address these concerns, without unduly restricting the ability of suppliers to use their preferred method of marketing, is through the regulations we have proposed, coupled with consumers' ability to rescind their choices within three days. It is our intent to put safeguards in place to protect public safety and the consumers participating in the market. These regulations will serve to protect the integrity of the entire competitive energy market, which will benefit consumers and suppliers alike.

The Commission has numerous mechanisms by which to monitor the market and enforce these rules. Consumers, likewise, have a variety of channels by which to report concerns or complaints. The Commission maintains a toll-free complaint hotline (800-692-7380) that is staffed by trained professionals who can respond to questions and/or open informal complaints for consumers. These

complaints are investigated by Commission staff that look into the matter and are authorized to write binding informal decisions if needed. Informal complaints can also be submitted electronically via the Commission's website (<http://www.puc.pa.gov>) or in writing via U.S. Mail. Consumers can also file formal complaints in writing by using forms available on the website, and request a hearing before an Administrative Law Judge. Additionally, questions, comments and concerns can be submitted via the Commission's well-publicized electric shopping website (www.papowerswitch.com). Consumers contact their local utility with questions or concerns about the competitive market—contacts that are often shared with Commission staff via routine meetings and conference calls with the utilities. Consumers contact other state agencies, such as the Office of Consumer Advocate and the Office of Attorney General, which in turn communicate with Commission staff. Finally, the Commission hears from local government officials and members of the General Assembly about competitive market concerns in their communities. Given all of these channels that are available for consumers to obtain information and report problems, the Commission is confident that sales and marketing activities in the competitive market can be effectively and thoroughly monitored.

The Commission also has available numerous resources to investigate and enforce any problems that come to its attention via the above-mentioned channels. These resources range from the very informal to formal Commission action that imposes penalties. Informally, Commission staff reviews the informal complaints filed by consumers to identify any customer care or compliance failures. Such failures are brought to the attention of the supplier and corrective action is requested. Commission staff routinely meets with suppliers to discuss their marketing practices and complaints. The Commission, since 2009, has also had an office specifically charged with monitoring the competitive market. OCMO is within the office of the Director of Regulatory Operations, and includes a group of legal, technical and policy staff members from various Commission bureaus to informally address retail market issues. The office is responsible for responding to questions from electric generation suppliers, monitoring issues hindering the development of a competitive retail market and facilitating informal dispute resolution between default service providers and electric generation suppliers. One of OCMO's chief monitoring and oversight venues are monthly conference calls consisting of suppliers, utilities and consumer representatives where any party can raise any market issue for discussion and possible resolution. More information about OCMO and the monthly conference calls are available on the Commission's website.

If these informal mechanisms are insufficient, more formal avenues are available. The PUC's Bureau of Investigation and Enforcement is the Commission's independent prosecutory arm that can initiate informal or formal investigations as needed and can seek penalties for non-compliance, including the suspension and revocation of supplier licenses. The Commission also has a long-standing Memorandum of Understanding (MOU) with the OAG and under this MOU can refer matters that more appropriately fall under the jurisdiction of the OAG. This could include matters that fall under the Pennsylvania Telemarketer Registration Act and the Pennsylvania Unfair Trade Practices and Consumer Protection Law. A copy of the MOU is attached as Attachment One.

With all of these enforcement resources, the Commission is confident that it can effectively act upon information received through a variety of channels and enforce these regulations. All market participants are put on notice that the Commission will use these resources to aggressively enforce these new regulations in the public interest—to safeguard public safety and ensure fairness for all. We also take this opportunity to remind suppliers of their obligation to respect all federal, state and local laws related to sales and marketing and to note that nothing in these regulations is intended to vacate or supersede any other existing federal, state or local requirement.

§ 111.2. Definitions.

Definition of Agent

The Commission specifically solicited comments on the definition of “agent” in the Proposed Rulemaking Order. PCADV, OCA/AARP, and CAC propose the expansion of the term “agent.” PCADV wishes to include all subcontractors, employees, vendors, and representatives not directly contracted by the supplier within the meaning of the term “agent” in order to cover those employees who are hired by marketing firms or other vendors on behalf of the supplier but are not working directly for the supplier. PCADV believes that this would ensure compliance with the confidentiality requirements of 52 Pa. Code §§ 54.8, 54.43(d) because it would require compliance of those agent subcontractors who may fall outside of these protections. (PCADV, p. 9.) Moreover, PCADV would include within the definition of “agent” a specific confidentiality provision to protect customer information and to require this as a topic for training as well. The PUC should also “completely restrict the sale of customer information by agents.” (PCADV, p. 12.) CAC also believes that consumers must first consent before any of their personal information is released and urges the Commission not to eliminate the need for this consent in the name of creating a “level playing field.” (CAC, p. 9.)

OCA/AARP believes that the definition of “agent” should be broadened to include those situations where a person may conduct marketing or sales activities on behalf of two or more licensed suppliers and in support of this position cite the Connecticut Department of Public Utility Control’s guidelines for Marketing and Sales Practices for Electric Suppliers and Aggregators as an example of a comprehensive definition of the term “agent” consistent with their position.²

Rather than expand the definition of “agent,” some parties prefer that the language of the proposed definition be clarified or remain unchanged. RESA suggests that the definition be changed to make clear that the person conducting the marketing/sales for a single supplier is compensated by that supplier and therefore that supplier is responsible for that agent’s actions. Moreover, RESA would include language within the definition which excludes employees of independent organizations which facilitate customer access to suppliers.

² DPUC Review of the Current Status of the Competitive Supplier and Aggregator Market in Connecticut and Marketing Practices and Conduct of Participants in that Market, Docket No. 10-06-24, Decision (Mar. 16, 2011) (DPUC Guidelines). In the DPUC Guidelines, the term “agent” is defined as follows: “Agent” means any person, whether an employee, representative, independent contractor, broker, marketer, vendor, sales conduit through multi-level marketing, or member of any organization, who (A) has contracted with, or has been directly authorized by, a Supplier or Aggregator to conduct marketing or sales activities or to enroll customers on behalf of the Supplier or Aggregator; or (B) has received compensation, in any form, from a Supplier or Aggregator for any activities relating to the sales or marketing of the Supplier or Aggregator’s electric generation services or the referral, enrollment or servicing of customers on behalf of the Supplier or Aggregator[.]

NEM opposes the view that compensation should be the determining factor because there are instances when a third party may be compensated but is not engaged in sales or marketing activities (such as providing a price quote to a consumer or the consumer’s consultant); instead, language should be added which would define the agency relationship on the basis of the contractual relationship between the supplier and the person marketing on behalf of that supplier. Consistent with this view, NEM believes that language should be added to the definition of “agent” which would limit liability to the supplier for whom marketing and sales activities were undertaken because the current proposed language covers agents who provide marketing and/or sales support services to more than one supplier.

The PEMC, RESA, and NEM agree that affinity groups such as fraternal organizations, churches, rotary clubs, community groups, and/or retail outlets should be excluded from the definition of “agent” because these groups “may choose to recommend or endorse a supplier to its members, employees, or customers and such reference should not result in the group or organization being considered an agent of the supplier under the [Commission’s] definition.” (PEMC, p. 4.)

RESA would remove the reference to “marketing service consultant” and “nontraditional marketer” as it relates to gas suppliers. RESA believes that the proposed definition would include some types of entities (such as “affinity partnerships” which are included within the definition of nontraditional marketers and “energy consultants to consumers” which are included within the definition of marketing service consultant). Moreover, RESA argues that because the Commission has initiated a rulemaking to remove the NGS licensing exemption of marketing services consultants and nontraditional marketers,³ any reference to these regulatory definitions would be outdated. Lastly, inclusion of these references would create the impression of creating different definitions for agents used by electric suppliers and those used by gas suppliers (RESA, p. 4.).

DES supports the definition of the term “agent” in the proposed regulations.

IRRC is concerned that the preamble to this section notes that agents that provide marketing and/or sales services to more than one supplier would fall under this definition but that the intent of the PUC in the preamble is not reflected in the definition of this term. IRRC believes that clarity could be improved by amending the definition to more accurately reflect the PUC’s intent. Additionally, IRRC requests that the PUC review this definition to make sure it covers all persons who could act as agents, such as subcontractors and the potential for an agent to hire employees or delegate activities to employees.

Resolution

We agree with OCA/AARP and IRRC that the definition of agent should include those representing more than one supplier and that this is more in keeping with our announced intent in the proposed rulemaking order. We also agree with PCADV, OCA/AARP and IRRC that the definition should be expanded to include all “subcontractors, employees, vendors, and representatives not directly contracted by the supplier” who are providing sales and marketing services on behalf of the supplier, as this will provide a more comprehensive description of the individu-

³ See Licensing Requirements for Natural Gas Suppliers, Docket No. L-2011-2266832, Motion of Commissioner Pamela A. Witmer adopted October 14, 2011.

als covered by the definition and lessen the chance of confusion. We agree with RESA that references to "marketing service consultant" and "nontraditional marketer" should be removed because, as RESA points out, these types of entities are the subject of another pending rulemaking that may make their inclusion in this rulemaking moot. (Even if this ends up not being the case, we believe the inclusion of these two references is superfluous given our rather comprehensive expansion of this definition discussed above.)

We agree with RESA, PEMC and NEM that the status of "affinity groups" such as community and fraternal organizations, churches, etc., that are not affiliated with a supplier, in the context of this definition needs to be discussed. However, we do not think it is necessary to revise the proposed definition to clarify this; we will simply do so by discussing our intent in this order. If a supplier is using an "affinity group" to obtain customers and the individual members of that group are not being reimbursed for the enrollments they obtain, then it is not our intent to treat those individuals as "agents" under this definition. Applying these regulations and requirements (background checks, training, uniforms, identification, etc.) upon the members of such organization(s) is impractical and unnecessary. The expectation is that the members of the affinity group are enrolling members of the same group or individuals with which they have a personal relationship.

However, if the individuals are being compensated for the customers they enroll and if they are approaching individuals outside of a group or personal relationships—including "multi-level marketing"—then these individuals are more accurately described as an "agent" under this definition and these regulations should apply. We acknowledge that there are many different marketing structures currently in operation and unforeseen structures that could appear in the future. There may be scenarios where the applicability of these definitions and regulations may not always be clear. We ask all market participants to use good faith and reason when confronted with such situations, and to seek the guidance of Commission staff if needed.

While we agree with PCADV and CAC that suppliers and their agents should not sell customer information, we believe that existing regulations at 52 Pa. Code § 54.43(d)⁴ are sufficient to address this concern and that it does not have to be added to the definition of agent (See 52 Pa. Code § 62.114(3) for the analogous gas industry regulation). We also want to remind everyone of 52 Pa. Code § 54.43(f)⁵ that codifies the long-standing PUC policy of holding licensed electric suppliers "responsible for any fraudulent deceptive or other unlawful marketing or billing acts performed by the licensee, its employees [sic], agents or representatives." (See 52 Pa. Code § 62.114(4)(e) for the analogous gas industry regulation).

Definition of Disclosure Statement

IRRC notes that Section 4(b)(7) of the Plain Language Consumer Contract Act (73 P. S. § 2204(b)(7)) provides an exclusion for "contracts subject to examination or other

supervision by the Pennsylvania Public Utility Commission or by the Federal Energy Regulatory Commission" and asks if contracts between suppliers and a customer are subject to examination or other supervision by the PUC or by FERC. If so, IRRC questions whether the reference to "consumer contract" is appropriate. (IRRC p. 2.)

Resolution

Although we are aware that the Plain Language Consumer Contract Act excludes contracts which are subject to our examination, we have encouraged the use of plain language in our own orders as well as in communications between companies we regulate and their customers. We are relying on the language drafted by the Legislature in the Plain Language Consumer Contract Act for the standard by which we will hold EGSs and those acting on their behalf when contracting with consumers. Moreover, we also should note in response to IRRC, that insofar as these regulations address "retail" sales of energy, they are beyond the jurisdiction of the FERC and are not subject to its review.

Definition of Door-to-door sales

PEMC recommends that the definition of "door-to-door sales" refers to residence-only locations which would not include commercial components that include both a residence and a commercial establishment.

IRRC is concerned that the inclusion of the phrase "without prior specific appointment" could negate all of the protections afforded customers by this regulation—if an agent has an appointment with a resident, would that agent have to abide by these regulations? IRRC asks the Commission to clarify this definition to ensure that all customers benefit from the safeguards this regulation is intended to provide. (IRRC p. 2.)

Resolution

We agree with IRRC and will remove the phrase "without prior specific appointment." The fact that the potential customer scheduled an appointment to meet with an agent should not negate the protections these regulations are intended to provide. We decline to adopt PEMC's suggestion to exempt residences that may have commercial use attached. While we understand this may complicate a supplier's solicitation of some commercial entities, we believe that the need to provide these regulatory protections to all residential consumers is the paramount concern. Regardless, the number of mixed residential/commercial premises is relatively small and should not present too much of a burden on suppliers.

Definition of Sales

RESA believes that the term "Sales" should be changed to "Sales and Marketing" because the term "sales" involves "the process of assisting the customer in accepting an offer" but the term "marketing" involves making an actual offer to the customer that the customer can accept. These terms are different yet interconnected and including both definitions would clarify that both activities are covered by the regulations.

Resolution

We believe that "sales" and "marketing" are interconnected enough that two different definitions are not necessary. We will instead change the definition of "Sales" to "Sales and Marketing" as to make the definition more comprehensive and to clarify that both activities are covered by the regulations.

⁴ (d) A licensee shall maintain the confidentiality of a consumer's personal information including the name, address and telephone number, and historic payment information, and provide the right of access by the consumer to his own load and billing information.

⁵ (f) A licensee is responsible for any fraudulent deceptive or other unlawful marketing or billing acts performed by the licensee, its employees, agents or representatives. Licensee shall inform consumers of state consumer protection laws that govern the cancellation or rescission of electric generation supply contracts. See section 7 of the Unfair Trade Practices and Consumer Protection Law (73 P. S. § 201-7).

Other Suggested Definitions

IRRC notes that there are several terms or phrases used throughout the regulation that are not defined and believes that the clarity of the regulation would be improved if definitions were provided for: marketing, public event, transaction, transaction document, verification, and verification process. RESA and OCA/AARP also request that the Commission should consider additional definitions within § 111.2. (IRRC p. 1.)

“Transaction” & “Verification”—RESA believes that the processes of a customer authorizing the transfer of his/her account to the supplier and the validation of a customer’s intent to transfer his/her account are two distinct steps that should be defined. Neither of these terms is defined in the regulations. By including a definition for each, RESA believes that the Commission would exclude transactions completed without the involvement of an agent from the definition of the verification process. In doing so, the Commission would eliminate the possibility that a customer service representative would be considered an “agent” within the context of the regulations because the CSR is merely assisting the customer rather than marketing a service to the customer.

“Transaction Document”—Because it is a term of art used in Proposed Regulations § 111.5(a)(8) and § 111.7(b)(5), OCA/AARP believes the term “transaction document” should be defined. OCA/AARP understands the term to mean “contract and enrollment forms” and suggests that a definition be added which defines “transaction document” to mean those “contracts and forms used by an EGS or NGS to enroll a customer for service.”

Resolution

We do not think that it is necessary to add a definition of “marketing” because we are amending the definition of “sales” to include “marketing” (see previous discussion of the definition of “sales”). However, we agree with IRRC’s, OCA/AARP’s and RESA’s suggestions and will add definitions of “public event,” “transaction,” “transaction document,” “verification” and “verification process.” Additionally, we have added a definition of “customer” to avoid possible confusion as to who we are referring to when we use this term. The definition is based, in part, on an existing definition of “customer” at 66 Pa.C.S.A. § 1403 and is very broad in that it includes all EDC, NGDC, EGS and NGS customers. This also makes it unnecessary to refer to “prospective” or “potential” customers; we will simply refer to “customers.”

§ 111.3. Supplier liability for its agent.

IGS recommends the addition of a paragraph which would require an agent to be separately licensed for each supplier that it represents and that the specific supplier’s licensing number for whom the agent is working is displayed. This would eliminate the potential for an agent who is engaged in marketing/sales activities for one supplier to cause another represented supplier to incur liability for that agent’s violations of the regulations. (IGS p. 2.) PEMC strongly supports the concept that suppliers should be held responsible for the actions of its agents over whom the supplier has responsibility but recommends the establishment of a Commission procedure for the investigation of alleged acts and the factual determination of a violation before a supplier is held responsible. RESA seeks to revise the regulations to eliminate references to state and federal laws so that it is understood that only those violations which fall within Commission jurisdiction to adjudicate are addressed. RESA also re-

quests Commission flexibility when formulating remedies for violations to ensure that appropriate sanctions are imposed. (RESA p. 6.)

IRRC notes that Subsection (a) requires compliance with “federal, state and municipal laws” but the regulation does not specify which state laws, federal laws or federal regulations apply. IRRC asks if this rulemaking is consistent with all of these laws, regulations and ordinances and also recommends that the rulemaking include specific references to local ordinances, state laws, federal laws or federal regulations in this subsections and subsections 111.3(a), 111.3(c), 111.9(b) and 111.10(a).

IRRC also has some concerns with the procedures that would be used to implement this section. IRRC notes that under Subsection (b), suppliers are “. . . responsible for fraudulent, deceptive or other unlawful marketing or billing acts performed by its agent.” (Emphasis added.) IRRC questions why this section includes a reference to billing—what kind of billing activities would an agent perform? IRRC also believes that including the procedures or a cross-reference to the procedures used to investigate the alleged misconduct would improve the clarity and assist with the implementation of the regulation. Additionally, IRRC asks if suppliers are the only parties that could be subject to fines, or could agents also be fined? (IRRC p. 3.)

OCA/AARP and CAC recommend the adoption of § 111.3 without modification.

Resolution

Due to the concerns expressed by RESA and IRRC, we will remove general references to “federal, state and municipal law” in this section and §§ 111.9 and 111.10. We also believe that it is not practical to list all the relevant laws in every instance; but will identify a specific law when appropriate. This in no way indicates that suppliers do not have to respect other federal, state and municipal laws, and as we have previously discussed, these regulations are not intended to supersede or preempt any federal, state or municipal law. Also, while the Commission may not have the direct jurisdiction to enforce federal, state and municipal laws, the Commission does have the means to bring any possible violations that we become aware of to the attention of the appropriate authorities. This includes utilizing the Memorandum of Understanding with the Office of Attorney General that we have previously discussed. Also, in response to the concerns expressed by IRRC, we will remove the reference to “billing acts” from paragraph (b) because agents would not be involved with billing customers.

In response to IRRC’s questions as to which parties are subject to fines, we point out that the supplier is the entity that the Commission licenses and, therefore, it is the licensed supplier that would be fined. As previously discussed, long-standing practice and existing regulations make clear that suppliers are responsible “for any fraudulent deceptive or other unlawful marketing or billing acts performed by the licensee, its employees [sic], agents or representatives.”⁶

The Commission has available numerous informal and formal resources to investigate and enforce any problems that come to its attention. If a concern cannot be addressed informally by Commission staff, matters can be escalated to a more formal level. The Commission’s independent prosecutory arm, the Bureau of Investigation and Enforcement (I&E), can initiate informal or formal

⁶ See 52 Pa. Code § 54.43(f) for electric; 52 Pa. Code § 62.114(4)(e) for gas.

investigations as needed and can seek penalties for non-compliance, including the suspension and revocation of supplier licenses. See 66 Pa.C.S. §§ 331(a) and 506 and 52 Pa. Code § 3.113. The Public Utility Code at 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code, and the Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities. Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11) as amended by Implementation of Act 129 of 2008 Organization of Bureaus and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011). 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission's authority for violations of the Code or Commission regulations or both. Section 3301 further allows for the imposition of a separate fine for each violation and each day's continuance of such violation(s).

Additionally, the Commission also has a long-standing MOU with the OAG and under this MOU can refer matters that more appropriately fall under the jurisdiction of the OAG. This could include matters that fall under the Pennsylvania Telemarketer Registration Act and the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

As the competitive energy market evolves, additional regulations and enforcement mechanisms may be developed. Given this, and the number and variety of regulations and enforcement avenues already available, as noted above, we decline to reference all of these in the instant regulations. Referencing them also risks communicating the false impression that the Commission is limited to just those regulations and enforcement methods that are referenced.

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

Some parties believe that the language of this section needs to be strengthened or clarified. NEM and PCADV argue that the phrase "probable health and safety of the public" contained in § 111.4(b) should be modified. NEM believes that the language should comport with federal and state statutory employment guidelines and the screenings should be for convictions that would impact upon and are related to the individual's ability to engage in these types of sales. (NEM p. 5.) PCADV would include additional language which establishes that specific convictions would bar individuals from engaging in these activities. These acts include, but would not be limited to harassment, stalking, terroristic threats, simple assault, aggravated assault, violation of a Protection from Abuse order, and any sexual-related offenses such as indecent exposure, indecent assault, sexual assault, and rape. In addition, PCADV recommends inclusion of inchoate crimes such as solicitation, attempt, and conspiracy to commit any of the aforementioned crimes as those which would prohibit an individual from engaging in door-to-door sales and marketing activities. PCADV would also require anyone who applies for a door-to-door sales position to sign an affirmation regarding the existence of a PFA or similar no-contact order and to affirm that they have no pending criminal charges.

OCA/AARP suggests that the phrase "exercise good judgment" in paragraph (a) is not sufficient and that suppliers should be required to "exercise good judgment

and follow industry standards" as this provides more direction to suppliers. (OCA/AARP p. 9.) OCA/AARP would also like to return the words "comprehensive" and "possible" back into the regulations consistent with Interim Guideline B(1).⁷ OCA/AARP quotes the Commission's interim guideline language in support of this position because "door-to-door sales [are] 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 home." Interim guidelines at 15. The Interim Guideline word "possible" should replace the proposed regulation's use of the word "probable" because the word "possible" is a different standard than "probable" and better reflects the intent of the criminal background check.

CAC supports criminal background checks of all persons who solicit door-to-door, and recommends that persons convicted of any felony or any offense involving sexual abuse or sexual misconduct be prohibited from conducting door-to-door sales.

DES believes that because of the critical nature of their jobs, agents should be required to submit to drug testing to ensure that they are unimpaired when dealing with customers in their homes.

RESA recommends the substitution of the phrase "ensure that a" for the word "conduct" in § 111.4(a) as it relates to performing criminal background checks so as to eliminate the implication that the background checks were to be done by the supplier only; this change would allow independent vendors to perform background checks and it would mirror the intent of the regulation.

PEMC believes that suppliers have an important obligation to develop standards and qualifications for individuals hired as its agents and this includes criminal background investigations and checking the "Megan's Law" registry. PEMC also believes that these obligations should apply to independent contractors and vendors that perform door-to-door activities.

IRRC believes that the Subsection (a) requirement that a supplier "exercise good judgment" in developing standards and qualifications for individuals it chooses to hire as its agents is vague and does not establish a binding norm and asks that it either be deleted or amended to state what the Commission considers to be "good judgment."

Concerning criminal background investigations, IRRC has four concerns. First, IRRC requests an explanation of why the Commission believes the regulatory standard of "probable" compared to "possible" is adequate to protect the public health, safety and welfare. Second, will suppliers have to perform a second background investigation on agents that have already been hired and do agents need to report any pending criminal charges or convictions? Third, IRRC notes that a commenter has suggested that the regulation be amended to clarify that other parties can conduct the required background checks on behalf of the supplier. If that is the intent of the Commission, then IRRC recommends that the final-form regulation be amended accordingly. Finally, IRRC notes that a commenter states that a typical background check may not be adequate because it will not provide information such as protection from abuse orders. IRRC asks that the Com-

⁷ See Proposed Interim Guidelines For Marketing And Sales Practices For Electric Generation And Natural Gas Suppliers, B(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.")

mission explain how the evaluation of a potential agent's background in the final-form regulation adequately protects the public's health, safety and welfare.

IRRC notes that under Subsection (c), suppliers must confirm that their independent contractors and vendors have performed criminal background checks on their "employees and agents." IRRC asks why the term "employees" was included in this subsection and is it the Commission's intent to require criminal background checks for all of an independent contractor or vendor's employees?

Resolution

Throughout the working group process that first developed the Interim Guidelines (Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers, M-2010-2185981, November 4, 2010) up to this point of finalizing regulations, agent background checks have been extensively discussed and considered. All the parties appear to recognize the paramount importance such checks have in helping safeguard public health and safety. However, as evidenced by the comments, there is still significant divergence of opinion as to what should constitute a sufficient background check and how they should be used.

While we appreciate the comments of the parties on these matters and have given them careful consideration, we of course must be primarily guided by the laws that govern the use of background checks for screening potential employees. In their review of these proposed regulations, the OAG communicated a number of concerns to the Commission. OAG questioned the Commission's legal authority to create a presumption that "a person whose name is listed on the "Megan's Law" registry presents a threat to the health and safety of the public" and questioned whether this presumption was consistent with the necessity to preserve due process rights of prospective employees. While the OAG advised that the regulation could require the supplier to check the "Megan's Law" listing, they suggested that the Commission adopt language similar to that used in the PUC motor carrier regulation at 52 Pa. Code § 31.134(c) (relating to criminal history; disqualification) that would bar a supplier from hiring as a door-to-door agent any person convicted of a felony or misdemeanor to the extent the conviction relates adversely to that person's suitability to provide service safely and legally. OAG believes that the suggested revised language would more closely track the Criminal History Record Information Act (CHRIA) and would make the regulation less vulnerable to a court challenge. Finally, OAG suggested that the regulation be revised to make clear that the requirements apply equally to both new and existing employees.

By memo to the OAG dated July 21, 2011, the Commission's Law Bureau submitted revised proposed language to the OAG and committed to recommending to the Commission the changes OAG insisted upon. As such, we have accepted OAG's suggested changes and have revised this section accordingly. Consistent with OAG's concerns regarding the due process rights of potential and present employees, we are rejecting IRRC's and others' suggestions that we include "possible" threats as opposed to "probable" threats. Based upon the OAG's advice, we believe the regulation goes as far as it legally is able without creating a potential violation of the due process rights of both existing and prospective employees.

We will remove the phrase "exercise good judgment" in paragraph (a) to address IRRC's concerns that the phrase does not establish a binding norm. Additionally, we have removed proposed language in subsection (b), which will address IRRC's concerns regarding the clarity of the phrase "to determine if the individual presents a probable threat to the health and safety of the public." Also at IRRC's suggestion, we will remove the term "employees" from paragraph (c) because "employees" is unnecessarily broad when we want this to apply only to "agents." We note that we have expanded the definition of "agent" at § 111.2 to include employees, representatives, contractors, subcontractors and vendors, who perform sales and marketing activities, regardless of whether they are directly or indirectly connected to the supplier. However, we decline to adopt the suggestions of DES and PCADV to expand and/or specify precise criminal activities out of concern that such specificity may go against the advice of the OAG and also invites the risk of overlooking activities that are not specifically listed. We also decline to include "pending charges" out of concern that this appears to be contrary to the guidance received from OAG, as discussed above.

In response to IRRC's request that we clarify the ability of other parties to conduct the required background checks, we believe it is not necessary to address this point in the regulation, but will instead clarify it here in this order. There are companies that provide background security check services, and it is indeed possible that a supplier may want to utilize the services of a professional firm that specializes in background checks. We do not object to the use of these services. The important thing is not who performs the check—but that a check is done correctly and in accordance with these regulations. We also note that the supplier is ultimately the party we will hold responsible for the security background check, regardless of the entity that actually performed the check.

§ 111.5. Agent training.

PCADV would add specific customer information confidentiality provisions within the definition of "agent" and include confidentiality as a specific topic of agent training. NEM suggests that inserting "supplier-approved" before "training" in Section 111.5(d) to clarify that the supplier's obligation is to ensure that the vendor or contractor utilizes the supplier's training program.

IRRC notes that while paragraph (a)(1) requires training in state and federal laws, it questions whether this provision should also reference Pennsylvania's Telemarketer Registration Act since it directly relates to agents and to Section 111.10. IRRC also notes that paragraph (a)(2) requires training in "responsible and ethical sales practices" but is concerned that this phrase could be interpreted in different ways. IRRC believes that the Commission should either include in the regulation the specific training required relating to responsible and ethical sales practices or add a citation to the practices the training must include.

IRRC is also concerned that the regulation is not clear regarding the bounds of actions an agent may take when doing door-to-door sales. For example, is it appropriate for the agent to ask to enter the dwelling, or should the agent only enter the dwelling upon the invitation of the customer? Additionally, IRRC thinks that paragraph (a)(10) is broad and suggests adding a cross-reference to the minimum terms and definitions the training must include. A time-frame associated with the record-keeping requirement should also be included in the final-form regulation.

IRRC also has two concerns with agent monitoring. First, IRRC thinks that the term "representative sample" is vague and that a more precise standard should be included in the final regulation. Second, IRRC questions how monitoring of door-to-door sales calls can be accomplished in a manner that ensures the agent is meeting the requirements of this regulation. In the preamble to the final-form regulation, IRRC asks that the PUC explain how a supplier is expected to monitor door-to-door sales and how that monitoring will adequately protect the public health, safety and welfare.

Resolution

We agree with PCADV that customer confidentiality should be a training topic requirement specified in the regulation and we agree with IRRC that Pennsylvania's Telemarketer Registration Act should be a training requirement for agents engaged in telemarketing. In response to the request that we specify the requirements as to what constitutes "responsible and ethical sales practices" and "bounds of action,"—we believe that complying with the proposed regulations in effect will constitute responsible and ethical sales practices and actions. We will add language to subsection (a)(2) specifying this. To address IRRC's request for clarification as to the terms and definitions in subsection (a)(10), we will add a reference to the glossary of electric and gas terms on the Commission's website. We also agree with IRRC in that we should be more specific on the record-keeping requirement in paragraph (b) and will adopt the record-keeping timeframe of three years that is found in the existing regulations at 52 Pa. Code § 57.179 (Record maintenance). In addition, we agree with IRRC that the phrase "representative sample" in paragraph (e) is too vague and we will remove it, along with the word "employees" in (d) because it is superfluous given our expanded definition of agent. We also agree with NEM and will insert "supplier-approved" before "training" to make clear the supplier's obligation to review and approve the training a vendor provides to its employees.

Regarding the concerns expressed by IRRC as to how the Commission will monitor and enforce these regulations, please see our discussion relating to Sections 111.1 and 111.3.

§ 111.6. Agent compensation; discipline.

Some of the parties that submitted comments on behalf of the utilities and suppliers are in general agreement with the intent of the proposed regulation but have concerns. PEMC believes "that if the Commission seeks to enforce the provision strictly, Commission staff will be faced with a significant burden to evaluate every supplier compensation program for its employees, agents, and contractors. We are concerned that assessment of supplier compensation practices may be an overreach into the legitimate and proprietary business practices of suppliers." (PEMC page 6); (See also NEM p. 6, "The matter of appropriate and optimal agent compensation structures should be a matter within the purview of the supplier.")

WGES proposes that the language of the subsection should be limited to prohibiting the supplier from compensating those agents who engage in practices which run counter to those contained in the regulations because "such inappropriate practices should be eliminated through agent selection and training and supplier contacts with agents that bar payment for slamming or defrauding customers." (WGES p. 2.) RESA opposes the language because "any time any agent violates the regulations, a supplier's compensation arrangement with the

agent could be viewed as violating this section because the agent is compensated by the supplier."

RESA also disagrees with the implication that agents who are salaried employees are less likely to violate the regulations than those agents who are paid under a commission compensation scheme. To RESA, the regulations would require a supplier to determine in advance whether a particular compensation arrangement was problematic. RESA would modify the language of § 111.6(a) to hold suppliers liable who "deliberately" design agent compensation program structure[s] which promote, encourage, or reward behavior which runs counter to those practices established by the regulations. (RESA p. 9.) In addition, RESA believes that the language of § 111.6(b) should be clarified to ensure that a supplier educates agents on the Commission's long standing policy toward slamming and other violations of consumer protections. PEMC believes that Subsection (b) should include a procedure for those instances when an honest mistake is made concerning the transfer of a customer's account and punish only those who engage in slamming. (PEMC p. 6.)

FES submits that the Commission should allow supplier's to exercise discretion in setting agent compensation in a way that suits its business model. FES believes that the consequences to suppliers of their agents' noncompliance are sufficient deterrence against supplier's promoting illegal behavior.

OCA/AARP strongly supports the proposed language and urges the Commission to implement it without modification. CAC believes that agents engaged in door-to-door activities, regardless of whether they are employees or contracted vendors, should not work on a commission basis but instead should be salaried.

IRRC asks that, given concerns of some parties that contend that compensation structures should be left to their discretion, the Commission should explain the need for this subsection. Also, relating to subsection (b), IRRC has three concerns. First, IRRC asks if this provision would apply to independent contractors and vendors of suppliers, or would those entities have to develop their own internal discipline practices and procedures? Second, IRRC recommends that this subsection include a cross-reference to the PUC's policies regarding unauthorized transfers. Third, IRRC believes that the phrase "long-standing zero tolerance" and the last sentence of the subsection are both non-regulatory in nature and should be deleted. (IRRC p. 5-6.)

Resolution

Regarding the proposed paragraph (a) and supplier employee compensation, we agree with those parties that suggest that this proposal is unnecessary, over-reaching and too vague and we will remove it. Regarding paragraph (b), we agree with IRRC and will remove the last sentence and the reference to "zero-tolerance" and will instead reference the supplier switching regulations for electric and gas. Concerning IRRC's question as to the applicability of this section, we note the long-standing practice of holding the licensed supplier responsible "for any fraudulent deceptive or other unlawful marketing or billing acts performed by the licensee, its employes [sic], agents or representatives."⁸ We believe this is sufficient notice to all suppliers that they will be held responsible for the actions of any contractors and vendors they utilize.

⁸ See 52 Pa. Code § 54.43(f) for electric; 52 Pa. Code § 62.114(4)(e) for gas.

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

DES supports the language of the regulation as proposed but would urge the Commission to be flexible given the changing technological environment. For example, one technological change to be considered would be to determine whether allowing electronic signatures for enrollment would be permissible under the regulations. RESA would revise § 111.7(b) to allow an on-site agent to correct any problems with enrollment with the customer's consent. This would avoid the time lag associated with strict adherence to the regulation which would require only contact by phone, letter, or email should a problem arise with verification.

PEMC offers three modifications to § 117(b)(2)(ii). The first would permit an agent to remain in the customer's presence or home to be used as a resource during the verification process; this is done to ensure an informed decision. In order to avoid the perception of undue influence or coaching by the marketer, PEMC suggests that a specific question or set of questions be posed to the customer by the verification agent to show no coaching or influence was present.⁹ If the customer answers any of the questions "no," then this would result in the automatic termination of the verification process. In addition to this modification, PEMC would establish a "safe harbor" provision in the regulation that would permit marketers to adopt an internal policy providing for customers to have the clear option to separate themselves from the agent's vicinity during the verification process. If the customer requests the marketer to leave the customer's home, or the customer chooses to leave the public location following the sale, the agent would be required to comply with the customer's wishes immediately. Lastly, PEMC would include a requirement that the sales agents would not be permitted to have any interaction with the verification agent once the verification process had begun because "once the verification starts, it is the customer who controls the conversation, including whether or not the customer would like to be separated from the sales agent during the verification." (PEMC p. 8.)

PEMC requests the addition of a new provision, § 111.7(5)(vii), which would deal with those suppliers who utilize automated sales verification systems. The companies who utilize these types of verification systems do not have a name or number attached to the record even though the verification is recorded and archived. The recordings would be maintained for six billing cycles and the maintenance of this information would provide reviewers with a record of the verification process. In addition, PEMC requests that the Commission permit the required pieces of information referenced in § 111.7 to be maintained in different databases due to the expense of keeping them in one location. PEMC argues that such a change would be permissible so long as the information would be readily available for Commission review.

FES requests that the Commission reconsider its position with respect to the three-day right of rescission contained in § 111.7(b) and remove the requirement that the customer be provided with a three-day right of rescission during telemarketing calls. Specifically, FES believes that because the customer is provided with the

⁹ Examples of questions would include: "Is the sales agent in your immediate vicinity? Are you aware of your right to not have the sales agent present during this verification process, unless you wish for the agent to be present? Can you verify that you are entering into this sales agreement voluntarily without any undue influence or pressure by the sales agent?" See PEMC p. 7.

right of rescission on two different occasions, the third notification at the end of the verification process might be counterproductive during telemarketing sales as it might be construed as urging the customer to rescind his or her authorization.

OCA/AARP strongly support the proposed section which they believe draws a clear line between the sales agent's personal contact in the home of the consumer and the need for the agent to physically depart before the verification process commences. As such, OCA/AARP urges the Commission to adopt § 111.7(b)(2) without modification. However, OCA/AARP is concerned with the Commission's proposal to not require the verification process when the enrollment is done without the interaction with an agent. OCA/AARP suggest that "there is a need to review the documents and forms used for such enrollments to ensure that the documents are clear, contain all necessary information to ensure that it is only the customer of record making the request, provide all necessary information about the supplier and the process and provide all necessary instructions. This rulemaking process does not provide the forum to review and address any necessary requirements." As such, the OCA/AARP submit that this exception to the verification process should be removed. (OCA/AARP, p. 13.)

CAC also recommends that the verification of sales be required without the agent being present because such verification "is most likely to be independent and free from influence if the sales agent is not present." (CAC, p. 7.)

IRRC has three concerns with subsection (a)(1). First, this subsection states that the process "may" include three specific actions. The use of the word "may" implies that a supplier has the option to use one of the three actions to authorize the transfer. If it is the PUC's intent to require suppliers to use one of the three actions in Paragraphs (i), (ii) and (iii) of Subsection (a)(1), then IRRC suggests "may include" should be replaced with "shall include one of." However, if the Commission intends to allow suppliers to use other processes, the regulation should be amended to clarify this intent. Second, IRRC notes that (a)(1)(ii) and (iii) include a reference to a "program" and asks what this term means. Third, (a)(2) requires the document used to complete the transaction to identify the agent who completed the transaction. However, the documents referenced in Subsection (a)(2)(iii) and (iv) could be completed without the assistance of an agent. IRRC believes that it is unclear how the requirements of these provisions will be implemented and recommends that these provisions be clarified in the final-form regulation. Concerning Subsection (b), IRRC believes that the regulated community would benefit if a specific reference to 73 P. S. § 201-7, Pennsylvania's Unfair Trade Practices and Consumer Protection Law was included in the final regulation. (IRRC p. 6-7.)

Resolution

The transaction verification process required by subsection (b) has been extensively discussed and debated; first in the working group process that developed the Interim Guidelines, and now in the proposed rulemaking. One of the central issues is the role and presence of the sales agent during the verification process. Many parties, including OCA/AARP and CAC believe potential customers should be free of the presence of the sales agent so that the verification is completed privately, thus minimizing the chance of intimidation. However, many suppliers

point to practical problems that this requirement could create and how it allegedly hinders their communication with the potential customer.

We believe there is a way to structure this process so that customers will still be protected, even if agents are allowed to be in their presence during the verification. First, we will include new language stating that the agent is permitted to remain in the vicinity of the customer during the verification process only if the customer agrees. Further, we believe that by concluding the verification process with a reminder to the potential customer of the three-day right of rescission, as proposed in subsection (b)(3), we will provide sufficient safeguards in case the customer feels intimidated or unsure. If a potential customer was feeling too intimidated to ask the agent to leave, or if for any reason is not satisfied with what he or she just agreed to, a customer merely has to exercise his or her three-day right of rescission. This will negate what the customer just agreed to without penalty. Therefore, we decline to accept the suggestion of FES to remove the reminder of the three-day right of rescission from the verification because we believe this requirement is key to protecting the consumer in instances where the agent is present. We will enforce this requirement by using the complaints that customers file with us and will be asking complainants about the presence of the agent during verification. Additionally, we will strengthen this provision by agreeing with IRRC and include a reference in the regulation to the Unfair Trade Practices and Consumer Protection Law.

Concerning IRRC's questions about subsection (a), we agree that this section is unclear and unnecessarily complex. As such, we will shorten and clarify it by simply requiring a supplier to establish either a verbal, written or electronic transaction process for a customer to authorize the transfer of his or her account to the supplier. We also agree with IRRC's concerns with subsection (a)(1) and will add language clarifying that the agent only has to be identified on the document if an agent was involved in the process.

Concerning PEMC's questions about the archiving of records under subsection (4), we respond by noting that we require that the records be maintained in a system that is capable of retrieving them. We will not dictate what kind of system or how many different systems may be involved; these are matters we leave to the discretion of the supplier.

OCA/AARP asks us to include under the verification requirements those transactions that do not include the interaction with an agent. We decline to do this because the main reason for the verification process is to protect against consumers being pressured, possibly intimidated, by the presence of an agent, either in person or on the phone. When a customer is enrolling through a process that does not involve an agent (i.e. direct mail, internet, PaPowerSwitch.com, etc.), these kind of pressures simply do not exist. Without an agent present, the customer is free to take all the time they want to review an offer, compare offers, read all materials and disclosures, and reject or accept the offer without any outside influence or pressure. Accordingly, we think requiring a verification process to confirm such transactions would be superfluous. However, OCA/AARP is correct in pointing out that all the documents involved in direct mail and internet solicitations must contain all of the information necessary for the potential customer to arrive at an informed decision and must comply with all relevant rules governing such transactions.

§ 111.8. Agent identification; misrepresentation.

Subsection 111.8(a) would require supplier-issued identification badges for all door-to-door sales agents or for those who appear at public events to be visible at all times. NEM wants to have the words "public event" defined in the regulations to include those events which may facilitate sales and marketing activities or may result in a customer enrollment. In doing so, this definition would exclude activities such as sporting events that are sponsored by the supplier or agent rallying events hosted by the supplier. OCA/AARP wishes to have this provision amended to require agents to "prominently or conspicuously" display identification badges and "to be on the outer clothing being worn at the time."

OCA/AARP and DES request changes to § 111.8(b) with respect to how an agent identifies the supplier to the potential customer. DES would require the agent to identify the supplier both orally and in writing as opposed to the proposed regulation's requirement that the agent perform the supplier identification either orally or in writing. OCA/AARP would require that the agent's initial identification upon first contact be orally and then a written notification may be provided to the customer to confirm the oral representation made to the customer. In addition to this change, OCA/AARP would broaden § 111.8(c) to avoid any confusion about branding. OCA/AARP would add additional language to eliminate any potential confusion as to who an agent represents by prohibiting any branding elements which might be construed by a customer as working for or approved by a government agency or another supplier. OCA/AARP would remove the "deceptively similar" language in the regulation as being too vague and substitute it with more specific language to capture the intent of the regulation. OCA/AARP would also include a new subsection (f) to require an agent to specifically advise a customer that their failure to choose a supplier will not affect their ability to receive natural gas or electric service.

CAC believes that agent identification cards should include a phone number the potential customer can call to verify that the person soliciting at their door is a legitimate agent. CAC also suggests that agents be required to direct potential customers to PUC and OCA information resources. (CAC, p. 7.)

IGS and RESA would add a new subsection § 111.8(f) in order to avoid confusing customers with the identity of the supplier for whom an agent represents. The new subsection (f) would require those suppliers who have similar names as the distribution company provide disclosures to the customer that explain that the non-affiliated company is not the utility and is not affiliated with the company and disclose the full legal name of the entity providing services that may appear to be similar to the utility. (IGS, p. 2-3.)

IRRC has three concerns with the subsection (a)(3) requirement that the agent's identification number be displayed on the identification badge in a "reasonably sized font." First, IRRC asks if a supplier must assign an identification number to each of its agents and if so, where can that requirement be found? The same concerns apply to business cards in subsection 111.9(d)(2). Second, IRRC asks what is considered a "reasonably sized font" and how will suppliers and agents know if they are meeting this standard? IRRC recommends that a more precise standard be included in the final-form regulation. Finally, IRRC asks how an agent can satisfy the requirement that the identification badge "be visible at all times" and would requiring the identification badge to be "promi-

nently displayed" be an acceptable standard that could be met by the agent while still protecting the public health, safety and welfare?

Concerning the subsection (c) prohibition on an agent from wearing apparel or accessories and carrying equipment that contains branding elements "deceptively similar to that of the local Pennsylvania distribution company" IRRC has two concerns. First, IRRC thinks that the word "deceptively" is unclear and should be deleted from the final-form regulation. Second, the Commission should consider replacing the phrase "Pennsylvania distribution company" with the phrase "any EDC or NGDC" as this would provide greater clarity and would be more consistent with other statutes and regulations. (IRRC, p. 7.)

Resolution

The intent of Section 111.8 is to minimize to the extent possible, the chances of misrepresentation—such as a potential customer being confused as to who they are dealing with because of inadvertent or deliberate actions of a sales agent. Given the relatively new concept of competitive energy shopping and the inexperience of many potential energy customers, confusion is all too possible. In such an environment, it is very easy for a potential consumer to confuse any energy provider with their incumbent energy utility—a confusion that can be contributed to by either inadvertent or deliberate acts of the supplier agent.

Concerning subsection (a), we have already previously discussed and agreed to add a definition of "public event" to Section 111.2 as suggested by NEM (see our discussion relating to Section 111.2 for more information on this change). We agree with CAC that the agent identification card should include the supplier's phone number so that the potential customer can call the supplier if desired. In response to IRRC's concerns, we will remove the reference to "identification number" since this requirement is not specified anywhere, and we will remove the phrase "reasonably sized font" as too vague and subjective. In response to IRRC, we also will replace the requirement that the badge be "visible at all times" with the more practical "prominently displayed."

Concerning subsection (b), we agree with DES and OCA/AARP that agents should be identifying themselves and their company both orally and in writing. However, we decline IGS's suggestion that suppliers affiliated with distribution utilities should provide additional disclosures to the potential customer as over-scripting. While we understand IGS's concern, this is more a matter of protecting suppliers rather than consumers. As such, we believe our original proposal including references to the existing codes of conduct at § 54.122 and § 62.142 is the appropriate way to address these concerns. We also decline CAC's suggestion that agents be required to refer consumers to PUC and OCA information resources as we wish to avoid over-scripting the agents; and inappropriately so in this case, because we would, in effect, be requiring an agent to provide information on the products and prices of competitors. In no other business that we are aware of does government force a business to provide consumers with information on their competitors.

Concerning subsection (c), we agree with OCA/AARP and IRRC, and will remove the word "deceptively" before "similar to that of the local Pennsylvania distribution company." We will replace this with language prohibiting actions that suggest a relationship that does not exist. Per the request of IRRC, we will also replace the phrase "Pennsylvania distribution company" with the phrase

"any EDC, NGDC . . ." Also, at the request of OCA/AARP, we will strengthen this sentence by adding "government agency or another supplier" in addition to "any EDC or NGDC." In response to OCA/AARP's request that we add a subsection (f) requiring agents to specifically advise customers that their failure to choose a supplier will not affect their ability to receive energy service, we will add a subsection (f) that prohibits agents from suggesting to potential customers that they "have to choose" a supplier since this is a point of confusion we hear about from consumers. We think this prohibition is more appropriate than adding yet more scripting.

§ 111.9. Door-to-Door Sales.

Although the Commission adopted a compromise solution in the proposed regulations regarding the time frame for door-to-door sales, several of the commenters request that the Commission revisit the positions they presented during the debate over the Interim Guidelines. Suppliers, in general, believe the proposed timeframes are unnecessarily restrictive. Those advocating an extension of the time frame include RESA (9 a.m. to 9 p.m. from October 1 through March 31), PEMC (9 a.m. to 9 p.m. for the entire year), DES (have the Commission adopt those approved by the North American Energy Standards Board which allow for 9 a.m. to 7 p.m. solicitations with seasonal variations).

However, OCA/AARP suggests that the timeframe be more restrictive (10 a.m. to 7 p.m. or in the alternative 9 a.m. to 7 p.m. year round) because they believe that any contacts after 7 p.m. are too intrusive as families try to spend time together, are engaged in homework, or are preparing for bath or bed time routines. OCA/AARP notes that Connecticut recently adopted the hours of 10 a.m. to 6:00 p.m. for door-to-door marketing.¹⁰

PEMC suggests that the requirement in § 111.9(2) that suppliers notify local officials of door-to-door marketing operations is not necessary and duplicative because when a supplier seeks and is granted a license from the municipality, the supplier is, in effect, informing the municipality of its activities. Additionally, PEMC points out that it may be difficult to identify the "local municipal officials" that would be required by this section. (PEMC, p. 10.)

PEMC and RESA propose that the language of § 111.9(e) be changed to provide flexibility when dealing with individuals who do not use English as their primary language. To alleviate this problem, PEMC and RESA suggest that language be inserted into the subsection that would permit a member of the customer's household to assist the agent. RESA would require a customer's affirmative consent and would permit a friend or neighbor to act as translator on behalf of the customer.

In addition, PEMC and RESA are in agreement that § 111.9(f)(3) should be changed to permit an on-site agent to provide the customer with a copy of the disclosure statement as opposed to the mailing requirement contained in the proposed subsection. PEMC believes that the mailing requirement makes sense for telephone sales but not door-to-door sales and RESA believes that to permit an agent to deliver the disclosure statement in this fashion with customer consent would streamline the enrollment process. NEM suggests that if the customer is provided with a copy of the disclosure statement at the time the contract is signed, the supplier should not be

¹⁰ DPUC Review of the Current Status of the Competitive Supplier and Aggregator Market in Connecticut and Marketing Practices and Conduct of Participants in that Market, Docket No. 10-06-24, Decision (Mar. 16, 2011) at Guideline IV(d)(4). See also CT Public Law NO. 11-80, § 113(F)(2)(B), effective July 1, 2011.

required to send another disclosure statement to the customer. NEM thinks this should be made clear by adding "if the disclosure statement has not been previously provided" to the end of § 111.9(f)(3). (NEM, p. 7.)

RESA suggests that the word "cancel" be replaced by the word "rescind" in subsection (f)(4) to make the subsection consistent with the three business day right of "rescission" and to avoid confusing the term with specific contractual rights that the customer may or may not have to "cancel" the contract at any time.

IRRC notes that under 66 Pa.C.S.A. § 2206(c), relating to natural gas competition, the PUC has the statutory directive to:

... by order or regulation, establish requirements that each natural gas distribution company and natural gas supplier provide adequate, accurate customer information to enable retail gas customers to make informed choices regarding the purchase of all natural gas services offered by that provider. Information shall be provided to retail gas customers in an understandable format that enables retail gas customers to compare prices and services on a uniform basis. (Emphasis added.)

IRRC adds that similar requirements relating to the electric industry are specified in 66 Pa.C.S.A. § 2807(d)(2) and that some parties have questioned whether door-to-door sales will provide the customer with the information needed to make an informed choice how door-to-door sales can be adequately monitored. IRRC believes that these are valid points and that the Commission should explain how the final-form regulation will ensure that customers, when solicited by door-to-door agents, will receive "adequate, reliable customer information," "in an understandable format" to enable customers to make informed choices, consistent with the statute. IRRC also asks the Commission to thoroughly explain its consideration and resolution of the comments that raise safety concerns with door-to-door sales and explain how the final-form regulation will adequately protect the public health, safety and welfare. Concerning the hours that door-to-door marketing or sales activities can occur, the Commission should explain how it chose the hours specified in the final-form regulation and why those hours represent the most reasonable hours for both the customer and the agents.

IRRC has two concerns with the paragraph (a)(2) requirement that a supplier notify local municipal officials "in advance of its schedule." First, notification "in advance" does not impose a specific time requirement. Second, the provision does not require notice if the schedule changes. IRRC recommends amending paragraph (a)(2) to specify a timeframe for the advance notice and also notification if the schedule changes.

Regarding the subsection (e) requirements relating to language skills, IRRC sees an overall need to address the circumstance where the agent and customer cannot communicate because 66 Pa.C.S.A. §§ 2206(c) and 2807(d)(2) require information to be in an understandable format. After it is established the agent and customer cannot communicate, IRRC questions the need, reasonableness and effectiveness of continued contact and questions the use of "translation services, electronic language translation devices and language identification cards," as excessive and impractical, particularly when there are other methods for a customer to be aware of and participate in customer choice. IRRC is also concerned with this provision as proposed in that it restricts the initial conversa-

tion to English and addresses the "customer's English language skills" and questions whether a supplier, who is familiar with a demographic area, should be allowed to initiate conversations in a language other than English that is prevalent in that area. As such, IRRC, recommends deleting the word "English" so there is flexibility in what language is used first. IRRC questions the use of the word "shall" in paragraph (e) and also suggests, to be consistent with Section 111.11, replacing the word "cancel" with the word "rescind" in paragraph (f)(4).

IRRC supports subsection (g) but questions whether it is too narrow. For example, if a customer says they are not interested, under the regulation, the agent would not have to leave the premises. IRRC suggests that the provision be broadened to require the agent to leave the premises if requested to do so by the customer or if the customer expresses no interest in the product being sold. Finally, concerning subsection (h), IRRC suggests adding language to state within what time-frame the annotating of the database must occur. (IRRC, p. 8-10.)

Resolution

The time of day in which door-to-door marketing must cease was a central topic of the working group that developed the current Interim Guidelines and continues to be a debated topic in this rulemaking. The current Guidelines and the proposed regulation reflect a "compromise" between those parties, mostly suppliers, who wanted an expanded timeframe, and those parties, mostly consumer groups, who wanted a more restrictive timeframe. Part of this "compromise" was to create the seasonal variation that is reflected in the proposal between "summer" hours and "winter" hours. Upon careful review of the comments submitted in this ongoing debate, we conclude that we have heard no new or unique argument that convinces us to alter our original proposal. We continue to believe that a seasonal variation, with the 7 p.m. end time between October and March and the 8 p.m. end time between April and September is a reasonable "middle ground" that adequately protects consumer safety and privacy while providing suppliers with sufficient time to market their services. We reject suggestions that we expand the permitted time to 9 p.m. as we believe it is simply too intrusive upon households that expect an increased measure of privacy later in the evening. Likewise, we reject suggestions that restrict the permitted time to 6 p.m. as too limiting; with many potential customers only arriving home from work at 5 p.m. or 6 p.m. We also want to note that when we limit the activities to 7 p.m. or 8 p.m., we are saying that new customer contacts are prohibited after that time. Sale presentations that are already underway when the end-hour is reached are permitted to continue. We also want to emphasize that per subsection (a)(1), municipalities may have restrictions on hours that are more restrictive than outlined in this regulation—and, if so, the more restrictive timeframes in the municipal ordinance apply.

We agree with PEMC that notifying local officials is a duplicative requirement because when a supplier seeks a license from the municipality, the supplier is, in effect, informing the municipality of its activities. We also question the appropriateness of such "courtesy" requirements in binding regulations. This will make moot IRRC's request that we specify timeframes for such notifications, including schedule changes.

Concerning the language provisions in subsection (e), we agree with IRRC and will remove the reference to "English" in the first sentence. We also agree with IRRC that the sales transaction should end if there is a

language barrier present. As such, we must reject the request of PEMC and RESA to expand the use of translators and translation services.

Concerning subsection (f), we agree with PEMC, RESA and NEM and will amend subsection (f)(3) to require the sending of a disclosure statement only if it has not already been provided. The written disclosure statement is a key consumer protection that helps ensure that the customer is receiving accurate customer information in an understandable format that is sufficient for the customer to make informed choices regarding the purchase of competitive energy products offered by suppliers. The electric disclosure regulations at 52 Pa. Code § 54.5 and the analogous gas disclosure regulations at 52 Pa. Code § 62.75 require that new customers receive, in writing, a disclosure that includes:

- The rate, fixed or variable. If variable, the conditions upon variability.
- Length of agreement.
- Explanation of sign-up bonuses, incentives, promotions, special services, etc.
- Cancellation and renewal provisions.
- Contact information for the supplier, the utility, and the PUC.
- Explanation of penalties, fees and exceptions in a larger font size.
- A three-day right of rescission without penalty and information on how to exercise the right of rescission.
- A statement directing the consumer to the PUC if they have a problem or concerns with the supplier.
- A statement explaining that while distribution charges are regulated by the PUC and transmission charges are regulated by FERC, generation charges are set by the supplier chosen by the customer.

With regard to those commenters who suggest that we should prohibit door-to-door sales because they believe a consumer cannot make an "informed" choice based upon information provided by only one representative, we must point out that we have been sponsoring extensive consumer education efforts since retail choice became available. Our customer information regulations (52 Pa. Code §§ 54.1—54.9 for electric and 52 Pa. Code §§ 62.71—62.80 for gas) include numerous provisions intended to provide consumers with the information they need about their energy choices, including:

- Supplier pricing, including a requirement that advertised prices must equal the price in the disclosure which then must also equal the price on the bill.
- Use of common and consistent terminology in customer communications, including marketing, billing and disclosure statements.
- Bill format requirements that include itemization and defining of charges; pricing in standard pricing units; 12-month usage histories and averages; company contact information; and a statement that the PUC regulates distribution rates, FERC regulates transmission rates, and generation rates are set by the supplier chosen by the customer.
- Requirements that electric suppliers have information available to customers on generation supply sources including documentation to support claims of renewable energy and prohibitions on using vague, unsubstantiated claims of environmental benefits.

- Customer information privacy requirements.
- Complaint handling procedures.

Additionally, the Commission has overseen an extensive consumer education process that includes utility efforts and Commission-funded efforts. For the most recent example of the Commission's consumer education efforts, please see the Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952, Order entered March 2, 2012. Of course our most important consumer education tool is the Commission's electric-shopping website, www.papowerswitch.com. This website includes information on:

- Switching power and what you are switching.
- Understanding your bill.
- Choosing an electric supplier.
- Your rights and protections.
- How to shop for electricity.
- Current supplier offers and online enrollment.
- Clean energy suppliers.
- Shopping worksheet.
- Questions to ask.
- Help paying your bill; assistance programs.
- Ways to save energy.
- Renewable energy questions.
- Frequently asked questions.
- Glossary of common electric competition terms.
- Contact information for suppliers and utilities, including web links and telephone numbers.
- Contact information for the PUC.
- Customer shopping statistics.

We believe that these consumer education efforts and existing regulations, augmented by the proposed regulations in this instant rulemaking, fulfill the Commission's obligations under 66 Pa.C.S.A. §§ 2206(c) and 2807(d)(2) to make sure that customers have the information they need to successfully navigate the competitive energy market.

Also concerning subsection (f), we agree with RESA and IRRC and will replace the word "cancel" with "rescind" in (f)(4), since that is the more appropriate term to describe what the customer is doing. "Rescinding" a contract within the three-day rescission period is indeed different from "canceling" a contract. We will also amend subsection (f)(2) to align this provision with the changes we are making at Section 111.7.

Concerning subsection (g), we agree with IRRC and will strengthen this sentence by adding that the agent should leave the premises if the potential customer expresses no interest in what is being sold. We will also, per IRRC's request, add language to subsection (h) specifying that a supplier should annotate, within two business days, existing marketing and sales databases with requests to be exempted from further sales contacts.

Regarding the concerns expressed by IRRC as to how the Commission will monitor and enforce these regulations, please see our discussion relating to §§ 111.1 and 111.3.

We will also delete language in subsection (f)(2) that is duplicative of language at § 111.7(b)(2)(i).

§ 111.10. *Telemarketing.*

RESA believes that subsections (a)(1) and (2) should be consolidated into one section with the burden of ensuring compliance for these non-Commission requirements to be left with the suppliers and their agents because "the Telemarketer Registration Act is within the jurisdiction of the Attorney General and is subject to change and interpretation by the Attorney General's Office." (RESA, p. 13.)

OCA/AARP recommends that subsection (b) should mirror the language of § 111.9(d)(1) in that the agent should provide his first name and the supplier name he/she represents immediately after greeting the potential customer. Moreover, the agent should be required to provide the same information to the customer regarding agent identification as contained in the door-to-door regulations. Telephone agents should advise potential customers of who they specifically represent and clearly state they are not representing any other entity.

NEM and PEMC recognize the common telemarketing practice of an agent providing a fictitious name in order to protect the identity of the agent for security reasons. NEM requests that the Commission modify Subsection § 111.10(b) to permit this practice to continue. PEMC agrees with NEM's request but would do so only if the fictitious name is directly assigned to a specific agent/individual.

IRRC notes that paragraphs (a)(1), (2) and (4) place in PUC regulation requirements under the Telemarketer Registration Act and asks if the PUC has established a Memorandum of Understanding with the Attorney General. The Commission should explain how it will enforce this provision. IRRC also recommends adding to subsection (b) the same or similar requirement for agent identification as paragraph 111.9(d)(1). Finally, IRRC notes that paragraph 111.9(d)(1) requires the door-to-door salesperson to "state he is not working for and is independent of the local distribution company or another supplier" and asks why isn't this included in subsection (b).

Resolution

We agree with OCA/AARP and IRRC and will revise subsection (b) to substantially reflect the analogous language in § 111.9(d) so that the telemarketing agent will identify himself to the potential customer the same as a door-to-door agent would have to do. We decline to address the use of fictitious names in the regulation as requested by NEM and PEMC, but will note here that we agree with PEMC that the use of fictitious names is acceptable, but only if the fictitious name is attributable to a specific agent that can be identified if needed. In response to IRRC's and RESA's concerns about enforcing the state telecommunication laws that are cited in this section, we again note that the Commission has a long-standing MOU with the OAG. Under this MOU, the Commission can refer matters that come to the Commission's attention but are more appropriately handled by the OAG due to jurisdictional concerns. As the competitive energy market continues to evolve, additional regulations and enforcement mechanisms may be developed. Given this possibility, we decline to reference all of the applicable regulations. Referencing them also risks communicating the false impression that the Commission is limited to just those regulations and enforcement methods that are referenced.

The OAG had concerns with the use of the word "intent" in paragraph (a)(4) and suggested the word "request" replace it. We have made this revision.

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

RESA proposes that the phrase "and is not submitted to the verification process" be removed from subsection (a) as it would not be necessary if RESA's proposed definition for "verification process" is adopted. This would be consistent with RESA's suggested exclusion from verification process for non-agent transactions set forth in § 111.7(b). In addition, RESA recommends the last sentence of subsection (b) become new paragraph (c) because in addition to regular mail, a customer could receive a disclosure statement online or via electronic mail. RESA would add additional paragraphs (d) (online enrollment process) and (e) (electronic mail) that would create a rebuttable presumption of receipt of disclosure statement if the customer agrees to receive the disclosure statement in that fashion.

OCA/AARP has concerns about recent changes proposed by the federal government to the guaranteed delivery time of the United States Postal Service and this would make the three day rebuttable presumption language of subsection 111.11(c) inappropriate. OCA/AARP suggests that the Commission consider removing the language or to extend the timeframe beyond three days.

IRRC notes that subsection 111.12(c) cross-references 52 Pa. Code §§ 54.5(d) and 62.75(d), which address disclosure statements and asks why these weren't cross-referenced in Section 111.11. Also, given that subsection (c) addresses receipt of a disclosure statement by mail, IRRC states that the regulation should also provide similar requirements for electronic delivery of disclosure statements. (IRRC, p. 10.)

Resolution

We agree with IRRC and will include references to the electric and gas disclosure regulations, 52 Pa. Code §§ 54.5 and 62.75. We also agree with IRRC and RESA about inserting language addressing the electronic provision of disclosures. However, we decline to modify the three-day mailing timeframe as requested by OCA/AARP. While we understand their concern with possible U.S. Postal Service changes to mail delivery, these possible changes are only speculative at this point. If the U.S. Postal Service makes changes in the future that could impact this timeframe, we can revisit the matter.

§ 111.12. *Consumer protection.*

CAC urges the Commission to adopt the language of § 111.12 and to have the Commission maintain a "Do Not Call" list with respect to door-to-door solicitations. OCA/AARP urges the Commission to adopt the language of § 111.12. OCA/AARP also asks that the provisions of the marketing guidelines at Guideline M(2)¹¹ be included in the regulations, possibly as part of § 111.12. IRRC makes this same point.

¹¹ Guideline M(2) states: 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 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." See Interim Guidelines, Annex A at 12.

RESA seeks clarification of the two separate issues of "rescission" and the federal "cooling off period." RESA suggests that the language of subsection (c) include the qualifying language that the three-day right of rescission and the federal cooling off period may run concurrently.

Resolution

We agree with OCA/AARP and IRRC and will include in this section the provisions section M(2) of the current Interim Guidelines. Per RESA's request, we will include language clarifying that the three-day rescission period (See 52 Pa. Code §§ 54.5 and 62.75) and the federal "cooling off" period can run concurrently. We decline to adopt CAC's suggestion that the PUC maintain a list of customers who do not want door-to-door solicitations, similar do the telemarketing "Do Not Call" lists. These regulations provide for sufficient protections for consumers who object to door-to-door solicitations. This includes the provisions in Section 111.9 that require an agent to immediately leave the residence when requested and for suppliers to respect all requests not to be visited and documenting their marketing databases noting such requests. We again point out that many municipalities have ordinances restricting or even prohibiting door-to-door activity, and that these local ordinances must be followed.

§ 111.13. *Customer complaints.*

PEMC requests that the last sentence of § 111.13(b) include language that would allow the retrieval of the record be satisfied by "customer name, account number or any other effective means in order to obtain access to the information." (PEMC, p. 10.) RESA recommends that subsection (d) include a sentence that would encourage a customer to contact the company to resolve a dispute prior to seeking assistance from the Commission. OCA/AARP urges the adoption of § 111.13 without modification.

Resolution:

We agree with PEMC and will add "or any other effective means in order to obtain access to the information" because how the information is retrieved is not important; just that it is retrievable. Concerning RESA's suggestion that we encourage customers to first contact the company to resolve disputes before seeking assistance from the Commission, we note that the general practice of the Commission's call center is to first refer the customer back to the company if they have not previously contacted the company about the disputed matter. However, we are reluctant to codify this practice because there are exceptions where this is not appropriate. For example, in cases of slamming, we do not think it is appropriate to force the customer to go back to the entity that allegedly slammed them,—in part because the customer may not even have contact information for said entity. Likewise, if the complaint includes allegations of egregious door-to-door marketing activities,—that is something Commission staff will want to hear about, and the customer should not simply be referred back to the company that is the subject of the allegations.

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

OCA/AARP support the adoption of § 111.14(a) and (b) without modification.

Many parties representing suppliers and energy marketing associations disagree with the mandatory language contained in § 111.14(b) and (c). NEM notes that the

proposed regulation differs from the guidelines in that it requires the supplier to provide the utility with information while the guidelines did not require this. NEM urges the Commission to reserve the decision to share this information with the utility to the supplier's business discretion. While DES supports "encouraging" suppliers to provide information to EDCs, it believes that they should not be required to do so. DES believes that any such notification should occur no later than the morning of the commencement of the marketing activities.

PEMC feels that the language of § 111.14(b) should be changed from "shall" to "shall be encouraged" to provide the information necessary to help utility customer service representatives understand who the supplier is and what the supplier does. (PEMC, p. 11.) RESA would change the word "shall" to "should" and have the local distribution company direct the customer to the appropriate supplier for information.

Concerning § 111.14(c), some parties suggested that the proposed subsection may conflict with the Commission's desire to encourage customer shopping. FES believes that "an EDC should not use customer contacts regarding supplier options to market its own price and terms unless that information is specifically requested by the customer during the call . . . any specific questions about supplier-related questions should be referred to the supplier [and] any questions about supplier choice should be referred to the Commission's website at PAPowerSwitch.com." (FES at 5)

OCA/AARP believes that proposed § 111.14(c) may conflict with an established Commission order set forth in the Retail Markets Investigation.¹² OCA/AARP notes that the programs being considered in the current Retail Markets Investigation require an EDC's customer service representative (CSR) to explain the program to the customer and this would include EGS pricing under the program. OCA/AARP would include language in the subsection that would permit a distribution company to provide information regarding a supplier's prices and terms when it was part of one of these programs.

FirstEnergy is also concerned with a possible conflict between § 111.14 and the referral programs that may result from the Commission's orders in its Retail Markets Investigation. As such, FirstEnergy requests that the Commission include an exception in § 111.14 for calls related to an EDC's customer referral program.

IRRC notes that Subsection (a) requires a supplier conducting marketing or sales activities "that the supplier anticipates may generate phone calls and inquiries to the Commission" to notify the PUC's Bureau of Consumer Services. IRRC finds this requirement to be unclear and subjective and questions how it could be enforced. IRRC asks the Commission to review this provision and clarify its intent.

Resolution

Supplier notification to utilities and to the PUC of their marketing efforts was a controversial and much-debated subject during the development of the Interim Guidelines, and that controversy continues into this rulemaking. Upon careful consideration of the comments, we are persuaded that the sweeping nature of the proposed rule is not appropriate or needed at this time. We also agree

¹² See Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan, Docket Number I-2011-2237952, Order entered March 2, 2012.

with IRRC that the proposal was somewhat subjective and would be difficult to enforce. We think a more careful, narrowly-targeted rule would be more objective, easier to enforce, and more effective in addressing our primary concerns. Our primary concern in promulgating these regulations is allowing the use of door-to-door marketing to sell energy services and making sure that public safety and privacy is protected and that consumers are receiving the information they need to make informed energy choices. Since our primary concern is door-to-door marketing, we will revise this section to require the notification of marketing activities to only door-to-door marketing activities.

Requiring suppliers to report this information to the Commission will assist the Commission in monitoring the amount of door-to-door activity and track any resulting complaints or concerns. This will also assist the Commission with enforcing the instant regulations. Commission staff will be able to compare the complaints concerning door-to-door marketing efforts with the notices received by the Commission to make sure that the Commission is indeed being notified appropriately. Commission staff will also be able to use this information to respond to questions from local and state officials about activities going on in their communities. Notifying the local utility of their door-to-door activities is appropriate because it is likely that consumers, possibly out of confusion, may contact the utility about agents selling energy services. This narrower requirement is also more practical. With approximately thirty suppliers serving residential consumers in the PECO and PPL service territories alone, requiring notification of all marketing activities (phone, direct mail, internet, etc.) could overburden both the Commission and the utilities with notices. This risks creating an unmanageable burden, with important matters, such as door-to-door activities that should receive greater attention, being buried among a stack of less-urgent notices.

We agree with OCA/AARP and FirstEnergy, and have included an exception to paragraph (c) to make allowances for referral programs or any Commission-sanctioned program that requires utilities to discuss supplier rates and terms. Such programs may become part of the competitive landscape in the coming years and we want to ensure these regulations are flexible enough to accommodate them.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 11, 2011, the Commission submitted a copy of the notice of proposed rulemaking, published at 41 Pa.B. 5624 (October 22, 2011), to IRRC and the Chairpersons of the House Consumer Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on May 15, 2013, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 16, 2013, and approved the final-form rulemaking.

Conclusion

Accordingly, pursuant to sections 501, 504, 1501, 1504, 2206(b), 2208(b) and (e), 2807(d)(1) and 2809(b) and (e) of 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); sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201 and 1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 732.204(b); section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5; and section 612 of the Administrative Code of 1929, 71 P.S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234, the Commission proposes adoption of the final-form regulations establishing best practices for marketing and sales activities for electric and natural gas suppliers serving residential customers, as noted and set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The regulations of the Commission, 52 Pa. Code, are amended by adding §§ 111.1—111.14 to read as set forth in Annex A.
2. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
3. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
4. The Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by IRRC.
5. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
6. The regulations in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.
7. The contact person for technical issues related to this rulemaking is Dan Mumford, Manager—Informal Compliance and Competition, Bureau of Consumer Services/Office of Competitive Market Oversight, (717) 783-1957. That the contact person for legal issues related to this rulemaking is Lawrence F. Barth, Assistant Counsel, Law Bureau, (717) 772-8579. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

ROSEMARY CHIAVETTA,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 3067 (June 1, 2013).)

Fiscal Note: Fiscal Note 57-283 remains valid for the final adoption of the subject regulations.

Attachment

MEMORANDUM OF UNDERSTANDING

This *Memorandum of Understanding* is made this 5th day of February 1998, by and between the Pennsylvania Office of Attorney General (herein "OAG") and the Pennsylvania Public Utility Commission (herein "PUC").

Whereas, on December 3, 1996, Governor Tom Ridge signed into law the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801—12

(herein "Electricity Competition Act"). The purpose of the Electricity Competition Act is to open up competition in the electric utility industry by giving all retail customers the ability to buy electric generation from their choice of electric generation suppliers.

Whereas, section 2809 of the new law gives the PUC the authority to license electric generation suppliers and section 2811 empowers the PUC to monitor the supply and distribution of electricity to retail customers to prevent anticompetitive or discriminatory conduct, and to prevent the unlawful exercise of market power.

Whereas, section 2811 also gives the PUC authority to conduct investigations, upon complaint or its own motion, and to refer its findings to the OAG or appropriate federal agencies whenever it has reason to believe that "anticompetitive or disciplinary conduct, including the unlawful exercise of market power is preventing the retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market."

Whereas, the potential now exists for electric generation suppliers to engage in unfair or deceptive marketing practices and other anticompetitive or discriminatory conduct, the PUC adopted internal procedures for handling electric competition complaints under section 2811, including appropriate referral procedures, which became effective August 8, 1997.

Whereas, both the PUC and the OAG recognize that other disputes related to terms, conditions and adequacy of service of a contractual nature often involve dual jurisdiction between the PUC under its service standards provision contained in 66 Pa.C.S. § 1501, and the OAG under Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P. S. §§ 201-1—209-6, the Plain Language Consumer Contract Act, 72 P. S. §§ 2201—12 and the Federal Trade Commission Act, 15 U.S.C. §§ 41—58.

Whereas, the OAG has enforcement authority under Pennsylvania's Unfair Trade Practices and Consumer Protection Law and the federal antitrust laws, 15 U.S.C. §§ 1, et seq., to challenge unfair or deceptive marketing practices, terms-of-service provisions, and other anticompetitive or discriminatory conduct engaged in by electric generation suppliers.

Whereas, for both terms, conditions and adequacy of service complaints and section 2811 complaints, the PUC has authority under the Public Utility Code, 66 Pa.C.S. §§ 101, et seq., to initiate proceedings to develop guidelines, policy statements or regulations to address an industry-wide issue or to file a section 701 complaint seeking a cease and desist order (or any other relief authorized by law) where more immediate and company-specific action is warranted.

Whereas, it would be mutually advantageous for the PUC and the OAG to develop interagency protocol procedures to maximize the ability of the OAG to obtain effective and adequate relief on behalf of consumers who have been injured by violations of the state consumer protection or federal antitrust laws and the PUC to develop, in appropriate cases, guidelines, policy statements or regulations to address industry-wide problems or obtain cease and desist orders for specific violations of the Public Utility Code.

Now, Therefore, the PUC and the OAG agree that the following protocol shall apply whenever the PUC or the OAG receive a complaint alleging unfair or deceptive

marketing practices, terms-of-service disputes, or other anticompetitive or discriminatory conduct engaged in by electric generation suppliers.

1. The agency that receives the original complaint will endeavor to complete its initial review in a prompt and timely manner.

2. At the completion of its initial review, the reviewing agency shall refer the complaint and its findings to the other agency for review and possible action if the original reviewing agency believes that the matter complained of is within the authority and jurisdiction of the other agency.

3. The PUC and the OAG agree to provide each other with periodic status reports, as appropriate, of any investigation begun because of a referral pursuant to this protocol procedure, including a final report when the investigation is completed or closed.

4. The PUC and OAG agree to meet informally on a quarterly basis to discuss matters of common interest and to share statistical information or data and/or activity reports generated by either agency summarizing terms-of-service and/or electric competition complaints handled by that agency during the applicable reporting period.

5. In referring complaints or providing status reports to the other agency, the investigating agency should not disclose any information that is protected by a confidentiality agreement, order, or law unless a waiver has been obtained from the party protected by the agreement, order, or law.

6. Nothing in this protocol shall require or prohibit either the PUC or the OAG from initiating any informal or formal action at the conclusion or its own investigation that it would be authorized to bring under any existing law.

7. Nothing in this protocol shall require, prohibit, or otherwise restrict the PUC's Bureau of Consumer Services from continuing to handle individual complaints concerning account eligibility criteria, credit and deposit practices, account billing, and termination disputes consistent with the existing policies and procedures set out in Chapter 56 of the Pa. Code, Title 52.

8. Nothing in this protocol shall require, prohibit, or otherwise restrict the OAG from continuing to handle individual complaints concerning unfair trade practices, consumer protection law violations, or antitrust law violations.

This agreement may be modified or terminated only upon written agreement of the PUC and the OAG.

Pennsylvania Public Utility Commission

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
John Hanger, Commissioner
David W. Rolka, Commissioner
Nora Mead Brownell, Commissioner

Pennsylvania Office of Attorney General

D. Michael Fisher, Attorney General

The undersigned have reviewed and approved the foregoing Memorandum of Understanding:

Counsel, Public Utility Commission

Comptroller, Public Utility Commission

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart F. COMPETITIVE MARKETS

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

Sec.	
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111.4.	Agent qualifications and standards; criminal background investigations.
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111.6.	Discipline.
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111.9.	Door-to-door sales.
111.10.	Telemarketing.
111.11.	Receipt of disclosure statement and right to rescind transaction.
111.12.	Consumer protection.
111.13.	Customer complaints.
111.14.	Notification regarding marketing or sales activity.

§ 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 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.

(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 equivalent 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 knowledgeably 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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Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 581, 583 AND 585]

Double Attack Blackjack; Flop Poker; Props & Hops; Temporary Regulations

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 13A03(b) (relating to temporary table game regulations), enacted by the act of January 7, 2010 (P. L. 1, No. 1) (Act 1), and the specific authority in 4 Pa.C.S. § 13A02(1) and (2) (relating to regulatory authority), adds Chapters 581, 583 and 585 (relating to Double Attack Blackjack; Flop Poker; and Props & Hops) to read as set forth in Annex A.

Explanation of Chapter 581

Section 581.1 (relating to definitions) contains the definitions for terms used in Double Attack Blackjack. Section 581.2 (relating to Double Attack Blackjack table; card reader device; physical characteristics; inspections) contains the requirements pertaining to the table and other equipment used in the play of the game.

Section 581.3 (relating to cards; number of decks; value of cards) addresses the number of decks that are used in Double Attack Blackjack and the frequency with which the decks are to be changed. Sections 581.4 and 581.5 (relating to opening of the table for gaming; and shuffle and cut of the cards) set forth the procedures for the inspection, shuffling and cutting of the cards before they are dealt.

Sections 581.6 and 581.7 (relating to wagers; and procedure for dealing the cards; completion of each round of play) specify which wagers are authorized for use at

the game and when those wagers are to be placed, and address how the dealer is to evaluate whether a patron's hand is a winning hand. Section 581.7 also addresses the procedures for collecting cards, collecting losing wagers and paying out winning wagers.

Sections 581.8—581.11 specify the procedures for the offering and placement of additional wagers and the procedure for handling the splitting or surrender of a player's hand.

Section 581.12 (relating to payout odds) addresses the payout odds for permissible wagers. Section 581.13 (relating to irregularities) specifies how irregularities in the play of the game are to be handled.

Explanation of Chapter 583

Section 583.1 (relating to definitions) contains the definitions for terms used in Flop Poker. Section 583.2 (relating to Flop Poker table physical characteristics) contains the requirements pertaining to the tables and other equipment used in the play of the game.

Section 583.3 (relating to cards; number of decks) addresses the number of decks that are used in Flop Poker and the frequency with which the decks are to be changed. Sections 583.4 and 583.5 (relating to opening of the table for gaming; and shuffle and cut of the cards) set forth the procedures for the inspection, shuffling and cutting of the cards before they are dealt.

Sections 583.6 and 583.7 (relating to Flop Poker rankings; and wagers) set forth the rank of the cards for the purpose of determining a winning hand and specify which wagers are authorized for use at the game and when those wagers are to be placed.

Sections 583.8—583.10 (relating to procedure for dealing the cards from a manual dealing shoe; procedure for dealing the cards from the hand; and procedures for dealing the cards from an automated dealing shoe) specify the procedures for the dealing of the cards to each patron. Section 583.11 (relating to procedures for completion of each round of play) addresses how the dealer is to evaluate whether a patron's hand is a winning hand. This section also addresses the procedures for collecting cards, collecting losing wagers and paying out winning wagers.

Section 583.12 (relating to payout odds; Envy Bonus; rate of progression; payout limitation) addresses the payout odds for permissible wagers. Section 583.13 (relating to irregularities) specifies how irregularities in the play of the game are to be handled. Section 583.14 (relating to surveillance coverage; minimum staffing; training) addresses surveillance coverage, staffing requirements and the training required to offer the game.

Explanation of Chapter 585

Section 585.1 (relating to Props & Hops table; physical characteristics) contains the requirements pertaining to the tables and other equipment used in the play of the game.

Section 585.2 (relating to wagers) specifies which wagers are authorized for use at the game and when those wagers are to be placed.

Section 585.3 (relating to dice; shaker; procedure for completion of each round of play) addresses the procedures for shaking and revealing the dice, how the dealer is to evaluate whether a patron's wager is a winning wager and the procedure for collecting losing wagers and paying out winning wagers.

Section 585.4 (relating to payout odds) addresses the payout odds for permissible wagers. Section 585.5 (relat-

ing to surveillance coverage; minimum staffing; training) addresses surveillance coverage, staffing requirements and the training required to offer the game.

Affected Parties

This temporary rulemaking will allow certificate holders additional options on how to conduct table games at their licensed facilities.

Fiscal Impact

Commonwealth. The Board does not expect that this temporary rulemaking will have fiscal impact on the Board or other Commonwealth agencies. Internal control procedures submitted by certificate holders related to table games Rules Submissions will be reviewed by existing Board staff.

Political subdivisions. This temporary rulemaking will not have direct fiscal impact on political subdivisions of this Commonwealth. Most municipalities and counties will benefit from the local share funding that is mandated by Act 1.

Private sector. This temporary rulemaking will give certificate holders some additional flexibility as to how they conduct table games. It is anticipated that this temporary rulemaking will have an impact only on certificate holders, which are not small businesses.

General public. This temporary rulemaking will not have direct fiscal impact on the general public.

Paperwork Requirements

If a certificate holder elects to offer new games for play at the licensed facility, the certificate holder will be required to submit an updated Rules Submission reflecting the changes.

Effective Date

The temporary regulations are effective June 29, 2013.

Public Comments

While this temporary rulemaking will be effective upon publication, the Board is seeking comments from the public and affected parties as to how these temporary regulations might be improved. Interested persons are invited to submit written comments, suggestions or objections regarding this temporary rulemaking within 30 days after the date of publication in the *Pennsylvania Bulletin* to Susan A. Yocum, Assistant Chief Counsel, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-172.

Contact Person

The contact person for questions about this temporary rulemaking is Susan A. Yocum, Assistant Chief Counsel, (717) 346-8300.

Regulatory Review

Under 4 Pa.C.S. § 13A03(b), the Board's authority to adopt temporary regulations governing the rules of new table games does not expire. Additionally, temporary regulations adopted by the Board are not subject to sections 201—205 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201—1208), known as the Commonwealth Documents Law (CDL), the Regulatory Review Act (71 P. S. §§ 745.1—745.12) and sections 204(b) and 301(10) of the Commonwealth Attorneys Act (71 P. S. §§ 732-204(b) and 732-301(10)). These temporary regulations expire 2 years after publication in the *Pennsylvania Bulletin*.

Findings

The Board finds that:

(1) Under 4 Pa.C.S. § 13A03(b), the temporary regulations are exempt from the Regulatory Review Act, sections 201—205 of the CDL and sections 204(b) and 301(10) of the Commonwealth Attorneys Act.

(2) The adoption of the temporary regulations is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II (relating to gaming).

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(1) The regulations of the Board, 58 Pa. Code, are amended by adding §§ 581.1—581.14, 583.1—583.14 and 585.1—585.5 to read as set forth in Annex A.

(2) The temporary regulations are effective June 29, 2013.

(3) The temporary regulations will be posted on the Board's web site and published in the *Pennsylvania Bulletin*.

(4) The temporary regulations are subject to amendment as deemed necessary by the Board.

(5) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

WILLIAM H. RYAN, Jr.,
Chairperson

Fiscal Note: 125-172. No fiscal impact; (8) recommends adoption.

Annex A

Title 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart K. TABLE GAMES

CHAPTER 581. DOUBLE ATTACK BLACKJACK

Sec.	Definitions.
581.1.	Definitions.
581.2.	Double Attack Blackjack table; card reader device; physical characteristics; inspections.
581.3.	Cards; number of decks; value of cards.
581.4.	Opening of the table for gaming.
581.5.	Shuffle and cut of the cards.
581.6.	Wagers.
581.7.	Procedure for dealing the cards; completion of each round of play.
581.8.	Insurance Wager.
581.9.	Surrender.
581.10.	Double Down Wager.
581.11.	Splitting pairs.
581.12.	Payout odds.
581.13.	Irregularities.
581.14.	Surveillance coverage; minimum staffing; training.

§ 581.1. Definitions.

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

Blackjack—An ace and any card having a value of 10 dealt as the initial two cards to a player or the dealer.

Card reader device—A device which permits the dealer to determine if the hole card will give the dealer a Blackjack.

Hard total—The total point count of a hand which does not contain aces or which contains aces that are each counted as 1 in value.

Hole card—The second card dealt face down to the dealer.

Soft total—The total point count of a hand containing an ace when the ace is counted as 11 in value.

§ 581.2. Double Attack Blackjack table; card reader device; physical characteristics; inspections.

(a) Double Attack Blackjack shall be played at a table having betting positions for no more than six players on one side of the table and a place for the dealer on the opposite side of the table.

(b) The layout for a Double Attack Blackjack table shall be submitted to the Bureau of Gaming Operations and approved in accordance with § 601a.10(a) (relating to approval of table game layouts, signage and equipment) and contain, at a minimum:

(1) The name or logo of the certificate holder.

(2) A separate betting area designated for the placement of the Bet Wager and the Double Attack Wager for each player.

(3) The following inscriptions:

(i) Blackjack pays even money.

(ii) Insurance pays 5 to 2.

(iii) Dealer shall draw to 16 and stand on all 17s or other similar language approved by the Executive Director in accordance with § 601a.10(a).

(4) If the certificate holder offers the optional Bust It Wager authorized under § 581.6(e) (relating to wagers), a separate area designated for the placement of the Bust It Wager for each player.

(5) Inscriptions that advise patrons of the payout odds or amounts for all permissible wagers offered by the certificate holder. If the payout odds or amounts are not inscribed on the layout, a sign identifying the payout odds or amounts for all permissible wagers shall be posted at each Blackjack table.

(c) Each Double Attack Blackjack table must have a drop box and a tip box attached on the same side of the table as, but on opposite sides of, the dealer, as approved by the Bureau of Casino Compliance in accordance with § 601a.10(g). The Bureau of Casino Compliance may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

(d) Each Double Attack Blackjack table must have a card reader device attached to the top of the dealer's side of the table. The floorperson assigned to the Double Attack Blackjack table shall inspect the card reader device at the beginning of each gaming day to ensure that there has been no tampering with the device and that it is in proper working order.

(e) Each Double Attack Blackjack table must have a discard rack securely attached to the top of the dealer's side of the table. The height of each discard rack must either:

(1) Equal the height of the cards, stacked one on top of the other, in the total number of decks that are to be used in the dealing shoe at that table.

(2) Be taller than the height of the total number of decks being used if the discard rack has a distinct and clearly visible mark on its side to show the exact height for a stack of cards equal to the total number of cards in the number of decks to be used in the dealing shoe at that table.

§ 581.3. Cards; number of decks; value of cards.

(a) Except as provided in subsection (b), Double Attack Blackjack shall be played with an eight-deck batch of cards that are identical in appearance and at least one cover card. The decks shall consist of 48 cards, with the 10 of each suit removed from each deck during the inspection required under § 581.4 (relating to opening of the table for gaming) or as provided in § 603a.16(u) or (v) (relating to cards; receipt, storage, inspection and removal from use).

(b) If an automated card shuffling device is utilized, other than a continuous shuffler, Double Attack Blackjack shall be played with at least two batches of cards in accordance with the following requirements:

(1) The cards shall be separated into two batches with eight decks included in each batch.

(2) The cards in each batch must be of the same design but the backs of the cards in one batch must be of a different color than the cards in the other batch.

(3) One batch of cards shall be shuffled and stored in the automated card shuffling device while the other batch is being used to play the game.

(4) Both batches of cards shall be continuously alternated in and out of play, with each batch being used for every other dealing shoe.

(5) The cards from only one batch shall be placed in the discard rack at any given time.

(c) The decks of cards opened for use at a Double Attack Blackjack table shall be changed at least once every 24 hours.

(d) The value of the cards shall be as follows:

(1) Any card from 2 to 9 shall have its face value.

(2) Any jack, queen or king shall have a value of 10.

(3) An ace shall have a value of 11 unless that value would give a player or the dealer a score in excess of 21, in which case the ace shall have a value of 1.

§ 581.4. Opening of the table for gaming.

(a) After receiving the decks of cards at the table, the dealer shall inspect the cards for defects. The floorperson assigned to the table shall verify the inspection.

(b) If the decks contain the 10 of any suit, the dealer and a floorperson shall ensure that these cards are removed from the decks, torn in half and placed in the box, envelope or container that the decks came from.

(c) After the cards are inspected, the cards shall be spread out face up on the table for visual inspection by the first player to arrive at the table. The cards shall be spread in horizontal fan shaped columns by deck according to suit and in sequence.

(d) After the first player arriving at the table has been afforded an opportunity to visually inspect the cards, the cards shall be turned face down on the table, mixed thoroughly by a washing of the cards and stacked. Once the cards have been stacked, the cards shall be shuffled in accordance with § 581.5 (relating to shuffle and cut of the cards).

(e) If an automated shuffling device is utilized, other than a continuous shuffler, the decks in one batch of cards shall be spread for inspection, mixed, stacked and shuffled in accordance with subsections (a)—(c) separate from the decks in the other batch of cards.

(f) If the decks of cards received at the table are preinspected and reshuffled in accordance with § 603a.16(u) or (v) (relating to cards; receipt, storage, inspection and removal from use), subsections (a) and (c)—(e) do not apply.

§ 581.5. Shuffle and cut of the cards.

(a) Immediately prior to commencement of play, unless the cards were reshuffled in accordance with § 603a.16(u) or (v) (relating to cards; receipt, storage, inspection and removal from use), after each shoe of cards is dealt or when directed by a floorperson or above, the dealer shall shuffle the cards, either manually or by use of an automated card shuffling device, so that the cards are randomly intermixed. Upon completion of the shuffle, the dealer or device shall place the decks of cards in a single stack. The certificate holder may use an automated card shuffling device which, upon completion of the shuffling of the cards, inserts the stack of cards directly into a dealing shoe.

(b) After the cards have been shuffled and stacked, the dealer shall offer the stack of cards to be cut, with the backs facing away from the dealer, to the player determined under subsection (c). If no player accepts the cut, the dealer shall cut the cards.

(c) The cut of the cards shall be offered to players in the following order:

(1) The first player arriving at the table, if the game is just beginning.

(2) The player on whose betting area the cover card appeared during the last round of play.

(3) If the cover card appeared on the dealer's hand during the last round of play, the player at the farthest position to the right of the dealer. If this player refuses, the offer to cut the cards shall rotate to each player in a counterclockwise manner.

(4) If the reshuffle was initiated at the direction of the floorperson or above, the player at the farthest position to the right of the dealer. If this player refuses, the offer to cut the cards shall rotate to each player in a counterclockwise manner.

(d) The player or dealer making the cut shall place the cover card in the stack at least ten cards from the top or bottom of the stack. Once the cover card has been inserted, the dealer shall take all cards on top of the cover card and place them on the bottom of the stack. The dealer shall then insert the cover card in the stack at a position at least 1/4 of the way in from the bottom of the stack. The stack of cards shall then be inserted into the dealing shoe for commencement of play.

(e) After the cards have been cut and before the cards have been placed in the dealing shoe, a floorperson or above may require the cards to be recut if the floorperson determines that the cut was performed improperly or in any way that might affect the integrity or fairness of the game. If a recut is required, the cards shall be recut either by the player who last cut the cards or by the next person entitled to cut the cards, as determined under subsection (c). The stack of cards shall then be inserted into the dealing shoe for commencement of play.

(f) A reshuffle of the cards in the shoe shall take place after the cover card is reached in the shoe, as provided in § 581.7(d) (relating to procedure for dealing the cards; completion of each round of play), except that a floorperson may determine that the cards should be reshuffled after any round of play.

(g) If there is no gaming activity at a Double Attack Blackjack table which is open for gaming, the cards shall be removed from the dealing shoe and the discard rack and spread out on the table face down unless a player requests that the cards be spread face up on the table. After the first player arriving at the table is afforded an opportunity to visually inspect the cards, the procedures in § 581.4(d) (relating to opening of the table for gaming) and this section shall be completed.

(h) A certificate holder may utilize a dealing shoe or other device that automatically reshuffles and counts the cards provided that the device is submitted to the Bureau of Gaming Laboratory Operations and approved in accordance with § 461a.4 (relating to submission for testing and approval) prior to its use in the licensed facility. If a certificate holder is utilizing the approved device, subsections (b)—(g) do not apply.

§ 581.6. Wagers.

(a) Wagers at Double Attack Blackjack shall be made by placing value chips, plaques or other Board-approved table game wagering instruments on the appropriate areas of the Double Attack Blackjack layout. Verbal wagers accompanied by cash may be accepted provided that they are confirmed by the dealer and the cash is expeditiously converted into value chips or plaques.

(b) After the cards have been shuffled as required under § 581.5 (relating to shuffle and cut of the cards), a certificate holder may prohibit any patron, whether seated at the gaming table or not, who does not make a wager on a given round of play from placing a wager on the next round of play and any subsequent round of play at that gaming table until either:

(1) The certificate holder chooses to permit the player to begin wagering again.

(2) A reshuffle of the cards has occurred.

(c) A player may not handle, remove or alter any wagers that have been made until a decision has been rendered and implemented with respect to that wager.

(d) To participate in a round of play, a player shall place a Bet Wager.

(e) A player who has placed a Bet Wager may then place a Double Attack Wager as provided in § 581.7(e) (relating to procedure for dealing the cards; completion of each round of play) in an amount equal to or less than the player's Bet Wager.

(f) If specified in its Rules Submission under § 601a.2 (relating to table games Rules Submissions), a certificate holder may offer to each player who placed a Bet Wager in accordance with subsection (d) the option of placing an additional Bust It Wager in an amount equal to or less than the player's Bet Wager.

(g) The certificate holder shall specify in its Rules Submission under § 601a.2 the number of adjacent boxes on which a player may place a Bet Wager in one round of play.

§ 581.7. Procedure for dealing the cards; completion of each round of play.

(a) All cards shall be dealt from a dealing shoe which must be located on the table in a location approved by the Bureau of Casino Compliance in accordance with § 601a.10(g) (relating to approval of table game layouts, signage and equipment). Once the procedures under § 581.5 (relating to shuffle and cut of the cards) have been completed, the dealer or automated card shuffling device shall place the stacked cards in the dealing shoe.

(b) Each card shall be removed from the dealing shoe with the hand of the dealer that is closest to the dealing shoe and placed on the appropriate area of the layout with the opposite hand. The dealer may deal cards to the two betting positions closest to the dealing shoe with the same hand.

(c) After each full batch of cards is placed in the shoe, the dealer shall remove the first card and place it in the discard rack. Each new dealer who comes to the table shall also remove one card and place it in the discard rack before dealing any cards to the players.

(d) If the cover card appears as the first card in the dealing shoe at the beginning of a round of play or appears during play, the cover card shall be removed and placed to the side and the hand will be completed. The dealer shall then collect and reshuffle the cards in accordance with § 581.5.

(e) At the commencement of each round of play and after all players have been afforded the opportunity to make a Bet Wager and a Bust It Wager, one card shall be dealt face up to the dealer. After examining the dealer's up card, a player who placed a Bet Wager may place an optional Double Attack Wager in accordance with § 581.6(e) (relating to wagers).

(f) After all players have been afforded an opportunity to place a Double Attack Wager, starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, the dealer shall deal the cards as follows:

(1) One card face up to each box on the layout in which a Bet Wager is contained.

(2) A second card face up to each box on the layout in which a Bet Wager is contained.

(3) A second card face down to the dealer.

(g) Immediately after the second card is dealt to each player and the dealer, if the dealer's first card is an ace, the dealer shall offer the Insurance Wager in accordance with § 581.8 (relating to Insurance Wager). If the dealer's first card is an ace, king, queen or jack, the dealer shall then determine whether the hole card will give the dealer a Blackjack. The dealer shall insert the hole card into the card reader device by moving the card face down on the layout without exposing it to anyone at the table, including the dealer. If the dealer has a Blackjack, additional cards may not be dealt and each player's Bet, Double Attack, Bust It and Insurance Wagers, if applicable, shall be settled in accordance with this section and § 581.8.

(h) After the procedures in subsection (g) have been completed, if necessary, the dealer shall start with the player farthest to the dealer's left and continue around the table in a clockwise direction and if the player:

(1) Has Blackjack, the dealer shall announce and pay the Bet and Double Attack Wagers in accordance with subsection (o) and remove the player's cards. If a player also placed a Bust It Wager, the wager shall remain on the layout until subsection (m) is completed.

(2) Does not have Blackjack, the player shall indicate whether he wishes to surrender, as permitted under § 581.9 (relating to surrender), double down as permitted under § 581.10 (relating to Double Down Wager), split pairs as permitted under § 581.11 (relating to splitting pairs), stand or draw additional cards.

(i) As each player indicates his decision, the dealer shall deal face upwards whatever additional cards are necessary to effectuate the player's decision.

(j) A player may elect to draw additional cards whenever his point count total is less than 21, except that:

(1) A player having Blackjack or a hard or soft total of 21 may not draw additional cards.

(2) A player electing to make a Double Down Wager may draw only one additional card.

(k) Prior to the dealer exposing his hole card, if player has less than 21 after drawing additional cards, the player may surrender in accordance with § 581.9.

(l) After the decisions of each player have been implemented and all additional cards have been dealt, the dealer shall turn the hole card face up.

(m) If the first two cards of the dealer's hand:

(1) Equal a total point count of 17 or higher, the dealer shall collect all losing Bust It Wagers before settling the player's Bet or Double Attack Wagers in accordance with subsection (o).

(2) Equal a total point count of less than 17, the dealer shall draw an additional card. If the dealer's three card hand has a total point count:

(i) In excess of 21, the dealer shall pay the winning Bust It Wager in accordance with § 581.12(c) (relating to payout odds). The payout shall be based on the value of the third card drawn, except that if all three of the dealer's cards are an 8 of the same color or suit, a player shall receive an increased payout based on the three 8s instead of the payout based on the value of the third card drawn.

(ii) Of 21 or less, the dealer shall collect all losing Bust It Wagers.

(n) After settling the player's Bust It Wager, if applicable, if the dealer's first three cards equal a total point count of less than 17, the dealer shall draw additional cards until he has a hard or soft total of 17, 18, 19, 20 or 21.

(o) After all additional cards have been dealt to the players and the dealer, the dealer shall, starting with the player farthest to the dealer's right and continuing around the table in a counterclockwise direction, settle the remaining wagers by collecting all losing wagers and paying all winning wagers as follows:

(1) A Bet Wager shall:

(i) Win and be paid in accordance with § 581.12(a) if:

(A) The total point count of the player's hand is 21 or less and the total point count of the dealer's hand is in excess of 21.

(B) The total point count of the player's hand exceeds the total point count of the dealer's hand without exceeding 21.

(C) The player has a Blackjack and the dealer's hand has a total point count of 21 in more than two cards.

(ii) Lose and be collected if:

(A) The dealer has a Blackjack and the player does not have a Blackjack.

(B) The total point count of the dealer's hand is 21 or less and the total point count of the player's hand is in excess of 21.

(C) The total point count of the dealer's hand exceeds the total point count of the player's hand without exceeding 21.

(iii) Tie and be returned to the player if the total point count of the player's hand is the same as the dealer's or if both the player and dealer have Blackjack.

(2) A Double Attack Wager shall win, lose or tie in accordance with subsection (o)(1) except that the Double Attack Wager shall be returned to the player if the dealer has a Blackjack and the player does not have a Blackjack.

(p) The dealer shall pay all winning wagers and collect all losing wagers beginning with the player farthest to the dealer's right and continuing around the table in a counterclockwise direction. The dealer shall place any losing wagers directly into the table inventory and may not pay off any winning wagers by using value chips collected from a losing wager.

(q) After all wagers have been settled, the dealer shall remove all remaining cards from the table and place them in the discard rack in a manner that permits the reconstruction of each hand in the event of a question or dispute.

(r) Players and spectators may not handle, remove or alter the cards used to play Double Attack Blackjack.

§ 581.8. Insurance Wager.

(a) If the first card dealt to the dealer is an ace, each player may make an Insurance Wager which shall win if the dealer's hole card is a king, queen or jack.

(b) An Insurance Wager may be made by placing a value chip on the insurance line of the layout in an amount not more than 1/2 of the player's Bet Wager. A player may wager an amount in excess of 1/2 of the initial Bet Wager to the next unit that can be wagered in chips, when, because of the limitation of the value of chip denominations, half the initial wager cannot be bet. Insurance Wagers shall be placed prior to the dealer inserting his hole card into the card reader device.

(c) Winning Insurance Wagers shall be paid in accordance with the payout odds in § 581.12(b) (relating to payout odds).

(d) Losing Insurance Wagers shall be collected by the dealer immediately after the dealer inserts his hole card into the card reader device and determines that he does not have a Blackjack and before he draws any additional cards.

§ 581.9. Surrender.

(a) After the first two cards are dealt to the player, the player may elect to discontinue play on his hand for that round by surrendering. A player may also elect to surrender after additional cards are dealt to the player, after a hand is split as permitted under § 581.11 (relating to splitting pairs) and after doubling down as permitted under § 581.10 (relating to Double Down Wager). A player may not elect to surrender after deciding to stand.

(b) If the player elects to surrender and the first card dealt to the dealer:

(1) Is not an ace, king, queen or jack, the dealer shall immediately collect the cards of the player and 1/2 of the Bet Wager and Double Attack Wager, if applicable, and return the other 1/2 to the player.

(2) Is an ace, king, queen or jack, the dealer shall determine whether the hole card will give the dealer a Blackjack. The dealer shall insert the hole card into the card reader device in accordance with § 581.7(g) (relating to procedure for dealing the cards; completion of each round of play). If the dealer:

(i) Has a Blackjack, the dealer shall collect the entire Bet Wager and the Bust It Wager, if applicable, and return the Double Attack Wager, if applicable, to the player.

(ii) Does not have a Blackjack, the dealer shall immediately collect the cards of the player and 1/2 of the Bet Wager and Double Attack Wager, if applicable, and return the other 1/2 to the player.

(c) If the player has made a Bust It Wager and then elects to surrender, the Bust It Wager must remain on the layout until settled in accordance with § 581.7(m).

(d) If the player has made an Insurance Wager and then elects to surrender, each wager will be settled separately in accordance with subsection (b) and § 581.8 (relating to Insurance Wager).

§ 581.10. Double Down Wager.

(a) Except when a player has a Blackjack, a player may elect to make a Double Down Wager, which may not exceed the amount of his original Bet and Double Attack Wagers, on two or more cards dealt to that player, including hands resulting from a split pair, provided that only one additional card shall be dealt to the hand on which the player has elected to double down.

(b) If a dealer obtains Blackjack after a player makes a Double Down Wager, the dealer shall collect only the amount of the original Bet Wager of the player and return the Double Down and Double Attack Wagers.

(c) Upon a player's election to make a Double Down Wager, the dealer shall deal the one additional card face up and place it sideways on the layout.

§ 581.11. Splitting pairs.

(a) If the initial two cards dealt to a player are identical in value, the player may elect to split the hand into two separate hands provided that he makes a wager on the second hand formed in an amount equal to his original Bet and Double Attack Wagers. For example, if a player has two 7s or a king and a queen, the player may elect to split the hand.

(b) When a player splits pairs, the dealer shall deal a card to and complete the player's decisions with respect to the first incomplete hand on the dealer's left before proceeding to deal any cards to the second hand.

(c) After a second card is dealt to each split pair hand, the player shall indicate his decision to stand, draw or double down with respect that hand. A player may split pairs again if the second card dealt to an incomplete hand is identical in value to the split pair. A player may split pairs a maximum of three times for a total of four hands.

(d) If the dealer obtains Blackjack after a player splits pairs, the dealer shall collect only the amount of the original Bet Wager of the player and return the Double Attack Wager and the additional amount wagered in splitting pairs.

(e) If a player elects to split a pair of aces, each ace shall receive only one card. Aces may not be split more than once and may not be resplit.

§ 581.12. Payout odds.

(a) The certificate holder shall pay out each winning Bet Wager and Double Attack Wager at odds of 1 to 1.

(b) The certificate holder shall pay out winning Insurance Wagers at odds of 5 to 2.

(c) The certificate holder shall pay out winning Bust It Wagers at the odds in the following payable:

<i>Hand</i>	<i>Payout</i>
8, 8, 8 of the same suit	200 to 1
8, 8, 8 of the same color	50 to 1
Third card drawn is a:	
6	15 to 1
7	10 to 1
8	8 to 1
9	6 to 1
King, queen or jack	3 to 1

§ 581.13. Irregularities.

(a) A card found face up in the shoe may not be used in that round of play and shall be placed in the discard rack.

(b) A card drawn in error without its face being exposed shall be used as though it were the next card from the shoe.

(c) After the initial two cards have been dealt to each player and the dealer and a card is drawn in error and exposed to the players, the card shall be dealt to the players or dealer as though it were the next card from the shoe. Any player refusing to accept the card may not have additional cards dealt to him during the round. If the card is refused by the players and the dealer cannot use the card, the card shall be placed in the discard rack.

(d) If the dealer has 17 and accidentally draws a card for himself, the card shall be placed in the discard rack.

(e) If there are insufficient cards remaining in the shoe to complete a round of play, all of the cards in the discard rack shall be shuffled and cut according to the procedures in § 581.5 (relating to shuffle and cut of the cards). The first card shall be drawn face down and placed in the discard rack and the dealer shall complete the round of play.

(f) If no cards are dealt to a player's hand, the hand is dead and the player shall be included in the next deal. If only one card is dealt to a player's hand, at the player's option, the dealer shall deal the second card to the player after all other players have received a second card.

(g) If after receiving the first two cards, the dealer fails to deal an additional card to a player who has requested a card, then, at the player's option, the dealer shall either deal the additional card after all other players have received their additional cards but prior to the dealer revealing his hole card or call the player's hand dead and return the player's Bet and Double Attack Blackjack Wagers.

(h) If the dealer inserts his hole card into a card reader device when the value of his first card is not an ace, king, queen or jack, the dealer, after notification to a floorperson or above, shall:

(1) If the particular card reader device in use provides any player with the opportunity to determine the value of the hole card, call all hands dead, collect the cards and return each player's wager.

(2) If the particular card reader device in use does not provide any player with the opportunity to determine the value of the hole card, continue play.

(i) If a card reader device malfunctions, the dealer may not continue dealing the game of Double Attack Blackjack at that table until the card reader device is repaired or replaced.

(j) If an automated card shuffling device is being used and the device jams, stops shuffling during a shuffle or fails to complete a shuffle cycle, the cards shall be reshuffled.

(k) If an automated shuffling device malfunctions and cannot be used, the device must be covered or have a sign indicating that it is out of order placed on the device before any other method of shuffling may be utilized at that table.

§ 581.14. Surveillance coverage; minimum staffing; training.

(a) A certificate holder offering Double Attack Blackjack shall have at least one stationary camera dedicated for each table.

(b) A certificate holder shall maintain at least one dealer for each Double Attack Blackjack table.

(c) A floorperson may not supervise more than four tables comprised of any combination of banking table games excluding:

- (1) Baccarat.
- (2) Midibaccarat.
- (3) Craps.
- (4) Mini-Craps.
- (5) Pai Gow.
- (6) Three Dice Football.

(d) A dealer who has completed a course of training in accordance with § 611a.3(a) (relating to employee training by certificate holders) and would like to be trained to deal Double Attack Blackjack shall successfully complete training and a table test required under § 611a.5 (relating to table test; employee personnel file).

CHAPTER 583. FLOP POKER

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§ 583.1. Definitions.

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

Burn—To remove the top or next card from the deck and place it face down in the discard rack without exposing the card to anyone.

Community card—A card which may be used by all players to form the best possible five-card Poker hand.

Flop—The three community cards dealt during a round of play.

Fold—The withdrawal of a player from a round of play by not making a Flop Wager.

§ 583.2. Flop Poker table physical characteristics.

(a) Flop Poker shall be played on a table having betting positions for no more than six players on one side of the table and a place for the dealer on the opposite side of the table.

(b) The layout for a Flop Poker table shall be submitted to the Bureau of Gaming Operations in accordance with § 601a.10(a) (relating to approval of table game layouts, signage and equipment) and contain, at a minimum:

- (1) The name or logo of the certificate holder.
- (2) Three separate betting areas designated for the placement of Ante, Flop and Pot Wagers for each player.
- (3) A separate area designated for the placement of the three community cards located directly in front of the table inventory container.
- (4) If a certificate holder offers the optional Three Card Bonus Wager authorized under § 583.7(d)(3) (relating to wagers), a separate area designated for the placement of the Three Card Bonus Wager for each player.

(5) Inscriptions that advise patrons of the payout odds or amounts for all permissible wagers offered by the certificate holder. If the payout odds or amounts are not inscribed on the layout, a sign identifying the payout odds or amounts for all permissible wagers shall be posted at each Flop Poker table.

(6) Inscriptions indicating the following:

- (i) The Flop Wager must be equal to the Ante Wager.
- (ii) The Pot Wager must be equal to the table minimum.

(7) If the information required under paragraph (6) is not inscribed on the layout, a sign which sets forth the required information shall be posted at each Flop Poker table.

(c) Each Flop Poker table must have a drop box and a tip box attached on the same side of the table as, but on opposite sides of, the dealer, as approved by the Bureau of Casino Compliance in accordance with § 601a.10(g). The Bureau of Casino Compliance may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

(d) Each Flop Poker table must have a discard rack securely attached to the top of the dealer's side of the table.

§ 583.3. Cards; number of decks.

(a) Except as provided in subsection (b), Flop Poker shall be played with one deck of cards that are identical in appearance and two cover cards.

(b) If an automated card shuffling device is utilized, Flop Poker may be played with two decks of cards in accordance with the following requirements:

(1) The cards in each deck must be of the same design. The backs of the cards in one deck must be of a different color than the cards in the other deck.

(2) One deck of cards shall be shuffled and stored in the automated card shuffling device while the other deck is being used to play the game.

(3) Both decks are continuously alternated in and out of play, with each deck being used for every other round of play.

(4) The cards from only one deck are placed in the discard rack at any given time.

(c) The decks of cards used in Flop Poker shall be changed at least every:

(1) Four hours if the cards are dealt by hand.

(2) Eight hours if the cards are dealt from a manual or automated dealing shoe.

§ 583.4. Opening of the table for gaming.

(a) After receiving one or more decks of cards at the table, the dealer shall inspect the cards for defects. The floorperson assigned to the table shall verify the inspection.

(b) After the cards are inspected, the cards shall be spread out face up on the table for visual inspection by the first player to arrive at the table. The cards shall be spread in horizontal fan shaped columns by deck according to suit and in sequence.

(c) After the first player arriving at the table has been afforded an opportunity to visually inspect the cards, the cards shall be turned face down on the table, mixed thoroughly by a washing of the cards and stacked. Once the cards have been stacked, the cards shall be shuffled in accordance with § 583.5 (relating to shuffle and cut of the cards).

(d) If an automated card shuffling device is utilized and two decks of cards are received at the table, each deck of cards shall be spread for inspection, mixed, stacked and shuffled in accordance with subsections (a)—(c).

(e) If the decks of cards received at the table are preinspected and reshuffled in accordance with § 603a.16(u) or (v) (relating to cards; receipt, storage, inspection and removal from use), subsections (a)—(d) do not apply.

§ 583.5. Shuffle and cut of the cards.

(a) Immediately prior to commencement of play, unless the cards were reshuffled in accordance with § 603a.16(u) or (v) (relating to cards; receipt, storage, inspection and removal from use), after each round of play has been completed or when directed by a floorperson or above, the dealer shall shuffle the cards, either manually or by use of an automated card shuffling device, so that the cards are randomly intermixed. Upon completion of the shuffle, the dealer or automated shuffling device shall place the deck of cards in a single stack. The certificate holder may use an automated card shuffling device which, upon completion of the shuffling of the cards, inserts the stack of cards directly into a dealing shoe.

(b) If an automated card shuffling device is being used, which counts the number of cards in the deck after the completion of each shuffle and indicates whether 52 cards are present, and the device reveals that an incorrect number of cards are present, the deck shall be removed from the table.

(c) After the cards have been shuffled and stacked, the dealer shall:

(1) If the cards were shuffled using an automated card shuffling device, deal or deliver the cards in accordance with § 583.8, § 583.9 or § 583.10 (relating to procedure for dealing the cards from a manual dealing shoe; procedure for dealing the cards from the hand; and procedures for dealing the cards from an automated dealing shoe).

(2) If the cards were shuffled manually or were reshuffled, cut the cards in accordance with subsection (d).

(d) If a cut of the cards is required, the dealer shall place the cover card in the stack at least ten cards in from the top of the stack. Once the cover card has been inserted, the dealer shall take all cards above the cover card and the cover card and place them on the bottom of the stack. The stack of cards shall then be inserted into the dealing shoe for commencement of play.

(e) After the cards have been cut and before any cards have been dealt, a floorperson or above may require the cards to be recut if the floorperson determines that the cut was performed improperly or in any way that might affect the integrity or fairness of the game.

(f) If there is no gaming activity at a Flop Poker table which is open for gaming, the cards shall be spread out on the table face down unless a player requests that the cards be spread face up on the table. After the first player arriving at the table is afforded an opportunity to visually inspect the cards, the procedures in § 583.4(c) (relating to opening of the table for gaming) and this section shall be completed.

(g) A certificate holder may utilize a dealing shoe or other device that automatically reshuffles and counts the cards provided that the device is submitted to the Bureau of Gaming Laboratory Operations and approved in accordance with § 461a.4 (relating to submission for testing and approval) prior to its use in the licensed facility. If a certificate holder is utilizing the approved device, subsections (d)—(f) do not apply.

§ 583.6. Flop Poker rankings.

(a) The rank of the cards used in Flop Poker, in order of highest to lowest rank, shall be: ace, king, queen, jack, 10, 9, 8, 7, 6, 5, 4, 3 and 2. Notwithstanding the foregoing, an ace may be used to complete a straight flush or a straight formed with a 2, 3, 4 and 5 but may not be combined with any other sequence of cards (for example, queen, king, ace, 2 and 3). All suits shall be equal in rank.

(b) The permissible five-card Poker hands at the game of Flop Poker, in order of highest to lowest rank, shall be:

(1) A royal flush, which is a hand consisting of an ace, king, queen, jack and 10 of the same suit.

(2) A straight flush, which is a hand, other than a royal flush, consisting of five cards of the same suit in consecutive ranking, with king, queen, jack, 10 and 9 being the highest ranking straight flush and ace, 2, 3, 4 and 5 being the lowest ranking straight flush.

(3) A four-of-a-kind, which is a hand consisting of four cards of the same rank, with four aces being the highest ranking four-of-a-kind and four 2s being the lowest ranking four-of-a-kind.

(4) A full house, which is a hand consisting of a three-of-a-kind and a pair, with three aces and two kings being the highest ranking full house and three 2s and two 3s being the lowest ranking full house.

(5) A flush, which is a hand consisting of five cards of the same suit, not in consecutive order, with ace, king, queen, jack and 9 being the highest ranking flush and 2, 3, 4, 5 and 7 being the lowest ranking flush.

(6) A straight, which is a hand consisting of five cards of more than one suit and of consecutive rank, with an

ace, king, queen, jack and 10 being the highest ranking straight and an ace, 2, 3, 4 and 5 being the lowest ranking straight.

(7) A three-of-a-kind, which is a hand consisting of three cards of the same rank, with three aces being the highest ranking three-of-a-kind and three 2s being the lowest ranking three-of-a-kind.

(8) Two pairs, which is a hand consisting of two pairs, with two aces and two kings being the highest ranking two pair and two 3s and two 2s being the lowest ranking two pair.

(9) A pair, which is a hand consisting of two cards of the same rank, with two aces being the highest ranking pair and two 2s being the lowest ranking pair.

(c) When comparing two Poker hands that are of identical rank under subsection (b), or that do not contain the hands listed in subsection (b), the hand that contains the highest ranking card under subsection (a), which is not contained in the other hand, shall be considered the higher ranking hand. If the hands are of identical rank after the application of this subsection, the hands shall be considered a tie.

(d) If the certificate holder is offering the Three Card Bonus Wager, the three-card Poker hands eligible for a payout are:

(1) A royal, which is a hand consisting of an ace, king and queen of the same suit.

(2) A straight flush, which is a hand consisting of three cards of the same suit in consecutive ranking, other than a royal.

(3) A three-of-a-kind, which is a hand consisting of three cards of the same rank.

(4) A straight, which is a hand consisting of three cards of more than one suit and of consecutive rank.

(5) A flush, which is a hand consisting of three cards of the same suit, regardless of rank.

(6) A pair, which is a hand consisting of two cards of the same rank.

§ 583.7. Wagers.

(a) Wagers at Flop Poker shall be made by placing value chips or plaques on the appropriate areas of the table layout. Verbal wagers accompanied by cash may not be accepted.

(b) Only players who are seated at a Flop Poker table may wager at the game. Once a player has placed a wager and received cards, that player shall remain seated until the completion of the round of play. If a player leaves the table during a round of play, any wagers made by the player may be considered abandoned and may be treated as losing wagers.

(c) All wagers, except the Flop Wager, shall be placed prior to the dealer announcing "no more bets" in accordance with the dealing procedure in § 583.8, § 583.9 or § 583.10 (relating to procedure for dealing the cards from a manual dealing shoe; procedure for dealing the cards from the hand; and procedures for dealing the cards from an automated dealing shoe). Except as provided in § 583.11(b) (relating to procedures for completion of each round of play), a wager may not be made, increased or withdrawn after the dealer has announced "no more bets."

(d) The following wagers may be placed in the game of Flop Poker:

(1) To participate in a round of play, each player shall place a Pot Wager equal to the table minimum and an Ante Wager.

(2) A player shall compete against a posted payable by placing a Flop Wager equal to the player's Ante Wager, in accordance with § 583.11(b).

(3) A certificate holder may, if specified in its Rules Submission under § 601a.2 (relating to table games Rules Submissions), offer to each player at an Flop Poker table the option to make an additional Three Card Bonus Wager that the player's first three cards will contain a pair or better.

(e) A player may not wager on more than one player position at a Flop Poker table.

§ 583.8. Procedure for dealing the cards from a manual dealing shoe.

(a) If a manual dealing shoe is used, the dealing shoe must be located on the table in a location approved by the Bureau of Casino Compliance in accordance with § 601a.10(g) (relating to approval of table game layouts, signage and equipment). Once the procedures required under § 583.5 (relating to shuffle and cut of the cards) have been completed, the stacked deck of cards shall be placed in the dealing shoe by the dealer or by the automated card shuffling device.

(b) Prior to dealing the cards, the dealer shall announce "no more bets." After all players have placed their Ante, Pot and Three Card Bonus Wagers, the dealer shall collect each player's Pot Wager and place it in the center of the table in the area designated for the placement of the Pot Wagers.

(c) The dealer shall then, starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, deal one card at a time to each player who placed the required wagers in accordance with § 583.7(d)(1) (relating to wagers) until each player who placed the required wagers has three cards. Each card shall be removed from the dealing shoe with the hand of the dealer that is the closest to the dealing shoe and placed on the appropriate area of the layout with the opposite hand.

(d) After three cards have been dealt to each player, the dealer shall deal the three community cards in accordance with § 583.11 (relating to procedures for completion of each round of play). After all community cards have been dealt, the dealer shall remove the stub from the manual dealing shoe and, except as provided in subsection (e), place the stub in the discard rack without exposing the cards.

(e) If an automated card shuffling device, which counts the number of cards in the deck after the completion of each shuffle and indicates whether 52 cards are present, is not being used, the dealer shall count the stub at least once every 5 rounds of play to determine if the correct number of cards are still present in the deck. The dealer shall determine the number of cards in the stub by counting the cards face down on the layout.

(f) If the count of the stub indicates that 52 cards are in the deck, the dealer shall place the stub in the discard rack without exposing the cards.

(g) If the count of the stub indicates that the number of cards in the deck is incorrect, the dealer shall determine if the cards were misdealt. If the cards were misdealt but 52 cards remain in the deck, all hands shall be void and all wagers shall be returned to the players. If the cards

were not misdealt, all hands shall be void, all wagers shall be returned to the players and the entire deck of cards shall be removed from the table.

§ 583.9. Procedure for dealing the cards from the hand.

(a) If the cards are dealt from the dealer's hand, the following requirements shall be observed:

(1) An automated shuffling device shall be used to shuffle the cards.

(2) After the procedures required under § 583.5 (relating to shuffle and cut of the cards) have been completed, the dealer shall place the stacked deck of cards in either hand. After the dealer has chosen the hand in which he will hold the cards, the dealer shall continue to use that hand whenever holding the cards during that round of play. The cards held by the dealer shall be kept over the table inventory container and in front of the dealer at all times.

(b) Prior to dealing any cards, the dealer shall announce "no more bets." After all players have placed their Ante, Pot and Three Card Bonus Wagers, the dealer shall collect each player's Pot Wager and place it in the center of the table in the area designated for the placement of the Pot Wagers.

(c) The dealer shall then, starting with the player farthest to the dealer's left and continuing around the table in a clockwise manner, deal one card at a time to each player who placed the required wagers in accordance with § 583.7(d)(1) (relating to wagers) until each player who placed the required wagers has three cards. To deal each card, the dealer shall hold the deck of cards in the chosen hand and use the other hand to remove the top card of the deck and place it face down on the appropriate area of the layout.

(d) After three cards have been dealt to each player, the dealer shall deal the three community cards in accordance with § 583.11 (relating to procedures for completion of each round of play). After all community cards have been dealt, the dealer shall, except as provided in subsection (e), place the stub in the discard rack without exposing the cards.

(e) If an automated card shuffling device, which counts the number of cards in the deck after the completion of each shuffle and indicates whether 52 cards are present, is not being used, the dealer shall count the stub at least once every 5 rounds of play to determine if the correct number of cards are still present in the deck. The dealer shall determine the number of cards in the stub by counting the cards face down on the layout.

(f) If the count of the stub indicates that 52 cards are in the deck, the dealer shall place the stub in the discard rack without exposing the cards.

(g) If the count of the stub indicates that the number of cards in the deck is incorrect, the dealer shall determine if the cards were misdealt. If the cards were misdealt but 52 cards remain in the deck, all hands shall be void and all wagers shall be returned to the players. If the cards were not misdealt, all hands shall be void, all wagers shall be returned to the players and the entire deck of cards shall be removed from the table.

§ 583.10. Procedures for dealing the cards from an automated dealing shoe.

(a) If the cards are dealt from an automated dealing shoe, the following requirements shall be observed:

(1) After the procedures required under § 583.5 (relating to shuffle and cut of the cards) have been completed, the cards shall be placed in the automated dealing shoe.

(2) Prior to the shoe dispensing any stacks of cards, the dealer shall announce "no more bets." After all players have placed their Ante, Pot and Three Card Bonus Wagers, the dealer shall collect each player's Pot Wager and place it in the center of the table in the area designated for the placement of the Pot Wagers.

(b) The dealer shall deliver the first stack of cards dispensed by the automated dealing shoe face down to the player farthest to the dealer's left who has placed the required wagers in accordance with § 583.7(d)(1) (relating to wagers). As the remaining stacks are dispensed to the dealer by the automated dealing shoe, the dealer shall, moving clockwise around the table, deliver a stack face down to each of the other players who has placed a required wager in accordance with § 583.7(d)(1). The dealer shall then deliver a stack of three cards face down under a cover card to the area designated for the placement of the three community cards.

(c) After each stack of three cards has been dispensed and delivered in accordance with subsection (b), the dealer shall remove the remaining cards from the automated dealing shoe and, except as provided in subsection (d), place the stub in the discard rack without exposing the cards.

(d) If an automated card shuffling device, which counts the number of cards in the deck after the completion of each shuffle and indicates whether 52 cards are present, is not being used, the dealer shall count the stub at least once every 5 rounds of play to determine if the correct number of cards are still present in the deck. The dealer shall determine the number of cards in the stub by counting the cards face down on the layout.

(e) If the count of the stub indicates that 52 cards are in the deck, the dealer shall place the stub in the discard rack without exposing the cards.

(f) If the count of the stub indicates that the number of cards in the deck is incorrect, the dealer shall determine if the cards were misdealt. If the cards were misdealt but 52 cards remain in the deck, all hands shall be void and all wagers shall be returned to the players. If the cards were not misdealt, all hands shall be void, all wagers shall be returned to the players and the entire deck of cards shall be removed from the table.

§ 583.11. Procedures for completion of each round of play.

(a) After the dealing procedures required under § 583.8, § 583.9 or § 583.10 (relating to procedure for dealing the cards from a manual dealing shoe; procedure for dealing the cards from the hand; and procedures for dealing the cards from an automated dealing shoe) have been completed, each player shall examine his cards subject to the following limitations:

(1) Each player who wagers at Flop Poker shall be responsible for his own hand and no person other than the dealer and the player to whom the cards were dealt may touch the cards of that player.

(2) Each player shall keep his cards in full view of the dealer at all times.

(b) After each player has examined his cards, the dealer shall, beginning with the player farthest to the dealer's left and moving clockwise around the table, ask

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each player if he wishes to fold or place a Flop Wager equal to his Ante Wager. If a player folds, the dealer shall collect the Ante Wager but the player's cards shall remain on the layout. A player who folds will be eligible to win the Pot in accordance with subsection (e).

(c) Unless the certificate holder is utilizing an automated dealing shoe that dispenses the stack of community cards, once all players have either placed a Flop Wager or folded, the dealer shall burn the next card. The dealer shall then deal the flop face up to the designated area for the community cards.

(d) After the three community cards have been revealed, the dealer shall, beginning with the player farthest to the dealer's right and moving counterclockwise around the table, turn the three cards of each player face up on the layout. The dealer shall then settle the Ante, Flop and Three Card Bonus Wagers as follows provided that the Ante, Flop and Three Card Bonus Wagers of each player shall be resolved one player at a time regardless of outcome:

(1) For each player who placed a Three Card Bonus Wager, the dealer shall form the highest ranking three-card Poker hand as described in § 583.6(d) (relating to Flop Poker rankings) from the three cards dealt to each player. If the player's hand contains a pair or better, the dealer shall pay the winning wager in accordance with § 583.12(c) (relating to payout odds; Envy Bonus; rate of progression; payout limitation).

(2) The dealer shall then select five cards from the player's three cards and two of the community cards to form the highest ranking five-card Poker hand. If the player's five-card Poker hand contains a pair of jacks or better, the dealer shall pay the winning Ante and Flop Wagers in accordance with § 583.12(a) and (b).

(e) After settling each player's Ante, Flop and Three Card Bonus Wagers, the dealer shall settle the Pot Wager by determining which player's five-card Poker hand ranks the highest. The player with the highest ranking five-card Poker hand shall be paid the entire Pot amount. If there is a tie hand, the player with the next highest card shall be awarded the entire Pot amount. If there is a tie hand and players have identical hands, the Pot shall be split evenly between the winning players.

(f) After all wagers have been settled, the dealer shall remove all remaining cards from the table and place them in the discard rack in a manner that permits the reconstruction of each hand in the event of a question or dispute.

§ 583.12. Payout odds; Envy Bonus; rate of progression; payout limitation.

(a) A certificate holder shall pay each winning Ante Wager at odds of 1 to 1.

(b) A certificate holder shall pay the player's winning Flop Wager in accordance with the following odds:

<i>Hand</i>	<i>Payout</i>
Royal flush	1,000 to 1
Straight flush	500 to 1
Four-of-a-kind	100 to 1
Full house	30 to 1
Flush	20 to 1
Straight	10 to 1
Three-of-a-kind	4 to 1
Two pair	2 to 1
A pair of jacks, queens, kings or aces	1 to 1

(c) A player placing a Three Card Bonus Wager shall be paid at the following odds:

<i>Hand</i>	<i>Payout</i>
Royal	100 to 1
Straight flush	50 to 1
Three-of-a-kind	25 to 1
Straight	6 to 1
Flush	3 to 1
A pair	1 to 1

§ 583.13. Irregularities.

(a) A card that is found face up in the shoe or the deck while the cards are being dealt may not be used in that round of play and shall be placed in the discard rack. If more than one card is found face up in the shoe or the deck during the dealing of the cards, all hands shall be void, all wagers shall be returned to the players and the cards shall be reshuffled.

(b) A card drawn in error without its face being exposed shall be used as though it were the next card from the shoe or the deck.

(c) If any player or the area designated for the placement of the community cards is dealt an incorrect number of cards, all hands shall be void, all wagers shall be returned to the players and the cards shall be reshuffled.

(d) If an automated card shuffling device is being used and the device jams, stops shuffling during a shuffle or fails to complete a shuffle cycle, the cards shall be reshuffled.

(e) If an automated dealing shoe is being used and the device jams, stops dealing cards or fails to deal cards during a round of play, the round of play shall be void, all wagers shall be returned to the players and the cards shall be removed from the device and reshuffled with any cards already dealt.

(f) If an automated card shuffling device or automated dealing shoe malfunctions and cannot be used, the automated card shuffling device or automated dealing shoe shall be covered or have a sign indicating that the automated card shuffling device or automated dealing shoe is out of order placed on the device before any other method of shuffling or dealing may be utilized at that table.

§ 583.14. Surveillance coverage; minimum staffing; training.

(a) A certificate holder offering Flop Poker shall have at least one stationary camera dedicated for each table.

(b) A certificate holder shall maintain at least one dealer for each Flop Poker table.

(c) A floorperson may not supervise more than four tables comprised of any combination of banking table games excluding:

- (1) Baccarat.
- (2) Midibaccarat.
- (3) Craps.

- (4) Mini-Craps.
- (5) Pai Gow.
- (6) Three Dice Football.

(d) A dealer who has completed a course of training in accordance with § 611a.3(a) (relating to employee training by certificate holders) and would like to be trained to deal Flop Poker shall successfully complete training and a table test required under § 611a.5 (relating to table test; employee personnel file).

CHAPTER 585. PROPS & HOPS

- Sec.
- 585.1. Props & Hops table; physical characteristics.
- 585.2. Wagers.
- 585.3. Dice; shaker; procedure for completion of each round of play.
- 585.4. Payout odds.
- 585.5. Surveillance coverage; minimum staffing; training.

§ 585.1. Props & Hops table; physical characteristics.

(a) Props & Hops shall be played at a table having betting positions for six players on one side of the table and a place for the dealer on the opposite side of the table.

(b) The layout for a Props & Hops table shall be submitted to the Bureau of Gaming Operations and approved in accordance with § 601a.10(a) (relating to approval of table game layouts, signage and equipment) and contain, at a minimum:

- (1) The name or logo of the certificate holder.
- (2) An area that depicts all wagers authorized under § 585.2 (relating to wagers).
- (3) A separate circle located to the right of the dealer for the placement of the shaker.
- (4) A player position diagram demonstrating the proper placement of each player's wagers.
- (5) The payout odds, in accordance with § 585.4 (relating to payout odds), for all permissible wagers offered by the certificate holder. If the payout odds are not on the layout, a sign identifying the payout odds shall be posted at each Props & Hops table.

(c) Each Props & Hops table must have a drop box with a tip box attached on the same side of the gaming table as, but on opposite sides of, the dealer, as approved by the Bureau of Casino Compliance in accordance with § 601a.10(g).

§ 585.2. Wagers.

- (a) Wagers shall be made before the dice are shaken.
- (b) Wagers shall be made by placing value chips or plaques on the appropriate areas of the layout. Verbal wagers accompanied by cash may not be accepted.
- (c) Only players who are seated at a Props & Hops table may place a wager at the game. Once a player has placed a wager, that player shall remain seated until the completion of the round of play.

(d) The following Double Wagers are authorized in the game of Props & Hops:

- (1) A Two the Hardway Bet placed in a box which shows two dice, each of which displays a value of 1. A Two the Hardway Bet shall win if a total of 2 is thrown on the next roll and shall lose if any other combination is thrown.
- (2) A Four the Hardway Bet placed in a box which shows two dice, each of which displays a value of 2. A

Four the Hardway Bet shall win if a total of 4 is thrown on the next roll with a 2 appearing on each die and shall lose if any other combination is thrown.

(3) A Six the Hardway Bet placed in a box which shows two dice, each of which displays a value of 3. A Six the Hardway Bet shall win if a total of 6 is thrown on the next roll with a 3 appearing on each die and shall lose if any other combination is thrown.

(4) An Eight the Hardway Bet placed in a box which shows two dice, each of which displays a value of 4. An Eight the Hardway Bet shall win if a total of 8 is thrown on the next roll with a 4 appearing on each die and shall lose if any other combination is thrown.

(5) A Ten the Hardway Bet placed in a box which shows two dice, each of which displays a value of 5. A Ten the Hardway Bet shall win if a total of 10 is thrown on the next roll with a 5 appearing on each die and shall lose if any other combination is thrown.

(6) A Twelve the Hardway Bet placed in a box which shows two dice, each of which displays a value of 6. A Twelve the Hardway Bet shall win if a total of 12 is thrown on the next roll and shall lose if any other combination is thrown.

(e) The following Any Number Wagers are authorized in the game of Props & Hops:

(1) A One-Two Bet placed in a box which shows two dice, one of which displays a value of 1 and the other displays a value of 2. A One-Two Bet shall win if a total of 3 is thrown on the next roll and shall lose if any other combination is thrown.

(2) A One-Three Bet placed in a box which shows two dice, one of which displays a value of 1 and the other displays a value of 3. A One-Three Bet shall win if on the next roll a total of 4 is thrown with a 1 appearing on one die and a 3 appearing on the other die and shall lose if any other combination is thrown.

(3) A One-Four Bet placed in a box which shows two dice, one of which displays a value of 1 and the other displays a value of 4. A One-Four Bet shall win if on the next roll a total of 5 is thrown with a 1 appearing on one die and a 4 appearing on the other die and shall lose if any other combination is thrown.

(4) A One-Five Bet placed in a box which shows two dice, one of which displays a value of 1 and the other displays a value of 5. A One-Five Bet shall win if on the next roll a total of 6 is thrown with a 1 appearing on one die and a 5 appearing on the other die and shall lose if any other combination is thrown.

(5) A One-Six Bet placed in a box which shows two dice, one of which displays a value of 1 and the other displays a value of 6. A One-Six Bet shall win if on the next roll a total of 7 is thrown with a 1 appearing on one die and a 6 appearing on the other die and shall lose if any other combination is thrown.

(6) A Two-Three Bet placed in a box which shows two dice, one of which displays a value of 2 and the other displays a value of 3. A Two-Three Bet shall win if on the next roll a total of 5 is thrown with a 2 appearing on one die and a 3 appearing on the other die and shall lose if any other combination is thrown.

(7) A Two-Four Bet placed in a box which shows two dice, one of which displays a value of 2 and the other displays a value of 4. A Two-Four Bet shall win if on the next roll a total of 6 is thrown with a 2 appearing on one

die and a 4 appearing on the other die and shall lose if any other combination is thrown.

(8) A Two-Five Bet placed in a box which shows two dice, one of which displays a value of 2 and the other displays a value of 5. A Two-Five Bet shall win if on the next roll a total of 7 is thrown with a 2 appearing on one die and a 5 appearing on the other die and shall lose if any other combination is thrown.

(9) A Two-Six Bet placed in a box which shows two dice, one of which displays a value of 2 and the other displays a value of 6. A Two-Six Bet shall win if on the next roll a total of 8 is thrown with a 2 appearing on one die and a 6 appearing on the other die and shall lose if any other combination is thrown.

(10) A Three-Four Bet placed in a box which shows two dice, one of which displays a value of 3 and the other displays a value of 4. A Three-Four Bet shall win if on the next roll a total of 7 is thrown with a 3 appearing on one die and a 4 appearing on the other die and shall lose if any other combination is thrown.

(11) A Three-Five Bet placed in a box which shows two dice, one of which displays a value of 3 and the other displays a value of 5. A Three-Five Bet shall win if on the next roll a total of 8 is thrown with a 3 appearing on one die and a 5 appearing on the other die and shall lose if any other combination is thrown.

(12) A Three-Six Bet placed in a box which shows two dice, one of which displays a value of 3 and the other displays a value of 6. A Three-Six Bet shall win if on the next roll a total of 9 is thrown with a 3 appearing on one die and a 6 appearing on the other die and shall lose if any other combination is thrown.

(13) A Four-Five Bet placed in a box which shows two dice, one of which displays a value of 4 and the other displays a value of 5. A Four-Five Bet shall win if on the next roll a total of 9 is thrown with a 4 appearing on one die and a 5 appearing on the other die and shall lose if any other combination is thrown.

(14) A Four-Six Bet placed in a box which shows two dice, one of which displays a value of 4 and the other displays a value of 6. A Four-Six Bet shall win if on the next roll a total of 10 is thrown with a 4 appearing on one die and a 6 appearing on the other die and shall lose if any other combination is thrown.

(15) A Five-Six Bet placed in a box which shows two dice, one of which displays a value of 5 and the other displays a value of 6. A Five-Six Bet shall win if on the next roll a total of 11 is thrown with a 5 appearing on one die and a 6 appearing on the other die and shall lose if any other combination is thrown.

(f) The following additional wagers are authorized in the game of Props & Hops:

(1) A Field Wager placed in a Field box which shows the numbers 2, 3, 4, 9, 10, 11 and 12 with the 2 and the 12 circled. A Field Bet shall win if on the next roll the combined total of the dice equals a 2, 3, 4, 9, 10, 11 or 12 and lose if any other combination is thrown.

(2) An Any Craps Wager placed in an Any Craps box which shows the numbers 2, 3 or 12. An Any Craps Bet shall win if on the next roll the combined total of the dice equals a 2, 3 or 12 and lose if any other combination is thrown.

(3) An Any Seven Wager placed in an Any Seven box which shows the number 7. The Any Seven Bet shall win if on the next roll the combined total of the dice equals a 7 and lose if any other combination is thrown.

(4) An Any Doubles Wager placed in an Any Doubles box which shall win if on the next roll the dice are a Two, Four, Six, Eight, Ten or Twelve the Hardway as described in subsection (d).

§ 585.3. Dice; shaker; procedure for completion of each round of play.

(a) Props & Hops shall be played with two dice in accordance with this subsection. Dice used in the play of the game shall comply with § 603a.12(a) (relating to dice; physical characteristics) and the receipt and inspection requirements in § 603a.13 (relating to dice; receipt, storage, inspection and removal from use).

(b) Props & Hops shall be played with a dice shaker, approved in accordance with § 601a.10(a) (relating to approval of table game layouts, signage and equipment), which shall be used to shake the two dice to arrive at the winning combinations. The dice shaker shall be designed and constructed to maintain the integrity of the game and must:

(1) Be capable of housing two dice that when not being shaken must be maintained in the shaker. Dice that have been placed in a dice shaker for use in gaming may not remain on a table for more than 24 hours.

(2) Be designed to prevent the dice from being seen while being shaken.

(3) Have the name or logo of the certificate holder imprinted or impressed thereon.

(c) The dice shaker shall be the responsibility of the dealer and may not be left unattended while at the table.

(d) A shaker and two dice shall be presented at the Props & Hops table for gaming. The floorperson, in the presence of the dealer, shall place the dice in the shaker. Prior to the commencement of play at the table and after each round of play, the dealer shall shake the covered shaker.

(e) After all players have placed their wagers, the dealer shall announce "no more bets" and offer the covered dice shaker to the player farthest to the dealer's left. The player shall shake the covered shaker at least three times to cause a random mixture of the dice. Once the player has shaken the dice, the player shall return the covered shaker to the layout. If the player shaking the dice removes the lid, the shaker shall be recovered and shaken again.

(f) The dealer shall then remove the lid and place the uncovered shaker in the designated circle on the table layout. The shaker shall remain uncovered in the designated area until all wagers have been settled. If the dealer uncovers the shaker and a die falls out of the shaker, the dealer shall call a "no roll" and all wagers placed shall be returned to the players.

(g) The dealer shall then announce the numbers on the uppermost or skyward sides of the two dice and place a pointer marker on the corresponding area of the layout. If one die comes to rest on top of the other or if the dice do not land flat on the bottom of the shaker after being tossed, the dealer shall call a "no roll" and all wagers placed shall be returned to the players.

(h) The dealer shall then collect all losing wagers before paying out winning wagers in accordance with § 585.4 (relating to payout odds).

(i) After all losing wagers have been collected and all winning wagers have been paid, the dealer shall cover and shake the shaker.

(j) The same player who shook the dice shall continue to shake the dice during each subsequent round of play until the player shakes a 7. Once the total of the dice is a 7, the dice shaker will be passed to the next player to the left at the next round of play.

§ 585.4. Payout odds.

The certificate holder shall pay out winning Props & Hops wagers as follows:

<i>Wager</i>	<i>Payout Odds</i>
Double Wager	30 to 1
Any Number Wager	15 to 1
Field Wager:	
2 or 12 is rolled	2 to 1
3, 4, 9, 10 or 11 is rolled	1 to 1
Any Craps Wager	7 to 1
Any Seven Wager	4 to 1
Any Doubles Bet	4 to 1

§ 585.5. Surveillance coverage; minimum staffing; training.

(a) A certificate holder offering Props & Hops shall have at least two stationary cameras for each table with one camera covering the designated circle on the table

layout for the placement of the uncovered shaker and one camera covering the table layout.

(b) A certificate holder shall maintain at least one dealer for each Props & Hops table.

(c) A floorperson may not supervise more than four tables comprised of any combination of banking table games excluding:

- (1) Baccarat.
- (2) Midibaccarat.
- (3) Craps.
- (4) Mini-Craps.
- (5) Pai Gow.
- (6) Three Dice Football.

(d) A dealer who has completed a course of training in accordance with § 611a.3(a) (relating to employee training by certificate holders) and would like to be trained to deal Props & Hops shall successfully complete 10 hours of training. Provided that a dealer who has successfully completed a course of training in Craps does not need to complete an additional 10 hours of training prior to dealing Props & Hops. Dealers shall complete a table test required under § 611a.5 (relating to table test; employee personnel file) prior to dealing Props & Hops on the gaming floor.

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