

RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 62]

[L-2011-2266832]

Advanced Notice of Final Rulemaking; Licensing Requirements for Natural Gas Suppliers Regulations

Public Meeting held
February 28, 2013

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

Licensing Requirements for Natural Gas Suppliers Regulations at 52 Pa. Code § 62.101—§ 62.102; L-2011-2266832

Advanced Notice of Final Rulemaking

By the Commission:

By Order entered January 13, 2012, the Pennsylvania Public Commission (Commission) initiated a rulemaking to review the scope of our natural gas supplier (NGS or supplier) licensing regulations at 52 Pa. Code § 62.101 (relating to definitions) and § 62.102 (relating to scope of licensure). Specifically this review was to address whether or not to maintain the exemptions from the licensing requirement for marketing services consultants and nontraditional marketers. Comments were filed by various interested parties. The Commission has reviewed those comments and issues this Advanced Notice of Final Rulemaking.

Background

On June 22, 1999, Governor Thomas J. Ridge signed into law the Natural Gas Choice and Competition Act, effective July 1, 1999, 66 Pa.C.S. §§ 2201—2212 (Act). Pursuant to the Act, beginning on November 1, 1999, retail customers have had the ability to choose an NGS to provide them with natural gas supply services.¹

Section 2208(a) of the Act requires that no entity can engage in the business of a NGS unless it holds a license issued by the Commission. 66 Pa.C.S. § 2208(a). The term NGS is defined, in part, as:

An entity other than a natural gas distribution company, but including natural gas distribution company marketing affiliates, which provides natural gas supply services to retail gas customers utilizing the jurisdictional facilities of a natural gas distribution company.

66 Pa.C.S. § 2202.

Further, the term “natural gas supply services” is defined, in part, as “the sale or arrangement of the sale of natural gas to retail gas customers,” 66 Pa.C.S. § 2202.

On June 24, 1999, following the passage of the Act, the Commission issued a Tentative Order establishing a draft licensing application for the interim licensing of NGSs.

¹ Section 2202 of the Act, 66 Pa.C.S. § 2202, defines natural “gas supply services” as including (1) the sale or arrangement of the sale of natural gas to retail customers; and (2) services that may be unbundled by the Commission under section 2203(3) of the Act (relating to standards for restructuring of the natural gas utility industry) and excluding distribution service.

On July 15, 1999, the Commission issued a Final Order at Docket No. M-00991248F0002 that adopted the interim licensing procedures and license application for NGSs. The Final Order required all suppliers of retail natural gas supply services to obtain a NGS license, other than natural gas local distribution companies providing service within their certificated service territories and municipal utilities providing service within their corporate or municipal limits.

Subsequently, in 2000, the Commission adopted a Proposed Rulemaking Order that revised its interim licensing procedures and promulgated proposed regulations governing the licensing requirements for NGSs. See 52 Pa. Code §§ 62.101—114. See Licensing Requirement for Natural Gas Suppliers, Proposed Rulemaking Order, Docket No. L-00000150, 30 Pa.B. 3073 (June 17, 2000). The Commission stated that its initial interpretation of the Act had been that every entity that engages in an activity listed as that undertaken by a natural gas supplier must be licensed. However, the Commission’s proposed rulemaking acknowledged that some activities may be undertaken by entities that will not have any direct physical or financial responsibility for the procurement of the customer’s natural gas. Accordingly, in the proposed regulations the Commission decided to exempt from licensing two types of entities that worked as brokers or agents for NGSs and retail customers. The proposed regulation used the terms “marketing services consultant” and “nontraditional marketer” for these agents and brokers.

In the final NGS licensing regulations, the Commission defined the term “marketing services consultant” as follows:

A commercial entity, such as a telemarketing firm or auction-type website, or energy consultant, that under contract to a licensee² or a retail customer, may act as an agent to market natural gas supply services to retail gas customers for the licensee or may act as an agent to recommend the acceptance of offers to provide service to retail customers. A marketing services consultant:

- (i) does not collect natural gas supply costs directly from retail customers;
- (ii) is not responsible for the scheduling of natural gas supplies;
- (iii) is not responsible for the payment of the costs of the natural gas to suppliers, producers, or NGDCs.

52 Pa. Code § 62.101 (footnote added).

Additionally, in the regulations the Commission defined “nontraditional marketer” as:

“A community-based organization, civic, fraternal or business association, or common interest group that works with a licensed supplier as an agent to market natural gas supply services to its members or constituents. A nontraditional marketer: (i) conducts its transactions through a licensed NGS; (ii) does not collect revenue directly from retail customers; (iii) does not require its members or constituents to obtain its natural gas service through the nontraditional marketer or a specific licensed NGS; (iv) is not

² “Licensee” is defined as “a person or entity that has obtained a license to provide natural gas supply services to retail customers.” See also 52 Pa. Code § 62.101 (relating to definitions).

responsible for the scheduling of natural gas supplies; [and] (v) is not responsible for the payment of the costs of the natural gas to its suppliers or producers.”

52 Pa. Code § 62.101.

In Section 62.102 of the regulations, relating to scope of licensure, the Commission created licensing exemptions for marketing services consultants and nontraditional marketers.

(d) A nontraditional marketer is not required to obtain a license. The licensed NGS shall be responsible for violations of 66 Pa.C.S. (relating to the Public Utility Code), and applicable regulations of this title, orders and directives committed by the nontraditional marketer and fraudulent, deceptive or other unlawful marketing or billing acts committed by the nontraditional marketer.

(e) A marketing services consultant is not required to obtain a license. The licensed NGS shall be responsible for violations of 66 Pa.C.S. and applicable regulations of this title, orders and directives committed by the marketing services consultant and fraudulent, deceptive or other unlawful marketing or billing acts committed by the marketing services consultant.

52 Pa. Code § 62.102(d)—(e).

The Commission proposed these two exemptions in its June 2000 Proposed Rulemaking Order. Some commenters supported the exemptions and others, including the Independent Regulatory Review Commission (IRRC), opposed them. In the final rulemaking the Commission determined that marketing services consultants and nontraditional marketers are not engaged in the sale or arranging of natural gas supply services to retail consumers. Thus, they fall outside of the definition of an NGS set forth in Section 2202 of the Act. Furthermore, rather than require these entities to obtain a license themselves, the regulations emphasized that the licensed NGS is responsible for any violations of the statute, regulations or orders or for any fraudulent, deceptive or other unlawful marketing or billing acts committed by the marketing services consultant or nontraditional marketer. See 52 Pa. Code § 62.102 (relating to scope of licensure). See also 52 Pa. Code § 62.110(a)(3) (NGSs must identify nontraditional marketers and marketing services consultants who are currently or will be acting as agents for the licensee in the upcoming year).

The proposed regulations were finalized by the Commission in July 2001 in Licensing Requirements for Natural Gas Suppliers, Final Rulemaking Order, Docket No. L-00000150, 31 Pa.B. 3943 (July 21, 2001).

Thereafter, on September 28, 2010, Alphabuyer LLC (Alphabuyer) filed a license application to operate as a broker/marketer engaged in the business of supplying natural gas services in the service territory of various NGDCs within the Commonwealth of Pennsylvania. The term broker/marketer is synonymous with marketing services consultant. The application was filed pursuant to section 2208 of the Natural Gas Choice and Competition Act (Act) and Title 52 of the *Pennsylvania Code*, Chapter 62, Subchapter D. In conjunction with the approval of that application, the Commission noted that during the past ten years, a number of entities similar to Alphabuyer,³ that despite the existence of an exemption

³ Under this model, the entity falls within the definition of “marketing services consultant” if it: (1) does not collect natural gas supply costs directly from retail customers; (2) is not responsible for the scheduling of natural gas supplies; and (3) will not be responsible for the payment of costs to NGSs, producers or NGDCs.

from the requirement to obtain a license, nonetheless applied for a NGS license in order to supply natural gas services to retail customers.⁴

Due to the non-compulsory nature of licensing such entities and the amount of direct interaction these entities have with retail customers, the Commission determined it was time to conduct a review of its regulations outlining the licensing requirements for natural gas suppliers. Accordingly, on January 13, 2012, the Commission initiated this instant rulemaking proceeding to determine (1) if its current NGS licensing regulations conform with the plain language of the Act and reflect the current business plans of NGSs appearing before it; and (2) whether continuing these exemptions is in the public interest. Furthermore, the Commission requested comments on whether it was appropriate to remove responsibility from a licensed NGS for violations of the Public Utility Code, and applicable Commission regulations, orders and directives and for fraudulent, deceptive or other unlawful marketing or billing acts committed by a marketing service consultant or a nontraditional marketer.

Accordingly, the Commission proposed the following revisions to its NGS licensing regulations at 52 Pa. Code §§ 62.101—62.110: (1) deletion of the “marketing service consultant” and “nontraditional marketer” definitions; (2) the deletion of the exemptions set forth in Subsections 62.102(d) and (e) of the regulations and (3) the deletion of Subsection 62.110(a)(3) that requires a licensee to report the names and addresses of nontraditional marketers and marketing services consultants who are acting or will be acting as agents for the licensee in the upcoming year.

Comments to the proposed revisions were filed by the IRRC, National Energy Marketers Association (NEMA), Washington Gas Energy Services, Inc. (WGES), Spark Energy Gas, LP, Retail Energy Supply Association (RESA) and the Pennsylvania Energy Marketers Coalition (PEMC).

Comments

IRRC’s Comments

In its comments, IRRC states that the Commission did not provide convincing supporting information as to the need to amend the regulations regarding licensing of NGSs. IRRC Comments at 2. IRRC further states that the Commission should explain its interpretation of its statutory authority in deciding which entities must be licensed, which entities do not need to be licensed and provide an explanation of how the final-form regulation meets the requirement of the Act. *Id.* IRRC recommends that the Commission withdraw this proposed regulation and conduct an investigation with stakeholders to determine who is using the current exemption, what the cost impact is to them and how to best regulate the competitive marketplace. *Id.* In the alternative, IRRC recommended that the Commission publish an advance notice of final rulemaking that allows the public and standing committees the opportunity to review the revised regulatory language before submittal of a final-form regulation. *Id.*

NEMA’s Comments

NEMA states that a wholesale deletion of the “marketing services consultant” definition and its exemption from licensing is not necessary for those consultants that make

⁴ The Commission’s practice has been to issue NGS licenses to such entities upon demonstration that they meet the financial and technical requirements of NGS licensure and also comply with, and be governed by, the applicable provisions of the Public Utility Code and Commission regulations.

sales to consumers on behalf of licensed suppliers. NEMA Comments at 7. NEMA states, however, that “energy consultants,” who purport to hold themselves out as either agents of or representatives of consumers and which have been included as a subset within the definition of ‘marketing services consultants’ by the Commission, may not have sufficient safeguards in place within the current regulations to protect consumers and the public interest. NEMA Comments at 9-12.

NEMA states that there has been a proliferation of ‘energy consultants’ in the competitive marketplace that interject themselves between the consumer and the NGS in order to “arrange for the sale of natural gas” for the consumer. *Id.* NEMA explains that these energy consultants may have a direct contract with the consumer to perform this service of the consumer’s behalf. In the alternative, the energy consultant may not have a contract with the consumer, but will gather bids from multiple suppliers for the consumer and receive its compensation through the NGS’s bill. In this latter scenario, the energy consultant has an agreement in place with the winning NGS for the NGS to act as its billing service provider and the NGS is under a contractual obligation to remit compensation or commission directly to the energy consultant.

NEMA states that an NGS should not be responsible for the energy consultant’s conduct because it is operating as the agent of the consumer and not the supplier. NEMA Comments at 12. NEMA states that the Commission should look to whom the entity owes its fidelity or whether they are acting for their own account rather than a specific supplier or a purchaser or group of purchasers. NEMA asserts that in the absence of a contractual relationship with the NGS, the NGS should not be responsible for the entity’s conduct. *Id.*

NEMA states that it supports the exemption from licensing of entities operating exclusively for a supplier in a utility service territory and the licensing of brokers who are not beholden to anyone unless they have an exclusive contract with one supplier. NEMA Comments at 15. NEMA asserts that refining the current exemption by excluding ‘energy consultants’ from the “marketing services consultant” definition may be a good first step in an ongoing process of monitoring the performance of entities in the natural gas market. Conversely, NEMA states that the Commission should retain the exemption from the licensing requirements for nontraditional marketers. NEMA asserts that the nontraditional marketer is not involved in the financial transaction between the licensed supplier and the customer and is not holding itself out as representing the NGS, it is merely communicating to its members that there is an offer that they may avail themselves of from the NGS.

Furthermore, NEMA states that prior to the Commission making a determination as to whether gas aggregators, brokers or marketers need to be licensed, that the Commission should engage in a rulemaking process to develop definitions and a common understanding of these terms as they apply to the retail gas market. *Id.* NEMA notes that legislature did not set forth definitions for the terms “aggregator,” “broker,” and “marketer” in the Act or any corresponding licensing requirement for any such specifically identified entities. NEMA asserts that the licensing requirement in the Act mentions only “natural gas suppliers.”

WGES’s Comments

In its comments, WGES states that it agrees with NEMA that the Commission should consider refining the expansive definition of “marketing services consultant” to exclude “energy consultants” that “arrange for the sale of natural gas for a consumer.” WGES Comments at 1. WGES explains that under this scenario, the main contractual relationship exists between the energy consultant and the customer.

WGES further states that NGSs generally do not exercise any control over the actions of energy consultants. WGES Comments at 2. Nevertheless, despite this lack of control or contractual relationship, under the current regulations, NGSs may be held responsible for the actions of the energy consultant. WGES states that the Commission should revise its regulations to assign appropriate responsibility to energy consultants for their actions, rather than assigning responsibility to NGSs. WGES Comments at 3.

Spark Energy’s Comments

Spark Energy states that NGS firms and marketing entities should not be grouped together when identifying licensing requirements. Spark Energy Comments at 2. Rather, Spark Energy states that the Commission should implement a less-stringent certification procedure for marketing entities. *Id.* Spark Energy explains that the newly-implemented certification process will allow the Commission to focus on whether the marketing entity possesses appropriate core marketing proficiencies. Additionally, Spark Energy states that certification should enhance but not replace oversight of the entity by the licensed NGS for fraudulent, deceptive or unlawful practices. Spark Energy Comments at 3. Lastly, Spark Energy states that if the definitions for “marketers” and “brokers” were adopted for gas purposes, it would be difficult to distinguish them from the existing marketing services consultant and nontraditional marketers operating today in the competitive retail market. Accordingly, Spark Energy states that the Commission should refrain from adopting the more generic “marketer” and “broker” terms. Spark Energy Comments at 5-6.

RESA’s Comments

RESA states the Commission should retain the current “marketing services consultant” and “nontraditional marketer” definitions in the regulations. RESA Comments at 2. However, RESA also states that the Commission should incorporate the “aggregator,” “broker” and “marketer” definitions so there is symmetry and continuity between the treatment of licensed entities on the electric side with the entities subject to the natural gas licensure regime. RESA Comments at 3-4. RESA states that the exemption from licensure should continue for those marketing services consultants and nontraditional marketers that are compensated and conducting marketing and sales activities on behalf of a single licensed NGS. RESA Comments at 4. To the extent that the marketing services consultant or nontraditional marketer works solely for a single NGS, it would be deemed an “agent” of the NGS and, therefore, would not be required to be separately licensed with the Commission. RESA Comments at 4-5.

RESA further states that those marketing services consultant or nontraditional marketers who function as aggregators or a broker/marketer by providing or arranging for natural gas service to be supplied to an end-user, including but not limited to collection of payment, schedule of natural gas supplies, or payment of natural gas supplies should be required to be licensed with the

Commission. RESA Comments at 5. RESA states that these entities are not “agents” of a NGS, but yet directly arrange for a customer’s natural gas supply services, natural gas aggregators and broker/marketers should go through the licensing process and have their marketing activities directly regulated by the Commission. *Id.*

However, RESA asserts that it is in favor of less burdensome licensing requirements for these entities in the form of reduced bonding or security requirements. *Id.* Furthermore, RESA asserts that these entities should not be required to submit annual reports given that NGSs already have an obligation to submit annual reports and are parties that are best positioned to provide the required data to the Commission due to their familiarity with the process for confidential filings. RESA Comments at 6.

PEMC’s Comments

PEMC states that there does not appear to be a discernible or identifiable reason for the Commission to revise the current regulations. PEMC Comments at 4. Additionally, PEMC states that as an unintended consequence, the Commission proposed revisions would dramatically expand the number of license applications it must review and suppliers it must monitor. *Id.* Accordingly, PEMC states that it opposes the elimination of the exemption from licensing requirements for marketing services consultants and nontraditional marketers.

PEMC offers two alternatives to the Commission. First, PEMC states that when agents that are legitimate representatives of a single supplier are found to be in violation of Commission regulations, the NGS should be held accountable as if the agent was its own employee. PEMC Comments at 5. Secondly, PEMC states that to address accountability issues that can arise when an agent simultaneously represents more than one NGS, the Commission could propose to define such agents as “natural gas supply brokers.” *Id.* PEMC further states that the Commission could then either require entities that meet this definition to apply for a standard NGS license or establish a new, separate natural gas broker license tantamount to the “broker” definition under the EGS licensing regulations. *Id.*

Discussion

The focus of this rulemaking is to review: (1) whether the exemption from licensing for marketing services consultants and nontraditional marketers should be discontinued; and (2) whether all natural gas aggregators, marketers and brokers should be required to be licensed as NGSs in order to offer natural gas supply services to retail customers. Accordingly, the Commission proposed to revise Section 62.101 of the regulations by deleting the definitions for marketing services consultant and nontraditional marketer and revise Section 62.102 by deleting the exemption language for these two groups and subsections (d) and (e).

In establishing the original NGS licensing regulations, the Commission adopted definitions for both “marketing services consultant” and “nontraditional marketer” as a means to distinguish certain activities that would fall outside of the definition of “natural gas supply services.” Thus, when the Commission defined these two entities, it clearly determined that there was a distinction between the rendering of the physical natural gas commodity versus the provision of marketing and sales activities. The Commission supported the exemptions because “those entities . . . act[ed], not on behalf of licensees, but on behalf of retail customers as energy consultants.” April 19, 2001 Order at 10.

However, upon its subsequent experience of monitoring the activities and interactions of entities acting or operating as “marketing services consultants” in the gas retail market, the Commission believes the entities appear to provide functions that are the same or similar to those performed by “aggregators” and “brokers” operating on the electric competition side. Therefore, the Commission now determines that it is appropriate to revisit the definitions of those entities operating within the competitive retail gas market.

We acknowledge that the Act did not create subcategories of natural gas suppliers as it did for electric generation suppliers in the Electric Competition Customer Choice and Competition Act. See 66 Pa.C.S. § 2803 (definitions of aggregator, market aggregator, broker, marketer and electric generation supplier). However, the Commission has determined that entities that act as aggregators and brokers do fall under the definition of NGS as they are engaged in the “arrangement of the sale of natural gas to retail gas customers.” 66 Pa.C.S. § 2202. The fact that these entities may take no title to the natural gas is irrelevant in this determination.

Further, the Commission notes RESA’s comments stating that there should be some form of symmetry and continuity between our governance of the licensed entities performing electric supply services on the electric side with entities operating within the natural gas licensure regime, especially when they appear to be undertaking the same or similar functions. Accordingly, we will revise Section 62.101 of our regulations by deleting the definition of “marketing services consultant” and incorporating the definitions for “aggregator” and “broker” set forth in the our EGS licensing regulations at 52 Pa. Code § 54.31.

Finally, as mentioned by the comments, there has been a growth in the number of entities offering to provide energy consulting services to consumers. We agree that these energy consultants work on behalf of consumers as intermediaries between the consumer and an NGS. As such, these “energy consultant” activities fall within the definition of “broker” and, therefore, entities that provide energy consultation services for consumers would be required to obtain a license from the Commission.

PEMC commented that the Commission’s proposed revision to incorporate the “aggregator” and “broker” terms, which are all “licensed” entities, would dramatically expand the number of applicants the Commission must review and suppliers it must monitor. Additionally, Spark Energy commented that the definitions of marketing service consultant and nontraditional marketer are useful in describing which marketing entities would be subject to the Commission licensing requirements. Moreover, Spark Energy has asserted that licensed NGSs and entities that perform only marketing duties should not be grouped together when identifying licensing requirements. The Commission agrees with this assessment in part, but our primary focus is whether the entity should be licensed under the Act. While it is true that licensing these entities will entail a minimal cost for both the license application fee and bonding, we note that the amounts are de minimus and have not had a negative impact on the electric generation supply market.

Based upon our further consideration of these issues, we still believe that an exemption from licensing for certain entities providing “marketing” services either (a) on behalf of the members of a civic or other community-based organization or (b) on behalf of a single NGS should remain intact. However, to bring clarity to the retail gas market regarding the entities that must be

licensed, we will delete the current “marketing services consultant” definition and, instead, incorporate a new entity referred to as a “non-selling marketer” into the regulations. A “non-selling marketer” is an entity whose activities are limited to providing only marketing and sales support services on behalf of one or more NGS firms.

We note the comments of RESA, PEMC, and NEMA that a “marketer” that operates under an exclusive contract with a single licensed NGS supplier to conduct natural gas-related marketing and sales activities in its service territory should not be required to be separately licensed by the Commission. Conversely, a marketer that works directly with an end-user customer or simultaneously represents more than one licensed NGS should be required to obtain a license. We agree with the commenters that the line of accountability back to a single NGS is clear where there is a direct relationship and the NGS will be directly responsible for the marketer’s activities and for reporting requirements under Section 62.110(a)(3). Accordingly, we will incorporate this concept into the regulations and provide that a “non-selling marketer” under contract to a single NGS will not be required to obtain a license.

As to “non-traditional marketers,” we will retain a definition for this term and exempt these entities from a licensing requirement. Non-traditional marketers are community-based organizations, civic, fraternal or other groups with a common interest that work with a licensed NGS to endorse that NGS’ natural gas supply service to its members. The members are not required to purchase the services from the endorsed NGS and if the offer is accepted the contract is between the member and the NGS. Under these circumstances, we believe it reasonable to not require a license for this type of activity.

Conclusion

This order sets forth further proposed amendments to the NGS licensing regulations that eliminate the definition of marketing service consultants and modifies the exemption from licensing requirements set forth in the current regulations. We are mindful of IRRC’s comments and therefore will issue this order as an Advance Notice of Final Rulemaking. Accordingly, this order also establishes an additional comment period that ends 30 days from the date of the publication of this order in the *Pennsylvania Bulletin*.

The Commission welcomes public comments on all revisions to the proposed regulations. We emphasize that parties should use this opportunity to focus on the revisions to the proposed rule, and not to revisit issues already raised in previously submitted comments. Note that we are particularly interested in receiving comments on the costs that would be incurred, and any savings that might be realized, by affected parties as the result of these proposed amendments. Affected parties would include marketing services consultants, nontraditional marketers, NGSs, NGDCs and customers. We look forward to preparing and delivering a final form regulation to the IRRC after we have reviewed these comments; *Therefore,*

It Is Ordered That:

1. The Secretary shall serve a copy of this Order and Annex A on all jurisdictional natural gas distribution companies, all licensed natural gas suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate, the Energy Association of Pennsylvania and all other parties that filed comments at Docket No. L-2011-2266832.

2. The Office of Competitive Market Oversight shall electronically send a copy of this Order and Annex A on all persons on the contact list for the Stakeholders Exploring Avenues to Remove Competitive Hurdles (SEARCH).

3. A copy of this Order and Annex A shall be posted on the Commission’s web site at the Office of Competitive Market Oversight’s web page.

4. The contact persons for this Advanced Notice of Final Rulemaking are David E. Screven, Assistant Counsel, (717) 787-2126 (legal), Colin Scott, Assistant Counsel, (717)-783-5949 (legal) and Brent Killian, Bureau of Technical Utility Services, (717) 783-0350 (technical). Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Review Assistant, Law Bureau, (717) 772-4597.

5. A copy of this Advanced Notice of Final Rulemaking shall be published in the *Pennsylvania Bulletin* for comment.

6. An original copy of any written comments referencing the docket number of this Advance Notice of Final Rulemaking shall be submitted no later than thirty days from the date of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn.: Secretary, P. O. Box 3265, Harrisburg, PA, 17105-3265.

7. The parties serve a courtesy copy of their comments on the contact persons previously mentioned.

ROSEMARY CHIAVETTA,
Secretary

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 62. NATURAL GAS SUPPLY CUSTOMER CHOICE

§ 62.101. Definitions.

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

* * * * *

Aggregator—An entity, licensed by the Commission, that purchases natural gas and takes title to it as an intermediary for sale to retail customers.

* * * * *

Broker—An entity, licensed by the Commission, that acts as an agent or intermediary in the sale and purchase of natural gas but does not take title to natural gas supply.

* * * * *

Marketing—The publication, dissemination or distribution of informational and advertising materials regarding the licensed NGS’s natural gas supply services and products to the public by personal contact, print, broadcast, electronic media, direct mail or by telecommunication.

Marketing services consultant—A commercial entity, such as a telemarketing firm or auction-type website, or energy consultant, that under contract to a licensee or a retail customer, may act as an agent to market natural gas supply services to

retail gas customers for the licensee or may act as an agent to recommend the acceptance of offers to provide service to retail customers. A marketing services consultant:

- (i) Does not collect natural gas supply costs directly from retail customers.
- (ii) Is not responsible for the scheduling of natural gas supplies.
- (iii) Is not responsible for the payment of the costs of the natural gas to suppliers, producers, or NGDCs.]

* * * * *

Non-selling marketer—A commercial entity, such as a telemarketing firm, door-to-door company or auction-type website, that provides marketing services to retail customers for a licensed NGS's natural gas supply services.

[*Nontraditional marketer*—A community-based organization, civic, fraternal or business association, or common interest group that works with a licensed supplier as an agent to market natural gas supply services to its members or constituents. A nontraditional marketer:

- (i) conducts its transactions through a licensed NGS;
- (ii) does not collect revenue directly from retail customers;
- (iii) does not require its members or constituents to obtain its natural gas service through the nontraditional marketer or a specific licensed NGS;
- (iv) is not responsible for the scheduling of natural gas supplies;
- (v) is not responsible for the payment of the costs of the natural gas to its suppliers or producers.]

Nontraditional marketer—A community-based organization, civic, fraternal or business association, or common interest group that works with a licensed NGS as an agent to market natural gas service to its members or constituents. The nontraditional marketer may not require its members or constituents to obtain its natural gas service through a specific licensed NGS and may not be compensated by the licensed NGS if members or constituents enroll with the licensed NGS.

* * * * *

§ 62.102. Scope of licensure.

* * * * *

- (a) An NGS, including an aggregator or a broker, may not engage in marketing, or may not offer to provide,

or provide natural gas supply services to retail customers until it is granted a license by the Commission.

* * * * *

[(d) A nontraditional marketer is not required to obtain a license. The licensed NGS shall be responsible for violations of 66 Pa.C.S. (relating to the Public Utility Code), and applicable regulations of this title, orders and directives committed by the nontraditional marketer and fraudulent, deceptive or other unlawful marketing or billing acts committed by the nontraditional marketer.

(e) A marketing services consultant is not required to obtain a license. The licensed NGS shall be responsible for violations of 66 Pa.C.S. and applicable regulations of this title, orders and directives committed by the marketing services consultant and fraudulent, deceptive or other unlawful marketing or billing acts committed by the marketing services consultant.]

(d) A nontraditional marketer is not required to obtain a license. The licensed NGS shall be responsible for violations of 66 Pa.C.S. (relating to the Public Utility Code), and applicable regulations of this title, orders and directives committed by the nontraditional marketer and fraudulent, deceptive or other unlawful marketing or billing acts committed by the nontraditional marketer.

(e) A non-selling marketer under contract to more than one licensed NGS or which has a contract with an end-user retail natural gas customer shall be required to obtain a license.

(f) A non-selling marketer under contract to only one licensed NGS may not be required to obtain a license. The licensed NGS shall be responsible for violations of 66 Pa.C.S. and applicable regulations of this title, orders and directives committed by the non-selling marketer and fraudulent, deceptive or other unlawful marketing or billing acts committed by the non-selling marketer.

§ 62.110. Reporting requirements.

- (a) A licensee shall file an annual report on or before April 30 of each year, for the previous calendar year. The annual report shall contain the following information:

* * * * *

[(3) The names and addresses of nontraditional marketers and marketing services consultants who are currently or will be acting as agents for the licensee in the upcoming year.]

* * * * *

[Pa.B. Doc. No. 13-451. Filed for public inspection March 15, 2013, 9:00 a.m.]