

Regulatory Analysis Form

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(1) Agency

Pennsylvania Public Utility Commission

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(2) I.D. Number (Governor's Office Use)

L-00000150/57-217

REVIEW COMMISSION

IRRC Number: 2125

(3) Short Title

Proposed Rulemaking Order regarding licensing requirements for Natural Gas Suppliers.

(4) PA Code Cite

52 Pa. Code, Chapter 62

(5) Agency Contacts & Telephone Numbers

Primary Contact: Patricia Krise Burket (717) 787-3463

Secondary Contact: Robert Bennett (717) 787-5553

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The proposed regulation affects natural gas suppliers. The regulation describes the forms, data and procedures involved in obtaining a license to become a natural gas supplier in the Commonwealth.

On June 22, 1999, Governor Thomas J. Ridge signed into law the Natural Gas Choice and Competition Act (Act), effective July 1, 1999. The purpose of the Act is to permit customers their choice of natural gas suppliers while maintaining reliable and safe gas service.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

66 Pa. C.S. §2201-§2212

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

See response to No. 8 and 9 above.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The proposed rulemaking is in response to the Natural Gas Choice and Competition Act which became effective on July 1, 1999.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

The licensing of natural gas suppliers is to insure both gas supply reliability, and consumer protection.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

All natural gas customers receiving service at retail could effectively benefit from this proposed rulemaking.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

N/A

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Compliance with this regulation will be required from all entities that desire to sell natural gas and natural gas services to customers in Pennsylvania.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Pennsylvania Gas Association and various natural gas suppliers have provided input to date.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Compliance with this regulation will impose no added costs on the regulated community. Any savings to the regulated community are not specifically quantifiable.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

N/A

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

N/A

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

N/A

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A				

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

N/A

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

N/A

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

N/A

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

N/A

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Pennsylvania's regulations in this area compare favorably with those of other states. Pennsylvania will not be put at a competitive disadvantage with the implementation of this regulation, while, at the same time, continuing to protect the interests of state's gas ratepayers.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Yes. Natural gas suppliers will need to comply with Section 62.111, Annual reporting requirements. The annual reports will contain total annual amount of gross receipts and total volume of natural gas sold.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The regulation takes into consideration the special circumstances of non-profit associations and neighborhood groups.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will become effective upon publication. No permits, licenses or other approvals must be obtained.

(31) Provide the schedule for continual review of the regulation.

The Public Utility Commission will monitor the effectiveness of this regulation on an ongoing basis, or as various parties make their concerns known.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

2125

Copy below is hereby approved as to form and legality. Attorney General.

BY

[Signature]
(DEPUTY ATTORNEY GENERAL)

MAY 30 2000

DATE OF APPROVAL

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Public Utility Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-00000150/57-217

DATE OF ADOPTION April 13, 2000

BY

[Signature]
James J. McNulty

TITLE

(SECRETARY)

Copy below is hereby approved as to form and legality. Executive or independent Agencies.

BY

[Signature]

Bohdan R. Pankiw
Chief Counsel

4-13-00
DATE OF APPROVAL

Check if applicable. No Attorney General approval or objection within 30 days after submission.

Check if applicable
Copy not approved. Objections attached

L-00000150/57-217
Proposed Rulemaking
Licensing Requirements for Natural
Gas suppliers
52 Pa. Code, Chapter 62

The Pennsylvania Public Utility Commission on April 13, 2000, adopted a proposed rulemaking order establishing licensing requirements for natural gas suppliers. The contact persons are Robert Bennett, Bureau of Fixed Utility Services, 787-5553 and Patricia Krise Burket, Law Bureau, 787-3464.

EXECUTIVE SUMMARY
L-00000150
**Proposed Regulations Regarding
Licensing Requirements for Natural
Gas Suppliers**
52 Pa. Code Chapter 62

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 their natural gas supplier. Previously, consumers procured their natural gas supply requirements as a package from the jurisdictional public utility. The package, mentioned above, included what are now the basic components of competitive natural gas supply service, commodity, capacity and storage, balancing and aggregation services of the natural gas utility.

On July 15, 1999, the Commission issued a Final Order which adopted interim licensing procedures and a license application. These interim licensing procedures were to be temporary in nature, and would be replaced by regulations. As the first step in promulgating these regulations, the Commission has revised its interim licensing procedures and has redrafted them as proposed regulations.

Through this proposed regulation, the Commission is seeking comments and reply comments from interested parties.

The contact persons are Patricia Krise Burket, Law Bureau (717) 787-3464, and Robert Bennett, Fixed Utility Services (717) 787-5553.

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA. 17105-3265**

Public Meeting held April 13, 2000

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
Nora Mead Brownell
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

Re: Licensing Requirements for Natural
Gas Suppliers;
52 Pa. Code, Chapter 62

Docket Number: L-00000150

PROPOSED RULEMAKING ORDER

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 their natural gas supplier. Previously, consumers procured their natural gas supply requirements as a package from the jurisdictional public utility. The package, mentioned above, included what are now the basic components of competitive natural gas supply service, commodity, capacity and storage, balancing and aggregation services of the natural gas utility. The Act at §2202 defines a natural gas supplier 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. The term includes a natural gas distribution company that provides natural gas supply outside its certificated service territories. The term includes a municipal corporation, its affiliates or any joint venture, to the extent that it chooses to provide natural gas supply services to retail customers located outside of its corporate or municipal limits, as applicable, other than:

(i) as provided prior to the effective date of this chapter, pursuant to a certificate of public convenience if required under this title;

(ii) total natural gas supply services in de minimis amounts;

(iii) natural gas supply services requested by, or provided with the consent of, the public utility in whose certificated territory the services are provided; or

(iv) natural gas supply services provided to the municipal corporation itself or its tenants on land it owns or leases, or is subject to an agreement of sale or pending condemnation, as of September 1, 1999, to the extent permitted by applicable law independent of this chapter.

The term excludes an entity to the extent that it provides free gas to end-users under the terms of an oil or gas lease. Notwithstanding any other provision of this title, a natural gas supplier that is not a natural gas distribution company is not a public utility as defined in section 102 (relating to definitions) to the extent that the natural gas supplier is utilizing the jurisdictional distribution facilities of a natural gas distribution company or is providing other services authorized by the Commission.

66 Pa. C.S. §2202.

As used in the above definition of a natural gas supplier, the term natural gas supply services includes (i) the sale or arrangement of the sale of natural gas to

retail customers; and (ii) 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). Natural gas supply service does not include distribution service.

66 Pa. C.S. § 2202.

On June 24, 1999, the Commission issued a Tentative Order and draft licensing application for interim licensing of natural gas suppliers pending the promulgation of regulations. The Tentative Order established a comment period ending July 9, 1999, and was served on the Office of Consumer Advocate, the Office of Small Business Advocate, Pennsylvania jurisdictional gas utilities, and other interested parties. The Commission's order was also posted on the Commission's website. Comments were received from numerous parties.

On July 15, 1999, the Commission adopted a Final Order which set forth interim licensing procedures and a license application. Re: Requirements for Natural Gas Suppliers - Guidelines pursuant to Chapter 22 Natural Gas Choice and Competition Act Section 2208, order entered July 16, 1999 at Dkt. No. M-00991248F0002.

In its July 16, 1999 Order, the Commission recognized that the interim licensing procedures were to be temporary in nature, and that they would be replaced by regulations. As the first step in promulgating these regulations, the Commission has revised its interim licensing procedures and has redrafted them as proposed regulations.

The Commission seeks general comments on the proposed regulations.

Persons submitting comments are requested to provide supporting justification for requested revisions, and propose suggested regulatory language for incorporation into the final form regulations.

While the proposed regulations are derived predominantly from the interim licensing guidelines, the Commission has included in the proposed regulations provisions that exempt from licensing non-traditional marketers and marketing services consultants that work as agents for a licensed natural gas supplier under certain restrictions. The restrictions are that the supplier is the financially responsible party (1) for the provision of natural gas supply services to retail customers and (2) for all unlawful acts committed by the agent. Non-traditional marketers include community-based organizations, civic, fraternal or business associations, common interest groups that endorse a supplier's services to their members or constituents (non-traditional marketers). Marketing services consultants are commercial entities, such as telemarketing firms and auction-type websites, that are under contract as an agent to a licensed supplier and that market natural gas supply services to consumers on the supplier's behalf.

The definition of "natural gas supplier" at 66 Pa. C.S. §2202 is very broad, and our initial interpretation of the law had been that every entity that engages in an activity listed as that undertaken by a natural gas supplier must be licensed. However, we have come to recognize that some of these activities may be

undertaken by entities like those listed above who will not have any direct physical or financial responsibility for the procurement of the customer's natural gas.

Under these circumstances, we do not believe that the public interest requires that these entities comply with the licensing requirements. Comment is specifically requested on these exemptions.

In addition, the proposed regulations would develop different financial surety mechanisms intended to facilitate customer choice for the gas industry contrasted with those in force for customer choice in the electric industry. This treatment may be extended to other areas as well.

The Commission seeks particular comment on whether, and to what extent, disparate treatment between industries is appropriate in the proceeding as a matter of law and policy. The Commission is interested in developing final regulations and policies that reflect the increased probability of gas and electric convergence in Pennsylvania.

Accordingly, under Sections 501, 2203 (12), and 2208 of the Public Utility Code, 66 Pa. C.S. §501, §2203(12) and §2208, and the Commonwealth Documents Law, 45 P.S. §§1201, et seq., and regulations promulgated thereunder at 1 Pa. Code §§7.1-7.4, we amend the regulations at 52 Pa. Code §3.551 and §§62.101-62.115 as noted above and as set forth in Annex A; **THEREFORE,**

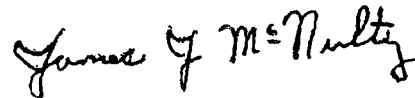
IT IS ORDERED:

1. That a rulemaking docket shall be opened to promulgate regulations for the licensing of natural gas suppliers as set forth in Annex A of this order.
2. That the Secretary shall submit this order and Annex A to the Office of the Attorney General for preliminary review as to form and legality.
3. That the Secretary shall submit a copy of this order, together with Annex A, to the Governor's Budget office for review of fiscal impact.
4. That the Secretary shall submit this order and Annex A for review and comments by the designated standing committees of both Houses of the General Assembly, and for review and comments by the Independent Regulatory Review Commission.
5. That the Secretary shall duly certify this order and Annex A and deposit them with the Legislative Reference Bureau for Publication in the Pennsylvania Bulletin.
6. That within thirty (30) days of this order's publication in the Pennsylvania Bulletin, an original and 15 copies of any comments concerning this order shall be submitted to the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265. One copy of a diskette containing the comments in electronic format should also be submitted.
7. That a copy of this order and Annex A be served on the Office of Consumer Advocate, the Office of Small Business Advocate, all natural gas

distribution companies and all licensed natural gas suppliers, posted on the Commission's web site at <http://puc.paonline.com>, and provided to all interested persons.

8. The contact persons are Patricia Krise Burket, at 717-787-3464 (legal) or Robert Bennett, at 717-787-5553 (technical). Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau at 717-772-4597.

BY THE COMMISSION,

A handwritten signature in black ink that reads "James J. McNulty". The signature is written in a cursive style with a large, stylized "M" and "N".

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: April 13, 2000

ORDER ENTERED: **APR 13 2000**

ANNEX A
TITLE 52. PUBLIC UTILITIES
PART 1. PUBLIC UTILITY COMMISSION
Subpart A. GENERAL PROVISIONS
CHAPTER 3. SPECIAL PROVISIONS
Subchapter H. FORMS

§3.551. Official forms.

The following is a list of forms which may be obtained from the Office of the Secretary of the Commission.

* * * * *

(16) Application for natural gas supplier license.

* * * * *

Subpart C. FIXED SERVICE UTILITIES
CHAPTER 62. NATURAL GAS SUPPLY CUSTOMER CHOICE
Subchapter D. LICENSING REQUIREMENTS FOR NATURAL
GAS SUPPLIERS

§62.101. Definitions.

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

Applicant- A person or entity seeking to obtain a license to supply retail natural gas supply services to retail customers.

City Natural Gas Distribution Operation- A collection of real and personal assets used for distributing natural gas to retail gas customers owned by a city or a municipal authority, nonprofit corporation or public corporation formed pursuant to §2212(m) (relating to city natural gas distribution operations).

Commission- The Pennsylvania Public Utility Commission.

Department- The Pennsylvania Department of Revenue.

License- A license granted to a natural gas supplier under this subchapter.

Licensee- A person or entity that has obtained a license to provide natural gas supply services to retail customers.

Marketing- The publication, dissemination or distribution of informational and advertising materials regarding the natural gas supplier's 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, that under contract to a licensee, acts as an agent to market natural gas supply services to retail gas customers for the licensee. A marketing services consultant does not collect revenues directly from retail customers, is not responsible for the scheduling of natural gas supplies, and is not responsible for the payment of the costs of the natural gas to suppliers, producers, or natural gas distribution companies.

Natural Gas Distribution Company- A public utility or city natural gas distribution operation that provides natural gas distribution services and which may provide natural gas services and other services.

Natural Gas Supplier- An entity other than a natural gas distribution company, including a natural gas distribution company's marketing affiliates,

which provides natural gas supply services to retail gas customers utilizing the jurisdictional facilities of a natural gas distribution company. The term includes a natural gas distribution company that provides natural gas supply services outside its certificated service territories. The term includes a municipal corporation, its affiliates or any joint venture to the extent that it chooses to provide natural gas services to retail customers located outside its corporate or municipal limits, as applicable, other than:

(1) As provided prior to the effective date of Natural Gas Choice and Competition Act, pursuant to a certificate of public convenience if required.

(2) Total natural gas supply services in de minimis amounts.

(3) Natural gas supply services requested by or provided with the consent of the public utility in whose certificated territory the service is provided.

(4) Natural gas supply services provided to the municipal corporation itself or its tenants on land it owns or leases, or is subject to an agreement of sale or pending condemnation, as of September 1, 1999, to the extent permitted by applicable law.

Natural Gas Supply Services -The term includes:

(1) The sale or arrangement of the sale of natural gas to retail gas customers.

(2) Services that may be unbundled by the Commission under 66 Pa. C.S. § 2203(3) (relating to standards for restructuring of natural gas utility industry).

Non-traditional Marketer - a community-based organization, civic, fraternal or business association, common interest group or commercial entity that works with a licensed supplier as an agent to market natural gas supply services to its members or constituents. A non-traditional marketer:

(1) Conducts its transactions through a licensed natural gas supplier.

(2) Does not collect revenues directly from retail customers.

(3) Does not require its members or constituents to obtain its natural gas service through the non-traditional marketer or a specific licensed natural gas supplier(s).

(4) Is not responsible for the scheduling of natural gas supplies.

(5) Is not responsible for the payment of the costs of the natural gas to its suppliers or producers.

Offer to provide service- The extension of an offer to provide services or products communicated orally or in writing to a customer.

Retail gas customer- A direct purchaser of natural gas supply services or natural gas distribution services, other than a natural gas supplier.

Supplier of Last Resort- A supplier approved by the Commission pursuant to 66 Pa. C.S. §2207 (a) to provide natural gas supply services to customers who contracted for natural gas that was not delivered, or who did not select an alternative natural gas supplier, or who are not eligible to obtain competitive

natural gas supply, or who return to the supplier of last resort after having obtained competitive natural gas supply.

§62.102. Scope of Licensure

(a) A natural gas supplier 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.

(b) A natural gas distribution company acting within its certified service territory as a supplier of last resort shall not be required to obtain a license.

(c) An owner/operator of a building or facility that manages the internal distribution system supplying a building or facility and supplies natural gas and other related services to occupants of the building or the facility where such owner/operators, and not the occupants, are the direct purchasers of the natural gas supply services shall not be required to obtain a license.

(d) A non-traditional marketer shall not be required to obtain a license.

Each non-traditional marketer and each licensed natural gas supplier must provide the Commission with a copy of their agreement to market natural gas supply services to retail customers prior to the non-traditional marketer engaging in any natural gas supply service sales activity. The licensed natural gas supplier shall be responsible for violations of the Public Utility Code, and applicable Commission regulations, orders and directives committed by the non-traditional marketer and

fraudulent, deceptive or other unlawful marketing or billing acts committed by the non-traditional marketer.

(e) A marketing services consultant shall not be required to obtain a license.

Each marketing services consultant and each licensed natural gas supplier must provide the Commission with a copy of their agreement to market natural gas supply services to retail customers prior to the marketing services consultant engaging in any natural gas supply service sales activity. The licensed natural gas supplier shall be responsible for violations of the Public Utility Code, and applicable Commission regulations, 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.

§62.103. Application Process.

(a) An application for a license shall be made on the form provided by the Commission. A copy of the application can be obtained from the Commission's Secretary. The application form is also available on the Commission's Internet web site. An application shall be verified by an oath or affirmation as required in Section 1.36 (relating to verification). See 66 Pa. C.S. §2208(b).

(b) An original and eight copies of the completed application and supporting attachments shall be filed. An electronic copy of the application shall also be filed. An application for a license shall be accompanied by the application

fee as established in Section 1.43 (relating to schedule of fees payable to the Commission).

(c) Copies of the completed applications with supporting documentation shall be served on the following: the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of the Attorney General, the Bureau of Consumer Protection, the Pennsylvania Department of Revenue, and each natural gas distribution company in whose service territory the applicant intends to provide natural gas supply services.

(d) Incomplete applications and those without supporting attachments, where needed, will be rejected without prejudice. The license application, with supporting attachments, shall be completed in its entirety.

(e) When an answer on the application requires the disclosure of privileged or confidential information not otherwise available to the public, the applicant may designate at each point in the application where information is disclosed that is confidential and privileged. One copy of this confidential or privileged information conspicuously marked at the top as "CONFIDENTIAL" may be submitted to the Office of the Secretary with the application. An applicant must provide reasons for protecting this information. The request for confidentiality will be treated as a petition for protective order and will be ruled on by the Commission in conjunction with the license application. Pending disposition, the information will be used solely for the purpose of evaluating the license

application, and the confidentiality of this information will be maintained consistent with the Commission's rules and regulations pertaining to confidentiality.

§62.104. Application Form.

(a) The application form includes information that will be used in the evaluation of the financial fitness and technical fitness to render service.

Information includes:

(1) Identification of the geographic area that the applicant proposes to serve.

(2) Identification of the type of service that the applicant proposes to furnish.

(3) Identification of the class of customers to which the applicant proposes to provide these services.

(4) The identification of the applicant's utility affiliates.

(5) Description of the applicant's business structure.

(6) Financial information sufficient to demonstrate financial fitness.

This information may include credit ratings and history, audited financial statements, and insurance pertinent to the conduct of the applicant's business as a natural gas supplier.

(7) Evidence of competency and experience in providing the scope and nature of the applicant's proposed services. This evidence may include descriptions of the applicant's prior experience, proposed staffing and employee training commitments, business plans and agreements, arrangements and contracts for natural gas supply procurement, transmission and related services.

(8) Evidence of information demonstrating the applicant's ability to comply with Commission applicable requirements concerning customer billing, customer education, billing and terms of service, and customer information. This evidence may include prior regulatory experience of applicant, prior business experience in energy or other service-oriented industries, staffing and staff training commitments, agreements, arrangements and contracts for customer education and information service, customer satisfaction survey results, government agency reports, and complaint statistics compiled by the Better Business Bureau or similar business organizations.

(9) Certification that notice of the application was published in accordance with §54.35 (relating to publication of notice of filing) shall be filed with the Commission's Secretary. The certification shall be notarized and include a photostatic copy of the notice(s) as published. An application shall not be considered complete for Commission review without this certification.

(b) Additional information that shall be submitted in support of the application includes:

(1) The name, address, telephone number, electronic numbers and addresses used to transmit tax and related information of the person(s) responsible for preparing and filing the applicant's Pennsylvania tax returns.

(2) Trade names or fictitious names used by the applicant.

(3) The type of business association (e.g., sole proprietor, partnership, corporation).

(4) The names of the owners, general partners, or corporate officers.

(5) Number of applicant's current and anticipated employees working in Pennsylvania.

(6) Identification of applicant's assets in Pennsylvania.

(7) Principal office in Pennsylvania or of its registered agent.

(8) Applicant's Department tax identification numbers including sales tax license number, employer identification number, and corporate box number.

§62.105. Change in Organizational Structure or Operational Status.

(a) The applicant is under a duty to inform the Commission of a material change in the information provided in the application during the pendency of the application, or while the licensee is operating in Pennsylvania.

(b) A material change in the organizational structure or operation that affects an applicant's or a licensee's operation in Pennsylvania shall be reported to

the Commission within 30 days of the date of the change. Specifically, notification shall be given to the Commission of a change in the following:

- (1) Affiliation with a natural gas distribution company.
- (2) Affiliation with an entity that has a franchised service area.
- (3) Affiliation with other natural gas supplier.
- (4) Affiliation with licensed electric generation supplier.
- (5) Office location.
- (6) Chief Executive Officer or operating partners.
- (7) Customer classes served expanded to include residential and

small commercial customers.

(c) Unless directed otherwise by the Commission, the licensee does not need to file an amended application with the Commission.

§62.106. Open and Nondiscriminatory Access.

A municipal corporation shall, before it is permitted to provide natural gas supply services as a licensed natural gas supplier, demonstrate, and the Commission shall determine, that by the date of the issuance of the license, it will provide other natural gas suppliers open and nondiscriminatory access to its gas distribution system under standards that are comparable to the Act, taking into consideration the particular circumstances of the municipal corporation's ownership and/or operation of its natural gas distribution system.

§62.107. Publication of Notice of Filing.

(a) Notice of filing an application shall be published in newspapers of general circulation covering each county in which the applicant intends to provide service as required by Section 5.14(a)(2) (relating to applications requiring notice). Applicants may contact the Commission's Press Secretary to confirm the identity of the newspapers of general circulation in which notice shall be published.

(b) The notice shall be written in plain language and include the name, address and telephone number of the applicant, a description of the proposed service or services to be provided and the geographic area to be served. The notice shall include the application docket number and a statement that protests related to the technical or financial fitness of the applicant shall be filed within 15 days of the publication date of the notice with the Commission's Secretary, Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265. The notice in an acceptable electronic format shall be submitted to the Commission's Secretary for posting on the Commission's Internet web site.

§62.108. Protests to Applications.

(a) Consistent with Section 5.14(b) (relating to applications requiring notice), a 15 day protest period commences on the date notice of the application filing is published in newspapers. An interested party may file a protest to an application in compliance with Section 5.52(a) (relating to content of a protest to

an application) and shall set out clearly and concisely the facts upon which challenge to the fitness of the applicant is based. An applicant may file an answer to the protest within 10 days of when the protest is filed. Protests which do not fully comply with Section 5.52(a) (relating to content of a protest to an application) will be rejected.

(b) Protests may challenge only the applicant's financial and technical fitness to provide the service for which a license is requested. Consistent with the requirements of due process, sanctions, such as revocation or suspension of a supplier's license or the imposition of a fine, may be imposed on parties who intentionally misuse the protest process by repeated filing of competitive protests.

(c) A protest to the applicant's technical or financial fitness to provide service will be assigned to Commission staff for review. Staff will determine if the protest fully complies with Section 5.52(a) (relating to content of a protest to an application) and sets out clearly and concisely the facts upon which the challenge to the fitness of the applicant is based. Staff will determine if the protest is sufficiently documented. If a protest is not sufficiently documented, Commission staff will prepare a recommendation for Commission consideration dismissing the protest and granting the application. If a protest is sufficiently documented, the application will be transferred to the Office of Administrative Law Judge for hearings or mediation as deemed appropriate.

§62.109. Approval.

(a) A license will be issued, authorizing the whole or any part of service requested, if the Commission finds:

(1) That the applicant is fit, willing and able to properly perform the service proposed in conformance with applicable provisions of the Public Utility Code and the lawful Commission orders and regulations, specifically including Chapter 56 (relating to Standards and Billing Practices for Residential Utility Service).

(2) That the proposed service is consistent with the public interest and the policy declared in the Natural Gas Choice and Competition Act. See 66 Pa. C.S. §2208(b).

(b) Completed applications, with all supporting documentation, including any documentation or clarifying information requested by Commission staff, if unprotested, will be processed within 45 days after acceptance by the Commission. If the application is not processed within the time period, the application will be deemed approved. The review period may be extended for a reasonable period of time by Secretarial Letter.

§62.110. Regulatory Assessments.

(a) A licensee shall be required to pay assessments to be used to defray regulatory costs. See 66 Pa. C.S. §510. Assessments will be based upon the

administrative costs incurred by the Commission related to suppliers. These costs include: maintaining records related to licensees, and administering other provisions of the Public Utility Code related to maintenance of adequate reserve margins, compliance with Chapter 56 (relating to standards and billing practices for residential utility service), and fulfilling consumer information and education obligations.

(b) Yearly assessments shall be paid by the licensee within 30 days of receipt of notice of the amount lawfully charged against it as a condition of maintaining a license to supply natural gas. See 66 Pa. C.S. §510(c).

§62.111. 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:

(1) The total amount of gross receipts from the sales of natural gas supply services for the preceding calendar year.

(2) The total amount of natural gas sold during the preceding calendar year.

(b) A licensee shall be required to meet periodic reporting requirements as may be issued by the Commission to fulfill the Commission's duty under Chapter

22 pertaining to reliability and to inform the Governor and Legislature of the progress to a fully competitive natural gas market.

(c) All information requested above will be made available for public review upon request to the Commission subject to any rulings on confidentiality made by the Commission.

§62.112. Bonds or Other Security.

(a) A license shall not be issued or remain in force until the licensee furnishes proof of a bond or other security. See 66 Pa. C.S. §2208(c)(1)(i).

(b) The purpose of the security requirement is to ensure the licensee's financial responsibility. See 66 Pa. C.S. §2208(c)(1)(i).

(c) The amount and the form of the security, if not mutually agreed upon by the natural gas distribution company and the licensee, shall be reasonably based on the criteria established in this section. The criteria shall be applied in a non-discriminatory manner. The Commission will periodically review the established criteria upon petition by any party.

(1) The amount of the security should be reasonably related to the financial exposure imposed on the natural gas distribution company or supplier of last resort resulting from the default or bankruptcy of the licensee. At a minimum, the amount of security should materially reflect the difference between the cost of

gas incurred and the supplier's charges, if any, incurred by the natural gas distribution company or supplier of last resort during one billing cycle.

(i) The amount of security established pursuant to subsection (c)(1) may be modified based on one, or more of the following:

(A) The licensee's past operating history, including the length of time that the licensee operated on the natural gas distribution company's system, number of customers served, and past supply reliability problems.

(B) The licensee's credit reports.

(C) Number and class of customers being served.

(D) Information that materially affects a licensee's creditworthiness.

(E) The licensee's demonstrated capability to provide the volume of natural gas necessary for their customers' needs.

(ii) The amount of the security may be adjusted, but not more often than every six months. Such adjustments shall be reasonable and based on one or more of the following criteria:

(A) Changes in a licensee's recent operating history on the natural gas distribution company's system.

(B) Changes in a licensee's credit reports.

(C) Changes in the number or class of customers being served by the licensee.

(D) Changes in circumstances that materially affect a licensee's creditworthiness.

(E) The licensee's demonstrated capability to provide the volume of natural gas necessary for their customers' needs.

(2) The following legal and financial instruments and property shall be acceptable as security:

(i) Bond.

(ii) Irrevocable letter of credit.

(iii) Corporate, parental or other third-party guaranty.

(3) In addition to the above small suppliers with annual operating revenues of less than \$1 million may utilize real or personal property with the following supporting documentation shall be acceptable as security:

(i) A verified statement from the licensee that it has clear title to the property and that the property has not been pledged as collateral, or otherwise encumbered in regard to any other legal or financial transaction.

(ii) A current appraisal report of the market value of the property.

(d) The licensee shall submit to the Commission documentation demonstrating that it has complied with the bonding or security requirement. One copy of each bond, letter of credit, or other financial or legal instrument or document evidencing an agreement between the licensee and the natural gas distribution company shall be submitted to the Commission.

(e) Licensee liability for unreasonable service, or for violations of the Public Utility Code and Commission orders and regulations is not limited by these security requirements.

§62.113. Transfer or abandonment of license.

(a) A license shall not be transferred without prior Commission approval. See 66 Pa. C.S. §2208 (d). Approval for transfer shall be obtained by petition to the Commission. The granting of such a petition shall not eliminate the need for the transferee to complete and file with the Commission an application that demonstrates the transferee's financial and technical fitness to render service under the transferred license.

(b) No licensee shall abandon service without providing 90 days prior written notice to the Commission, the licensee's customers, the affected distribution utilities and suppliers of last resort. The licensee shall provide written individual notice to its customers at approximately 90 days and 60 days preceding the effective date of the abandonment.

§62.114. License Suspension; License Revocation.

(a) A licensee must comply with all applicable requirements of the Public Utility Code, 66 Pa. C.S. §§ 101, et seq., and Commission regulations and orders.

Consistent with due process, a license may be suspended or revoked, and fines may be imposed against the licensee for:

(1) Failure to pay the yearly assessment.

(2) Failure to furnish and maintain a bond or other security.

(3) Failure to comply with the rules, regulations, orders or directives of the Department.

(4) Failure to provide the address of its current principal office in the Commonwealth or of its registered agent.

(5) Failure to follow the principles in Section 62.115 (relating to standards of conduct and disclosure for licensees).

(6) Violation of applicable provisions of the Public Utility Code, Commission regulations and lawful Commission orders. See 66 Pa. C.S. §2208(c)(2).

(7) Violation of Pennsylvania consumer protection law.

(b) The unauthorized transfer by a natural gas distribution company, or its affiliate, of a customer's natural gas supplier without the customer's express consent will result in a fine, or the suspension, or the revocation of the license of that natural gas distribution company's affiliated natural gas supplier. See 66 Pa. C.S. §2206(b).

(c) The unauthorized transfer by a licensed natural gas supplier, or its affiliate, of a customer's natural gas supplier without the customer's express

consent will result in a fine, or the suspension, or the revocation of the license of that natural gas supplier.

§62.115. Standards of Conduct and Disclosure for Licensees.

In order to protect Pennsylvania consumers, licensees shall adhere to the following principles in the provision of natural gas service:

(a) A licensee shall provide accurate information about its natural gas services using plain language and common terms in communications with consumers. Where new terms are used, such terms shall be defined again using plain language.

(b) A licensee shall provide notification of change in conditions of service, intent to cease operation as a natural gas supplier, explanation of denial of service, proper handling of deposits and proper handling of complaints in accordance with Commission regulations.

(c) A licensee shall maintain the confidentiality of a consumer's personal information including 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.

(d) A licensee shall not discriminate in the provision of natural gas as to availability and terms of service based on race, color, religion, national origin, sex, marital status, age, receipt of public assistance income, and exercise of rights

under the Consumer Credit Protection Act, 15 U.S.C. §§1601, et seq. (relating to Equal Credit Opportunity). See 15 U.S.C. §§1691-1691f (relating to equal credit opportunity); 12 C.F.R. §§202-202.14 (Regulation B) (relating to equal credit opportunity).

(e) A licensee shall be responsible for any fraudulent, deceptive or other unlawful marketing or billing acts performed by the licensee, its employees, agents or representatives. A licensee shall inform consumers of state consumer protection laws that govern the cancellation or rescission of natural gas supply contracts. See 73 P. S. §201-7.

(f) A licensee must comply with all relevant Commission regulations, orders and directives that may be adopted.



PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA

JOHN M. QUAIN
CHAIRMAN

June 2, 2000

The Honorable John R. McGinley, Jr.
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown II
333 Market Street
Harrisburg, PA 17101

Re: L-00000150/57-217
Proposed Rulemaking
Licensing Requirements for
Natural Gas Suppliers
52 Pa. Code, Chapter 62

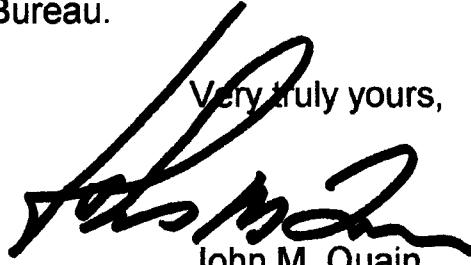
Dear Chairman McGinley:

Enclosed please find one (1) copy of the proposed rulemaking and the Regulatory Analysis Form prepared in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." Pursuant to Section 5(a) of the Regulatory Review Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission is submitting today a copy of the proposed rulemaking and Regulatory Analysis Form to the Chairman of the House Committee on Consumer Affairs and to the Chairman of the Senate Committee on Consumer Protection and Professional Licensure.

The purpose of this proposal is to establish regulations for the licensing of natural gas suppliers. The contact persons are Robert Bennett, Bureau of Fixed Utility Services, 787-5553 and Patricia Krise Burket, Law Bureau 787-3464.

The proposal has been deposited for publication with the
Legislative Reference Bureau.

Very truly yours,

A handwritten signature in black ink, appearing to read "John M. Quain". The signature is fluid and cursive, with a large initial "J" and "M".

John M. Quain
Chairman

Enclosures

cc: The Honorable Clarence D. Bell
The Honorable Lisa Boscola
The Honorable Chris R. Wogan
The Honorable Keith McCall
Legislative Affairs Director Perry
Chief Counsel Pankiw
Assistant Counsel Burket
Regulatory Coordinator DelBiondo
Mr. Bennett
Mr. Zogby

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

RECEIVED

2000 JUN -2 AM 10:52

ID Number: L-00000150/57-217

Subject: Licensing Requirements for Natural Gas Suppliers

Pennsylvania Public Utility Commission

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted.
- Final Regulation
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REPORT

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
5/2/00	Jessita Hojman	HOUSE COMMITTEE Consumer Affairs
6/2/00	Sammy J. Weaver	SENATE COMMITTEE Consumer Protection and Professional Licensure
6/2/00	Jessica Villancourt	Independent Regulatory Review Commission
		Attorney General
		Legislative Reference Bureau