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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

August 17, 2000

Honorable John M. Quain, Chairman
Pennsylvania Public Utility Commission
104 North Office Building
Harrisburg, PA 17105

Re: Regulation #57-217 (IRRC #2125)
Pennsylvania Public Utility Commission
Licensing Requirement for Natural Gas Suppliers

Dear Chairman Quain:

Enclosed are our Comments. They will soon be available on our website at www.irrc.state.pa.us.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director

wbg

Enclosure

cc: Honorable Chris R. Wogan, Majority Chairman, House Consumer Affairs Committee
Honorable Keith R. McCall, Democratic Chairman, House Consumer Affairs Committee
Honorable Clarence D. Bell, Chairman, Senate Consumer Protection & Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection & Professional Licensure Committee
Sherri DelBiondo
Patricia Burket
Robert Bennett

Comments of the Independent Regulatory Review Commission

on

Pennsylvania Public Utility Commission Regulation No. 57-217

Licensing Requirements for Natural Gas Suppliers

August 17, 2000

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Pennsylvania Public Utility Commission (PUC) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by July 17, 2002, the regulation will be deemed withdrawn.

1. Section 62.101. Definitions. - Conformance with statutory authority and Clarity.

Marketing Services Consultant and Nontraditional Marketer

The proposed term *Marketing Services Consultant* is defined, in part, as “(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.” The proposed definition of *Nontraditional Marketer* also includes a commercial entity. Why wouldn’t the “commercial entity” referenced in the definition of *Nontraditional Marketer* be considered a *Marketing Services Consultant*? Any distinctions in the definitions of these terms should be clarified in the final-form regulation.

Natural Gas Distribution Company; Natural Gas Supply Services; and Retail Gas Customer

The definitions of these terms in the regulation differ from the definitions of the same terms in the Natural Gas Choice and Competition Act (Act) (66 Pa. C.S. § 2202). The definitions of these terms in the final-form regulation should conform to the statutory definitions or reference the Act, or the PUC should justify the differences.

NGS – Natural Gas Supplier

The definition of this term in the proposed regulation differs from the definition of the same term in the Act. Specifically, the definition in the regulation does not include the entire last paragraph of the Act’s definition that expressly exempts NGSs from being classified as a public utility. We question the omission of this paragraph in the proposed regulation, and recommend that, in the final-form regulation, this definition be amended to conform to the statutory definition or reference the Act.

2. Section 62.102. Scope of licensure. - Statutory authority.

Subsections (d) and (e) exempt nontraditional marketers and marketing services consultants from the licensure requirement. The Act defines a “natural gas supplier,” in part, as an entity that “provides natural gas supply services to retail customers.” “Natural gas supply services” are defined in the Act to include “the sale or arrangement of the sale of natural gas to retail customers.” It appears that both nontraditional marketers and marketing services consultants “arrange the sale of natural gas” between the NGS and the customer. We request that the PUC explain its statutory authority for the exemptions in Subsections (d) and (e).

3. Section 62.103. Application process. - Clarity.

Subsection (c) requires that copies of completed applications, with supporting documentation, be served upon five specified state regulators and each NGDC in whose service territory the applicant intends to provide natural gas supply services. Subsection (e) provides that an applicant may designate those items, in the application, that it believes are confidential and privileged. Do the confidentiality provisions apply to copies provided under Subsection (c)? If so, an introductory qualifying clause should be added to Subsection (c), making the disclosure of information subject to the limitations of Subsection (e).

We also recommend that the reference to “...each NGDC in whose service territory the applicant intends to provide natural gas supply services” be made a new Paragraph (6) under Subsection (c).

4. Section 62.104. Application form. - Clarity.

Subsection (a)(6) requires an applicant for a license to provide financial information that is “sufficient to demonstrate financial fitness.” Additionally, the regulation provides examples of the type of information that “may” be submitted. It is unclear how the PUC will determine if the financial information is “sufficient.” To improve clarity, the PUC should list the minimum documentation that is required, or the criteria it will use to determine if the information submitted is “sufficient.”

5. Section 62.106. Open and nondiscriminatory access. - Clarity.

This section references the standards for open and nondiscriminatory access to a gas distribution system “in the act.” For clarity, the final-form regulation should specifically cite the relevant sections of the Act. The PUC should also clarify the criteria it will use to determine if a municipal corporation will provide open and nondiscriminatory access to its gas distribution system.

6. Section 62.107. Publication of notice of filing. - Clarity.

Subsection (b)(2) requires a notice of filing an application to be provided to the PUC in an “acceptable electronic format.” The term “acceptable” is vague. What is an “acceptable electronic format”? The PUC should amend the regulation to make this clarification, or direct an applicant to the location or phone number for the information.

7. Section 62.108. Protests to applications. - Reasonableness and Clarity.

Subsection (c)(3) states: “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.” How will the PUC determine which protests will result in hearings and which will result in mediation? Is there a list of criteria that need to be satisfied in both cases? The PUC should explain the process and criteria for establishing whether a protest goes to a hearing or to mediation, and delete the phrase “as deemed appropriate.”

8. Section 62.112. Bonds or other security. - Economic and fiscal impact and Clarity.

This section requires an NGS to post a bond or other security to receive a license to conduct business in Pennsylvania. We have a number of concerns with this section. First, it does not include a prioritization of claims for payment under a bond or other security if an NGS defaults. For clarity, the PUC should establish the priority of claimants by listing who would receive payment from a bond or other security in the event that an NGS ceases service. This approach is consistent with the electric generation supplier licensure regulations at 52 Pa. Code § 54.40(f)(3).

Second, Subsection (c) states: “The amount and form of the security... shall be reasonably based on the criteria established in this section.” The term “reasonably” is unnecessary, and it should be deleted from this subsection.

Finally, Subsection (e) includes the phrase “unreasonable service.” This phrase is unclear. The PUC should either define it or provide examples of “unreasonable service” in this section.

9. Section 62.113. Transfer or abandonment of license. - Clarity.

Petition and application

In this section, the PUC requires two steps for a license transfer. The order of the steps is unclear. As written, the regulation implies that the PUC approves license transfers before receiving the financial and technical fitness application. If that is so, why would an application be necessary after the transfer is granted? In what order does the PUC require submission of these two documents, or are both to be submitted simultaneously? The PUC should amend the regulation to clarify the chronology of document submittal and whether both the petition and an application are necessary.

Abandonment of service

Subsection (b) contains the phrase: “A licensee may not abandon service....” Does “abandon service” mean an NGS surrenders its license? Or, does the phrase refer to the failure to renew or

the cancellation of an NGS contract? The PUC should clarify “abandon service” in the final-form regulation.

10. Section 62.110. Regulatory assessments. - Statutory authority.

Section 62.114. License suspension; license revocation. - Statutory authority.

Section 62.110 (a) requires licensed NGSs to pay assessments to defray regulatory costs, pursuant to Section 510 of the Public Utility Code (66 Pa. C.S. § 510). Section 62.114(a)(1) provides that the license of an NGS may be suspended or revoked for failure to pay an assessment. However, Section 510 of the Code only authorizes the PUC to collect regulatory assessments from public utilities. The definition of “Natural Gas Supplier” in Section 2202 of the Act states: “*Notwithstanding any other provision of this title, a natural gas supplier ...is not a public utility as defined in Section 102 (relating to definitions)....*” (Emphasis added.)

Based on the highlighted language in the definition, it is unclear that an NGS is a public utility. The PUC should explain its authority for collecting these assessments from an NGS under Section 510, or delete Subsections 62.110(a) and 62.114(a)(1) from the final-form regulation.