

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

IRRC Number: 2938

(1) Agency:

Pennsylvania Public Utility Commission

(2) Agency Number: L-2011-2266832

Identification Number: 57-288

(3) PA Code Cite:

52 Pa. Code § 62.101, § 62.102 and §62.110

(4) Short Title:

Licensing Requirements for Natural Gas Suppliers

<http://www.puc.state.pa.us/general/ConsolidatedCaseView.aspx?Docket=L-2011-2266832>

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Patricia Krise Burket, 717-545-3447, pburket@pa.gov

Secondary Contact: Sherri DelBiondo, 717-772-4597, sdelbiondo@pa.gov; Brent W. Killian, 717-783-0350, bkillian@pa.gov

(6) Type of Rulemaking (check applicable box):

☒ Proposed Regulation

☐ Final Regulation

☐ Final Omitted Regulation

☐ Emergency Certification Regulation;

☐ Certification by the Governor

☐ Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The proposed rulemaking solicits comments on revisions proposed to be made to the regulations for licensing natural gas suppliers (NGSs). The purpose of the proposed rulemaking is to review the licensing requirements for NGSs, specifically focusing on: (1) whether the exemption from NGS licensing of "marketing services consultants" and "nontraditional marketers," as defined in 52 Pa. Code § 62.101, 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.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The statutory authority for the proposed revisions to the NGS licensing regulations may be found in the following sections of the Public Utility Code: 66 Pa.C.S. § 501 (relating to [the PUC's] general powers); § 504 (relating to reports by public utilities); § 1501 (relating to character of service and facilities); § 1504 (relating to standards of service and facilities); § 2202 (relating to definitions); § 2204(a) (relating to implementation; commencement of customer choice); and § 2208 (relating to requirements for natural gas suppliers).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The NGS licensing regulations are mandated by state law at 66 Pa. C.S. § 2204(a) (relating to implementation; commencement of customer choice) to implement natural gas choice. The proposed rulemaking, which proposes to eliminate the exemption from NGS licensing requirements for two groups -- marketing services consultants and non-traditional marketers, was initiated at the discretion of the PUC.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The compelling public interest furthered by the proposed revision to existing regulations is the licensing of all entities who are required to be licensed as "natural gas suppliers" pursuant to 66 Pa. C.S. § 2208(a) (relating to requirements for natural gas suppliers; license requirements). The term "natural gas supplier" is broadly defined at 66 Pa.C.S. § 2202 (relating to definitions), and as previously construed by the PUC, did not include "marketing services consultants" and "nontraditional marketers." The instant proposed rulemaking is to determine whether the exemption of these two groups from licensing requirements should continue or should be eliminated and 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.

A specific request was made in the proposed rulemaking order for comments on the costs and savings to affected parties that may result from the proposed revisions. However, in general, the persons who may potentially benefit from the proposed revision are NGSs who must compete for customers with previously unlicensed entities involved in selling natural gas supply services. NGDCs may benefit as they will be able to identify and establish applicable security requirements for all entities that sell natural gas supply services in their service territories. Retail natural gas customers may benefit by being protected from marketing and sales solicitations by previously unlicensed *de facto* NGSs.

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data was not submitted to support the original NGS licensing regulations in July 2001, and is not needed to support the revisions now proposed to be made to the regulations. The regulations set forth the application and approval process for entities to be licensed as NGSs as required by the Public Utility Code. See 66 Pa. C.S. § 2208(a) (relating to requirements for natural gas suppliers; license requirements).

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

Entities previously exempted from NGS licensing may be adversely affected by this proposed revision. These entities are "marketing services consultants" and "non-traditional marketers" as these terms are defined in PUC regulations at 52 Pa. Code § 62.101 (relating to definitions). Marketing services consultants include commercial entities like advertising and telemarketing firms who would assist a licensed supplier in its marketing and sales campaigns; non-traditional marketers include scout troops, civic organizations, alumni associations and church groups that market to their members, *i.e.*, affinity marketing. Under the proposed revisions, these entities could be required to be licensed as NGSs, which may possibly increase costs for other NGSs that hire them or partner with them for sales and marketing support. Consumers may also be affected by NGSs' higher marketing costs since they may be passed onto consumers in the form of higher natural gas supply costs.

The number of persons who will be directly affected by this proposed revision is unknown since at this stage, it is uncertain whether the proposed elimination of the exemption from licensing will be made final. Additionally, if the exemption is eliminated in the final rulemaking order, the number of marketing services providers and non-traditional marketers who may simply choose not to apply to be licensed as an NGS and simply withdraw from doing business in Pennsylvania is unknown.

(13) 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.

Marketing services consultants and non-traditional marketers as those presently defined in 52 Pa. Code § 62.101 (relating to definitions) will need to comply with the revised regulation and will need to be licensed. This number cannot be estimated. See Answer 12 above.

(14) 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. Explain how the dollar estimates were derived.

The costs of this proposed revision on the regulated community cannot be estimated because the number of previously exempted marketing services consultants and non-traditional marketers that may need to obtain NGS licenses is not known. In general, costs that could be incurred by a previously exempt entity to obtain a NGS license could include costs: (1) to prepare and submit an NGS license application; and (2) to post and maintain security to be licensed to operate in each NGDC's service territory. Costs could also be increased for those NGSs who have in the past hired or partnered with these previously unlicensed entities to provide sales and marketing support.

Savings to the regulated community also cannot be estimated because the number of previously exempt entities is not known.

A specific request was made in the proposed rulemaking order for comments on the costs and savings to affected parties that may result from the proposed revisions.

(15) 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. Explain how the dollar estimates were derived.

Local governments will not be affected by the proposed revision of PUC regulations on NGS licensing, and are not expected to incur costs or realize any savings.

(16) 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. Explain how the dollar estimates were derived.

The PUC, the branch of state government that processes NGS license applications and oversees the activities of NGS licensees, will be affected by the proposed revisions to the regulation. The revisions will eliminate the exemption from regulation for marketing services consultants and non-traditional marketers, thereby increasing the number of NGS applications that must be processed. The current \$350 NGS license application fee, 52 Pa. Code § 1.43 (a), covers only administration costs related to the application's filing. The fee does not cover the PUC's costs for reviewing and approving the NGS license application.

Additionally, the PUC exercises continuing oversight over NGS licensees and may incur increased operational costs as previously exempt entities are granted licenses. Currently NGSs do not pay assessments under 66 Pa. C.S. § 510 (relating to assessment for regulatory expense upon public utilities) so the cost of the PUC's continuing oversight of licensed NGSs is borne by NGDCs and the customers.

As the number of the previously exempted entities is unknown, and the number of these entities who will file a license application is also unknown, the total additional costs to state government cannot be estimated. For this same reason, savings from this revision cannot be estimated.

(17) 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	Cannot be estimated	Cannot be estimated	Cannot be estimated	Cannot be estimated	Cannot be estimated	Cannot be estimated
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	Cannot be estimated	Cannot be estimated	Cannot be estimated	Cannot be estimated	Cannot be estimated	Cannot be estimated
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community	Cannot be estimated	Cannot be estimated	Cannot be estimated	Cannot be estimated	Cannot be estimated	Cannot be estimated
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	Cannot be estimated	Cannot be estimated	Cannot be estimated	Cannot be estimated	Cannot be estimated	Cannot be estimated
Total Costs	Cannot be estimated	Cannot be estimated	Cannot be estimated	Cannot be estimated	Cannot be estimated	Cannot be estimated
REVENUE LOSSES:						
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(17a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Program costs cannot be estimated*				

* PUC operational costs are recorded by utility industry, and not by program. Costs associated with processing and approving NGS license applications are recorded under the natural gas industry for assessment purposes. A conservative estimate of the number of man-hours needed to process an NGS license application and issue an NGS license is 15-20 man-hours. This time estimate is for work done by all PUC personnel including technical, legal, managerial and executive staff, but excluding administrative staff. Approximately 60% of this total is attributable to technical staff, and 40% of this total is attributable to managerial, legal and executive staff. Note also that PUC staff involved in processing NGS license applications are not of the same pay classification.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

This analysis cannot yet be completed. The number of entities that may be affected by this revision to the NGS licensing regulations is unknown making the costs and savings associated with this revision difficult to estimate. See Answers 12, 13, 14 and 16.

A specific request was made in the proposed rulemaking order for comments on the costs and savings to affected parties that may result from the proposed revisions. This information may be useful in performing the requested cost-benefit analysis.

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

No public input and no advisory groups were consulted in the development of this revision to the existing NGS licensing regulations. An opportunity for public input in the form of written comments has been provided by a 60-day comment period that will begin on the date that the proposed rulemaking order is published in the *Pennsylvania Bulletin*.

The proposed rulemaking order and Annex A were served on the following interested parties to ensure that they had notice of the proposed revisions to the NGS licensing regulations and of the opportunity to be heard by filing comments: all jurisdictional natural gas distribution companies, all licensed natural gas suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Energy Association of Pennsylvania. The order and Annex A were also provided to all persons on the contact list for the standing PUC working group -- Stakeholders Exploring Avenues to Remove Competitive Hurdles (SEARCH) -- and were posted on the PUC's website at the Office of Competitive Market Oversight's web page.

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The proposed revision to the natural gas supplier licensing regulations eliminates an exemption from licensing for marketing services consultants and non-traditional marketers. The alternative would be that the exemption from licensing could be retained as originally written, or as modified by the PUC based on public comment. The least burdensome alternative will be identified based on the comments received and will be adopted in the final rulemaking.

(21) 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 regulations.

There are no specific federal standards that are directed at licensing retail natural gas suppliers.

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Other states have adopted regulations or rules for licensing natural gas suppliers. These regulations, like those at 52 Pa. Code Chapter 62, are based on that state's own enabling legislation. For example, Ohio licenses natural gas suppliers, natural gas brokers, and natural gas aggregators (competitive and governmental). See Chapters 4901:1-27 and 4901:1-29 of the Ohio Administrative Code, and Section 4929.20 of the Ohio Revised Code. In Ohio, there are 56 suppliers that serve residential and small business customers and 95 suppliers that are aggregators. Unlike Pennsylvania, Ohio law provides for governmental aggregation and there are presently 126 government aggregators. Finally, Ohio has 50 marketers that serve large industrial customers. These marketers are not regulated by Ohio.

In Pennsylvania, the existing NGS licensing regulations went into effect on July 21, 2001. At present, there are 110 NGSs licensed by the PUC that serve retail residential, commercial and industrial customers. This figure is comparable to the number of suppliers and aggregators that are licensed to serve customers in Ohio. The proposed revision of the existing regulations to delete the exemption from licensing for marketing services consultants and non-traditional marketers theoretically should increase the number of licensed suppliers licensed in Pennsylvania. As such, Pennsylvania's ability to compete with other states does not appear to have been adversely affected by the existing NGS licensing regulations, and may not be adversely affected by the proposed revisions.

Note that a specific request was made in the proposed rulemaking order for comments on the costs and savings to affected parties that may result from the proposed revisions. Possible concerns about the effect of the proposed revisions to the NGS licensing regulations on the State's ability to compete with other states may be raised in these comments.

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

Other regulations that are affected by the proposed elimination of the exemption from licensing for marketing services consultants and non-traditional markets in Section 62.102 are addressed in this proposed rulemaking order.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No additional legal, accounting or consulting procedures should be required for the implementation of the proposed revisions to the regulation. The proposed revisions, *inter alia*, eliminate an exemption from NGS licensing requirements for marketing services consultants and non-traditional marketers. It is anticipated that other actions that may possibly need to be taken are the revision of the NGS license application form and the reallocation of staff time if needed to process applications.

(25) 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 proposed revision of the NGS licensing regulations will have no singular effect on the identified groups or persons.

(26) Include a schedule for review of the regulation including:

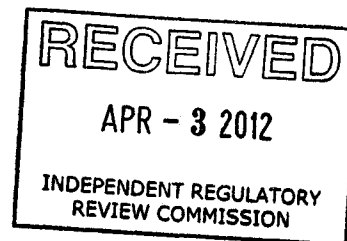
- A. The date by which the agency must receive public comments: _____
Comments to the proposed rulemaking must be received within 60 days of the date of publication of the proposed rulemaking order in the Pennsylvania Bulletin.
- B. The date or dates on which public meetings or hearings will be held: _____
It is not contemplated that a public meeting or hearing will be held other than the public meeting at which the PAPUC will approve the final-form regulation.
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: _____
Not able to predict as this is a proposed rulemaking.
- D. The expected effective date of the final-form regulation: _____
Not able to predict as this is a proposed rulemaking.
- E. The date by which compliance with the final-form regulation will be required: _____
Not able to predict as this is a proposed rulemaking. Compliance with final form rulemaking will be required on publication date.
- F. The date by which required permits, licenses or other approvals must be obtained: _____
If the exemption from NGS licensing requirements for marketing services consultants and non-traditional marketers is eliminated in the final regulations, these entities will be required to be licensed by a date certain which will be set forth in the final form rulemaking.

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

No schedule is contemplated. The proposed revisions, *inter alia*, eliminate an exemption from NGS licensing requirements for marketing services consultants and non-traditional marketers. The purpose of the proposed revision to existing regulations is to ensure the licensing of all entities who are required to be licensed as "natural gas suppliers" pursuant to 66 Pa. C.S. § 2208(a) (relating to requirements for natural gas suppliers; license requirements). When finalized, the effectiveness of the revised regulation will be continually reviewed by the PUC's monitoring of the number of complaints filed by consumers, and by concerns raised by competing NGSs and NGDCs about possible marketing or sales activities by entities acting as *de facto* NGSs that should be licensed.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)



DO NOT WRITE IN THIS SPACE

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

BY *Amy M. Elliott*
(DEPUTY ATTORNEY GENERAL)

MAR 07 2012

DATE OF APPROVAL

☐ Check if applicable
Copy not approved. Objections attached

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-2011-2266832/57-288

DATE OF ADOPTION January 12, 2012

BY *Rosemary Chiavetta*
Rosemary Chiavetta

TITLE *Secy*
(SECRETARY)

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

BY *Bohdan R. Pankiw*
Bohdan R. Pankiw
Chief Counsel

1-12-2012
DATE OF APPROVAL

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

L-2011-2266832/57-288
Proposed Rulemaking
Licensing Requirements for Natural
Gas Suppliers
52 Pa Code, Chapter 62

The Pennsylvania Public Utility Commission on January 12, 2012, adopted a proposed rulemaking order which reviews the Commission's existing regulations outlining the licensing requirements for natural gas suppliers; specifically whether the exemption from NGS licensing of marketing services consultants and nontraditional marketers should be discontinued and 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. The contact persons are Assistant Counsel Patricia Krise Burket, Law Bureau, 717 787-3464 and Brent W. Killian, Bureau of Technical Utility Services, 717 783-0350.

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

Public Meeting held January 12, 2012

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner
James H. Cawley, Statement
Pamela A. Witmer, Statement

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

PROPOSED RULEMAKING ORDER

BY THE COMMISSION:

In conjunction with the approval of the Application of Alphabuyer LLC¹ (“Alphabuyer”) for a natural gas supplier (NGS) license to operate as a broker/marketer engaged in the business of supplying natural gas services in various local natural gas distribution company service territories throughout the Commonwealth, the Pennsylvania Public Utility Commission (the Commission) determined that a review of the scope of its NGS licensing regulations at 52 Pa. Code § 62.101(relating to definitions) and § 62.102 (relating to scope of licensure) should be undertaken. The focus of this review is the exemption from licensing of marketing services consultants and nontraditional marketers. Accordingly, by this order we will initiate this review.

¹ *Application of Alphabuyer LLC*, Docket No. A-2010-2201777, order entered October 17, 2011.

DISCUSSION

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 their Natural Gas Supplier (“NGS”).

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, Section 2202 of the Act defines natural “gas supply services” as including:

- (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).
- (iii) The term does not include distribution service.

Id.

Notably, unlike the categories of Electric Generation Suppliers (“EGSs”) in the *Electricity Generation Customer Choice and Competition Act*, 66 Pa. C.S. §§ 2801 - 2815, the *Natural Gas Choice and Competition Act*, 66 Pa.C.S. §§ 2201 – 2212, does not break down NGSs into the subclasses of aggregator, broker and marketer.

Following the passage of the *Natural Gas Choice and Competition Act* in 1999, the Commission promulgated regulations governing licensing requirements for NGSs. See 52 Pa. Code §§ 62.101 – 114. While these regulations generally require 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, the Commission exempted “marketing service consultants” and “nontraditional marketers” from these licensing requirements. In the NGS licensing regulations, the term “marketing services consultant” is defined 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, “nontraditional marketers” is defined 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.

Rather than license these entities, the regulations emphasize 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) (relating to reporting requirements)(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).

These 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). As referenced in our July 2001 order, the Commission set forth its rationale for the existing exemptions to the NGS licensing requirements.

Review of NGS Licensing Regulations

During the past ten years, a number of entities similar to Alphabuyer have operated under a business model where marketers/brokers contract directly with retail customers without any affiliation to or contract with specific NGSs. 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. Despite this designation, some of these entities, like Alphabuyer, have applied for a NGS license in order to supply natural gas services to retail customers, despite the fact that they are not required to do so. To date, 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 will be governed by, the applicable provisions of the Public Utility Code and Commission regulations.

However, due to the non-compulsory nature of licensing such entities and the amount of direct interaction these entities have with retail customers, we believe that now is the time to initiate a proposed rulemaking to conduct a review of the Commission's regulations outlining the licensing requirements for natural gas suppliers. Specifically, the focus of this review will be on: (1) whether the exemption from NGS licensing of 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. At a minimum, initiating this proposed rulemaking will allow the Commission to receive comments to determine if our NGS licensing regulations conform with the plain language of the Act, and reflect the current business plans of NGSs appearing before this Commission so that we can determine whether continuing these exemptions is in the public interest. Finally, to be clear, the NGS licensing exemptions contained in 52 Pa. Code § 62.102 shall remain in effect until such time as the Commission adopts regulations that rescind them.

Proposed Revisions

In order to solicit comment on the possible rescission of the exemptions of marketing services consultants and nontraditional marketers from NGS licensing requirements, we propose the following revisions to our regulations:

Section 62.101. Definitions.

The definitions of “marketing service consultant” and “nontraditional marketer” are proposed to be deleted.

Section 62.102. Scope of licensure.

Subsections 62.102 (d) and (e) are proposed to be deleted. Because marketing service consultants and nontraditional marketers are proposed to be licensed, we are requesting comment to determine whether it is 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.

Section 62.110. Reporting Requirements.

Subsection 62.110 (a)(3) is proposed to be deleted. This section required 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.

CONCLUSION

This order sets forth proposed amendments to the NGS licensing regulations that eliminate the exemption from licensing requirements for marketing service consultants and nontraditional marketers. This order also establishes a comment period that ends 60 days from the date of the publication of this order in the *Pennsylvania Bulletin*. 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 service consultants, nontraditional marketers, NGSs, NGDCs and customers.

Accordingly, pursuant to sections 501, 504, 1501, 1504, 2202, and 2208 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504, 2202, and 2208; sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 732.204(b); section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5; and section 612 of the Administrative Code of 1929, 71 P.S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231-7.234, we are proposing to amend our regulations as set forth in Annex A, attached hereto;

THEREFORE,

IT IS ORDERED:

1. That a rulemaking docket shall be opened to revise regulations at 52 Pa. Code § 62.101, § 62.102 and § 62.110 relating to licensing requirements for natural gas suppliers as set forth in Annex A.

2. That the Secretary shall submit this Order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.

3. That the Secretary shall submit this Order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.

4. That the Secretary shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. That an original and 15 copies of written comments referencing the docket number of the proposed regulations be submitted within 60 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn.: Secretary, P.O. Box 3265, Harrisburg, PA 17105-3265. To facilitate posting, a courtesy copy of each comment filed shall be forwarded via electronic mail to Patricia Krise Burket at pburket@pa.gov, Brent W. Killian at bkillian@pa.gov, and Cyndi Page at cypage@pa.gov.

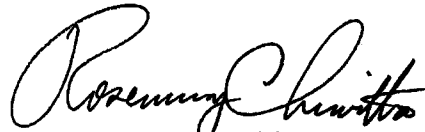
6. That a copy of this Order and Annex A shall be served on all jurisdictional natural gas distribution companies, all licensed natural gas suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Energy Association of Pennsylvania.

7. That 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).

8. That a copy of this Order and Annex A shall be posted on the Commission's website at the Office of Competitive Market Oversight's web page.

9. That the contact persons for this Proposed Rulemaking are Patricia Krise Burket, Law Bureau, 717-787-3464 (legal) and Brent W. Killian, Bureau of Technical Utility Services, 717-783-0350 (technical).

BY THE COMMISSION


Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: January 12, 2012

ORDER ENTERED: January 13, 2012

**TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
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:

* * * * *

[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.]

* * * * *

NGS—Natural gas supplier—As defined in section 2202 of the act.

* * * * *

[*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 revenues 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.]

* * * * *

§ 62.102. Scope of licensure.

- (a) An NGS 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) An NGDC acting within its certified service territory as a supplier of last resort is not required to obtain a license.
- (c) The owners/operators of a building or facility that manage the internal distribution system supplying a building or facility and supply natural gas and other related services to occupants of the building or the facility where the owners/operators, and not the occupants, are the direct purchasers of the natural gas supply services are not required to obtain a license.
- [(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.]

* * * * *

§ 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:

(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.

[(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.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**Licensing Requirements for
Natural Gas Suppliers
Regulations at 52 Pa. Code §
62.101 – § 62.102**

**Public Meeting: January 12, 2012
2266832-LAW
Docket L-2011-2266832**

STATEMENT OF COMMISSIONER CAWLEY

Before us is a tentative order to review and possibly modify the scope of the NGS licensing regulations at 52 Pa. Code § 62.101 (relating to definitions) and § 62.102 (relating to scope of licensure). The focus of this review is to examine whether or not this Commission should continue the current exemption from licensing of natural gas marketing services consultants and nontraditional marketers. Accordingly, by this tentative order, the Commission will initiate this review.

Currently, rather than license nontraditional marketers and marketing services consultants, the regulations emphasize 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) (relating to reporting requirements) (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).

These 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), and the Commission's rationale for the existing exemptions to the NGS licensing requirements was set forth:

Initially we note that as the agency responsible for implementing and enforcing the Public Utility Code and the act, we are afforded great deference by the courts in our interpretation of the law. When a statute is interpreted by the agency charged with the responsibility for its administration, interpretation shall be accorded great weight and shall not be overturned unless such construction is "clearly erroneous." *Cherry v. Pennsylvania Higher Education Assistance Agency*, 620 A.2d 687, 691 (Pa. Cmwlth. 1993); *Hawkins v. Pennsylvania Housing Finance Agency*, 595 A.2d 712 (Pa. Cmwlth. 1991). This is particularly true when the interpretation involves construction of a statutory mandate in a new regulatory environment. *Barasch v. Pennsylvania Public Utility Commission*, 521 A.2d 482 (Pa. Cmwlth. 1987).

Under our authority to interpret our enabling legislation, the Commission is authorized to interpret the definitions of "natural gas

supplier" and "natural gas supply services" that are referenced in the definition for "natural gas supplier." Generally, under the act, an NGS is an entity engaged in the provision at retail of natural gas supply services. Natural gas supply services are defined in general as "the sale or the arrangement of the sale of natural gas to retail consumers." In interpreting "natural gas supply services," it is not clearly erroneous for us to distinguish certain activities that would fall within that definition from those activities that would fall outside of that definition. Based on an entity's activities, it is not clearly erroneous for this Commission to identify entities who are not engaged in providing natural gas supply services to retail customers, and to exempt those entities from licensing requirements.

In this instance, the Commission defined for exemption from the licensing requirement at section 2208 of the act, the marketing services consultant, entities that are engaged in providing marketing and sales support services to licensed NGSs under a contract. Marketing service consultants would include commercial businesses involved in telemarketing, direct mail service or information dissemination through auction-type or information only websites and electronic newsletters. Based on their activities, the marketing services consultants are indistinguishable from the NGS's own employees, who would not be required to be individually licensed under the act. Accordingly, it is not clearly erroneous for us to identify this group as falling outside the definition of "natural gas supplier."

Nontraditional marketers such as fraternal organizations, unions, civic organizations or governmental organizations may provide endorsements of an NGS's service to its membership or constituency. In these types of affiliations, the sole role of the nontraditional marketer is to make the endorsement that its members are free to accept or reject on its merits. If the member decides to accept the service offered, the transaction is between the contracting member and the licensed NGS. The nontraditional marketer is not involved in the financial transaction between the licensed supplier and the customer. Under this scenario, the nontraditional marketer is not engaged in providing natural gas supply services to retail customers.

Additionally, as the competitive energy marketplace has developed over the previous 4 years, the Commission staff has received a number of requests to exempt from licensing those entities who act, not on behalf of licensees, but on behalf of retail customers as energy consultants. These energy consultants gather and evaluate information about various energy supply offerings and then make recommendations to the consumer regarding the best offer available. These consultants are not generally involved in the actual transaction for the gas supply services in that they are not responsible for paying the producer, the supplier or the NGDC for costs related to gas supply service and they are not responsible for the procurement or the

scheduling for transport of natural gas supplies.

Based on their activities, it is our interpretation that energy consultants are not engaged in the sale or arranging the sale of natural gas supply services to retail consumers. Thus, they would fall outside the definition of an NGS at section 2202 of the act. We believe that our interpretation on this point is not clearly erroneous, and that the exemption from licensing of these energy consultants would not be detrimental to the public interest because consumers would be transacting business through a licensed supplier. Accordingly, we will revise our definition of "marketing services consultant" to include those entities who act as energy advisors to consumers.


31 Pa.B. at 3944-45.

Through this tentative order, we solicit comments on whether or not this exemption should continue. At the outset, it should be made clear that my affirmative vote for this tentative order should not be interpreted as my concurrence with this rulemaking. Rather, my affirmative vote only reflects my willingness to listen to stakeholder feedback on how best to balance the needs of utilities, service providers, and customers in the provision of natural gas supply requirements as our industry matures. In support of this neutral position, responses to the following questions are welcomed:

1. Should the Commission affirm its current practice by not licensing any nontraditional marketers or consultants so as not to appear to favor one entity over another?
2. What problems may result from terminating the licenses of nontraditional marketers or consultants that have voluntarily subjected themselves to our regulation, and how could the Commission mitigate those problems?
3. Are nontraditional marketers and consultants presently acting in a manner contrary to existing NGS consumer protection regulations?
4. Is there a segment of natural gas market service providers that should be more closely regulated?

Given the evolving maturation of both competitive electricity and natural gas markets, and the future growth to competitive markets related to our efforts to remove barriers to competitive retail markets, we welcome all comments to ensure that our regulations continue to advance competition and protect consumers in the most efficient manner.

January 12, 2012


James H. Cawley
Commissioner

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

**Licensing Requirements for
Natural Gas Suppliers**

Public Meeting – January 12, 2012
2266832 - LAW
Docket No. L-2011-2266832

STATEMENT OF
COMMISSIONER PAMELA A. WITMER

Before the Commission today is a proposed rulemaking order that solicits comments on the issue of removing the exemption from natural gas licensing requirements for marketing services consultants and nontraditional marketers. The rulemaking was initiated through my October 14, 2011 Motion directing staff to conduct a review of the Commission's existing natural gas licensing regulations.

The current regulations exempt marketing services consultants and nontraditional marketers from licensing as natural gas suppliers (NGSs). However, some exempted entities have applied for a NGS license in order to supply natural gas services to retail customers, even though they are not required to do so. To date, 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 will be governed by, the applicable provisions of the Public Utility Code and Commission regulations.

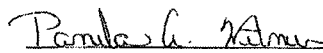
Our action here today provides an opportunity for interested parties to comment on whether it is appropriate, given the current NGS market, to discontinue the NGS licensing exemption of marketing services consultants and nontraditional marketers and instead require all natural gas aggregators, marketers and brokers to be licensed by the Commission in order to offer natural gas supply services to retail customers.

As I previously stated, I believe that it is necessary for the Commission to continuously review both the Public Utility Code and our regulations to ensure that their purpose is being properly effectuated. It is our job to ensure that the Commission's regulations are consistent with the law and responsive to changes within the regulated community. The proposed regulation addresses the issues the Commission set forth in its October 14 Motion.

I also wish to stress my desire for interested parties to comment on these proposed changes. In reviewing the proposed rulemaking, I believe it is instructive and appropriate for parties to review comments previously submitted on this issue under the 2001 proceeding that promulgated

our current regulation. See Licensing Requirements for Natural Gas Suppliers, Final Rulemaking Order, Docket No. L-00000150, 31 Pa. B. 3943 (July 21, 2001).

DATE: January 12, 2012

A handwritten signature in cursive script, appearing to read "Pamela A. Witmer", is written over a horizontal line.

**PAMELA A. WITMER
COMMISSIONER**

EXECUTIVE SUMMARY

L-2011-2266832/57-288

Proposed Rulemaking Re Licensing Requirements for Natural Gas Suppliers 52 Pa. Code §§ 62.101-62.102, 62.110

By order entered January 13, 2012, the Pennsylvania Public Utility Commission (PUC) initiated a proposed rulemaking to review the exemption from licensing for “marketing services providers” and “non-traditional marketers” in its natural gas supply (NGS) licensing regulations at 52 Pa. Code § 62.102 (relating to scope of licensure). The terms “marketing services consultants” and “nontraditional marketer” are defined in 52 Pa. Code § 62.101 (relating to definitions). Rather than license these entities, the existing regulations hold a licensed NGS responsible for violations of the law, or for any fraudulent, deceptive or other unlawful marketing or billing acts committed by the marketing services consultant or nontraditional marketer that the NGS hires or with whom it partners.

The proposed rulemaking revises Section 62.102 by deleting the exemption language for marketing services consultants and non-traditional marketers at subsections (d) and (e), and deletes the definitions for these two groups at subsection 62.101. It also deletes Subsection 62.110 (a)(3)(relating to reporting requirements) that directs that a licensed NGS include in its annual 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.

The proposed rulemaking solicits comments on (1) whether the exemption from NGS licensing of marketing services consultants and non-traditional 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. The PUC also requests comments on costs that would be incurred, and any savings that might be realized, by affected parties as the result of these proposed revisions. Affected parties would include marketing service consultants, nontraditional marketers, NGSs, NGDCs and customers.

The PUC contact persons are Patricia Krise Burket, 717-787-3463 (legal), and Brent W. Killian, 717-783-0350 (technical).



COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION
400 NORTH STREET
HARRISBURG, PA 17120

ROBERT F. POWELSON
CHAIRMAN

April 3, 2012

The Honorable Silvan B. Lutkewitte, III
Chairman
Independent Regulatory Review Commission
14th Floor, Harrisstown II
333 Market Street
Harrisburg, PA 17101

Re: L-2011-2266832/57-288, Proposed Rulemaking Re Licensing
Requirements for Natural Gas Suppliers, 52 Pa. Code, Chapter 62

Dear Chairman Lutkewitte:

Enclosed please find 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 review the Commission's existing regulations outlining the licensing requirements for natural gas suppliers. Specifically, whether the exemption from NGS licensing of marketing services consultants and nontraditional marketers should be discontinued and 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. The contact persons are Assistant Counsel Patricia Krise Burket, Law Bureau, 717 787-3464 and Brent W. Killian, Bureau of Technical Utility Services, 717 783-0350.

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

Very truly yours,

Robert F. Powelson
Chairman

Enclosures

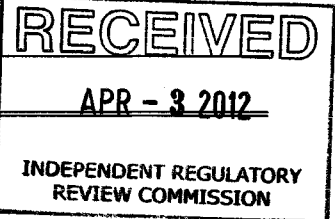
pc: The Honorable Robert M. Tomlinson
The Honorable Lisa Boscola
The Honorable Robert Godshall
The Honorable Joseph Preston, Jr.
Legislative Affairs Director Perry
Chief Counsel Pankiw
Assistant Counsel Burket
Mr. Killian
Regulatory Coordinator DelBiondo

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-2011-2266832/57-288

Subject: Proposed Rulemaking Re 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>
<u>4/12/12</u>	<u>[Signature]</u>	<u>HOUSE COMMITTEE</u> (Godshall) Consumer Affairs
<u>4/3/12</u>	<u>[Signature]</u>	<u>SENATE COMMITTEE</u> (Tomlinson) Consumer Protection and Professional Licensure
<u>4/3/12</u>	<u>[Signature]</u>	Independent Regulatory Review Commission Attorney General
<u>4/3/12</u>	<u>[Signature]</u>	Legislative Reference Bureau