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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Licensing Requirements for Natural Gas Suppliers )  
Regulations at 52 Pa. Code § 62.101-§62.102 ) Docket No. L-2011-2266832

Comments of the  
National Energy Marketers Association

The National Energy Marketers Association (NEM)<sup>1</sup> hereby submits its comments on the Commission's Proposed Rulemaking Order dated January 12, 2012, on licensing requirements for natural gas suppliers (NGSs) [hereinafter "Proposed Order"]. The Commission has opened this review to determine,

"(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." (Proposed Order at 5).

PA PUBLIC UTILITY COMMISSION  
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The NOPR proposes to delete the definitions of "marketing services consultants" and "nontraditional marketers" from the regulations. (Proposed Order at 6). In addition, the Commission requests comment on whether it is appropriate to remove the responsibility

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<sup>1</sup> The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies. This document reflects the views of the National Energy Marketers Association and does not necessarily reflect the views of any specific member..

from licensed NGSs for Code and Commission regulation and order violations as well as fraudulent, deceptive or other unlawful marketing or billing acts that are committed by a marketing service consultant and/or a nontraditional marketer. (Id.) Finally, the Commission requests comment on costs incurred and savings realized by affected parties (which the Commission defines to include marketing service consultants, nontraditional marketers, NGSs, NGDCs and customers) as a result of the proposed changes. (Id. at 7). The Commission noted that current licensing exemptions remain in effect during the pendency of this proposed rulemaking. (Id. at 5).

In a separate statement to the proposed rulemaking, Commissioner Cawley asks additional questions for comment as follows:

- “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?”

As explained in greater detail herein, NEM believes that at this stage of market development it would be appropriate for the Commission to revisit the definitions of the entities that it has adopted and refine which entities currently have sufficient regulatory and licensing oversight and which entities require additional oversight or licensing requirements to safeguard the public interest. Prior to requiring additional registration

requirements on entities already subject to regulatory and compliance safeguards, there should be a showing of demonstrable need to safeguard the public interest. Additionally, a threat to the public interest should be proven with respect to each additional business model proposed to be subject to additional regulation or oversight. NEM recommends that when an NGS has entered into a contract with a third party entity to act on its exclusive behalf in the utility service territory, that the NGS should be responsible for the entity's conduct. However, where no such exclusive contractual relationship exists, and/or where the scope of the relationship and a related contract is limited to an NGS's activity as a billing agent on behalf of the entity, the NGS should not be responsible for the third party entity's conduct. In addition, there should be a safe harbor under which each different type of entity can conduct business and minimize its risk of liability as well as maximize its duty to safeguard the public interest, for example, through the implementation of specific quality controls and public safety measures.

## **I. Background and History on Natural Gas Supplier Licensing**

In 2001, the Commission issued an Order<sup>2</sup> [hereinafter "Order 2001"] adopting regulations to implement the licensing requirements for natural gas suppliers under the Natural Gas Choice and Competition Act [hereinafter "the Gas Act"] that became law in 1999. The Gas Act provides in Section 2208(a) that, "No entity shall engage in the business of a natural gas supplier unless it holds a license issued by the commission." The Gas Act at Section 2202 defines "natural gas supplier" as follows:

**"Natural gas supplier." An entity other than a natural gas distribution company, but including natural gas distribution company marketing**

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<sup>2</sup> Docket L-00000150, Licensing Requirements for Natural Gas Suppliers, adopted April 19, 2001.

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 supply services to retail customers located outside of its corporate or municipal limits, as applicable, other than:

- (1) as provided prior to the effective date of this chapter, pursuant to a certificate of public convenience if required under this title;
- (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 services are provided; or
- (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 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. (emphasis added).

Section 2202 of the Gas Act also defines the term “natural gas supply services” that are rendered by natural gas suppliers (NGSs). “Natural gas supply services” are defined as follows:

- (1) The term includes:
  - (i) the sale or arrangement of the sale of natural gas to retail gas customers; and
  - (ii) services that may be unbundled by the commission under section 2203(3) (relating to standards for restructuring of natural gas utility industry).

- (2) The term does not include distribution service. (emphasis added).

In implementing the statutory NGS licensing requirements in Order 2001, the Commission adopted Code definitions for both the terms “marketing service consultant” and “nontraditional marketer.” Order 2001 also addressed an additional entity in the marketplace which it called an “energy consultant.” However, the Commission did not adopt a separate Code definition for this type of entity. Rather, the Commission decided to include “energy consultants” within the definition of “marketing service consultant.” The Pennsylvania Code definitions of these terms that the Commission adopted are set forth in Section 62.101 as follows:

*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.

*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.

Upon deliberation in Order 2001 the Commission determined that marketing services consultants, then defined to include energy consultants, and nontraditional marketers were to be exempt from NGS licensing requirements. When the Commission granted the exemption from licensing for marketing service consultants, energy consultants and nontraditional marketers, the factors which it relied upon most heavily were: 1) a distinction between the rendering of the physical natural gas commodity (including activities such as scheduling) versus the provision of marketing and sales activities/a product endorsement/consumer advisory services as indicative of whether an entity was a "natural gas supplier"; and 2) whether granting the exemption from licensing would be, "detrimental to the public interest." In general, NEM agrees with the Commission's reasoning behind this exemption.<sup>3</sup> However, at this time NEM suggests that a refinement

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<sup>3</sup> The Commission's reasoning for the exemption for marketing services consultants, including energy consultants, and nontraditional marketers bears repeating in undertaking this review over a decade later. In granting the exemption in Order 2001, the Commission explained that,

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 consumers." In interpreting "natural gas supply services," it is not clearly erroneous

to the current expansive definition of a "marketing services consultant" to exclude "energy consultants" that "arrange for the sale of natural gas for a consumer," may now be warranted.

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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 service 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 consumer 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. (emphasis added).

## II. Commission Regulation and Oversight of Retail Gas Market Participants

### A. Marketing Services Consultant and Energy Consultant

In many if not most cases encountered in the current marketplace, a “marketing services consultant” operates under an exclusive contract with a single supplier in each utility service territory in which it provides services.<sup>4</sup> Currently, the NGS has both a formal contractual relationship with the marketing services consultant and has both regulatory and compliance responsibility as well as agency liability for that marketing services consultant as well as its agents.<sup>5</sup> Acts or omissions of that marketing services consultant are currently

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<sup>4</sup> As a point of clarification, MLM representatives are not marketing service consultants. First and foremost, they are not commercial entities (which term is explicitly included in the Commission definition of “marketing service consultant”). They are individual energy consumers themselves. In other words, a MLM representative is a, “A *person* who conducts marketing or sales activities, or both, on behalf of a single licensed supplier.” Using this definition from the Marketing Standards NOPR, they are an agent of the MLM company. Their conduct is properly reachable as an agent of the MLM company, and as such, this obviates the need for independent registration of MLM representatives.

<sup>5</sup> As a corollary to the instant proceeding, NEM notes that in Docket No. L-2010-2208332 the Commission is considering a Proposed Rulemaking Order on marketing and sales practices of electric generation suppliers (EGSs) and natural gas suppliers (NGSs). (Docket No. L-2010-2208332, Rulemaking Re: Marketing and Sales Practices for the Retail Residential Energy Market, Proposed Rulemaking Order, dated February 10, 2011.) Of particular relevance here, the Definitions Section of the Marketing Standards NOPR included the term “agent,” for which the proposed regulations in subsequent sections set forth a significant amount of requirements and responsibilities. Under Section 111.3 of the Proposed Marketing Standards a supplier is, “responsible for fraudulent, deceptive or other unlawful marketing or billing acts performed by its agent,” and, “the Commission may suspend or revoke a supplier’s license, and may impose fines for fraudulent acts, violations of Commission regulations and orders, or for violations of state and federal law committed by the supplier’s agent.”

As proposed by the Commission in the Proposed Marketing Standards, the term “agent” would be defined as,

A person who conducts marketing or sales activities, or both, on behalf of a single licensed supplier. The term includes an employee, a representative, an independent contractor or a vendor. For natural gas suppliers, the term “agent” also includes “marketing services consultant” or “nontraditional marketer” as those terms are defined at 52 Pa. Code § 62.101 (relating to definitions).

In NEM’s comments in the Marketing Standards rulemaking, we suggested that in delineating what constitutes a supplier’s “agent” in the marketplace, that there are two main factors that should be determinative: 1) the exclusivity of the relationship; and 2) the terms of the contractual relationship between the supplier and the entity. The Commission’s proposed definition of “agent,” by using the phrase, “on behalf of a single licensed supplier” has incorporated the concept of exclusivity. NEM recommended that it would aid in the application of the “agent” definition if the concept of the contractual relationship between



the responsibility of a licensed NGS. Under the Commission's current definition of a marketing services consultant, such an entity when operating exclusively on behalf of a supplier while making sales of natural gas to a consumer is well-regulated and clear lines of responsibility are in place to protect the consumer and the public interest. In addition, the NGS should be protected by a safe harbor when it employs specific quality controls and public safety measures.

However, when a person or entity holds him or herself out as an agent or representative of a consumer and "arranges a sale" for or on behalf of a consumer, retaining the current definition of marketing services consultant to include such an entity, activity or transaction may not adequately protect the consumer or the public interest. NEM does not believe a wholesale deletion of the MSC definition and its exemption from licensing is necessary for those MSCs that make sales to consumers on behalf of licensed suppliers. In NEM's opinion, before licensing or registration or certification requirements are imposed on this class of entities (i.e., MSC's currently operating under contract as agents of licensed suppliers), there needs to be a closer examination of the threat to the public interest, the cost and benefits of such a regulatory imposition, and the manner and type of registration/certification/licensing that may be appropriate given all the protections inherent in current law.

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the parties were also incorporated. NEM suggested that the definition of "agent" be modified to incorporate the concept of the contractual relationship as follows:

**A person who, at any point in time, conducts marketing or sales activities, or both, pursuant to a contractual agreement with the supplier, on behalf of and in the interest of a single licensed supplier. The term includes an employee, a representative, an independent contractor or a vendor. For natural gas suppliers, the term "agent" also includes "marketing services consultant" or "nontraditional marketer" as those terms are defined at 52 Pa. Code § 62.101 (relating to definitions). (additions indicated in bold text).**

However, many of our members have expressed concern that there is one portion of the current exemption from licensing that warrants heightened Commission scrutiny and possible action. Specifically, people or entities that “arrange a sale” of natural gas or electricity while holding themselves out as either agents of or representatives of a consumer, those which the Commission has defined as “energy consultants,” may not have sufficient safeguards in place within the current regulations to protect the consumer and the public interest. In NEM’s opinion, there is a functional and substantive economic distinction between *selling natural gas and electricity to a consumer* versus *arranging for the sale of natural gas or electricity for a consumer*. It is the latter commercial function that has both evolved and expanded in the marketplace without adequate protections for the consumers that these entities purport to represent.

NEM members report that there has been a proliferation of energy consultants in the marketplace that interject themselves between the consumer and the NGS in order to “arrange for the sale of natural gas” for the consumer. The energy consultant may have a direct contract with the consumer to perform this service on the consumer’s behalf. Alternatively, the energy consultant may not have a contract with the consumer but will gather bids from multiple suppliers for the consumer and receive its compensation through the NGS’s bill, in which case the energy consultant has an agreement in place with the winning NGS for the NGS to act as its billing service provider. As the regulations currently read, licensed NGSs may have imputed liability for the acts or omissions of “energy consultants” that are agents for or represent one or more consumers or broker on behalf of one or more consumers, solely because of a contractual obligation for the

supplier to remit compensation or commissions directly to these entities, even though the entity is operating as the agent of the consumer and not the supplier.

There is concern that energy consultants may not possess a sufficient degree of knowledge about energy choice or the Commission's regulations. Additionally, there is concern that energy consultants are not disclosing their fees to consumers on a transparent basis. These concerns are compounded by the fact that there is seemingly no accountability for the accuracy of the analyses of the consumer's energy needs or RFPs issued as the agent for the consumer. Additionally, a supplier has no idea what this entity has represented to the consumer nor should the supplier be held responsible for misstatements or errors or omissions of these entities. Given these facts, there appears to be no or insufficient oversight mechanisms in place for these entities.

In these situations, there is or should be a fiduciary duty that flows from the energy consultant to the consumer: (1) that the energy consultant has the requisite expertise to perform its services, (2) is acting in the consumer's best interest, and (3) that if there is an error, omission or misrepresentation, that the entity, not the supplier as its billing service provider, should be held responsible.

Consequently, NEM recommends additional Commission scrutiny as to whether the current exclusion from the licensing for energy consultants is warranted at this time. If the Commission finds that the consumer and/or the public interest is not adequately protected as to these entities, the current definition of "marketing services consultant" can easily be clarified to exclude "energy consultants that represent or are agents for one or more consumers." In the event of such a finding, NEM would appreciate the opportunity to

submit additional comments or suggestions on the development of appropriate regulatory oversight mechanisms for these entities in order to safeguard the public interest. If the Commission finds that the public interest requires additional regulatory oversight, NEM submits that in addition to a level of knowledge necessary to offer such services to the public and adequate D&O insurance, that the “energy consultants who holds itself out as a representative of or agent for one or more consumers” should, at a minimum provide a disclosure statement to consumers regarding their fees and that subsequent to the consumer signing the disclosure statement that it be shared with the NGS.

The NGS should not be responsible for the energy consultant’s conduct, Regulations that define these entities as the agent of a supplier merely because the supplier remits their commission as a “billing service provider” should be clarified such that these entities are not agents of the supplier and should eliminate the NGSs responsibility for the conduct of such entities.<sup>6</sup>

At this time, it may be premature to expand licensing requirements dramatically or to repeal the current exemption completely. However, refining the current exemption in such a way as to limit the expansive definition of a “marketing services consultant” to exclude “energy consultants,” may be a good first step in an ongoing process of monitoring the performance of entities in the natural gas and electricity marketplace. Distinguishing

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<sup>6</sup> In many cases, the energy consultant has a contract with the consumer for its services and the NGS has no contractual relationship with the energy consultant. Alternatively, the energy consultant may not be operating under a contract with the consumer when it solicits bids from multiple NGSs for the consumer. Its fee is collected from the consumer on the supplier bill pursuant to an agreement with the winning NGS to do so, however, the entity is acting in the capacity of representative of the consumer, not to any one exclusive NGS. Under both scenarios, the energy consultant operates independently of any particular NGS to render advice to the consumer and provide its advisory service.

between agents of suppliers versus agents of consumers is a cost-effective and efficient way to protect both the consumer and the public interest at this time.

## **B. Nontraditional Marketer**

With respect to the nontraditional marketer, the regulations and Order 2001 define this type of entity 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.” Order 2001 characterizes it this way, “the sole role of the nontraditional marketer is to make the endorsement that its members are free to accept or reject on its merits. . . The nontraditional marketer is not involved in the financial transaction between the licensed supplier and the customer.” NEM recommends that the Commission should retain the exemption from the licensing requirement for nontraditional marketers. Affinity groups such as these are simply conduits of the NGS offer. Consumers understand that if they avail themselves of the offer that they are dealing with the NGS itself, not the affinity group. The affinity group is not holding itself out as representing the NGS,<sup>7</sup> it is merely communicating to its members that there is an offer that they may avail themselves of from the NGS. And, the affinity group is not in the energy business. Any issues related to the terms and conditions of the offer are clearly traceable to the NGS itself and are reachable under the NGS’s license.

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<sup>7</sup> Also of relevance here with respect to the Commission’s decision to retain the exemption from licensing of nontraditional marketers, in the Marketing Standards NOPR in Docket No. L-2010-2208332 NEM requested that the Commission clarify that affinity groups, and individuals acting on behalf of affinity groups, such as fraternal organizations, churches, rotary clubs and the like, that merely endorse a competitive supplier offering should not be deemed an “agent” under the proposed regulations.<sup>7</sup> NEM noted that these affinity groups, which fall within the Commission’s definition of nontraditional marketer, exist independently outside of the energy markets, and the application of the marketing standards to these entities would be outside of the scope of “marketing and sales activities” that the standards are intended to regulate. To the extent that consumers encounter issues with the underlying marketer offering, any associated marketer misconduct would be actionable under that marketer’s license.

### C. Aggregators, Marketers and Brokers

The Commission posed the question as to 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. It bears noting that the legislature did not set forth definitions for the terms “aggregator,” “broker” and “marketer” in the Gas Act or any corresponding licensing requirement for any such specifically identified entities. By comparison, the Electricity Generation Customer Choice and Competition Act does set forth definitions for the terms “aggregator,” “broker” and “marketer”<sup>8</sup> and an explicit licensing requirement for these entities operating in the electric marketplace.<sup>9</sup> The licensing requirement in the Gas Act mentions only “natural gas suppliers.” Likewise, the legislature did not define “marketing service consultants,” “energy consultants” or “nontraditional marketers.” These definitions as applied to the retail gas marketplace were a regulatory interpretation of the Commission. Moreover, the definitions that have been applicable to the retail marketplace for the past decade – marketing service consultant, energy consultant and

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<sup>8</sup> 66 Pa.C.S.A. § 2803. Although the Commission has not heretofore defined these terms in its regulations for the purposes of natural gas competition, it did however define these terms in the Code as they apply in the electric market. These definitions are as follows:

Aggregator – An entity licensed by the Commission, that purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers. See section 2803 of the code (relating to definitions).

Broker – An entity, licensed by the Commission, that acts as an intermediary in the sale and purchase of electric energy but does not take title to electric energy. See section 2803 of the code.

Marketer – An entity, licensed by the Commission, that acts as an intermediary in the sale and purchase of electric energy but does not take title to electric energy. See section 2803 of the code.

52 Pa. Code 54.31.

<sup>9</sup> 66 Pa.C.S.A. § 2809.

nontraditional marketer – are not coterminous with the definitions of aggregator, marketer and broker.

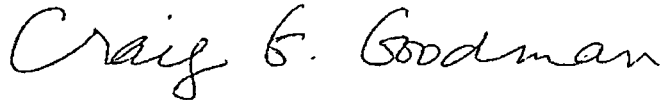
NEM recommends that prior to the Commission making a determination as to whether gas aggregators, brokers or marketers need to be licensed, that the Commission should engage in a rulemaking process to develop definitions and a common understanding of these terms as they apply to the retail gas market. Only then can a proper evaluation of the need for and extent of regulation and oversight for each of these entities be made.

Any licensing or lesser registration/certification requirement should be imposed only after a showing of demonstrable need to safeguard the public interest has been made. More specifically, NEM supports the exemption from licensing of entities operating exclusively for a supplier in a utility service territory and the licensing of brokers who are not beholden to anyone unless they have an exclusive contract with one supplier. In all cases, the Commission should look to whom the entity owes its fidelity or whether they are acting for their own account rather than for a specific supplier or a purchaser or group of purchasers. Once that analysis is performed, a better decision can be made as to whether the public interest is or needs to be better protected and at what cost. With respect to the question of NGS responsibility for the actions of these entities, NGSs should be responsible for the actions of third parties with whom they have entered into contractual relationships that act exclusively in the NGS's interest in a utility service territory. In the absence of that contractual relationship with the NGS, then the NGS should not be responsible for the entity's conduct.

## Conclusion

NEM appreciates this opportunity to provide input into the Commission's review of its licensing requirements for natural gas suppliers.

Sincerely,

A handwritten signature in cursive script that reads "Craig G. Goodman".

Craig G. Goodman, Esq.

President

Stacey Rantala

Director, Regulatory Services

National Energy Marketers Association

3333 K Street, NW, Suite 110

Washington, DC 20007

Tel: (202) 333-3288

Fax: (202) 333-3266

Email: [cgoodman@energymarketers.com](mailto:cgoodman@energymarketers.com);

[srantala@energymarketers.com](mailto:srantala@energymarketers.com)

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