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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Rulemaking on Licensing Requirements
For Natural Gas Suppliers

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Docket No. L-2011-2266832

COMMENTS OF THE PENNSYLVANIA ENERGY MARKETERS COALITION

INTRODUCTION

Pursuant to Docket No. L-2011-2266832, the Pennsylvania Public Utility Commission ("PUC," or "Commission") seeks comments on a Proposed Rulemaking Order ("proposed rulemaking") reviewing the Commission's licensing requirements for natural gas suppliers ("NGS"). The proposed rulemaking was adopted by the Commission on January 12, 2012, motivated by the PUC's previous approval of a natural gas supplier license for Alphabuyer LLC, to act as broker/marketer in the Commonwealth of Pennsylvania. The proposed rulemaking considers specifically the scope of NGS licensing requirements at 52 Pa. Code § 62.101 (relating to definitions) and § 62.102 (relating to scope of licensure).

As the Commission notes, the legislative act which implemented electricity choice throughout the Commonwealth established subclasses of electric generation suppliers ("EGSs") – aggregator, broker, and marketer – but the implementing legislation for natural gas choice did not break license applicants into subclasses. Through regulation, the Commission has exempted "marketing service consultants" and "nontraditional marketers" from the general requirement that all suppliers of retail natural gas supply services obtain a NGS license. Marketing service consultants are defined in regulation as, "[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."¹ Similarly, nontraditional marketers are defined as "[a] community-based organization, civic, fraternal or business association,

¹ 52 Pa. Code § 62.101

or common interest group that works with a licensed supplier as an agent to market natural gas supply services to its members or constituents.”² Critical to these exemptions is the Commission’s position that the licensed NGS is responsible for the behavior of the marketing service consultants and nontraditional marketers with which the NGS has business relationships.

The Commission states in the proposed rulemaking, however, firms like Alphabuyer and other brokers have proposed business models in which the broker does not contract with NGSs, but rather with retail customers, and negotiates with NGSs on behalf of these customers. These brokers meet the technical exemption for marketing service consultants, but have sometimes applied for NGS licenses, which the Commission has been disposed to grant if the applicant meets all the other licensing requirements. According the proposed rulemaking, the Commission believes that the “the non-compulsory nature of licensing such entities and the amount of direct interaction these entities have with retail customers”³ merits reconsideration of the NGS licensing regulations. Accordingly, in this rulemaking, the Commission proposes to: (1) eliminate the regulatory definitions of marketing service consultants and nontraditional marketers; (2) eliminate the licensing exemptions for marketing service consultants and nontraditional marketers; and (3) eliminate the reporting requirement for NGSs to report the names and addresses of marketing service consultants and nontraditional marketers which act as “agents” for the licensed NGS.

The Pennsylvania Energy Marketers Coalition (“PEMC”)⁴ appreciates the opportunity to comment on these proposed revisions to the PUC’s regulations and the impact they could have on the Commonwealth’s consumers and the competitive marketplace.

² 52 Pa. Code § 62.101

³ L-2011-2266832, Proposed Rulemaking Order, “Licensing Requirements for Natural Gas Suppliers Regulations at 52 Pa. Code § 62.101—§ 62.102,” January 12, 2012.

⁴ For purposes of this filing, the PEMC consists of Agway Energy Services, LLC (“Agway”), Energy Plus Holdings LLC (“Energy Plus”), Interstate Gas Supply, Inc. (“IGS”), Pennsylvania Gas & Electric (“PAG&E”), and SouthStar Energy Services (“SouthStar”). PEMC members supply electricity, natural gas, and various other energy services to residential and commercial customers across a large number of utility markets throughout several states. PEMC works collaboratively on non-competitive, regulatory issues to advance competitive markets and consumer choice.

**REQUIRING LICENSING OF MARKETING SERVICE CONSULTANTS AND NONTRADITIONAL
MARKETERS IS UNNECESSARY FOR CONSUMER PROTECTION**

The PEMC shares the view of the Commission that ongoing review of existing regulations can be worthwhile, both to ensure that consumers continue to be protected from deceptive practices and also to continue to enable a robust, competitive marketplace with an array of value-added products and services to meet consumer needs. At the same time, however, we believe that regulatory certainty is critical to giving suppliers the confidence to invest in the Commonwealth for the long-term. As such, regulatory review should be based on a clear and pressing need. The PUC itself notes in the proposed rulemaking that this particular review was not prompted by misbehavior by NGSs or their agents nor by consumer complaints, but rather by the *voluntary* compliance actions of a number of marketing service consultants and nontraditional marketers. While we appreciate the Commission's desire to ensure a level playing field and consistent application of existing regulations, it does not appear that there is a pressing need for revision at this time. There is no identifiable problem with the existing regulations in the marketplace.

As such, we are concerned about the proposed rulemaking's elimination of the exemption from licensing requirements for nontraditional marketers and marketing services consultants. The PEMC emphatically supports strong consumer protections, robust licensing requirements for true NGSs, and swift sanctions for market actors who break the rules. We believe that when it comes to misbehavior by NGS employees and agents, "the buck stops with the supplier." We are not seeking to shirk responsibility for the actions of those who represent our firms; in fact, we want to continue to be held to account for our employees' and agents' behavior. While well-intentioned, the Commission's proposed revisions will actually *lessen* NGSs' accountability and responsibility to thoroughly vet and train their partners. The fact that an NGS could face sanctions for the actions of its agents is the strongest check in the marketplace on unscrupulous or deceptive behavior.

We are also concerned that in the best case, the Commission's proposed revisions would dramatically expand the number of license applications it must review and suppliers it must monitor. This internalization of the due diligence that the suppliers must currently undertake could

unnecessarily use up valuable, limited PUC Staff resources. At worst, by requiring every potential agent – from a professional broker focused on energy choice to a fraternal organization or church group which might merely endorse a particular NGS to its members – to apply for an NGS license, the Commission could be severely limiting the range of value-added products and services available to Pennsylvania consumers. Further, this may discourage the entry of other competitive suppliers into the marketplace (particularly suppliers using relationship-based marketing channels). This Commission has made its commitment to competition abundantly clear, but these revisions, no matter how well-intentioned, could undermine that commitment.

OTHER APPROACHES COULD SERVE SAME OBJECTIVES WHILE MAINTAINING COMPETITION

Alternatively, the PEMC offers two approaches which could serve the Commission's objectives without causing any harm to consumers or the competitive marketplace.

First, the Commission could maintain the status quo, while vigilantly monitoring consumer complaints and credible allegations of misbehavior. When agents that are legitimate representatives of a single supplier are found to be in violation of PUC regulations, ***the NGS should be held accountable as if the agent was its own employee.*** Strong oversight coupled with swift Commission action when abuses are determined to have taken place will continue to serve the competitive marketplace well.

Second, to address accountability issues that can arise when an agent simultaneously represents more than one NGS, the Commission, to the extent it has the statutory authority to do so, could propose to define such agents as "natural gas supply brokers." The Commission could then either require entities that meet that definition to apply for a standard NGS license or could establish a new, separate natural gas supply broker license. For reference, the PEMC recommends the Commission consider the definition for broker under the EGS licensing regulations and incorporate a substantially similar definition natural gas supply brokers. That definition is, "*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.”⁵ The PEMC recommends, however, that this definition of broker be further qualified to state that a natural gas supply broker must simultaneously represent more than one NGS in order to trigger licensing provisions. In this way, agents that work exclusively for a single NGS would not need to be licensed, because the line of accountability back to the licensed NGS is clear. In cases in which relationships are more complex, however, it is in the best interests of customers for the Commission to be able to hold a single entity responsible for any misbehavior (in this case, the licensed natural gas supply broker). This definition of natural gas supply broker could also include companies like Alphabuyer, which primarily act on behalf of customers but work with multiple NGSs.

CONCLUSION

PEMC appreciates the commitment of the Commission and Staff to the continuing development of the competitive natural gas and electricity marketplace in the Commonwealth of Pennsylvania. It is critical that any revision to regulations is approached with a continued commitment to empowering consumers so that they have the ability to take control of their energy purchases with products that they believe best fit their individual needs. While well-intentioned, we believe this proposed rulemaking could undermine this objective by placing barriers in the marketplace to legitimate sales channels, discouraging new suppliers from entering the market, and shifting responsibility for misbehavior away from licensed suppliers.

⁵ 52 Pa. Code § 54.31

We respectfully urge the Commission to either rescind this proposed rulemaking or modify it to focus solely on agents that primarily represent retail customers or work simultaneously on behalf of more than one NGS.

We recognize that more work remains to be done on this topic and others related to competition, and we pledge to the Commission our continued support to help with these efforts.

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Respectfully submitted,

PENNSYLVANIA ENERGY MARKETERS COALITION



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