

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Licensing Requirements for
Natural Gas Suppliers

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Docket No. L-2011-2266832

Comments of Spark Energy Gas, LP

Spark Energy Gas, LP ("Spark Energy") submits these comments to questions posed by the Commission in a proposed rulemaking order of January 12, 2012 concerning licensing requirements for marketing entities that interact with retail customers. Spark Energy is a licensed Natural Gas Supplier (NGS) in Pennsylvania. Spark Energy, L.P. is an affiliate of Spark Energy and a licensed Electric Generation Supplier (EGS) in Pennsylvania that sells electricity to customers in the PECO and PPL service territories. Collectively, the two companies serve retail customers in seventeen states across the country.

Spark Energy commends the Commission for raising the licensing topic for discussion. Pennsylvania's current licensing rules and exemptions were designed to meet the needs of the competitive retail gas industry as it existed over a decade ago. As the forms of marketer interaction with consumers continues to evolve, so too should the regulations that apply to those interactions. Retail markets need a favorable reputation among customers to exist, grow, and thrive. We support rules that encourage behavior by market participants that helps maintain and enhance our industry's reputation.

License Requirements for Marketing Service Consultants and Nontraditional Marketers

In the proposed rulemaking order, the Commission posed the question:

Should the current exemption from the NGS licensing requirement for Marketing Services Consultants and Nontraditional Marketers be discontinued?

As a general matter, Spark Energy believes the Commission first, should establish a framework that differentiates NGS licensing requirements from review requirements that may be

applied to marketing entities, and second, should apply those review requirements to the types of marketing entities that have caused concern in the market, while continuing to exempt other types of marketing entities from those review requirements. We explain this recommendation in the points noted below.

Point 1. NGSs and marketing entities should not be grouped together when identifying licensing requirements. NGSs undergo a formal *licensing* process to prove financial, managerial and technical capabilities across a wide range of activities that encompass buying and selling gas with prudent risk management. All of these demonstrations may not be necessary for an entity engaged only in marketing functions. A review process for marketing entities should allow the Commission to focus on whether the marketing entity possesses appropriate core marketing proficiencies. For example, the Commission may want to be assured that an entity engaged in marketing functions can demonstrate knowledge and proficiencies related to Pennsylvania and federal marketing requirements and agent screening. We refer to this review as a *certification* process, distinct from the NGS licensing process.

Point 2. The certification requirement for marketing entities can be used selectively to target Commission attention to the types of marketing entities causing concern in the market. For example, we are not aware of significant circumstances where Nontraditional Marketers are causing concern; well-guided community organizations or interest groups working with a licensed supplier help educate many consumers on retail choice programs. However, it may be appropriate to apply a certification requirement to vendors engaged in door-to-door marketing (at the company level, not to individual agents). These entities are typically involved in the rare but unfortunate cases when the privilege of direct communication with the customer is abused.

Point 3. The certification process need not be overly burdensome, but it should establish within the marketing entities chosen for certification an obligation of accountability to the Commission. The requirement could be met by having the entity provide the following information to the Commission:

- Name of entity, owners and principals, business address
- Record of convictions, fines, business violations by owners or principals
- Attestation of awareness of Commission and/or federal marketing rules relevant to the Entity's marketing channel
- Description of how the Entity will abide by Commission marketing rules
- Information of uniforms, websites, call center phone number information, or other relevant identifiers that the Entity will use in the market and by which a customer could identify the Entity
- Contact information for individuals who can quickly be contacted in case of incident

Point 4. Definitions of Marketing Service Consultants and Nontraditional Marketers in Section 62 are useful for describing which marketing entities would be subject to Commission certification. We suggest these definitions be retained (and expanded to provide more clarity where possible) and not be deleted.

The Commission also posed the question:

If Marketing Service Consultants and Nontraditional Marketers are required to be licensed, should responsibility for fraudulent, deceptive, or unlawful practices committed by MSCs and NMs be removed from the NGSs on whose behalf the activity occurred?

Responsibility for fraudulent, deceptive, or unlawful practices should not be removed from the NGS on whose behalf the marketing activity was conducted. If the illicit activity was conducted by a Commission-certified marketing entity, the certified entity should also be held accountable for its actions. In other words, the NGS should not get a free pass simply because it contracts with a certified marketing entity; nor should a certified marketing entity escape regulatory oversight simply because it operates under the umbrella of the NGS. The delegation

of responsibility between a NGS and certified marketing entity for improper activity would be a case-specific factual question.

Certification in the manner described above should enhance but not replace oversight of the entity by the licensed NGS. Even though NGSs are currently responsible for the activities of Marketing Services Consultants working under contract with the NGS, the reality is that not all NGSs apply a sufficient standard of review. Moreover, even if an NGS does apply a sufficient standard of review, it remains possible for a Marketing Services Consultant to operate outside the boundaries established by the NGS and engage in improper marketing activity. In either case, the presence of a Commission certification standard and the threat of losing that status would motivate stronger compliance efforts by both Marketing Service Consultants and NGSs.

Proposed Revisions to 52 Pa. Code § 62

To implement the changes described in these comments, Spark Energy suggests these changes to Section 62:

Section 62.101. Definitions.

The definition of “marketing service consultant” is expanded to include more examples.

Marketing services consultant—A commercial entity, such as a telemarketing, door-to-door, multi-level marketing, or internet-based 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.

Section 62.102. Scope of licensure.

In subsection 62.102(e), reference to the license exemption for marketing services consultants is removed. Subsection (f) is added to specify that marketing services consultants

engaged in designated activities under contract with an NGS (our suggestion is to apply this requirement to companies engaged in door-to-door selling) must be Commission certified.

Subsection (g) is added to specify the responsibilities that accompany Commission certification.

(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] a marketing services consultant under contract to the NGS and fraudulent, deceptive or other unlawful marketing or billing acts committed by the marketing services consultant.

(f) A marketing services consultant engaged in {insert applicable channels, if any; e.g., door-to-door selling} must be certified by the Commission prior to selling natural gas supply services to retail gas customers for a licensee. This subsection is effective {insert date 6 months after effective date of subsection}.

(g) A marketing services consultant which is required to be certified by the Commission under part (f) of this section must submit the required information for certification in a format prescribed by the Commission. The certified entity is 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 marketing entity and fraudulent, deceptive or other unlawful marketing or billing acts committed by the certified entity, notwithstanding the responsibilities of the NGS licensee on whose behalf it was marketing.

Licensure of Aggregators, Brokers and Marketers

In the Rulemaking Order, the Commission also asked for comment on the following:

Should all aggregators, marketers and brokers be required to be licensed as NGSs in order to sell natural gas supply services?

As the Commission noted in the Order, the Natural Gas Choice and Competition Act (unlike the Electricity Generation Customer Choice and Competition Act) does not break down NGSs into aggregator, broker, and marketer subclasses. For electric purposes, 52 Pa. Code Section 54.31 defines “marketer” and “broker” as “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.”

If the definitions of marketers and brokers used for the electric industry were generally adopted for gas purposes, it would be difficult to distinguish marketers and brokers from Marketing Service Consultants as defined in the current gas rules. While the Rulemaking envisions elimination of the definitions for Marketing Service Consultants and Nontraditional Marketers, Spark Energy believes it better to keep these latter definitions and the clarity they offer in the rules, as compared to adopting the more generic "marketer" and "broker" terms.

Spark Energy thanks the Commission for its consideration of these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry Kingerski".

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