

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