

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17105**

**LICENSING REQUIREMENTS  
FOR NATURAL GAS SUPPLIERS**

**Public Meeting – October 14, 2011  
2266832-CMR**

**MOTION OF  
COMMISSIONER PAMELA A. WITMER**

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 continues:

As used in the above definition of a natural gas supplier, the term natural gas supply services includes: (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). Natural gas supply service 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 *et seq.*, the Natural Gas Choice and Competition Act 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. Rather, 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.

Pursuant to 52 Pa. Code § 62.101, 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 licensee<sup>1</sup> 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; [and] (iii) is not responsible for the payment of the costs of the natural gas to suppliers, producers, or NGDCs.<sup>2</sup>

The Commission has addressed today the Application of Alphabuyer LLC (“Alphabuyer”) for a NGS License to operate as a broker/marketer engaged in the business of supplying natural gas services in various local distribution company service territories throughout the Commonwealth. 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 to the amount of direct interaction these entities have with retail customers, combined with the fact that licensed marketing services consultants and/or nontraditional marketers may gain a competitive edge or perceived higher

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<sup>1</sup> 52 Pa. Code § 62.101 defines “Licensee” as “A person or entity that has obtained a license to provide natural gas supply services to retail customers.”

<sup>2</sup> Additionally, 52 Pa. Code § 62.101 defines nontraditional marketers 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 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.” *Id.*


level of credibility over other unlicensed entities providing the same types of services, I believe that now is the time to conduct a review of the Commission's regulations outlining the licensing requirements for natural gas suppliers. This view is consistent with my earlier statements that support continuous review of both the Public Utility Code and our regulations to ensure that their purpose is being properly effectuated. I further believe that the goal of this review should be 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, consistent with Act 121 of 1999. At a minimum, initiating a proposed rulemaking will allow the Commission to receive comments to determine if our regulations regarding NGS licensing requirements conform with the plain language of the Act and reflect the current business plans of NGSs appearing before this Commission. 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.

To that end, I move that the Law Bureau initiate a proposed rulemaking in order to solicit comments from interested parties.

**THEREFORE, I MOVE THAT:**

1. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.
2. Law Bureau initiate a proposed rulemaking to amend the Licensing Requirements for Natural Gas Suppliers Regulations at 52 Pa. Code 62.101 – 102 within 90 days of the entry date of the above referenced Order.

**DATE: OCTOBER 14, 2011**

  
**PAMELA A. WITMER**  
**COMMISSIONER**