

Hawke
 McKeon &
 Sniscak LLP
ATTORNEYS AT LAW

Thomas J. Sniscak
(717) 236-1300 x224
tjsniscak@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

April 15, 2013

By Hand Delivery

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

RE: Licensing Requirements for Natural Gas Suppliers Regulations at 52 Pa. Code §§62.101 and 62.102; Docket No. L-2011-2266832; **Comments of the Retail Energy Supply Association**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") are the original and fifteen (15) copies of the Comments of the Retail Energy Supply Association to the Commission's Advanced Notice of Final Rulemaking in the above-captioned proceeding

Thank you for your attention to this matter. Please do not hesitate to contact me with any questions you may have.

Sincerely,



Thomas J. Sniscak
Counsel to the
Retail Energy Supply Association

TJS/san
Enclosures

cc: David E. Screven, Esquire (via electronic mail)
Brent W. Killian (via electronic mail)
Cyndi Page (via electronic mail)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION
TO THE COMMISSION'S FEBRUARY 28, 2013
ADVANCED NOTICE OF FINAL RULEMAKING**

Thomas J. Sniscak, Attorney ID No. 33891
Hawke McKeon & Sniscak LLP
Harrisburg Energy Center
100 North Tenth Street
PO Box 1778
Harrisburg, PA 17105-1778
(717) 236-1300 (Voice)
(717) 236-4841 (Facsimile)
tjsniscak@hmslegal.com

*Counsel for
The Retail Energy Supply Association*

Dated: April 15, 2013

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I. INTRODUCTION

By Order entered January 13, 2012, in the above-captioned matter, the Pennsylvania Public Utility Commission (“Commission”) sought comment on proposed regulations that would remove the exemption from licensing for marketing services consultants and nontraditional marketers. Comments were submitted in response to this Order by the following interested parties: Independent Regulatory Review Commission (“IRRC”); National Energy Marketers Association (“NEMA”); Washington Gas Energy Services, Inc. (“WGES”); Spark Energy Gas, LP (“Spark”); Retail Energy Supply Association (“RESA”) and the Pennsylvania Energy Marketers Coalition (“PEMC”).

After consideration of the various comments submitted in this proceeding, the Commission entered an Advance Notice of Final Rulemaking (“Advance Notice”) on February 28, 2013. In its Advance Notice, the Commission made certain revisions to the proposals put forth in its January 13, 2012 Order. The Commission proposed to delete the definition of “marketing service consultant” from its licensing regulations, as well as the exemption from licensing provided to such entities. The Commission further proposed to retain the definition, and associated exemption, for “nontraditional marketers.” In addition, the Commission proposed to add definitions for “aggregator” and “broker” as set forth in its EGS licensing regulations at 52 Pa. Code §54.31. A definition was also added for “non-selling marketer” for entities whose activities are limited to providing only marketing and sales support services on behalf of one or more NGS firms. Under the Commission’s proposed revisions, marketers who work for only one NGS will be considered an agent of that NGS and, therefore, will not be required to be licensed. If a marketer works for more than one NGS, it will be required to obtain a license from the Commission.

As noted in its initial comments in this proceeding, RESA¹ is a broad and diverse group of retail energy suppliers who share the common belief that competitive retail energy markets deliver a more efficient and favorable outcome for customers than a traditional monopoly regulated utility structure. RESA strives to provide input to this Commission and to work with stakeholders to continue to grow competitive retail natural gas and competitive options for residential, commercial and industrial customers.

RESA commends the Commission for its efforts in this proceeding and offers its thanks for this further opportunity to submit comments. RESA believes that its suggestions will help *promote natural gas competition in Pennsylvania while maintaining necessary consumer protections.*

In general, RESA fully supports the revisions recommended in the Commission's Advanced Notice. By way of example, RESA agrees with the Commission's proposal to retain the definition and associated licensing exemption for nontraditional marketers. RESA agrees that the nature of the activities performed by these types of entities renders a licensing requirement unnecessary. Additionally, RESA agrees with the Commission's recommendations on the issue of reporting requirements. Where a marketer acts as an agent for a single NGS and, therefore, does not need to obtain a license, the NGS should be responsible for the activities and reporting requirements of the marketer. On the other hand, where a marketer works on behalf of

¹ RESA is a non-profit trade association made up of a broad range of companies that are involved in wholesale generation of electricity and the competitive supply of natural gas to residential, commercial and industrial customers. RESA and its members are actively involved in the development of retail and wholesale competition in natural gas and electricity markets in various states throughout the country, including Pennsylvania. RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homestead Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

more than one NGS, and is required to obtain a license, the marketer should be responsible for its own activities and reporting requirements.

RESA believes, however, as more fully explained below, that additional clarification of the requirement that a marketer may only work exclusively on behalf of one NGS in order to be exempt from licensing is necessary so that the regulation tracks more closely the reason and distinction the Commission stated in reaching its conclusion at page 15 paragraph 1 of its Advance Notice issued February 28, 2013. RESA believes that this “exclusivity” requirement should be clarified by adding language to indicate that the licensing exemption applies to marketers who work exclusively for a single NGS in a *service territory*.

II. COMMENTS ON PROPOSED REVISIONS TO SECTIONS 62.102

The Commission’s proposed Section 62.102(E) provides, “a non-selling marketer under contract to more than one licensed NGS or which has a contract with an end-user retail natural gas customer shall be required to obtain a license.” Under this proposed provision as written, a marketer who works on behalf of more than one NGS, even if the marketer works for no more than one NGS in any given service territory, must obtain a license. RESA believes that the licensing exemption applicable to marketers who work for a single NGS should be clarified to state that the exemption attaches to marketers who work for no more than a single NGS in a given service territory. Otherwise, a marketer that works for a single NGS that is licensed to provide service in a specific service territory would not be permitted to work for another NGS that is licensed to provide service in a completely different service territory without first obtaining a license.

The Commission appears to have acknowledged the focus on service territory in the body of its Advanced Notice where it states, on page 15, “[w]e note the comments of RESA, PEMC,

and NEMA that a “marketer” that operates under an exclusive contract with a single NGS supplier to conduct natural gas-related marketing and sales activities *in its service territory* should not be required to be separately licensed by the Commission.” (Emphasis added). RESA believes, however, that this idea should be more clearly stated in the proposed regulation itself in order to capture the Commission’s intent.

Specifically, as currently proposed by the Commission, Section 62.102(E) states:

A non-selling marketer under contract to more than one licensed NGS or which has a contract with an end-user retail natural gas customer shall be required to obtain a license.

As noted, RESA believes that this provision does not clearly connect the “exclusivity” requirement to service territory. Accordingly, RESA suggests that this provision be revised to state:

A non-selling marketer under contract to more than one licensed NGS *in a NGDC service territory* or which has a contract with an end-user retail natural gas customer shall be required to obtain a license. (Emphasis added to show suggested revision).

Connecting the “exclusivity” concept to an NGDC service territory rather than a single NGS provides the necessary protections to consumers located within a given territory while also providing clarity to NGSs when contracting with marketers. Marketers working exclusively for a single NGS in a NGDC territory will not need to be licensed. The NGS for whom the marketer is working, however, will remain responsible for the sales activities and Commission reporting requirements of the marketer. Where a marketer works for more than one NGS in a particular service territory, the marketer will be required to obtain its own NGS license and be responsible to the Commission for its own sales activities and reporting requirements. At the same time, RESA’s proposed revision will enable an unlicensed non-selling marketer to work for more than one NGS, so long as it is not in the same service territory. RESA believes this best provides for

necessary consumer protections while, at the same time, supports and promotes natural gas competition in Pennsylvania.

III. CONCLUSION

For the reasons set forth above, RESA respectfully recommends that the Commission's proposed Section 62.102(E) in its Advanced Notice be revised as described above. In all other respects, RESA supports the recommendations made by the Commission and appreciates very much the opportunity to submit these comments in this proceeding.

Respectfully submitted,



Thomas J. Sniscak, Attorney ID No. 33891
Hawke McKeon & Sniscak LLP
Harrisburg Energy Center
100 North Tenth Street
PO Box 1778
Harrisburg, PA 17105-1778
(717) 236-1300 (Voice)
(717) 236-4841 (Facsimile)
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*Counsel for
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