

**STEVENS & LEE**  
**LAWYERS & CONSULTANTS**

17 North Second Street  
16th Floor  
Harrisburg, PA 17101  
(717) 234-1090 Fax (717) 234-1099  
www.stevenslee.com

Direct Dial: (717) 255-7365  
Email: mag@stevenslee.com  
Direct Fax: (610) 988-0852

August 30, 2013

VIA ELECTRONIC FILING

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

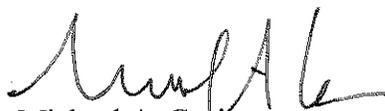
**Re: Licensing Requirements for Natural Gas Suppliers Regulations at 52 Pa. Code §  
62.101 – § 62.102  
Docket No. L-2011-2266832**

Dear Secretary Chiavetta:

Enclosed for filing please find the Petition for Clarification and/or Reconsideration of Washington Gas Energy Services, Inc. in the above-captioned matter. Copies of the Petition are being served in accordance with the attached Certificate of Service. If you have any questions, please do not hesitate to contact me.

Best Regards,

STEVENS & LEE

  
Michael A. Grun

Encl.

cc: Certificate of Service

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A PROFESSIONAL CORPORATION

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Licensing Requirement** :  
**For Natural Gas Suppliers** : **Docket No. L-2011-2266832**  
**At 52 Pa. Code § 62.101 - § 62.102** :

**PETITION FOR CLARIFICATION AND/OR RECONSIDERATION OF  
WASHINGTON GAS ENERGY SERVICES, INC.**

Pursuant to Sections 703(g) and (g) of the Public Utility Code and 52 Pa. Code § 5.572, Washington Gas Energy Services, Inc. (“WGES”) files this Petition for Clarification and/or Reconsideration of the August 15, 2013 Final Rulemaking Order (“Final Rulemaking Order”) issued in the above-captioned proceeding. With this Petition, WGES is respectfully requesting that the Commission clarify a narrow, but important, aspect of the Order related to the definition of Nontraditional Marketers.

**I. Introduction and Background**

1. By Order entered January 13, 2012, the Pennsylvania Public Utility Commission (“Commission”) initiated a rulemaking to review the scope of the natural gas supplier (“NGS”) licensing regulations at 52 Pa. Code § 62.101(relating to definitions) and § 62.102 (relating to scope of licensure). The Commission initiated the instant rulemaking proceeding to determine (1) if its current NGS licensing regulations conform with the plain language of the Natural Gas Choice and Competition Act<sup>1</sup> and reflect the current business plans of NGSs appearing before it; and (2) whether continuing certain licensing exemptions was in the public interest.

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<sup>1</sup> Natural Gas Choice and Competition Act, effective July 1, 1999, 66 Pa. C.S. §§ 2201-2212 (Act).

2. Specifically, the rulemaking was initiated to address whether or not to maintain the exemptions from the licensing requirement for marketing services consultants and nontraditional marketers.

3. In its Proposed Rulemaking Order, the Commission suggested the following revisions to its NGS licensing regulations at 52 Pa. Code 62.101-62.110: (1) deletion of the “marketing service consultant” and “nontraditional marketer” definitions; (2) the deletion of the exemptions set forth in Subsections 62.102 (d) and (e) of the regulations and (3) the deletion of Subsection 62.110 (a)(3) that requires a licensee to report the names and addresses of nontraditional marketers and marketing services consultants who are acting or will be acting as agents for the licensee in the upcoming year.

4. Comments to the proposed revisions were filed by WGES, IRRC, National Energy Marketers Association (NEMA), Spark Energy Gas, LP, Retail Energy Supply Association (RESA) and the Pennsylvania Energy Marketers Coalition (PEMC).

5. Based upon these comments, the Commission suggested further amendments to the NGS licensing regulations to add the definitions “aggregator”, “broker”, and “nonselling marketer” and to incorporate a revised definition of “nontraditional marketer”. The Commission issued its further revisions to the proposed regulations as an Advanced Notice of Final Rulemaking (ANOFR), entered February 28, 2013, and invited additional comments.

6. The ANOFR proposed to continue the exemption from licensure requirements for Nontraditional Marketers, but proposed the following new definition of Nontraditional Marketers::

NONTRADITIONAL MARKETER—A COMMUNITY-BASED ORGANIZATION, CIVIC, FRATERNAL OR BUSINESS ASSOCIATION, OR COMMON INTEREST GROUP THAT WORKS WITH A LICENSED NGS AS AN AGENT TO MARKET NATURAL GAS SERVICE TO ITS MEMBERS OR CONSTITUENTS. THE NONTRADITIONAL

MARKETER MAY NOT REQUIRE ITS MEMBERS OR CONSTITUENTS TO OBTAIN ITS NATURAL GAS SERVICE THROUGH A SPECIFIC LICENSED NGS AND **MAY NOT BE COMPENSATED BY THE LICENSED NGS IF MEMBERS OR CONSTITUENTS ENROLL WITH THE LICENSED NGS.** (Emphasis added).

7. Comments to the ANOFR were filed by the RESA, NEMA, PEMC, the Pennsylvania Independent Oil and Gas Association (PIOGA), and the Office of Consumer Advocate (OCA).

8. No parties expressed opposition to the Commission's proposed new definition of "Nontraditional marketer", and all seemed to agree that it was reasonable to exempt Nontraditional marketers from the licensing requirement. But no party specifically addressed the "no-compensation" limitation in the new definition.

9. In the Final Rulemaking Order, the Commission approved the proposed new definition of Nontraditional Marketer that was included in the ANOPR.

10. With this Petition, WGES seeks clarification on one aspect of the Commission's new definition of "Nontraditional Marketer", namely, the portion of the definition that addresses the payment of compensation to Nontraditional Marketers.

11. As the new definition is currently written, it appears that Community-based Civic, Fraternal or Business Associations that receive compensation from NGSs if their members enroll could be excluded from the definition, and therefore would be required to obtain an NGS license before marketing natural gas service to its members.

12. Neither the ANOPR nor the Final Rulemaking Order discussed this "no-compensation" limitation, and no parties addressed this issue in their comments. Therefore, the Commission's intent with respect to this limitation is unclear.

13. For the reasons set forth below, WGES respectfully requests that the Commission clarify that it did not intend to require Community-based Civic, Fraternal or Business Associations that receive compensation from NGSs to obtain NGS licenses before marketing

natural gas service to its members. In the alternative, if the Commission's intent was to extend the "Nontraditional Marketer" designation only to Community-based Civic, Fraternal or Business Associations that receive no compensation from NGSs, WGES respectfully requests that the Commission reconsider this determination, and extend the designation to all such organizations, including those that receive compensation from NGSs when their members enroll.

## II. Legal Standards

14. Section 703(g) of the Public Utility Code authorizes the Commission to reopen the record in a proceeding to clarify or reconsider a prior Order. Section 5.572 of the Commission's regulations sets forth the procedure for seeking clarification or reconsideration of an Order.

15. The well-established standards for granting reconsideration or clarification of a prior Commission Order are set forth in *Duick v. PG&W*, 56 Pa. P.U.C. 553 (1982) ("*Duick*");

A petition for reconsideration, under the provisions of 66 Pa. C.S. §703(g), may properly raise any matters designed to convince the commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.....What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error. (*Duick*, at 59).

16. The Commission has held that a Petition for Clarification must meet the same standard as a Petition for Reconsideration. See *Petition of PECO Energy Company for Approval of its Revised POR Program*, Docket No. P-2009-2143607 (Opinion and Order issued August 24, 2010).

17. In this case, it appears neither the Commission nor any of the commenting parties considered the language in the new definition of Nontraditional Marketer which appears to limit

the “Nontraditional Marketer” designation only to Community-based Civic, Fraternal or Business Associations that receive no compensation from NGSs. The ANOPR and the Final Rulemaking Order do not discuss why such a limitation would be imposed, so the rationale behind the apparent limitation is unknown.

18. OCA’s comments to the ANOPR and the Final Rulemaking Order both discussed the other limitation in the new definition (i.e., the limitation that would exclude organizations that require members to obtain service from a certain NGS), but there is no discussion anywhere of the “no-compensation” limitation. In other words, it appears this issue has been overlooked by the Commission and the commenting parties.

19. Accordingly, the *Duick* standard has been satisfied, and clarification and/or reconsideration of this aspect of the Nontraditional Marketer definition is warranted, and WGES respectfully requests that the Commission exercise its discretion and grant its Petition, for the reasons set forth below.

### **III. Argument**

20. The Commission’s existing regulation at 52 Pa. Code § 62.102 does not require Nontraditional Marketers to be licensed, and when that regulation was enacted the Commission determined that Nontraditional Marketers fall outside of the Act’s definition of an NGS, because Nontraditional Marketers are not engaged in the sale or arranging of natural gas supply to retail customers.<sup>2</sup>

21. Furthermore, the existing regulations at 52 Pa. Code §§ 62.101 -102 do not include any limitation that would preclude Nontraditional Marketers from receiving compensation from the NGS.

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<sup>2</sup> See *Licensing Requirements for Natural Gas Suppliers*, Final Rulemaking Order, Docket No. L-00000150, 31 PA.B. 3943 (July 21, 2001).

22. In its ANOPR in the present docket, the Commission acknowledged that it is reasonable to still not require Community-based Civic, Fraternal or Business Associations to obtain an NGS license, on the condition that the organization's members are not required to purchase the services from the endorsed NGS and if the offer is accepted the contract is between the member and the NGS. See ANOPR, at p. 14-15.

23. The existing regulation sanctions the practice of using Community-based Civic, Fraternal or Business Associations to market natural gas services in the Commonwealth. Such arrangements are not unusual, and have proven to be an effective method of expanding energy choice to residential and small business customers.

24. While there is little discussion of Nontraditional Marketers in the record, it is safe to say that many of these partnerships involve the organization receiving some form of compensation from the NGS based on the enrollment of the organization's members, because the current regulations clearly do not prohibit the receipt of compensation from an NGS.

25. WGES and all of the commenters agree with the Commission that civic and community organizations should not be required to obtain a license in order to market natural gas services to their members. And there is no valid reason why the existence of a compensation arrangement with an NGS should change this conclusion.

26. Requiring community and civic organizations to obtain an NGS license in order to receive compensation from their NGS partners will certainly have a chilling effect on these arrangements, as most organizations would have no interest in taking the steps necessary to obtain a license and remain compliant with the rules and regulations that go along with being an NGS, as RESA discussed in its comments to the ANOPR, at p. 6.

27. As currently written, the new definition of Nontraditional Marketer states that “The Nontraditional Marketer.....MAY NOT BE COMPENSATED BY THE LICENSED NGS IF MEMBERS OR CONSTITUENTS ENROLL WITH THE LICENSED NGS”.

28. This language could be interpreted to mean that Nontraditional Marketers are *not necessarily* compensated by the NGS, or that Nontraditional Marketers *may or may not be* compensated by the NGS. But the Commission should clarify that this language does not mean that Nontraditional Marketers *must not be* compensated by the NGS.

29. There is no rationale for adding a new limitation to the Nontraditional Marketer definition that would have the effect of requiring licensure for Nontraditional Marketers that receive a fee from an NGS based on members who enroll with the NGS.

30. The current regulation, which has been in place since 2001, contains no such limitation, and there is no evidence in the record to suggest that there is a need for such a limitation.

31. Furthermore, the receipt of a fee does not bring the Nontraditional Marketer within the Act’s definition of “Natural Gas Supplier”, because the Nontraditional Marketer would still not be engaged in the sale or arranging of natural gas supply service to retail customers. In situations where a Nontraditional Marketer receives compensation from the NGS, Customers still contract directly with the NGS for supply, and the NGS is still responsible any violations of statute, regulations, and orders for acts committed by the Nontraditional Marketer.

32. Alternatively, instead of clarifying its intent regarding the new definition of Nontraditional Marketer, the Commission should revise the new definition to exclude the language which states that the Nontraditional Marketer “MAY NOT BE COMPENSATED BY THE LICENSED NGS IF MEMBERS OR CONSTITUENTS ENROLL WITH THE

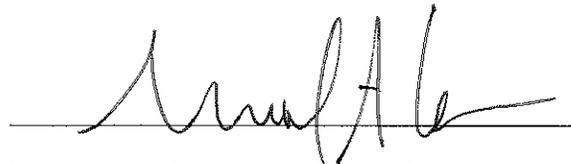
LICENSED NGS.” Removing this language would be consistent with the current regulation and would reflect the current business practices of NGSs in the Commonwealth.

**IV. Conclusion**

33. WGES applauds the Commission for undertaking this rulemaking, and believes that with the exception of the issue identified in the Petition the new regulations are appropriate and beneficial. But for the reasons set forth above, WGES respectfully submits that clarifying or removing the aforementioned language in the new Nontraditional Marketers definition will be in the public interest and allow for the continued beneficial practice of allowing civic and community organizations to partner with NGSs to market natural gas supply services.

WHEREFORE, WGES respectfully requests that the Commission clarify its Final Rulemaking Order to confirm that Community-based Civic, Fraternal or Business Associations that receive compensation from NGSs are not excluded from the new definition of Nontraditional Marketer, or in the alternative, remove the language from the new definition of Nontraditional Marketer which states that Nontraditional Marketers may not be compensated by the licensed NGS if members or constituents enroll with the NGS.

Respectfully Submitted,



Michael A. Gruin (I.D. No. 78625)

17 North Second Street

16th Floor

Harrisburg, PA 17101

Telephone: 717-255-7365

Facsimile: 610-988-0852

[mag@stevenslee.com](mailto:mag@stevenslee.com)

Counsel for Washington Gas Energy Services, Inc.

August 30, 2013

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of August, 2013, copies of the foregoing Petition have been served upon the persons listed below via First Class U.S. Mail in accordance with the requirements of 52 Pa. Code Sections 1.54 and 1.55.

Johnnie Simms, Esq.  
Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor, F West  
Harrisburg, PA 17120

Thomas J. Sniscak, Esq.  
Hawke McKeon & Sniscak LLP  
100 North Tenth St.  
Harrisburg, AP 17101

Frank Caliva, III  
Strategic Communications LLC  
1012 14<sup>th</sup> Street, NY Suite 1106  
Washington, DC 200005

Craig G. Goodman  
National Energy Marketers Assoc.  
3333 K Street, NY, Suite 110  
Washington, DC 20007

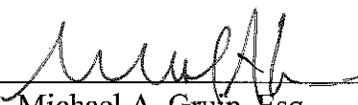
Tanya McCloskey, Esq.  
Aron Beatty  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1921

Steven Gray, Esq.  
Office of Small Business Advocate  
Commerce Building, Suite 1102  
300 North Second Street  
Harrisburg, PA 17101

Harry Kingerski  
Spark Energy, LLP  
2105 CityWest, Suite 100  
Houston, TX 77042

Kevin Moody, Esq.  
General Counsel  
PIOGA  
212 Locust St., Suite 300  
Harrisburg, PA 17101

DATE: August 30, 2013

  
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Michael A. Grum, Esq.