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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** | | |  |
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|  | | Public Meeting held January 28, 2016 | | |
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| Commissioners Present: | | |  | |
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| Gladys M. Brown, Chairman  Andrew G. Place, Vice Chairman  Pamela A. Witmer  John F. Coleman, Jr.  Robert F. Powelson | | | | |
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| Application of FS Energy LLC to  become a Licensed Broker/Marketer of  Natural Gas Services | | | Docket Number:  A-2015-2517131 | |
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**ORDER**

**BY THE COMMISSION:**

On November 27, 2015, FS Energy LLC (FS Energy), Utility Code 1218323, filed a License Application to operate as a broker/marketer engaged in the business of supplying natural gas supply (NGS) services in the natural gas distribution company (NGDC) service territory of Philadelphia Gas Works within the Commonwealth of Pennsylvania. This application was filed pursuant to section 2208 of the Natural Gas Choice and Competition Act (Act) and Title 52 of the Pennsylvania Code, Chapter 62, Subchapter D.

§2208 provides in pertinent part that:

Requirements for Natural Gas Suppliers.--No entity shall engage in the business of a natural gas supplier unless it holds a license issued by the Commission. To the extent that a natural gas distribution company provides natural gas supply service outside of its chartered or certificated territory, it also must hold a license. A license shall not be required for customers who make de minimis incidental sales or resales to themselves, an affiliate or to other nonresidential retail gas customers. 66 Pa. C.S. §2208.

A natural gas supplier is defined 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. The term includes a natural gas distribution company that provides natural gas supply services outside its certificated service territories. The term includes a municipal corporation, its affiliates or any joint venture, to the extent that it chooses to provide natural gas supply services to retail customers located outside of its corporate or municipal limits, as applicable, other than:

(i) as provided prior to the effective date of this chapter, pursuant to a certificate of public convenience if required under this title;

(ii) total natural gas supply services in de minimis amounts;

(iii) natural gas supply services requested by, or provided with the consent of, the public utility in whose certificated territory the services are provided; or

(iv) natural gas supply services provided to the municipal corporation itself or its tenants on land it owns or leases, or is subject to an agreement of sale or pending condemnation, as of September 1, 1999, to the extent permitted by applicable law independent of this chapter.

The term excludes an entity to the extent that it provides free gas to end-users under the terms of an oil or gas lease. Notwithstanding any other provision of this title, a natural gas supplier that is not a natural gas distribution company is not a public utility as defined in section 102 (relating to definitions) to the extent that the natural gas supplier is utilizing the jurisdictional distribution facilities of a natural gas distribution company or is providing other services authorized by the Commission.

66 Pa. C.S. § 2202.

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. 66 Pa. C.S. § 2202.

FS Energy is a foreign limited liability company, formed in the State of Delaware on April 16, 2009, and registered to do business in the Commonwealth of Pennsylvania on September 10, 2014. FS Energy has stated that upon the approval of this Application, it proposes to provide natural gas supply services as a broker/marketer to residential, small commercial (less than 6,000 Mcf annually), large commercial (6,000 Mcf or more annually), industrial, and governmental customers. FS Energy has indicated that it will not be taking title to the natural gas, nor paying customer’s bills in its broker/marketer role.

Regarding the financial and technical fitness requirements of the license application, FS Energy has submitted detailed financial documents. FS Energy has also provided a professional resume of its chief officer. We find that sufficient information has been provided by FS Energy to demonstrate its financial and technical fitness in order to be licensed as an NGS broker/marketer in the Commonwealth of Pennsylvania.

Since FS Energy will be serving residential customers, it is important to note that a licensee must comply with, and be governed by, applicable Chapter 56 residential service regulations as set forth in the Commission Order *Guidelines for Maintaining Customer Service at the Same Level of Quality Pursuant to 66 Pa. C. S. §2206(a), Assuring Conformance with 52 Pa. Code Chapter 56 Pursuant to 66 Pa. C.S. §2207(b), §2208(e) and (f) and Addressing the Application of Partial Payments* (M-00991249 F003). Thus, we deem it appropriate to reiterate certain items with respect to Chapter 56 of our regulations. Chapter 56 (52 Pa Code Chapter 56) is applicable to residential accounts. A natural gas supplier cannot physically disconnect a residential customer from the distribution system, and thus, the rules relating to residential service termination are not applicable to natural gas suppliers. A natural gas supplier may seek to terminate its natural gas services through an appropriate written notice to the customer and the local distribution company. The residential customer can then attempt to repair his or her relationship with the natural gas supplier, seek a new natural gas supplier, or default to the natural gas distribution company’s service tariffed rates in accordance with the local distribution company’s obligations under Section 2207(a), 66 Pa. C.S. §2207(a). The customer would only be disconnected from the distribution system pursuant to appropriate regulations if the customer failed to meet his or her obligations to the natural gas distribution company or the natural gas supplier which has been designated by the Commission as the supplier of last resort.

Section 2208(c)(1), 66 Pa. C.S. §2208(c)(1), provides that a natural gas supplier license shall not be issued unless the applicant furnishes a bond or other security in a form and amount to ensure its financial responsibility. The criteria used to establish the form and amount of the bond or other security is set forth in the natural gas distribution company’s tariff. The amount and form of the bond or other security may also be mutually agreed to between the natural gas distribution company and the natural gas supplier. Section 2208 also provides that should the parties fail to achieve an agreement, then the form and amount of bond or other financial security “shall be determined by criteria approved by the Commission.” FS Energy has provided documentation to evidence its compliance with the Section 2208(c) bonding requirement for the natural gas distribution company service territory of Philadelphia Gas Works within the Commonwealth of Pennsylvania.

Additionally, we specifically note that the licensee must comply with, and ensure that its employees, agents, representatives and independent contractors comply with the standards of conduct and disclosure for licensees set out in Commission regulations at 52 Pa. Code § 62.114 that were enacted to protect consumers of this Commonwealth. These standards include, *inter alia*, the provision of timely and accurate information about the services offered by the licensee, the practice of nondiscrimination in service in regard to race, color, religion, national origin, marital status, etc., the safeguarding of a customer’s personal information, and compliance with applicable state and federal consumer protection laws. We further note that the licensee and its agents must comply with the Commission’s sales and marketing regulations at 52 Pa. Code §111.1, et seq. applicable to residential customers.  Among other things, these regulations require the licensee and its agents to provide accurate information about products and services being offered and prohibit a licensee and its agents from engaging in misleading or deceptive conduct and from making false or misleading representations. Also, we take this opportunity to remind the licensee of its agreement to abide by, and to ensure that its employees, representatives, agents and independent contractors abide by all applicable federal and state laws, and Commission regulations, procedures, and orders, including Emergency Orders, which may be issued verbally or in writing during any emergency situations that may unexpectedly develop from time to time in the course of doing business.

FS Energy has published notice of its application in the Pennsylvania newspapers and provided proofs of service to the interested parties as required by the Commission.

As of January 15, 2016, no protests have been filed.

We find that FS Energy:

1. Is fit, willing and able to properly perform the service proposed in conformance with applicable provisions of the Public Utility Code and the Commission orders and regulations, specifically including 52 Pa. Code Chapter 56 (relating to Standards and Billing Practices for Residential Utility Service).

2. Has agreed to abide by all Commission regulations, procedures and orders, including Emergency Orders, which may be issued verbally or in writing during any emergency situations that may develop from time to time in the course of doing business in Pennsylvania.

3. Has proposed to offer natural gas supply services which, to the extent authorized by the license, will be consistent with the public interest and the policy declared in the Natural Gas Choice and Competition Act.

Upon full consideration of all matters of record, we find that approval of this application is necessary and proper for the service, accommodation and convenience of the public; **THEREFORE,**

**IT IS ORDERED:**

1. That the application of FS Energy LLC is hereby approved, consistent with this Order.

2. That a license be issued authorizing FS Energy LLC the right to begin to offer, render, furnish or supply natural gas services as a Broker/Marketer to the public, limited to residential, small commercial (under 6,000 MCF annually), large commercial (6,000 MCF or more annually), industrial, and governmental customers in the natural gas distribution company service territory of Philadelphia Gas Works within the Commonwealth of Pennsylvania.

3. That this proceeding, at Docket No. A-2015-2517131 be closed.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: January 28, 2016

ORDER ENTERED: January 28, 2016