

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
HARRISBURG, PA 17120**

Public Meeting held February 9, 2023

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
Stephen M. DeFrank, Vice Chairman  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

Application of Capital Energy, Inc. to become a  
Licensed Broker/Marketer of Natural Gas Services

Docket Number:  
A-2022-3036811

**ORDER**

**BY THE COMMISSION:**

On November 16, 2022, the Pennsylvania Public Utility Commission (Commission) accepted Capital Energy, Inc.'s (Capital Energy), Utility Code 1225734, application to provide natural gas supply services as a broker/marketer in the natural gas distribution company (NGDC) service territories of Columbia Gas of Pennsylvania, Inc., National Fuel Gas Distribution Corporation, PECO Energy Company, Peoples Natural Gas Company, LLC – Peoples Natural Gas Division, Peoples Natural Gas Company, LLC – Peoples Gas Division, Philadelphia Gas Works, UGI Utilities, Inc., and Valley Energy, Inc. 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. For the reasons expressed in this Order, the Commission approves the application consistent with this Order.

## Legal Standard

Section 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. *See*, 66 Pa. C.S. § 2202 (relating to the definition of natural gas supply services).

### **Applicant**

Capital Energy is a foreign corporation, incorporated in the State of New York as of August 27, 2010, and registered to do business in the Commonwealth of Pennsylvania on September 23, 2010. Capital Energy has stated that upon the approval of this application, it proposes to provide natural gas supply services as a broker/marketer to small commercial (less than 6,000 Mcf annually), large commercial (6,000 Mcf or more annually), industrial and governmental customers, as well as residential and small commercial (limited to mixed meters) customers, pursuant to the Commission's Secretarial Letter dated March 25, 2011, at Docket No. M-2009-2082042. Capital Energy has indicated that it will not be taking title to the natural gas, nor paying customers' bills in its broker/marketer role.

Regarding the financial and technical requirements of the license application, Capital Energy has submitted three consecutive monthly bank statements, and income tax filings for years ending 2020 and 2021. Capital Energy has also supplied a business plan, and its previous experience in brokering electric and natural gas services in New York. Capital Energy also provided résumé data for its chief officer. Additionally, Capital Energy was previously licensed by the Commission to operate as an Electric Generation Supplier on January 13, 2011, at Docket No. A-2010-2209014. We find that sufficient information has been provided by Capital Energy to demonstrate its financial and technical fitness in order to be licensed as a broker/marketer of retail natural gas in the Commonwealth of Pennsylvania.

### **Financial Security Requirements**

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." Capital Energy has provided documentation to evidence its compliance with the Section 2208(c) bonding requirement for the NGDC service territories of Columbia Gas of Pennsylvania, Inc., National Fuel Gas Distribution Corporation, PECO Energy Company, Peoples Natural Gas Company, LLC – Peoples Natural Gas Division, Peoples Natural Gas Company, LLC – Peoples Gas Division, Philadelphia Gas Works, UGI Utilities, Inc., and Valley Energy, Inc. within the Commonwealth of Pennsylvania.

## **Disposition**

Capital Energy has provided proofs of publication in the Pennsylvania newspapers and proofs of service to the interested parties as required by the Commission. As of January 31, 2023, no protests have been filed.

We find that the applicant:

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.
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.

## **Regulatory Requirements**

As a natural gas supplier, Capital Energy, is required to comply with all applicable provisions of the Public Utility Code, Commission regulations and Commission Orders. *See* 66 Pa. C.S. § 2208(e). We will not address or list all such provisions in this Order, but will, however, highlight a few of them in this section.

Since Capital 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.

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 in Pennsylvania.

Furthermore, should Capital Energy employ any independent consultants to arrange for the sale of its energy products to end-users, it must inform such independent consultants that they will be required to be licensed as an NGS if they arrange for the sale of energy products to end-users from another supplier or suppliers in addition to Capital Energy.

Finally, in order to assist in compliance with the regulatory requirements, we bring to your attention the Commission's Office of Competitive Market Oversight (OCMO) that serves to informally assist suppliers in participating in the retail market. OCMO is responsible for responding to questions from stakeholders, such as NGSs, regarding the competitive retail market. Additional responsibilities include monitoring issues hindering the development of a competitive retail market and facilitating informal dispute resolution between default service providers and suppliers. We advise you to contact OCMO and provide an email address to be included in their distribution list that is used to alert suppliers and utilities of important matters impacting the competitive retail market. OCMO can be reached at [ra-OCMO@pa.gov](mailto:ra-OCMO@pa.gov).

## **Required Reports and Fees**

As a natural gas supplier, Capital Energy, is required to provide various reports and remit fees to the Commission on a periodic basis. We will not address or list all such reports or fees in this Order, but will, however, highlight a few of them in this section.

Natural gas suppliers are required to file an annual report with the Commission on or before April 30 of each year identifying their gross Pennsylvania intrastate operating revenues from the prior calendar year,<sup>1</sup> among other information. The annual report is to be filed with Rosemary Chiavetta, Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, PA, 17120.

NGSs also are required to remit to the Commission applicable annual fees authorized by Act 155 of 2014.<sup>2</sup> These fees were established by order of the Commission<sup>3</sup> as a flat annual fee of \$350 to be paid by all licensed suppliers and brokers regardless of reported gross intrastate operating revenues due to the Commission by July 1 of each year. The fees are to be sent to Pennsylvania Public Utility Commission, Bureau of Administrative Services Fiscal Office, 400 North Street, Harrisburg, PA, 17120. Make checks payable to “Commonwealth of Pennsylvania.”

## **Conclusion**

We find that Capital Energy, Inc. is fit, willing, and able to properly perform the functions of a natural gas supplier, has agreed to abide by all Commission regulations, procedures and orders, and has proposed to provide such service consistent with the public interest and the policies 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

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<sup>1</sup> See 52 Pa. Code § 62.110(a)(1)

<sup>2</sup> See 66 Pa. C.S. § 2208(h).

<sup>3</sup> *Final Implementation Order on Implementation of Act 155 of 2014*, at pgs. 3-8, Docket No. M-2014-2448825 (Order entered April 24, 2015) (*Final Implementation Order*).

necessary and proper for the service, accommodation, and convenience of the public;  
**THEREFORE,**

**IT IS ORDERED:**

1. That the application of Capital Energy, Inc. is hereby approved, consistent with this Order.

2. That a license be issued authorizing Capital Energy, Inc. the right to begin to offer, render, furnish, or supply natural gas services as a broker/marketer to small commercial (under 6,000 MCF annually), large commercial (6,000 MCF or more annually), industrial, governmental customers, as well as residential and small commercial (limited to mixed meters) customers, pursuant to the Commission's Secretarial Letter dated March 25, 2011, at Docket No. M-2009-2082042, in the natural gas distribution company service territories of Columbia Gas of Pennsylvania, Inc., National Fuel Gas Distribution Corporation, PECO Energy Company, Peoples Natural Gas Company, LLC – Peoples Natural Gas Division, Peoples Natural Gas Company, LLC – Peoples Gas Division, Philadelphia Gas Works, UGI Utilities, Inc., and Valley Energy, Inc. within the Commonwealth of Pennsylvania.

3. That if Capital Energy, Inc. should employ any independent consultants to arrange for the sale of its energy products to end-users, it must inform such independent consultants that they will be required to be licensed as a natural gas supplier if they arrange for the sale of energy products to end-users from another supplier or suppliers in addition to Capital Energy, Inc.

4. That Capital Energy, Inc. shall file an annual report with the Pennsylvania Public Utility Commission by April 30 of each year as required by 52 Pa. Code § 62.110(a)(1).

5. That Capital Energy, Inc. shall remit all applicable annual fees to the Pennsylvania Public Utility Commission by July 1 of each year as required by 66 Pa. C.S. § 2208(h).

6. That this proceeding, at Docket No. A-2022-3036811 be closed.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: February 9, 2023

ORDER ENTERED: February 9, 2023