

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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May 27, 2020

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

Re: Supplier Door-to-Door and In-Person Marketing Moratorium
Proclamation of Disaster Emergency-COVID-19
Docket No. M-2020-3019254

Dear Secretary Chiavetta:

Attached for electronic filing please find the Answer of the Office of Consumer Advocate to the Petition of NRG Energy, Inc. for Partial Rescission of March 16, 2020 Emergency Order Establishing Moratorium on In-Person Sales and Marketing of Competitive Energy Supply Services and the Petition of NRG Energy, Inc. for Expedited Relief in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Laura J. Antinucci
Laura J. Antinucci
Assistant Consumer Advocate
PA Attorney I.D. # 327217
E-Mail: LAntinucci@paoca.org

Enclosures:

cc: Office of Administrative Law Judge (**email only**)
Law Bureau (**email only**)
Daniel Mumford, Director, Office of Competitive Market Oversight (**email only**)
Kriss E. Brown, Deputy Director, Office of Competitive Market Oversight (**email only**)
Office of Special Assistants (**email only**)
Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SUPPLIER DOOR-TO-DOOR AND :
IN-PERSON MARKETING MORATORIUM :
PROCLAMATION OF DISASTER : DOCKET NO. M-2020-3019254
EMERGENCY- COVID-19 :
:

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE TO
THE PETITION OF NRG ENERGY, INC. FOR PARTIAL RESCISSION OF MARCH 16,
2020 EMERGENCY ORDER ESTABLISHING MORATORIUM ON IN-PERSON SALES
AND MARKETING OF COMPETITIVE ENERGY SUPPLY SERVICES
AND
THE PETITION OF NRG ENERGY, INC. FOR EXPEDITED RELIEF

Pursuant to Section 5.61 of the Pennsylvania Public Utility Commission’s (Commission) Regulations, 52 Pa. Code Section 5.61, the Office of Consumer Advocate (OCA) files this Answer to NRG Energy, Inc.’s (NRG or the Company) Petition for Partial Rescission of March 16, 2020 Emergency Order Establishing Moratorium on In-Person Sales And Marketing of Competitive Energy Supply Services (Petition for Partial Rescission) and Petition for Expedited Relief (Expedited Relief Petition) (collectively, the Petitions) in the above-referenced matter. As an initial matter, the Office of Consumer Advocate (OCA) interprets NRG’s Petition for Partial Rescission as intending to request relief in the nature of a waiver or an exemption for NRG and its affiliates, even though it is characterized as a “rescission.”¹ In either event, the OCA submits that

¹ NRG’s Petition for Partial Rescission requests relief for its wholly-owned subsidiary “energy suppliers”, but the Commission’s moratorium initiated through the Emergency Order applies universally to all Pennsylvania electric and natural gas suppliers. In the case that an industry-wide rescission is being requested, the Commission should collect information from the remaining suppliers in Pennsylvania potentially affected by NRG’s request and require the same conditions for reinstating the narrow sales and marketing channel of in person sales within retail establishments for all suppliers universally. If NRG is requesting relief solely for itself and its wholly-owned subsidiary suppliers, it should amend its petition to request a waiver or an exemption rather than a rescission.

the narrow request for relief by NRG should be only considered by the Commission after the review of additional information, and if granted, should be done so in accordance with specific conditions.

I. Background.

On March 6, 2020, the Governor of the Commonwealth of Pennsylvania, Tom Wolf, issued a Proclamation of Disaster Emergency.² The Proclamation established the existence of a disaster emergency throughout the Commonwealth as a result of the novel coronavirus (hereinafter COVID-19). As a result of this Emergency Disaster Proclamation, Governor Wolf issued the following directive:

FURTHER, I hereby suspend the provisions of any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the orders, rules or regulations of any Commonwealth agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency...³

The Proclamation granted the Commission the power to revise regulatory statutes, orders, and regulations that would prevent, hinder, or delay necessary action in coping with the COVID-19 emergency, if strictly complied with.

On March 16, 2020, an Emergency Order⁴ was issued by the Commission at Docket No. M-2020-3019254. The Emergency Order established a moratorium on door-to-door, public event and in-person sales and marketing of competitive energy supply services in Pennsylvania.⁵ The moratorium was initiated “to help minimize non-essential personal social contact” during the

² See Proclamation of Disaster Emergency, (March 6, 2020) <https://www.governor.pa.gov/wpcontent/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>.

³ Id.

⁴ See Re: Supplier Door-to-Door and In-Person Marketing Moratorium Proclamation of Disaster Emergency-COVID-19, Docket No. M-2020-3019254, Emergency Order (Mar. 16, 2020) (Emergency Order).

⁵ Id.

COVID-19 emergency. As of May 25, 2020, Pennsylvania has experienced 68,186 confirmed COVID-19 cases and 5,139 deaths as a result of this pandemic.⁶

On May 20, 2020, NRG filed the Petition for Partial Rescission of the above-mentioned Commission March 16th Emergency Order, as well a Petition for Expedited Relief. It is crucial to highlight that the Petition for Partial Rescission of the Emergency Order requests the Commission to rescind a very narrow form of sales and marketing of energy supply—in-person marketing conducted in retail establishments that have authorized the supplier to conduct this type of business in their retail establishment. As stated by NRG in the Petitions, the request to lift the ban on supplier marketing in retail establishments does not constitute a request to lift the moratorium on the remaining, riskier and invasive forms of supplier in-person marketing: in-person door-to-door and public event sales and marketing efforts.

Through the Petitions, NRG requested that the Commission issue a narrow order rescinding only the portion of the Emergency Order that bans in-person sales and marketing at retail businesses that are now open as a result of orders and directives issued by the Governor and/or Secretary of Health in counties in the “yellow” phase, “green” phase or which are otherwise permitted to be open under future directives.⁷ NRG avers that, without modification of the Commission’s Emergency Order, its wholly-owned subsidiary energy suppliers in Pennsylvania cannot “reopen” the business of selling energy supply at retail establishments within the designated counties in the “yellow” and “green” phases.⁸ In addition, NRG requests that the modification of

⁶ See PA Dept. of Health – Situation Report May 25, 2020: https://www.health.pa.gov/topics/Documents/Diseases%20and%20Conditions/COVID-19%20Situation%20Reports/20200525nCoV_SituationReportExt.pdf

⁷ See Petition at 2.

⁸ Id. at 6.

the Emergency Order have an effective date of June 1, 2020—11 days after the Petition was filed.⁹ NRG avers that this request for expedited relief is justified by the length of time (over 60 days as of May 20, 2020) suppliers have been required to refrain from in-person sales of energy supply in Pennsylvania and the lack of input associated with the issuance of the Emergency Order.¹⁰

Accordingly, the OCA files this Answer to NRG's Petitions.

II. Answer.

The OCA would first commend the Commission on its rapid, and important action of issuing the Emergency Order to establish a moratorium on door-to-door, public event, and in-person sales and marketing of competitive energy supplies in Pennsylvania. As the Commission properly recognized in its Emergency Order, door-to-door, public event and in-person sales and marketing of competitive energy supply services should be prohibited during the pendency of the Governor's Proclamation of Disaster Emergency, or as otherwise directed by the Commission, as such activity constitutes unnecessary social contacts while the Commonwealth of Pennsylvania, the Nation, and the world, deal with a highly infectious virus.¹¹ To be clear, other marketing channels, such as outbound telemarketing, inbound calls, website advertising and enrollment, various media advertising, PaPowerSwitch, and the utility Customer Referral Programs have all remained open and viable channels for suppliers to continue marketing their products and services to customers.

NRG now seeks a partial rescission of the Commission's Emergency Order to allow NRG and its affiliates to conduct in-person marketing in retail businesses that are open as a result of

⁹ Id. at 2.

¹⁰ Id. at 10.

¹¹ See Emergency Order.

being in counties designated to be in the “yellow” phase or the “green” phase by the Governor. The OCA submits that, in order for the Commission to determine that partially rescinding a moratorium designed to prevent unnecessary in-person social contact during a highly contagious virus pandemic is in the public interest, additional information is required. At a minimum, the OCA submits that the Commission should request documentation to establish that retailers have requested NRG’s presence be returned to their retail establishments to market and sell energy in-person to customers.¹² While NRG states that unnamed retail establishments have sought to have NRG return to conduct such activity,¹³ NRG does not identify or provide any evidence of such communications.

For the duration of the Emergency Order, in addition to providing proof that NRG (or any other supplier) has permission from the retail establishment to resume in-person sales at the business location, the Commission should seek documentation from the suppliers indicating the address of the retail establishment and the zone of the location—“yellow” or “green”. The Commission should also review NRG’s protocols to ensure safe operation and to ensure compliance with the safety protocols.¹⁴ Finally, NRG seeks to have the ban on in-person retail sales revoked for all its affiliates¹⁵ but does not identify the affiliates that would be covered by the requested Commission Order. NRG should be required to list the NRG affiliates that would also be covered by any grant of its request.

¹² As mentioned in Footnote #1, a rescission of the Commission’s moratorium would require similar information from other suppliers seeking to reinstate such activity.

¹³ Emergency Order at 5.

¹⁴ Again, if the rescission is to apply to all suppliers, the Commission would need to obtain this information for each supplier seeking to engage in this sales activity.

¹⁵ See Emergency Order at 5.

The situation surrounding COVID-19 is unprecedented, and the OCA submits that the Emergency Order issued by the Commission to protect the safety of consumers, the public, and employees of the competitive energy suppliers in Pennsylvania from unnecessary in-person social contact should not be partially rescinded until the information necessary to move forward with such a decision is available and evaluated by the Commission. If, after a review of the documentation, the Commission considers this narrow rescission to the moratorium, additional conditions may be necessary to continue to ensure the protection of the public and to monitor compliance. At a minimum, the Commission should require NRG (and the other Pennsylvania suppliers resuming the requested sales and marketing activities) to regularly report the name and location of the retail establishments in which this in-person sales activity is being conducted,¹⁶ similar to the current requirement to report the locations where suppliers intend to conduct door-to-door marketing. This condition will establish a record of the suppliers and locations resuming in-person marketing and sales in specific retail establishments for the Commission's Office of Competitive Market Oversight to monitor and review in the case of consumer complaints. The Commission should also require that all necessary safety protocols be followed at all times and that all directives of the Governor be complied with by the suppliers engaging in this activity. The Commission should make clear that any violation of the Governor's directives or safety protocols will result in an immediate suspension of the supplier's license and will result in appropriate civil penalties.

III. Conclusion.

The Commission's March 16th moratorium on unnecessary in-person marketing and sales of energy supply is necessary to meet the mounting challenges resulting from the COVID-19

¹⁶ As mentioned in Footnote #1, a rescission of the Commission's moratorium would be applicable to all Pennsylvania suppliers and require monitoring of all suppliers in Pennsylvania affected by the rescission.

pandemic and to protect customers, the public, and the employees of competitive energy suppliers in Pennsylvania. For the reasons set forth above, the OCA submits that NRG's Petition for Partial Rescission of March 16, 2020 Emergency Order Establishing Moratorium on In-Person Sales And Marketing of Competitive Energy Supply Services and Petition for Expedited Relief should not be granted before further information on the request is provided and conditions are placed into effect to monitor any resumed in-person sales and marketing activities within retail establishments during this pandemic emergency.

Respectfully submitted,

/s/ Laura J. Antinucci

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Dated: May 27, 2020

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CERTIFICATE OF SERVICE

Re: Supplier Door-to-Door and In-Person :
Marketing Moratorium Proclamation : Docket No. M-2020-3019254
of Disaster Emergency- COVID-19 :

I hereby certify that I have this day served a true copy of the following document, the Answer of the Office of Consumer Advocate to the Petition of NRG Energy, Inc. for Partial Rescission of March 16, 2020 Emergency Order Establishing Moratorium on In-Person Sales and Marketing of Competitive Energy Supply Services and the Petition of NRG Energy, Inc. for Expedited Relief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 27th day of May 2020.

SERVICE BY E-MAIL ONLY

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