

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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June 25, 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 StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc. for Partial Rescission of March 16, 2020 Emergency Order, 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

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Enclosures:

cc: Office of Administrative Law Judge (**email only**)
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Kriss E. Brown, Deputy Director, Office of Competitive Market Oversight (**email only**)
Office of Special Assistants (**email only**: ra-OSA@pa.gov)
Certificate of Service

*290863

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 Office of Consumer Advocate's Answer to the Petition of StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc. for Partial Rescission of March 16, 2020 Emergency Order, 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 25th day of June 2020.

SERVICE BY E-MAIL ONLY

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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 IN OPPOSITION TO
PETITION OF STATEWISE ENERGY PENNSYLVANIA LLC AND SFE ENERGY
PENNSYLVANIA, INC. FOR PARTIAL RESCISSION, OR IN THE ALTERNATIVE,
FOR PARTIAL WAIVER OF THE MARCH 16, 2020 EMERGENCY ORDER

Pursuant to Section 5.572(e) of the Pennsylvania Public Utility Commission’s (Commission) Regulations, 52 Pa. Code Section 5.572(e), the Office of Consumer Advocate (OCA) files this Answer to StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc.’s (collectively, StateWise and SFE or the Companies) Petition for Partial Rescission, or in the Alternative, for Partial Waiver of March 16, 2020 Emergency Order Establishing Moratorium on In-Person Sales And Marketing of Competitive Energy Supply Services (Petition) in the above-referenced matter. The OCA submits that the request for relief by StateWise and SFE should be rejected as the Commission’s March 16th Emergency Order is still necessary at this time to protect Pennsylvania customers from risks of contracting the novel and deadly coronavirus (hereafter, COVID-19) due to involuntary exposure to in-person door-to-door energy supplier sales and marketing.¹

¹ StateWise and SFE are making this request only on behalf of their Company based on the information contained in this filing. As the OCA reads the Petition, there is no request for a general waiver of the March 16th Emergency Order.

While Pennsylvania is in a gradual phase of reopening, COVID-19 continues to spread in Pennsylvania.² There is no evidence that Pennsylvania residential utility customers are willing to take the risk of allowing an uninvited person to knock on their door to sell energy services, particularly when many Pennsylvania residents are still avoiding in-person contact, especially those who may have pre-existing health conditions or the elderly. The OCA urges the Commission to continue to protect residential customers from non-essential personal contact, particularly from uninvited and unexpected personal contact at their own homes.

I. Background.

On March 6, 2020, the Governor of the Commonwealth of Pennsylvania, Tom Wolf, issued a Proclamation of Disaster Emergency.³ The Proclamation established the existence of a disaster emergency throughout the Commonwealth as a result of 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...⁴

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.

² See COVID-19 Data for Pennsylvania, PA Department of Health, <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>

³ See Proclamation of Disaster Emergency, (March 6, 2020) <https://www.governor.pa.gov/wpcontent/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>.

⁴ Id.

On March 16, 2020, an Emergency Order⁵ 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.⁶ The moratorium was initiated “to help minimize non-essential personal social contact” during the COVID-19 emergency. As of June 24, 2020, Pennsylvania has experienced 83,191 confirmed COVID-19 cases and 6,515 deaths as a result of this pandemic.⁷

On June 3, 2020, Governor Wolf issued an Amendment to Proclamation of Emergency Disaster⁸ which extended the disaster declaration for 90 days to September 1, 2020.

On June 4, 2020, the Commission issued an order which partially rescinded the Commission’s March 16, 2020 Emergency Order. NRG had filed a petition seeking to narrowly and conditionally lift the moratorium only as to in-person sales and marketing conducted by suppliers within retail establishments 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.⁹ The Commission’s basis for granting the narrow, partial rescission was that NRG’s petition met the standards under Duick v. Pennsylvania Gas and Water Company, 56 Pa. PUC 553 (1982), by presenting new and novel arguments that could not have been previously considered by the Commission in its Emergency

⁵ 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).

⁶ Id.

⁷ See PA Dept. of Health – <https://www.media.pa.gov/Pages/Health-Details.aspx?newsid=876>

⁸ See Amendment to Proclamation of Emergency Disaster, Pennsylvania Governor Tom Wolf, June 3, 2020, <https://www.governor.pa.gov/wp-content/uploads/2020/06/20200603-TWW-amendment-to-COVID-disaster-emergency-proclamation.pdf>.

⁹ See Commission’s June 4, 2020 Marketing Order, Order (June 4, 2020) (June 4th Marketing Order).

Order.¹⁰ Furthermore, the request filed by NRG proposed a very narrow exception to the Commission's March 16, 2020 Emergency Order, namely seeking to allow suppliers to conduct in-person marketing at retail locations that gave permission to those suppliers to market generation supply service in their retail locations. In the above situation, the retail establishments are already open and the in-person contact to conduct the marketing and sales are with customers who have voluntarily left their home and entered the business.

Contrary to StateWise and SFE's contention that circumstances have further changed since the Commission's June 4th Marketing Order, the circumstances necessary to lift the moratorium on in-person door-to-door marketing and sales have not changed. The highly infectious virus responsible for the initiation of the Commission's March 16th Emergency Order has not been eradicated nor has a vaccine been developed and issued at this time. The Governor's Emergency Proclamation remains in effect, and the Commission has recently rejected the idea of lifting the moratorium on in-person door-to-door and public event sales and marketing efforts in the June 4th Marketing Order:

Lastly, we note that this Order does not impact the portion of the March 16, 2020 Emergency Order establishing a moratorium on all other door-to-door, public event, and in-person sales and marketing activities. **We find that the moratorium on all other door-to-door, public event, and in-person sales and marketing activities remains necessary to protect customers and supplier employees by minimizing social contact in response to the COVID-19 pandemic. This portion of the Emergency Order remains consistent with the Governor's directives for the yellow and green phases, which continue to require social distancing and limitations on large gatherings.** See supra, n. 7. As such, at this time, this portion of the Emergency Order will remain in place during the pendency of the Proclamation of Disaster Emergency, or unless otherwise ordered by the Commission. The Commission will reevaluate the need to modify the moratorium on all other door-to-door, public event, and in-person sales and marketing activities as the Governor's reopening plan progresses throughout the Commonwealth and more restrictions are lifted.¹¹

¹⁰ Id. at 9.

¹¹ Id. at 11 (emphasis added).

Accordingly, the OCA files this Answer in opposition to StateWise and SFE's Petition.

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 and confirmed in its June 4th Marketing Order, door-to-door and public event 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.¹² 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.

StateWise and SFE now seek a partial rescission of the Commission's Emergency Order to allow StateWise and SFE to conduct in-person marketing by going door-to-door in Pennsylvania residential neighborhoods. StateWise and SFE justify their request by stating that circumstances have changed since the issuance of the Commission's Emergency Order now that other Pennsylvania business are reopening as a result of more counties designated to be in the "yellow" phase or the "green" phase by the Governor. The OCA submits that (1) door-to-door marketing does not align with the type of businesses reopened as a result of counties moving into

¹² See Emergency Order.

different reopening phases and (2) under Duick, the circumstances have not changed to the extent necessary for the revocation of the moratorium on door-to-door in person sales and marketing during the on-going pandemic.

The Center for Disease Control and Prevention has instructed individuals who are at higher risk for serious illness from COVID-19, due to age or a serious long-term health problem, to “[s]tay at home if possible” and “[t]ake everyday precautions to keep space between yourself and others (stay 6 feet away, which is about two arm lengths)”.¹³ StateWise and SFE are requesting to be permitted to approach individuals at their homes and communicate with them in-person to market and sell electricity supply. This is invasive, unwarranted human contact with residents who are trying to stay healthy and safe in their own homes that is accompanied by a level of risk. The COVID-19 pandemic places all individuals in society at some level of risk, however, all individuals should retain the right to remain safe from unnecessary human contact within the sanctity of their own homes and property. In addition, there is no manner in which suppliers’ sales agent can truly know: (1) if they are infected COVID-19 and perhaps not showing any symptoms or (2) if the individual at the residence is either infected with COVID-19 or at higher risk for serious illness from COVID-19. The key difference between the in-person contact in reopened retail establishments and the in-person contact between a sales agent and an individual consumer at their own front door is that the latter in-person interaction is uninvited and involuntary. The moratorium on in-person door-to-door energy supplier sales and marketing should remain in place for the duration of Governor’s Wolf’s Emergency Proclamation to protect individuals from unnecessary and involuntary social interactions at their own homes—the place where an

¹³ See Center for Disease Control: “What You Can Do”, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/what-you-can-do.html>.

individuals should feel safest from exposure to COVID-19. No amount of assurances about safety precautions should override an individual's preference to be left alone and without unwanted social interactions at their own home during this pandemic.

The OCA submits that energy supplier door-to-door marketing at residences does not fall into the categories of businesses that individuals may voluntarily visit at this time and voluntarily risk being exposed to COVID-19. The OCA submits that neither the "yellow" phase nor the "green" phase applies to involuntary at-home sales and marketing visits.¹⁴ In fact, some townships in Pennsylvania have halted issuing licenses and permits for any type of door-to-door solicitations as a result of this pandemic.¹⁵ Even if Pennsylvania is seeing a general, long-term decline in cases, the sales agents used by StateWise and SFE to conduct door-to-door marketing could be sent to Pennsylvania from states with COVID-19 cases that are on the rise.¹⁶ It has occurred in the past that suppliers have sent sales agents to other states, including Pennsylvania, to "knock" on the doors of up to 180-280 residences over a shift of about 12 hours while being housed in "company-acquired" group housing until they are eventually sent to the next state.¹⁷ The point of this real example is that, there are not yet safeguards in place to prevent this type of gross mismanagement

¹⁴ See Governor's Guide: Responding to COVID-19/Yellow Phase, <https://www.pa.gov/guides/responding-to-covid-19/#YellowPhase>; See also, Governor's Guide: Responding to COVID-19/Green Phase, <https://www.pa.gov/guides/responding-to-covid-19/#GreenPhase>.

¹⁵ See Derry Township Police Dept. Website: <https://dauphin.crimewatchpa.com/derrypd/3742/content/soliciting-permits-during-covid-19-pandemic>

¹⁶ This is particularly worrisome when an energy supplier such as StateWise, with a D- rating by the Ohio Better Business Bureau, cannot assure compliance with the safety measures it has proposed in an unmonitored door-to-door solicitation setting. See Better Business Bureau: StateWise Energy, <https://www.bbb.org/us/oh/seven-hills/profile/energy-service-company/statewise-energy-llc-0312-92022461>.

¹⁷ See Steve Daniels, Inside the lives of the folks knocking on your door to sell you power, Crains Chicago Business, October 5, 2018, available at: <https://www.chicagobusiness.com/utilities/inside-lives-folks-knocking-your-door-sellyou-power>.

of supplier sales agents in Pennsylvania and a scenario such as the one described above exacerbates the risks of spreading COVID-19 through door-to-door in-person sales and marketing.

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 Commission is assured that residential customers will not be unnecessarily and involuntarily exposed to this highly infectious virus at their own residences. Unlike the partial rescission of the Commission's March 16th Emergency Order related to the moratorium on in-person sales at retail establishments in the Commission's June 4th Marketing Order, door-to-door sales and marketing efforts are by nature incredibly difficult to monitor for compliance and enforcement. There is no record of these contacts, either audio or video, to assure compliance, and rarely is there in-person monitoring by supervisors.¹⁸ Even with safety measures in effect, it cannot be guaranteed that these measures will be routinely followed and that a residential customer will be protected during an uninvited and involuntary home visit by a salesperson whose income is dependent on the sale of energy supply. This incentive contributes to the long-standing history of ever-more strict regulations of door-to-door sales by this Commission and the pending rulemaking that is designed in part to respond to continuing concerns about this sales channel.¹⁹

If the Commission seeks to explore the potential conditions under which door-to-door sales should resume in Pennsylvania, the OCA recommends that a more formal proceeding be initiated

¹⁸ Connecticut has recently adopted a rule that requires both GPS tracking of door to door sales and a video record of any sale that exceeds 30 seconds. See, <https://www.nhregister.com/business/article/CT-regulators-toughen-rules-on-energy-suppliers-15254917.php>

¹⁹ See [Secretarial Letter November 2019 RE: CHARGE Call On Dec 12, 2020](http://www.puc.state.pa.us/pcdocs/1643183.docx); Docket No. L-2010-2208332, <http://www.puc.state.pa.us/pcdocs/1643183.docx>

to consider the ongoing need for stricter consumer protections and the health-related criteria associated with the ongoing COVID-19 pandemic that is likely to occur and re-occur until 2021 and the availability and widespread use of a vaccine.

Businesses have been permitted to reopen in Pennsylvania on the condition that extreme safety measures are taken *in an effort* to protect voluntary patrons from unnecessary exposure to the virus. If anywhere at all, Pennsylvanians should continue to live without fear of being unnecessarily and involuntarily approached at the doorstep of their own homes. Even with promises of safety measures, the risk for individuals is too great, especially given the alternative marketing channels, mentioned previously in this Answer, currently available during this pandemic.

III. Conclusion.

The Commission's March 16th Emergency Order establishing a moratorium on unnecessary in-person marketing and sales of energy supply is necessary to meet the challenges resulting from the COVID-19 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 StateWise and SFE's Petition for Partial Rescission of March 16, 2020 Emergency Order Establishing Moratorium on In-Person Sales and Marketing of Competitive Energy Supply Services should not be granted.

Respectfully submitted,

/s/ Laura J. Antinucci

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