

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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June 29, 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 Interstate Gas Supply, 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
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Enclosures:

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Daniel Mumford, Director, Office of Competitive Market Oversight (**email only**)
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Office of Special Assistants (**email only**: ra-OSA@pa.gov)
Certificate of Service

*291089

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 Interstate Gas Supply, Inc. (IGS) 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 29th day of June 2020.

SERVICE BY E-MAIL ONLY

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Dated: June 29, 2020
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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 INTERSTATE GAS SUPPLY, INC. FOR PARTIAL RESCISSION OF
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 the Petition of Interstate Gas Supply, Inc. (IGS) for Partial Rescission, of the March 16, 2020 Emergency Order (Petition) establishing a moratorium on in-person sales and marketing of competitive energy supply services. The OCA submits that the relief requested by IGS—to resume door-to-door sales and marketing and public event marketing—should be rejected outright as the Commission’s March 16th Emergency Order is still necessary at this time to protect Pennsylvania customers particularly 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 As for “by-appointment” visits to commercial and industrial customers, the OCA does not see the necessity of such visits but takes no position. The OCA would oppose “by appointment” sales to residential customers as there is no need for such a sales call to a residence.

¹ IGS is making this request only on behalf of its Company based on the information contained in this filing and the protocols established by IGS. 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 26, 2020, Pennsylvania has experienced 81,956 confirmed COVID-19 cases and 6,579 deaths resulting from this pandemic.⁷

On June 3, 2020, Governor Wolf issued an Amendment to Proclamation of Emergency Disaster,⁸ 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 green 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 Quick 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.health.pa.gov/topics/disease/coronavirus/Pages/Coronavirus.aspx>.

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 IGS's contention that the Commission's June 4th Marketing Order requires further consideration, the circumstances necessary to lift the moratorium on in-person door-to-door marketing and sales and public event marketing 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's recent rejection of 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 remains applicable today:

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 IGS's Petition.

II. Answer.

A. Introduction.

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.

IGS seeks a partial rescission of the Commission's Emergency Order to allow IGS to conduct in-person marketing by going door-to-door in Pennsylvania residential neighborhoods. IGS also requests a lifting of the restrictions on public event sales and marketing and seeks to restart "by appointment" sales and marketing at commercial and industrial locations. IGS seeks to do this in counties that have entered the green phase of Governor Wolf's reopening plan. The OCA submits that (1) door-to-door marketing does not align with the type of businesses reopened

¹² See Emergency Order.

as a result of counties moving into different reopening phases, (2) public events remain limited to 250 individuals or less in the green phase¹³, and (3) under Duick, circumstances have not changed to the extent necessary for the revocation of the moratorium on in-person sales and marketing door-to-door to residential customers, “by appointment” sales to residential customers, and public event sales and marketing during the on-going pandemic. IGS is requesting substantial rescissions to the Commission’s Order and, for the reasons detailed further below, the OCA submits that IGS’s request that the Commission lift the moratorium on door-to-door in-person marketing to residential customers should be rejected outright. Also, the OCA submits that public event marketing should not be allowed at this time. As to “by appointment” sales calls, the OCA questions the necessity for such methods of in-person marketing when other remote and safer marketing and sales methods are available during this pandemic.

B. Door to Door Marketing.

The OCA submits that IGS’s request that the Commission lift the moratorium on door-to-door in-person marketing to residential customers, who have the right to be safe from in-person contact at their own homes and undisturbed by solicitors during this pandemic, should be outright rejected as it would be counterintuitive to the mission of the Emergency Order: “to help minimize non-essential personal social contact.”¹ 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)”¹⁴.

¹³ See Governor’s Guide: Responding to COVID-19/Green Phase, <https://www.pa.gov/guides/responding-to-covid-19/#GreenPhase> (Green Phase).

¹⁴ See Center for Disease Control: “What You Can Do”, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/what-you-can-do.html>.

IGS is requesting to be permitted to approach individuals at their homes and communicate with them in-person to market and sell electricity supply through a door-to-door initiative. This is invasive, unwarranted personal 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 personal contact within the sanctity of their own homes and property. While the OCA appreciates IGS's development of safety protocols, the fact remains that there is no manner in which suppliers' sales agents can truly know: (1) if they are infected with 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 individual should feel safest from exposure to COVID-19. No amount of assurances about safety precautions should override an individual's safety and 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 the green phase does not mean “go” and

should not be interpreted to allow involuntary at-home sales and marketing visits.¹⁵ 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.¹⁶

Plainly put, the fact that counties in Pennsylvania have, or are soon to be, entering the Governor's green phase has no bearing on whether or not an IGS salesperson can potentially put customers at risk by coming to their residences uninvited while COVID-19 continues to spread. As of June 26, 2020, 81,956 Pennsylvania residents have tested positive.¹⁷ As stated earlier, the OCA appreciates IGS's development of safety protocols in order to resume door-to-door sales, however, these safety measures are not a guaranteed form of protection and individuals should not be placed at any level of risk through involuntary contact at their own homes.

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

¹⁵ See Green Phase, <https://www.pa.gov/guides/responding-to-covid-19/#GreenPhase>.

¹⁶ See Derry Township Police Dept. Website: <https://dauphin.crimewatchpa.com/derrypd/3742/content/soliciting-permits-during-covid-19-pandemic>

¹⁷ See PA Dept. of Health – <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Coronavirus.aspx>.

video, to assure compliance, and rarely is there in-person monitoring by supervisors.¹⁸ While IGS discusses its use of iPads in the sales process and the GPS function of the iPad, this is very different than creating an audio or video record of the contact that can be used for monitoring purposes.

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 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. Certainly the protocols developed by IGS, including the use of its own employees living in the communities where the sales are occurring, should be included in any formal proceeding.

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.

C. Public Events.

As to public event marketing, the Commission was clear in its June 4th Order that it did not intend to allow public event marketing at this time, and the circumstances have not changed in this

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>

regard. As even IGS acknowledges, public events remain limited in both scale and scope under the green phase. According to Governor Wolf's green phase social restrictions, public events of more than 250 persons are prohibited.¹⁹ Adding vendors to these events seems to simply increase the size of the event and the potential for exposure of the sales agents. It is not at all clear that everyone at a public event will be following safety protocols, even if the sales agent is doing so. Exposing the sales agent, and other members of the public who may approach the sales agent at a public event does not seem justified given the limited opportunity for such sales at public events. Therefore, the OCA submits that the Commission's moratorium on supplier sales and marketing at public events should remain in effect for the duration of the Governor's Proclamation.

D. "By Appointment" Sales at Commercial and Industrial Customer Sites.

IGS has also requested a lifting of the moratorium on "by appointment" sales at commercial and industrial customer sites. As to the "by appointment" sales and marketing at commercial and industrial customer's place of business, the OCA takes no position on restarting these sales contacts, however, the OCA questions the necessity for an IGS salesperson to conduct an "in-person" marketing and sales visit with an initially interested commercial or industrial customer when other remote and safer marketing and sales methods are available during this pandemic. The OCA would, though, oppose such contacts for residential customers as it remains far less clear why such an in-person "by appointment" visit would be necessary for a residential account or how such a visit came to be.

¹⁹ See Green Phase, <https://www.pa.gov/guides/responding-to-covid-19/#GreenPhase>.

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 IGS'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 in relation to door-to-door in-person marketing and public event sales. In relation to visits "by appointment" to commercial and industrial customers, the OCA questions the need for this sales channel but takes no position. The OCA opposes "by appointment" sales to residential customers as there is no stated need for such a sales call.

Respectfully submitted,

/s/ Laura J. Antinucci

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