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July 24, 2020

VIA ELECTRONIC FILING

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

RE: Supplier Door-to-Door and In-Person Marketing Moratorium Proclamation of Disaster Emergency – COVID-19; Docket No. M-2020-3019254; **PETITION OF INTERSTATE GAS SUPPLY, INC. FOR REHEARING AND/OR RECONSIDERATION OF THE COMMISSION'S JULY 16, 2020 ORDER DENYING IGS' PETITION FOR PARTIAL RECISSION**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Petition of Interstate Gas Supply, Inc. for Rehearing and/or Reconsideration of the Commission's July 16, 2020 Order Denying IGS' Petition for Partial Recission in the above-referenced matter. Copies of the Petition have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,

Todd S. Stewart

TSS/jld
Enclosures
cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PETITION OF
INTERSTATE GAS SUPPLY, INC.
FOR REHEARING AND/OR RECONSIDERATION
OF THE COMMISSION’S JULY 16, 2020 ORDER
DENYING IGS’ PETITION FOR PARTIAL RECISSION**

Now Comes Interstate Gas Supply, Inc. d/b/a IGS Energy (“IGS”) and hereby Petitions the Pennsylvania Public Utility Commission (“Commission”) pursuant to 66 Pa. C.S. §§ 703(f) and (g); and 52 Pa. Code § 5.572, for Reconsideration and/or Rehearing of the Commission’s July 16, 2020 Order (“July Order”) in the above-captioned docket, wherein the Commission rejected in its entirety IGS’ request that the Commission partially rescind its March 16, 2020 Emergency Order (“March Order”) in the above-captioned proceeding so as to allow IGS to engage in door-to-door and by-appointment in-person marketing. IGS herein raises four reasons why it believes the Commission’s Order should have allowed IGS to engage in by-appointment, in-person marketing: 1) the Commission’s decision unfairly determined the matter based upon facts that were relevant only to StateWise Energy Pennsylvania, LLC (“StateWise”) and SFE Energy Pennsylvania, Inc. (“SFE”), which had also sought partial rescission, but which is a vastly different supplier and which has substantial negative baggage at the moment that does not apply to IGS; 2) the Commission failed to consider that IGS’ Home Energy Consultants (“HEC”) are employees of IGS under its direct control; 3) the Commission prohibited residential door-to-door marketing by

appointment without fully considering the circumstances that make it a safer option; and, 4) that in the Commission’s review of the video education materials provided, the Commission appeared to be unaware that IGS HECs carry extra masks in sealed wrapping that can be safely provided to customers who do not have them. Based upon these reasons, IGS believes there is a substantial basis for its request that the Commission reconsider its July Order and allow IGS to engage in “by appointment, in-person” marketing as more fully described herein.

I. BACKGROUND AND SUMMARY OF ARGUMENT

IGS is a licensed electric generation supplier (“EGS”) and natural gas supplier (“NGS”) serving most markets in Pennsylvania. When the Commission issued its March Order, IGS immediately complied and continues to comply with its requirements. On June 18, 2020, IGS filed a Petition for Partial Recission of this Commission’s March Order. IGS’ Petition followed a similar Petition filed three days prior by Statewise/SFE which had requested similar relief.

Following the submission of the Statewise/SFE Petition, serious allegations were raised against Statewise/SFE in Ohio and an Order to Show cause was issued by the Public Utilities Commission of Ohio (“PUCO”) regarding these allegations of Statewise/SFE’s alleged blatant failure to follow appropriate procedures in door-to-door marketing.¹ Ohio has just recently allowed for door-to-door marketing and IGS also has been engaged in door-to-door marketing in Ohio with no reports or allegations of any improper behavior by its HECs.

In its June 18, 2020 Petition, IGS explained that its HECs carry personal protective equipment for their own use, but did not detail the fact that the HECs carried extra sanitized masks

¹ *In the Matter of the Commission’s Investigation into SFE Energy Ohio and StateWise Energy Ohio LLC’s Compliance with the Ohio Revised Code, Ohio Administrative Code and Potential Remedial Action*, Docket No. 20-1216-GE-COI (Letter of Notification filed June 30, 2020) available at <http://dis.puc.state.oh.us/TiffToPDF/A1001001A20F29B73218B00142.pdf>.

in sealed packets so that if they were to approach a residence where the person who came to the door was not wearing a mask, the HEC could provide one for the customer's use by placing the sealed mask on the sidewalk or other suitable location and backing away to allow the customer to safely retrieve and wear the mask without violating the safe distance requirements. It does not appear that the Commission considered that notion in its decision, stating that "suppliers cannot ensure that customer will wear masks for the protection of their employees." (July Order at 13) In fact, IGS can ensure that all parties to any in-person sales interaction are wearing masks or the encounter is terminated. It is not difficult for an HEC to provide, when necessary, a sanitized electronic device for a customer to use to complete a transaction. The same basic process for providing customers with sanitized masks can be used and the social distance requirements are not violated. The Governor's guidance for businesses simply requires that "high-touch" sources be disinfected frequently,² while our representatives will sanitize their equipment after every encounter – exceeding requirements.

In its July Order, the Commission appears to have rejected the idea of any in-person marketing to residential customers, relying heavily on the argument that such encounters are unanticipated by the customer, and possibly unwanted. The Commission also raised the concern that in a door-to-door encounter, representatives could unknowingly approach a residence where someone was particularly vulnerable or was isolating due to a positive test result. IGS had requested that it be allowed to conduct in-person, by-appointment marketing so that there would be no surprise, only customers who agreed to meeting would be visited and customers could be told before-hand the parameters of the encounter so that there are no surprises.

² COVID-19 Guidance for Businesses (Updated July 20, 2020)
<https://www.governor.pa.gov/covid-19/business-guidance/>

The July Order also suggested that because a large portion of the sales process can be conducted “electronically” that in-person marketing need not take place. That view misapprehends reality. First, the sales script is provided for the use of the representative on an iPad, and the verification at the end also can be completed on a sanitized iPad, only if necessary, but more typically by the customer, after the HEC has left, who need only click on a link that is emailed or texted to them. Regardless, the interaction between the customer and the sales representative is still best when completed in-person. Furthermore, IGS contends that if we can complete the sale on the phone, we will. It should be noted, however, that IGS’ HECs will be making the appointment calls, not an off-shore call center. With that said, we often find that consumers want to meet us in person in order to legitimize our business. Additionally, the experience that IGS creates when in the presence of the customer is superior to an over-the-phone encounter. Many times, we are able to walk the customer thru the bill and answer any questions with more precision and accuracy and it is easier and more effective to do that socially distanced, face to face. It is easier to find a product that meets the consumer’s needs if we are socially distanced, face to face, and a face to face encounter allows us to better consult with the consumer than over the phone. Please keep in mind, our sales teams are called Home Energy Consultants for a reason – they are available to the consumer to consult on their energy questions and needs, and a face to face encounter is free of distractions and interruptions which makes for a better experience. The simple truth is that scheduling an appointment where all the required distancing and protective requirements are observed, the entire encounter is conducted out-doors, and the customer is not surprised and has agreed to the meeting, is the most effective sales method and is safer than going to a store where there could be an indoor encounter with someone who will not wear a mask or observe social distancing rules.

The Commission's July Order also noted that in the training video, a customer was depicted not wearing a mask which indicated a possibility that an IGS HEC could be vulnerable because customers cannot be expected to wear masks when opening the door at their own home. With by-appointment in-person marketing, the customer would know the HEC was going to be there and that masks are required. Even in a cold-call situation, the HEC would remain far enough away from the front door to eliminate the potential exposure from a customer answering the door unmasked. Second, if the customer did not have a mask and wanted to continue the conversation, a mask could be provided for them by the HEC, who will be carrying sanitized masks with them.

In short, IGS believes that it has addressed all the unanswered material questions raised in the Commission's July Order. IGS contends that reconsideration is warranted because the open questions appeared to have weighed heavily on the Commission's determination.

II. LEGAL STANDARD

The Legal standard for Petitions for Rehearing and/or Reconsideration before the Commission is found in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. PUC 553 (1982)

(*Duick*):

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that “[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them . . .” *What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the commission.* Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

III. ARGUMENT

IGS needs to prove that the Commission (1) overlooked key factors, that had they been considered, should have altered the outcome, or (2) it must raise new arguments not previously considered by the Commission. *Duick, supra*. IGS' Petition satisfies both requirements.

At the outset, it seems clear to IGS that the Commission considered the recent allegations lodged against SFE in deliberating its decision for IGS. The Commission seemed to suggest that its decision on allowing any supplier to engage in in person marketing was impacted by the allegations against Statewise/SFE. This is wholly unfair to IGS as it gives the appearance, at a minimum, that negative allegations against an unrelated supplier were considered as evidence that another supplier, not subject to any such allegations, would be prone to engaging in bad behavior. The unique set of facts regarding SFE and its affiliates simply cannot be attributed to any other supplier while respecting mandatory due process rights. *See Duquesne Light Co. v. Pennsylvania Public Utility Commission*, 507 A.2d 433 (Pa. Cmwlth. 1986) (due process in matters before the Commission requires that a party be afforded reasonable notice of the nature of the allegations against it so that the party can prepare a suitable defense.); *see also, City of Erie v. Pennsylvania Public Utility Commission*, 398 A.2d 1084 (Pa. Cmwlth. 1979) (although the Commission may take notice of results it reached in other cases, the record must reflect that the parties had notice that the Commission would consider such evidence).

It also appears that the Commission likewise failed to consider the notable additional control that IGS retains over its HECs because they are employees. This arrangement is somewhat unique in the marketplace and provides the HEC's with regular, non-commission-based income, with benefits, and provides IGS a much greater ability to direct the activities of its employees and

to discipline or retrain any who fall short. Clearly that level of control was not addressed and should have assuaged many of the Commission's stated concerns regarding in-person marketing.

The Commission's July Order also neglected IGS' request regarding by-appointment in-person marketing. The Governor's Green Phase guidance allows health and wellness businesses, such as message therapy providers, spas, hair and nail salons and other personal care facilities, where the activity is occurring in-doors, to operate at 50% capacity,³ yet the Commission appears to have adopted a zero capacity rule for by-appointment outdoor retail sales. While not explicitly requested in its Petition, the Commission nonetheless rejected the notion for residential customers, despite the obvious fact that contacting a customer and arranging an appointment addresses a vast majority of the concerns raised in opposition to IGS' Petition, namely that customers would be surprised or unprepared for a visit, may not be in a position to even answer the door, or be unwilling to wear or not in possession of appropriate PPE. As discussed above, IGS will complete transactions by telephone, but its experience reveals that many customers prefer the in-person experience. For those customers, IGS believes that in-person marketing is more controlled, and less likely to transmit COVID-19 than trips to uncontrolled environments such as grocery stores and other retail shopping or dining experiences that are permitted to be open under the green phase. It is inexplicable that a person could walk into a store with numerous individuals who may or may not be wearing PPE, and that is permitted, when an appointment to meet under strict controls where everyone maintains the appropriate distance and is wearing PPE is not. There are other industries that engage in door-to-door marketing that are permitted to operate subject to local regulation, while the Commission has so far refused to allow EGS/NGSs under strict control to do the same

³ COVID-19 Guidance for Businesses (Updated July 20, 2020)
<https://www.governor.pa.gov/covid-19/business-guidance/>

notwithstanding Governor Wolf's Order for the Continued Reopening of the Commonwealth, effective May 20, 2020.⁴

Under the Governor's phased plan for reopening businesses, resumption of in-person commercial activities like the marketing IGS seeks to resume, is permitted under specified parameters. Likewise, guidance issued by the Governor and the Pennsylvania Department of Health permits "all business," in the yellow or green phases, except those in certain excluded categories, to conduct in-person operations.⁵ While the Commission is empowered to regulate IGS' marketing activities, the Commission should not substitute its judgment for that of the Governor and Department of Health, which possess the necessary expertise to determine and respond to the public health consequences of reopening. *See Drain v. Covenant Life Ins. Co.*, 685 A.2d 119, 123 (Pa. Super. 1996) ("Administrative agency jurisdiction is premised on the assumed agency expertise in its particular field."), *aff'd*, 712 A.2d 273 (Pa. 1998).

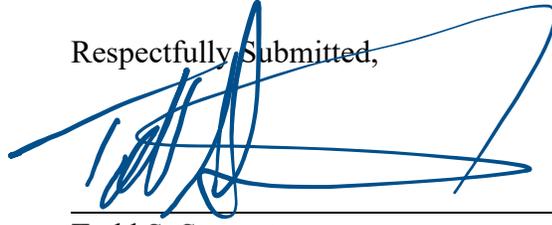
IV. CONCLUSION

WHEREFORE, IGS respectfully requests the Commission grant rehearing, or in the alternative, reconsideration of its July 16, 2020 Order and to permit IGS to engage in in-person marketing by appointment to all customer classes, including residential customers.

⁴ *Order of the Governor of the Commonwealth of Pennsylvania for the Continued Reopening of the Commonwealth* (eff. May 29, 2020), available at <https://www.governor.pa.gov/wp-content/uploads/2020/05/20200527-TWW-green-phase-order.pdf>.

⁵ *COVID-19 Guidance for Businesses* (updated July 20, 2020), available at <https://www.governor.pa.gov/covid-19/business-guidance/>

Respectfully Submitted,



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IGS Energy*

Date: July 24, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Petition upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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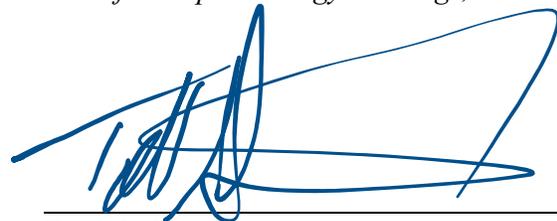
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DATED: July 24, 2020