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October 22, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

On behalf of NRG Energy, Inc. ("NRG"), enclosed for electronic filing please find a Petition for Partial Rescission of March 16, 2020 Emergency Order issued in the above-captioned matter. Also, please note that NRG is respectfully requesting expedited relief with regard to its Petition. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ Karen O. Moury

Karen O. Moury

KOM/lww
Enclosure

cc: Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of NRG Energy, Inc.'s Petition upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Electronic Mail

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Dated: October 22, 2020

/s/ Karen O. Moury

Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**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

REQUEST OF NRG ENERGY, INC. FOR EXPEDITED RELIEF

Pursuant to Section 703(g) of the Public Utility Code, 66 Pa. C.S. § 703(g), and Section 5.572(d) of the regulations of the Pennsylvania Public Utility Commission (“Commission”), 52 Pa. Code § 5.572(d), and on behalf of its wholly-owned subsidiaries who are Commission-licensed electric generation suppliers and licensed natural gas suppliers (collectively, “energy suppliers”), NRG Energy, Inc. (“NRG”) files this Petition for Partial Rescission of the Commission’s March 16, 2020 Emergency Order (“Emergency Order”). NRG also hereby requests expedited relief, requesting Commission action at or before the public meeting scheduled for November 19, 2020. In support of this Petition, NRG states as follows:

I. SUMMARY OF RELIEF SOUGHT

1. Through an *ex parte* Emergency Order, which was signed on March 16, 2020 and ratified on March 26, 2020, the Commission established a moratorium on door-to-door, public event and in person sales and marketing of competitive energy supply services in Pennsylvania.

2. By this Petition, NRG seeks relief from the portion of the Emergency Order that bans in person sales and marketing by energy suppliers at outdoor public events that are held in accordance with orders and directives issued by Governor Wolf and/or the Secretary of Health.

Given the view of health officials that outdoor gatherings are safer than indoor gatherings, and in light of the Commonwealth's recent amendment of orders addressing outdoor public gatherings to enable higher levels of attendance, this Petition is timely and should be granted.

3. Also, the telework option that the Commission has relied on denying other petitions is not viable here. Being a vendor of a product or service at an outdoor public event, which other businesses are freely able to do and members of the public have voluntarily opted to attend, cannot be replaced by a telephone call or video meeting.

4. Further, it is not appropriate to expect energy suppliers who have a business model that relies on the use of outdoor public events as a sales channel to find another way of selling energy such as through advertising or telemarketing. This is particularly true when the Commission has been so supportive of this channel for energy sales since consumers have an opportunity for personal interactions at a public location. As public health issues are within the domain of the Governor and the Secretary of Health, and energy suppliers are permitted under their directives to conduct in-person sales at public outdoor events, the Commission should follow suit.

5. Energy suppliers who opt to resume these in person sales and marketing practices must comply, of course, with: (i) all orders, guidance and other directives issued by the Governor's Office and the Secretary of Health; (ii) the safety protocols that apply to the outdoor public event organizers; and (iii) any other applicable Commission regulations, including the marketing and sales practices regulations.

6. Additionally, suppliers engaging in such sales and marketing activities at outdoor public events should be required to follow best practices that include the following:

- Steps to ensure sales agent and customer safety, such as temperature checks, use of face masks, use of disposable stylus pens, hand sanitizer and disinfectant wipes;

- Steps to maintain six-foot social distancing requirements, including training and designations of such space; and
- Use of a “contactless” enrollment process whenever possible.

7. NRG respectfully urges the Commission to act as swiftly and efficiently as it did in issuing the Emergency Order so that NRG’s subsidiaries may resume in person sales and market activities at outdoor public events and offer attractive and innovative energy supply alternatives to Pennsylvania customers.

II. BACKGROUND OF EX PARTE EMERGENCY ORDER

8. On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency, pursuant to subsection 7301(c) of the Emergency Management Services Code (“Emergency Code”), 35 Pa. C.S. § 7301(c), proclaiming the existence of a disaster emergency throughout the Commonwealth for a period of up to ninety days.¹ This same statutory section limits the initial declaration to a period of ninety days, but permits the Governor to renew the declaration at his/her discretion. The Governor extended the Proclamation on two occasions such that it is now scheduled to expire on December 1, 2020.²

9. In issuing an *ex parte* Emergency Order on March 16, 2020 and ratifying the same on March 26, 2020, the Commission relied on this Proclamation of Disaster Emergency to establish a moratorium on the door-to-door, public event and in person sales and marketing of competitive energy supply services in Pennsylvania. By the terms of the Emergency Order, this

¹ On March 11, 2020, the World Health Organization declared COVID-19 – the coronavirus – a pandemic.

² <https://www.governor.pa.gov/newsroom/gov-wolf-signs-second-renewal-of-covid-19-disaster-declaration-for-state-response-and-recovery/>

prohibition will now continue unabated “during the pendency of the Proclamation of Disaster Emergency, or unless otherwise directed by the Commission.”³

10. The Commission issued the *ex parte* Emergency Order under its regulations at 52 Pa. Code § 3.1 et seq. which requires “a clear and present danger to life or property or which is uncontested and requires action.” As no petition was filed seeking such relief, as contemplated at 52 Pa. Code § 3.2 prior to issuance of the Emergency Order, the Commission took action *sua sponte* with no prior notice to the public, including the affected energy suppliers. Notably, the Commission took no similar measures or imposed any restriction on in-person activities on any of the other industries that it regulates, including those that are person-to-person intensive such as taxicabs and transportation network companies.

III. SUBSEQUENT EVENTS

11. Since the date of the Commission’s *ex parte* Emergency Order, management of the COVID-19 pandemic by the Commonwealth has continued to evolve, addressing and resolving many of the concerns expressed in the Emergency Order.

12. Three days after issuing the Emergency Order, on March 19, 2020, Governor Wolf ordered all non-life-sustaining businesses to close across the Commonwealth to help stop the spread of the virus. The administration provided guidance, refined parameters, and designed an exemption process that could allow some businesses to remain open under strict guidance from the State. After issuing several County Stay-at-Home Orders, the Governor issued a Statewide Stay-at-Home Order on April 1, 2020.

13. On May 4, 2020, the Governor’s Office and the Department of Health began employing a regional and industry-specific approach to reopening non-life-sustaining businesses

³ Emergency Order at 2.

under the Governor’s Plan to Reopen Pennsylvania and easing restrictions,⁴ although the Proclamation of Disaster Emergency remains in effect.

14. Guidance issued by the Department of Health on May 4, 2020 permits “all business,” except those in certain excluded categories (such as indoor fitness and entertainment), to conduct in-person operations in various counties designated to be in the “yellow phase” on and after May 8, 2020. Under the phased reopening, as of July 3, 2020, all Pennsylvania counties are now in the “green phase,” which contains the fewest restrictions.⁵

15. The Guidance details the myriad of procedures that reopened businesses must follow. These include limitation on entry, social distancing, masking, cleaning high touch surfaces and shielding, as well as employee wellness.⁶

16. On June 4, 2020, the Commission revised its *ex parte* Emergency Order to permit energy suppliers to engage in in-person sales and marketing activities at retail businesses that were open as a result of the subsequent directives issued by Governor Wolf. The Commission’s revision was based upon its observation that “in-person sales and marketing activities at retail businesses are comparable to the retail activities permitted to resume in-person operations in the yellow and green phases.”⁷ Energy suppliers were required by the June 4, 2020 Order to comply with all relevant orders and guidance of the Governor and the Secretary of Health, as well as

⁴ <https://www.governor.pa.gov/process-to-reopen-pennsylvania/>.

⁵ <https://www.abc27.com/news/health/coronavirus/coronavirus-pennsylvania/all-pa-counties-in-the-green-phase/#:~:text=Last%20week%20Lancaster%20County%20went,Health%20reported%20832%20new%20cases.>

Reopening Targeted for May 8 in North-Central, Northwest, Commonwealth of Pennsylvania, Office of the Governor (April 22, 2020) available at <https://www.governor.pa.gov/newsroom/gov-wolf-reopening-targeted-for-may-8-in-north-central-northwest/>.

⁶ <https://www.governor.pa.gov/wp-content/uploads/2020/05/20200504-COVID-19-Business-Guidance.pdf>

⁷ *Supplier Door-to-Door and In-Person Marketing Moratorium; Proclamation of Disaster Emergency – COVID-19*, Docket No. M-2020-3019254 (Order entered June 4, 2020), at 9.

Commission regulations. They were also directed to report to the Commission staff when they intend to resume these in-person sales and marketing activities.

17. In the June 4, 2020 Order, the Commission noted that the Governor's phased reopening under which several counties had moved to the yellow and green phases justified the change to permit in-person sales and marketing activities at retail businesses. The Commission also indicated that it would reevaluate the need to modify the moratorium on all other in-person sales and marketing activities as the Governor's reopening plan progresses throughout the Commonwealth and more restrictions are lifted.⁸

18. On October 6, 2020, Governor Wolf and Secretary Levine amended prior orders to allow for adjusted capacity to gathering limits while keeping in place the mitigation tools of wearing masks and maintaining social distancing. Under the amended guidelines, occupancy at gatherings is based upon the maximum occupancy of the venue and is more lenient for outdoor events than indoor events.⁹

19. Whereas the prior limit on outdoor gatherings in the green phase was 250, the new limits are 25% of maximum occupancy for venues holding 0-2,000 people, 20% for venues holding 2,001-10,000 people and 15% for venues holding over 10,000 people. Therefore, the upper limit on outdoor gatherings is now 7,500. Venues are subject to a number of other requirements, including the need for attendees to comply with 6-foot social distancing standards and to wear masks and to implement best practices such as timed entry, multiple entry and exit points, multiple restrooms and hygiene stations.¹⁰

⁸ June 4, 2020 Order at 11.

⁹ <https://www.media.pa.gov/pages/health-details.aspx?newsid=1058>

¹⁰ *Id.*

20. These significant changes to the size of outdoor gatherings warrants a modification to the in-person sales and marketing moratorium to permit energy suppliers to participate in outdoor public events along with other businesses and vendors, provided they comply with all existing requirements as well as mandates imposed by the event planners.

IV. EFFECT ON NRG AND ITS RETAIL PARTNERS

21. NRG operates several wholly-owned subsidiaries that are licensed by the Commission to provide competitive energy supply services in Pennsylvania. A frequently used channel for the in-person sale and marketing of competitive energy supply services by NRG's subsidiaries includes outdoor public events, such as farmers' markets and harvest festivals. The Commission has long expressed support for this in-person sales and marketing channel because it gives consumers an opportunity to speak with the energy suppliers' representatives in a public location.¹¹

22. The Emergency Order's very broad moratorium immediately and adversely affected NRG's subsidiaries that were conducting in-person sales and marketing activities. Given Pennsylvania's recent and ongoing movement toward increasing the size of gatherings at outdoor public events consistent with the Governor's Guidance, no valid justification exists for continuing to subject energy suppliers to restrictions that are not applicable to other businesses.

23. NRG's subsidiaries have existing partnerships with event organizers in Pennsylvania that have invited or are in discussions with the suppliers to participate in outdoor events and market competitive retail energy services to customers visiting those retail

¹¹ See, e.g., *Natural Gas Distribution Company Customer Account Number Access Mechanism for Natural Gas Suppliers*, Docket No. M-2015-2458991 (Order entered July 8, 2015), at 19-20.

establishments. NRG seeks to have the same ability as any business in Pennsylvania to restart its marketing in these channels.

24. Under the Governor’s Plan to Reopen Pennsylvania, NRG is permitted to attend outdoor public events under the expressed safeguards. However, Staff advises that it this is not permissible unless and until Commission further modifies its *ex parte* Emergency Order.

25. Through a partial rescission of the Emergency Order by the Commission, NRG would be placed on equal footing with other businesses operating in Pennsylvania.

V. APPLICABLE LEGAL STANDARDS

26. Section 703(g) authorizes the Commission at any time “after notice and after opportunity to be heard...rescind or amend any order made by it.” 66 Pa.C.S. § 703(g). *See also* 52 Pa. Code § 5.572(d).

27. Pursuant to its statutory authority to regulate competitive energy markets, the Commission has promulgated the marketing and sales practices regulations that are published in Chapter 111, 52 Pa. Code §§ 111.1-111.14.

28. As noted, the Commission’s Emergency Order is based upon the March 6, 2020 Proclamation of Disaster Emergency issued by Governor Wolf. Similarly, the June 4, 2020 modification of the Emergency Order was consistent with the Governor’s reopening of the Commonwealth.

29. Given that the circumstances have changed again with the easing of restrictions on the size of outdoor gatherings, a further partial rescission of the Emergency Order is warranted to stay abreast of the Guidance being issued and implemented by the Governor’s Office.

VI. RELIEF SOUGHT

30. For the reasons set forth herein, NRG respectfully requests that that the Commission rescind the portion of its Emergency Order that bans in person sales and marketing at outdoor public events, which are permitted under the amended directives of Governor Wolf and Secretary Levine.

31. Further, NRG recommends that the Commission require energy suppliers who opt to resume in person sales and marketing practices to comply with: (i) all orders, guidance and other directives issued by the Governor’s Office and the Secretary of Health; (ii) the safety protocols that apply to their event organizers; and (iii) the Commission’s regulations, including its marketing and sales practices regulations. 52 Pa. Code §§ 111.1-111.14

32. Additionally, NRG recommends that suppliers engaging in such sales and marketing activities undertaken at a retail establishment be required to follow best practices that include the following:

- Steps to ensure sales agent and customer safety, such as temperature checks, use of face masks, use of disposable stylus pens, hand sanitizer and disinfectant wipes;
- Steps to maintain six-foot social distancing requirements, including training and designations of such space; and
- Use of a “contactless” enrollment process whenever possible.

33. In addition to the foregoing, NRG is willing to notify Commission Staff of its intent to engage in-person sales and marketing activities at outdoor events.

34. In prior Orders denying Petitions filed by energy suppliers to resume door-to-door marketing or in-person appointments with commercial and industrial customers, the Commission has expressed a desire “to ensure the protection of customers and supplier employees by

minimizing social contact in response to the COVID-19 pandemic.”¹² The Commission has also encouraged continued telework and the use of telephone or video meeting platforms.¹³ Further, the Commission has suggested that safer alternatives exist, such as telemarketing, website advertising, media advertising, PaPowerSwitch and Customer Referral Programs.¹⁴

35. None of those factors should be relied upon to deny this Petition. Most importantly, it is the Governor and the Secretary of Health whose domain it is to determine whether outdoor public events may be held, what occupancy levels must be maintained and other requirements or restrictions designed to limit the spread of COVID-19. As the Governor and the Secretary of Health have recently increased the acceptable size of outdoor gatherings, their guidance should likewise be followed by the Commission so that energy suppliers have the same opportunities to participate in outdoor public events as other Pennsylvania businesses. Even with COVID-19 numbers on the rise in the Commonwealth, the Secretary of Health is closely watching restaurants – not outdoor gatherings.¹⁵ Notably, health officials have indicated that outdoor events are generally safer than indoor gatherings.¹⁶

36. Moreover, the telework option that the Commission has relied on denying other petitions is not viable here. Being a vendor of a product or service at an outdoor public event,

¹² *Supplier Door-to-Door and In-Person Marketing Moratorium; Proclamation of Disaster Emergency – COVID-19: Interstate Gas Supply, Inc. Petition for Rehearing and/or Reconsideration*, Docket No. M-2020-3019254 (Order entered August 27, 2020), at 5.

¹³ August 27, 2020 Order at 16.

¹⁴ *Supplier Door-to-Door and In-Person Marketing Moratorium; Proclamation of Disaster Emergency – COVID-19*, Docket No. M-2020-3019254 (Order entered July 16, 2020) at 14.

¹⁵ <https://www.inquirer.com/health/coronavirus/live/covid-coronavirus-cases-pa-philadelphia-nj-de-updates-testing-news-20201020.html> (Pa. health secretary watching restaurants ‘closely’ as commonwealth reports more than 1,500 new cases – Rob Tornoe)

¹⁶ <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/personal-social-activities.html>

which members of the public have opted to attend, cannot be replaced by a telephone call or video meeting. It also is not acceptable to expect energy suppliers who have a business model that relies on the use of outdoor public events as a sales channel to find another way of selling energy such as through advertising or telemarketing.¹⁷ Nothing in the Governor's and the Secretary of Health's directives interferes with energy suppliers conducting in-person sales at public outdoor events and NRG respectfully urges the Commission to follow suit.

VII. EXPEDITED CONSIDERATION

37. The Commission should act as swiftly and efficiently as it did when issuing the *ex parte* Emergency Order that immediately and adversely affected the operation of competitive energy supply businesses by NRG's subsidiaries.

38. As NRG's subsidiaries have already been denied the opportunity to utilize a significant sales and marketing channel for over 6 months, the Commission should take measures before or at its public meeting on November 19, 2020 enabling energy suppliers to resume use of this channel while festivals and similar events are being held.

VIII. SERVICE OF PETITION

39. Consistent with the Commission's regulations regarding the service of petitions, NRG is electronically serving this Petition on the Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate.¹⁸

40. NRG is also electronically serving the Petition on the Office of Competitive Market Oversight.

¹⁷ See, e.g., *Natural Gas Distribution Company Customer Account Number Access Mechanism for Natural Gas Suppliers*, Docket No. M-2015-2458991 (Order entered July 8, 2015), at 19-20.

¹⁸ 52 Pa. Code § 5.41(b).

IX. CONCLUSION

WHEREFORE, NRG Energy, Inc. respectfully requests that the Commission grant its Petition, partially rescind the Emergency Order consistent with the foregoing and take any other action deemed to be in the public interest.

Respectfully submitted,

/s/ Karen O. Moury

Karen O. Moury, Esq.
(PA Attorney ID No. 36879)

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Dated: October 22, 2020

Counsel for NRG Energy, Inc.

VERIFICATION

I, Leah Gibbons, am the Director of Regulatory Affairs for NRG Energy, Inc., and I hereby state that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to sworn falsification to authorities).



Leah Gibbons, Director Regulatory Affairs
NRG Energy, Inc.

Dated: October 22, 2020