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March 29, 2021

**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 THE RETAIL ENERGY SUPPLY ASSOCIATION FOR THE PARTIAL RECISSION OF THE COMMISSION’S MARCH 16, 2020 EMERGENCY ORDER ESTABLISHING A MORATORIUM ON IN-PERSON SALES AND MARKETING OF COMPETITIVE ENERGY SUPPLY SERVICES**

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission is the Petition of the Retail Energy Supply Association for Partial Recission of the Commission’s March 16, 2020 Emergency Order Establishing a Moratorium on In-Person Sales and Marketing of Competitive Energy Supply Services in the above-referenced matter. Copies of this 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 related to this filing, please do not hesitate to contact my office.

Very truly yours,

Todd S. Stewart  
*Counsel for  
the Retail Energy Supply Association*

TSS/jld  
Enclosure  
cc: Per Certificate of Service

**CERTIFICATE OF SERVICE**

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

**VIA ELECTRONIC MAIL ONLY**

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Todd S. Stewart

DATED: March 29, 2021

**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 :

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**PETITION OF THE RETAIL ENERGY SUPPLY ASSOCIATION  
FOR THE PARTIAL RESCISSION  
OF THE COMMISSION’S MARCH 16, 2020 EMERGENCY ORDER  
ESTABLISHING A MORATORIUM ON IN-PERSON SALES AND MARKETING  
OF COMPETITIVE ENERGY SUPPLY SERVICES**

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**NOW COMES** the Retail Energy Supply Association (“RESA”)<sup>1</sup>, 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), on behalf of RESA which represents competitive energy suppliers; both Electric Generation Suppliers (“EGS”) and Natural Gas Suppliers (“NGS”), and files this Petition for Partial Rescission of the Commission’s March 16, 2020 Emergency Order (“Emergency Order”)<sup>2</sup>. Considering the prolonged pandemic and the April 4, 2021 effective date of the Governor’s most recent relaxation of mitigation measures, RESA respectfully requests EXPEDITED TREATMENT of this request.

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<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

<sup>2</sup> *Re: Supplier Door-to-Door and In-Person Marketing Moratorium, Proclamation of Disaster Emergency – COVID-19*; Docket No. M-2020-3019254 (Emergency Order entered March 16, 2020, ratified, March 26, 2020).

## I. SUMMARY OF REQUESTED RELIEF

1. On March 16, 2020, Commission Chairman Brown Dutrieuille, issued the *ex parte* Emergency Order that established a moratorium on door-to-door, public event, and in-person sales and marketing of competitive energy supply services throughout the Commonwealth of Pennsylvania, such as those provided by the members of RESA. Chairman Brown Dutrieuille's *ex parte* Order was ratified by the Commission at its March 26, 2020 Public Meeting.

2. Through the instant Petition for Partial Recission, RESA seeks relief from that portion of the Emergency Order that prohibits in-person, marketing of competitive energy supply services to commercial and industrial customers that are permitted to be open pursuant to the Orders or Directives of the Governor and/or the Secretary of Health. In light of the recent relaxation of restrictions on indoor face-to-face businesses, such bars and restaurants, it is now appropriate to consider what other activities, particularly those that are most effective in-person, can be authorized. RESA believes that such meetings, in a business setting, can appropriately protect attendees, and allow for an effective form of interaction that simply is not attainable through other means, including virtual.

3. The Governor's recent Order<sup>3</sup> allows other forms of commerce to expand in-person capacity – malls, gyms and theaters, among them. These indoor face-to-face businesses will be permitted to operate at 75% of capacity, and yet EGSs and NGSs are left to flounder with no meaningful opportunity to conduct in-person business with commercial customers, where meetings are very often pre-arranged. This is in contrast to any other business that operates in a face-to-face sales mode, who have not been restricted at the state level at any time during the

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<sup>3</sup> <https://www.governor.pa.gov/newsroom/gov-wolf-effective-april-4-more-options-for-restaurants-and-other-businesses-mass-gathering-maximums-increase/>

pandemic. In these settings there will be no surprise, the business and the sales representative will know the rules, including the need for masks and to maintain social distancing, and will be required to follow them.

4. Prior to the pandemic the primary means of soliciting commercial and industrial customers was through face-to-face meetings, which are the norm in a business setting. It is not realistic to expect that the Commercial and Industrial customers that are being solicited will continue to tolerate virtual contact when other businesses, ones where the likelihood of transmission is greater, are allowed to expand service. The result has been less engagement.

5. Energy Suppliers that choose to avail themselves of the opportunity that will be created by rescission of the Emergency Order as requested herein, will be required to comply with all orders, directives or other requirements issued by the Governor or the Secretary of Health, and will be required to wear masks and remain 6 ft. apart, in addition to any other applicable requirements. Best practices will be followed, including periodic temperature checks and screening, use of disposable items such as pens and/or use of contactless enrollment where possible. The Suppliers' goal, as always, is to build sustainable customer relationships, a result which cannot be accomplished if safety is not paramount. RESA believes that a safety-focused approach can more than overcome the risks presented by in-person conversations with potential customers. RESA therefore requests that the Commission act decisively and allow the same for NGSs and EGSs in Pennsylvania.

## **II. BACKGROUND**

6. 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. This same statutory section limits the declaration to a period of ninety days but permits the Governor to renew the declaration at his/her discretion. The Governor has extended the Proclamation on four occasions so that it is now scheduled to expire on May 20, 2021.<sup>4</sup>

7. In issuing an *ex parte* Emergency Order on March 16, 2020 and ratifying it on March 26, 2020, the Commission relied on the Governor's 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 prohibition will now continue unabated "during the pendency of the Proclamation of Disaster Emergency, or unless otherwise directed by the Commission."

8. Since the Emergency Order was first issued there has been a constantly evolving environment, that has included contraction and expansion of restrictions on citizen's interactions that have rippled through businesses and which have limited and sometimes, as in this most recent case, created broader opportunities for commerce. Indeed, the Commission has issued two partial recession Orders at this same Docket that have allowed for face-to-face marketing in retail businesses that were permitted to be open and which have allowed similar marketing at outdoor events; but again, such efforts were primarily directed to residential customers. The next phase that will begin April 4, 2021, could be viewed as the culminating phase, as vaccination rates in the Commonwealth climb and infection rates recede. Despite this conception, however, RESA continues to believe that all required mitigation precautions must continue to be employed, but

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<sup>4</sup> <https://www.governor.pa.gov/newsroom/governor-wolf-signs-fourth-renewal-of-covid-19-disaster-declaration-to-aid-in-response-and-recovery/#:~:text=Today%2C%20Governor%20Tom%20Wolf%20signed,of%20the%20virus%20in%20Pennsylvania.>

that face-to-face meetings can nonetheless be safely permitted in a business setting, as it will be in a retail setting, while observing those precautions as well as continued adherence to the Commission's marketing and sales practice regulations.

9. RESA's members that have historically relied upon in-person marketing as a commercial and industrial sales channel, have struggled to find alternatives that have similar efficacy in an environment where face-to-face is the norm. RESA believes that the professionalism of its member company's representatives and the commercial and industrial customers can be relied upon to ensure that the required protocols are maintained.

### **III. LEGAL STANDARD**

10. 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).

11. 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.

12. As noted, the Commission's Emergency Order is based upon the March 6, 2020 Proclamation of Disaster Emergency issued by Governor Wolf. Similarly, the Commission's June 4, 2020 and December 3, 2020 modifications of the Emergency Order were consistent with the Governor's reopening of the Commonwealth.

13. Given that the circumstances have changed again with the easing of restrictions on bars, gyms, theaters and restaurants, and other businesses, it appears that the Governor and Secretary of Health have concluded that such activities are once more reasonable, i.e., that such a level of contact is now appropriate at the retail level. RESA seeks to translate that same sensibility

into the business-to-business environment, much as the Commission did in its June 4, 2020 Order, “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.”<sup>5</sup> In this case, the newly permitted activities translate into the business-to-business market in the same manner as to the permitted retail activities – a limited number of people can interact within the same physical space so long as the guidelines are maintained (masks and distancing, etc.).

14. While it is true that the Commission has previously denied requests to rescind the Emergency Order to allow for in-person marketing with commercial and industrial customers, those determinations were made in keeping with the status of the pandemic at time, the then-current mitigation requirements, and the “Commission’s desire to minimize social contact in response to the COVID-19 pandemic”.<sup>6</sup> That same rationale, applied here should produce the opposite result, because the trend in the mitigation efforts at present clearly is moving in the direction of allowing greater social interaction, not less. Particularly in the controlled environment of a business meeting, RESA submits that the time is now right to allow in-person marketing to commercial and industrial customers. It also is true that virtual meetings in the business-to-business space are less effective and becoming less so as the perception that the pandemic has reached its zenith continues to grow. Simply put, RESA submits that now is the time to allow for the change.

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<sup>5</sup> *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.

<sup>6</sup> *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.



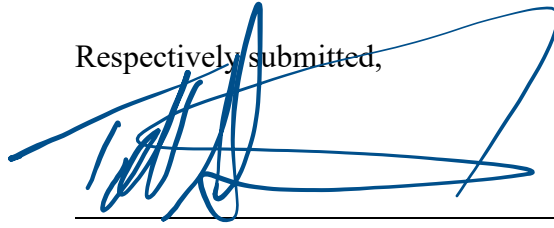
15. For the reasons discussed herein, RESA respectfully requests that the Commission rescind that portion of its Emergency Order that bans in-person sales and marketing, when that marketing is to Commercial and Industrial customers as otherwise permitted by current orders of the Governor and/or Secretary of Health.<sup>7</sup>

16. RESA suggests that any such order require that any EGS or NGS that avails itself of the opportunity presented by such rescission: 1) be required to comply with all orders, guidance and/or directives of the Governor and the Secretary of Health; 2) comply with any safety protocols established for any customer premise that they may visit; and, 3) that they Comply with all applicable Commission Regulations or Orders. Suppliers should also be required, at a minimum, to employ best practices, which should include 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 as well as steps to maintain six-foot social distancing requirements, including training and designations of such space; and use of a “contactless” enrollment process whenever possible.

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<sup>7</sup> RESA is aware that in prior Orders, the Commission has expressed concern that in-person sales could result in surprise to the prospective customer and thus, in their unpreparedness, cause them to be inadvertently exposed to COVID. That is not the case in the business-to-business setting, in businesses that are already open to the public and so there will be no element of surprise that could cause inadvertent exposure. In non-retail businesses, where access is more controlled, the problem is likewise mitigated by the existing means of gaining access to decision-makers. Nonetheless, to the extent the Commission finds it as a necessary element to rescind its Emergency Order to allow for marketing to businesses that are open, RESA can agree to limit its request to by appointment-only marketing.

Respectively submitted,



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*Counsel for the Retail Energy Supply  
Association*

DATED: March 29, 2021

**VERIFICATION**

I, Anthony Cusati, III, certify that I am the Pennsylvania State Policy Chair for Electricity and Natural Gas for the Retail Energy Supply Association (“RESA”), and that in this capacity I am authorized to, and do make this Verification on their behalf, that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information, and belief, and that RESA expects to be able to prove the same at any hearing that may be held in this matter. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.



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Anthony Cusati, III  
*Pa. State Policy Chair, RESA*

DATED: March 29, 2021