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July 13, 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 Direct Energy Business, LLC, Direct Energy Services, LLC, and Direct Energy Business Marketing, LLC (“Direct Energy”), enclosed for electronic filing please find a Petition for Clarification or Modification of Prior Order issued in the above-captioned matter. Also, please note that Direct Energy 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 Direct Energy's Petition for Clarification or Modification of Prior Order, 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: July 13, 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 DIRECT ENERGY BUSINESS, LLC, DIRECT ENERGY SERVICES, LLC, AND DIRECT ENERGY BUSINESS MARKETING, LLC FOR CLARIFICATION, OR MODIFICATION OF PRIOR ORDER

Pursuant to Section 703(g) of the Public Utility Code, 66 Pa. C.S. § 703(g), and Section 5.572 of the regulations of the Pennsylvania Public Utility Commission (“Commission”), 52 Pa. Code § 5.572, Direct Energy Business, LLC, Direct Energy Services, LLC, and Direct Energy Business Marketing, LLC (collectively, “Direct Energy”) files this Petition for Clarification or Modification of the Commission’s June 4, 2020 Order or the March 16, 2020 Emergency Order in the above-captioned matter (“June 4 Order”). By this Petition, Direct Energy seeks a ruling from the Commission, which clarifies that as a competitive energy supplier, Direct Energy may conduct in-person sales and marketing activities with commercial, industrial and governmental customers that have reopened their businesses under the Commonwealth’s phased reopening directives, while observing all required safety and social distancing procedures. Direct Energy respectfully requests that the Commission grant this relief on an expedited basis. In support of this Petition, Direct Energy states as follows:

I. INTRODUCTION AND BACKGROUND

1. On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency declaring the existence of a disaster emergency throughout the Commonwealth for a period of up to ninety days, unless renewed.

2. 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 during the pendency of the Proclamation of Disaster Emergency, or unless otherwise directed by the Commission.

3. On March 19, 2020, the Governor directed the closure of the physical operations of non-life-sustaining businesses.¹

4. On April 22, 2020, the Governor announced a phased plan for reopening businesses. The plan categorizes counties into three color-coded phases – red, yellow, and green – based on conditions in the counties. Red is the most restrictive, while green is the least restrictive. The yellow and green phases allow for the resumption of in-person retail activities, under specified parameters.²

5. 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, a listing of counties which is expanding as the Governor loosens restrictions across the Commonwealth. Some counties moved to the “yellow phase” on May 8, 2020, and over the course of the following month, all counties in Pennsylvania were in the

¹ *Order Regarding the Closure of all Businesses that are Not Life Sustaining*, Commonwealth of Pennsylvania, Office of the Governor (March 19, 2020) available at <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf>.

² *Process to Reopen Pennsylvania*, Commonwealth of Pennsylvania, Office of the Governor (Last updated May 28, 2020) available at <https://www.governor.pa.gov/process-to-reopen-pennsylvania/>.

yellow or green phases by June 5, 2020.³ As of July 3, 2020, all Pennsylvania counties had entered the green phase.⁴

6. The Guidance details the myriad of safety procedures that reopened businesses, including in person retail enterprises, must follow. These include limitation on entry, social distancing, masking, cleaning high touch surfaces and shielding, as well as employee wellness.⁵

7. On May 20, 2020, NRG Energy, Inc. (“NRG”) filed a Petition for Partial Rescission of the Commission’s Emergency Order (“NRG Petition”), seeking relief from the portion of the Emergency Order that prohibited electric generation suppliers and natural gas suppliers (“competitive energy suppliers”) from engaging in in-person sales and marketing activities at retail businesses that are open as a result of directives issued by Governor Wolf.

8. The Commission issued the June 4 Order granting the NRG Petition, finding that “it is appropriate to lift the moratorium on in-person sales and marketing activities for all jurisdictional suppliers as it pertains to activities at retail businesses open as a result of the Governor’s directives regarding the yellow and green phases.”⁶

9. Noting that certain restrictions remain in place during the yellow and green phases pursuant to directives of the Governor and the Pennsylvania Secretary of Health, the Commission held that “suppliers engaging in in-person sales and marketing activities at retail businesses must comply with all relevant orders and guidance of the Governor and the Secretary

³ <https://www.governor.pa.gov/newsroom/reopening-phase-orders-updated-to-include-10-additional-counties-moving-to-yellow-and-16-to-green-on-june-5/>

⁴ <https://www.abc27.com/news/health/coronavirus/coronavirus-pennsylvania/all-pa-counties-in-the-green-phase/>

⁵ <https://www.governor.pa.gov/wp-content/uploads/2020/05/20200504-COVID-19-Business-Guidance.pdf>

⁶ June 4 Order at 10.

of Health,”⁷ as well as building and building safety orders.⁸ The Commission also noted that suppliers must continue to adhere to applicable Commission regulations, including the marketing and sales practices regulations.⁹

10. Although the stay-at-home order that still remained in some counties throughout Pennsylvania ended on June 4, 2020, Governor Wolf renewed the Proclamation of Disaster Emergency by another 90 days on June 3, 2020.¹⁰ Currently, although Direct Energy assumes that the emergency situation is ongoing, some uncertainty exists due to the passage of a resolution by the General Assembly on June 9, 2020 to terminate the emergency.¹¹

II. THE JUNE 4 ORDER SHOULD BE FOUND TO BE APPLICABLE TO SUPPLIERS’ IN-PERSON SALES VISITS WITH COMMERCIAL CUSTOMERS

11. Direct Energy operates several affiliates and subsidiaries that are licensed by the Commission to provide competitive energy supply services in Pennsylvania. A frequently used

⁷ *Id.*; *Order for Limited Opening of Businesses, Lifting of Stay at Home Requirements, and Continued Aggressive Mitigation Efforts*, Commonwealth of Pennsylvania, Office of the Governor (May 7, 2020) available at <https://www.governor.pa.gov/wp-content/uploads/2020/05/20200507-TWW-Yellow-Phase-Order.pdf>; *Order for the Continued Reopening of the Commonwealth*, Commonwealth of Pennsylvania, Office of the Governor (May 27, 2020) available at <https://www.governor.pa.gov/wp-content/uploads/2020/05/20200527-TWW-green-phase-order.pdf>.

⁸ June 4 Order at 10; *Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public*, Commonwealth of Pennsylvania, Office of the Governor (Last updated May 22, 2020) available at <https://www.governor.pa.gov/wp-content/uploads/2020/05/20200504-COVID-19-Business-Guidance.pdf>

⁹ June 4 Order at 10. Direct Energy notes that these regulations are not applicable to the in-person sales that are the subject of this Petition since the activities sought to be exempt from the Emergency Order are targeted only at commercial and industrial customers, neither of which are covered by Chapter 111 of the Commission’s regulations. Moreover, as the Commission has recognized, “door to door” sales are defined as a “solicitation or sales method whereby an agent proceeds randomly or selectively from residence to residence.” 52 Pa. Code § 111.2.

¹⁰ <https://www.governor.pa.gov/wp-content/uploads/2020/06/20200603-TWW-amendment-to-COVID-disaster-emergency-proclamation.pdf>

¹¹ <https://papost.org/2020/06/09/senate-gop-passes-resolution-to-end-coronavirus-emergency-declaration-sending-it-back-to-house-for-concurrence/>

channel for the sale and marketing of competitive energy supply services by Direct Energy's affiliates and subsidiaries includes in-person sales and marketing activities with commercial, industrial and governmental customers that operate businesses within Pennsylvania.

12. Given Pennsylvania's recent and ongoing movement toward reopening businesses consistent with the Governor's Guidance, no valid justification exists for subjecting energy suppliers to restrictions that are not applicable to other businesses.

13. Under the Governor's Plan to Reopen Pennsylvania, and in the absence of the Commission's *ex parte* Emergency Order, Direct Energy would be permitted to resume its in-person marketing and sales operations pursuant to the mandated safeguards. With the requested clarification or modification from this Commission, Direct Energy intends to do so, and will abide by any directives issued by the Governor and/or the Secretary of Health. However, this is not possible unless and until the Commission clarifies or modifies the June 4 Order or its *ex parte* Emergency Order.¹²

14. Through such clarification or minor modification, Direct Energy would be placed on equal footing with other businesses operating in Pennsylvania. The June 4 Order provides that "[i]n light of the Commonwealth's progress in the phased reopening plan, we find that it is appropriate to lift the moratorium on in-person sales and marketing activities for all jurisdictional suppliers as it pertains to activities at retail businesses open as a result of the Governor's directives regarding the yellow and green phases."¹³

¹² Direct Energy sought to informally resolve this issue through a clarification from staff and was advised of the need to file a petition.

¹³ June 4 Order at 10.

15. Direct Energy is seeking to resume its in-person sales and marketing activities of commercial, industrial and governmental customers operating businesses that are open as a result of the Governor’s directives regarding the yellow and green phases. Thus, while NRG or other competitive energy suppliers may be reopening sales and marketing activities aimed at residential customers in particular retail establishments, Direct Energy is seeking to enter businesses for purposes of in-person sales and marketing activities with employees or representatives, such as energy managers, of various types of establishments. Just as a competitive energy supplier is now permitted under the June 4 Order to set up an otherwise authorized kiosk within Best Buy, the Commission should clarify that a supplier may meet with the Best Buy manager about energy supply for the commercial store or make an appointment with the energy manager or other appropriate representative of an industrial or governmental business about their energy needs. Business that is permissible by the Governor’s directives should not be hindered by the PUC’s March 16, 2020 Emergency Order.

16. In terms of Covid-19 transmission risk, meeting a store manager at a commercial, industrial or governmental establishment to discuss Direct Energy’s products and services is not materially different than a supplier employee engaging in the sale of energy products to retail customers at a kiosk in a particular business. The ability to protect both parties involved by employing appropriate protections is the same.

17. Importantly, the activities that Direct Energy seeks to resume do not fall within the definition of “door-to-door sales” that appears in the Commission’s regulations. “Door-to-door sales” are defined as a [a] solicitation or sales method whereby an agent proceeds randomly or selectively from residence to residence.”¹⁴ Direct Energy is not seeking to proceed randomly

¹⁴ 52 Pa. Code § 111.2.

or selectively from residence to residence. By contrast, Direct Energy proposes to visit commercial, industrial and governmental establishments, which have resumed operating their businesses as a result Pennsylvania's phased reopening process, for purposes of engaging in sales and marketing activities with the businesses themselves.

18. While Direct Energy believes that a clarification of the June 4 Order to address its particular scenario is sufficient, Direct Energy, alternatively, seeks a minor modification of the June 4 Order or the Emergency Order to allow it to resume in-person sales and marketing with existing and prospective commercial, industrial and governmental customers that are lawfully operating their businesses in counties that are in yellow or green phases.

19. The June 4 Order further noted that certain restrictions remain in place during the yellow and green phases pursuant to directives of the Governor and the Pennsylvania Secretary of Health, so that suppliers engaging in activities at these retail businesses must comply with all relevant orders and guidance. It also directed the filing of reports by suppliers with the name and location of the retail business, including the county to identify which phase of the reopening is applicable. Direct Energy is fully willing to comply with these conditions as well.¹⁵

III. RELIEF SOUGHT

20. For the reasons set forth herein, Direct Energy respectfully requests that that the Commission clarify, or in the alternative, modify the June 4, 2020 Order or the March 16, 2020 Emergency Order to make it clear that competitive energy suppliers may resume in-person sales and marketing activities in commercial, industrial and governmental businesses that are open consistent with Governor Wolf's directives.

¹⁵ As to the Commission's reference to its marketing and sales practices regulations, Direct Energy notes that they only apply to interactions with small business customers. Thus, Direct Energy would not expect to have those regulations imposed on its sales and marketing activities with other commercial, industrial and governmental customers.

IV. EXPEDITED CONSIDERATION

21. 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 Direct Energy.

22. As Direct Energy, as well as its affiliates and subsidiaries, have already been denied the opportunity to utilize a significant sales and marketing channel for over three months, the Commission should take measures designed to get them back in business as soon as possible.

23. Moreover, Direct Energy is currently being denied the opportunity to market through this channel when other similar businesses in Pennsylvania do not face this prohibition. No justification exists for further delaying these sales and marketing activities.

V. SERVICE OF PETITION

24. Consistent with the Commission's regulations regarding the service of petitions, Direct Energy is electronically serving this Petition on the Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate.¹⁶

VI. CONCLUSION

WHEREFORE, Direct Energy respectfully requests that the Commission grant its Petition, and clarify, or in the alternative, modify the June 4, 2020 Order or the March 16, 2020 Emergency Order consistent with the foregoing and take any other action deemed to be in the public interest.

¹⁶ 52 Pa. Code § 5.41(b).

Respectfully submitted,

/s/ Karen O. Moury

Daniel Clearfield, Esq.
(PA Attorney ID No. 26183)
Karen O. Moury, Esq.
(PA Attorney ID No. 36879)

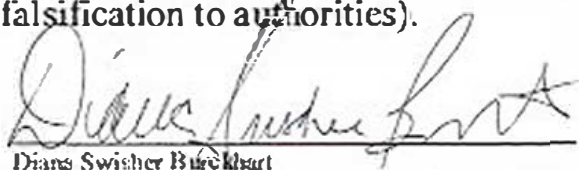
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Dated: July 13, 2020

Counsel for Direct Energy

Verification

I, Diana Swisher Burckhart, state that I am a Senior Specialist, Government and Regulatory Affairs for Direct Energy Services, LLC and that I am authorized to make this verification on its behalf. I hereby state that the facts set forth in the foregoing Petition are true and correct to the best of my knowledge, information and belief and that I expect Direct Energy to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to sworn falsification to authorities).



Diana Swisher Burckhart
Senior Specialist, Government and Regulatory Affairs
Direct Energy Services, LLC

July 13, 2020