

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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July 23, 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 in Opposition to Petition of Direct Energy Business, LLC, Direct Energy Services, LLC, and Direct Energy Business Marketing, LLC for Clarification, or Modification of Prior 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:

cc: Office of Administrative Law Judge (**email only**)
Law Bureau (**email only**)
Daniel Mumford, Director, Office of Competitive Market Oversight (**email only**)
Kriss E. Brown, Deputy Director, Office of Competitive Market Oversight (**email only**)
Office of Special Assistants (**email only**: ra-OSA@pa.gov)
Certificate of Service

*292763

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 Answer of the Office of Consumer Advocate in Opposition to the Petition of Direct Energy Business, LLC, Direct Energy Services, LLC, and Direct Energy Business Marketing, LLC for Clarification, or Modification of Prior 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 23rd day of July 2020.

SERVICE BY E-MAIL ONLY

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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 DIRECT ENERGY BUSINESS, LLC, DIRECT ENERGY SERVICES,
LLC, AND DIRECT ENERGY BUSINESS MARKETING, LLC FOR CLARIFICATION,
OR MODIFICATION OF PRIOR 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 Direct Energy Business, LLC, Direct Energy Services, LLC, and Direct Energy Business Marketing, LLC (collectively, Direct Energy) for Clarification of Modification of Prior Order (Petition) partially rescinding a narrow portion of the Commission’s moratorium on in-person sales and marketing of competitive energy supply services. The OCA submits that the relief requested by Direct Energy—to resume door-to-door sales and marketing to commercial, industrial, and governmental customers—should be rejected as the Commission recently found that the March 16th Emergency Order restriction on such marketing including at commercial, industrial and governmental facilities, is still necessary at this time. The OCA’s position is in alignment with that of the Commission in the July 16, 2020 order that, “that recent changes in circumstances weigh in favor of the continuation of the moratorium on door-to-door, public event, and in-person sales and marketing activities, rather than rescission of the moratorium” and that, given the wide range of remote marketing and sales activities available to suppliers, “by appointment” sales and marketing can likewise be conducted

electronically.¹ This order, entered after Direct Energy’s filing of this Petition, sufficiently clarifies that in-person marketing and sales visits are unnecessary social contact during this pandemic and, therefore, Direct Energy’s Petition should be denied.

While Pennsylvania has experienced a gradual phase of reopening, COVID-19 continues to spread in Pennsylvania.² There is no evidence that Pennsylvania commercial, industrial, or governmental utility customers are willing to take the risk of allowing an uninvited salesperson to enter their business or office location to sell energy services, particularly when many Pennsylvanians are still avoiding in-person contact, especially those who may have pre-existing health conditions or the elderly. The OCA respectfully urges the Commission to continue to protect all customers from non-essential personal contact, particularly from uninvited and unexpected personal contact at their businesses or workplaces.

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

¹ See Commission’s July 16, 2020 Marketing Order, Order at 14 (July 16, 2020) (July 16th Marketing Order).

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.

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.

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 July 22, 2020, Pennsylvania has experienced 100,483 confirmed COVID-19 cases and 7,063 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

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://experience.arcgis.com/experience/cfb3803eb93d42f7ab1c2cfccca78bf7/> (Last accessed July 23, 2020).

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).

the narrow, partial rescission was that NRG’s petition met the standards under Duick 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 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.

On July 16, 2020, the Commission issued an order rejecting the petitions of Statewise/SFE and Interstate Gas Supply, Inc. requesting partial rescissions of the March 16 Moratorium in the marketing and sales areas of residential door-to-door, in-person events, commercial and industrial “by appointment”.¹¹ The Commission denied the petitions finding that, “the risk of harm is too great to allow jurisdictional suppliers to resume door-to-door, public event, and in-person sales and marketing activities at this time.”¹² Specifically, the Commission found that “by appointment” sales could be conducted electronically “thereby nullifying the need for in-person interaction.”¹³ 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 or “by appointment” to commercial and industrial customers sales and marketing efforts in the July 16th Marketing Order remains applicable today.

Accordingly, the OCA files this Answer in opposition to Direct Energy’s Petition.

II. Answer.

¹⁰ Id. at 9.

¹¹ See July 16th Marketing Order.

¹² Id. at 16.

¹³ Id. at 14.

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 and July 16th Marketing Order, door-to-door, public event in-person, and in-person “by appointment” 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.¹⁴ As recognized by the Commission in the June 4th Marketing Order and July 16th Marketing Order, other marketing channels, such as outbound telemarketing, inbound calls, website advertising and enrollment, various media advertising, PaPowerSwitch, by appointment electronic meetings, and the utility Customer Referral Programs have all remained open and viable channels for suppliers to continue marketing their products and services to customers.

Direct Energy seeks a clarification or modification of the Commission’s June 4th Marketing Order to allow Direct Energy to conduct in-person marketing by going door-to-door to or making visits “by appointment” to businesses and industrial and governmental locations. The OCA submits that Direct Energy’s request that the Commission lift the moratorium on door-to-door or “by appointment” in-person marketing to commercial, industrial, and governmental customers should be rejected as it would be counterintuitive to the mission of the Emergency Order: “to help minimize non-essential personal social contact.”¹ As stated above, the Commission has recognized that cases of COVID-19 are on the rise and, thus, circumstances have not changed to an extent that

¹⁴ See Emergency Order.

this type of in-person sales should be permitted once again. The moratorium on in-person door-to-door, “business-to-business,” and “workplace-to-workplace” 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, businesses, offices, and workplaces.

Even with promises of safety measures, the risk of spreading COVID-19 through unnecessary in-person sales and marketing interactions is too great, especially given the alternative marketing channels, mentioned previously in this Answer, currently available during this pandemic. As recently stated by the Commission, “recent changes in circumstances weigh in favor of the continuation of the moratorium on door-to-door, public event, and in-person sales and marketing activities, rather than rescission of the moratorium.”¹⁵ The OCA submits that the Commission made clear that all door-to-door marketing and sales initiatives, including unexpected visits or “by appointment” visits to commercial, industrial, and governmental entities constitutes unnecessary social contact during this pandemic.

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 Direct Energy’s Petition for clarification or modification of the Commission’s June 4th Marketing Order should not be granted as the Commission made clear, in its July 16th Marketing

¹⁵ See July 16th Marketing Order at 14.

Order that in-person door-to-door and “by appointment” marketing and sales to commercial and industrial customers remain to be unnecessary social contact during this pandemic.

Respectfully submitted,

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