

COMMONWEALTH OF PENNSYLVANIA



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August 3, 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 to Interstate Gas Supply, Inc.'s Petition for Rehearing and/or Reconsideration of the Commission's July 16, 2020 Order Denying IGS' Petition for Partial Rescission, in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Laura J. Antinucci

Laura J. Antinucci

Assistant Consumer Advocate

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Enclosures:

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Law Bureau (**email only**)
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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

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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 to Interstate Gas Supply, Inc.'s Petition for Rehearing and/or Reconsideration of the Commission's July 16, 2020 Order Denying IGS' Petition for Partial Rescission, 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 3rd day of August 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 :
:

THE OFFICE OF CONSUMER ADVOCATE’S ANSWER TO
INTERSTATE GAS SUPPLY, INC.’S PETITION FOR
REHEARING AND/OR RECONSIDERATION OF THE COMMISSION’S JULY 16, 2020
ORDER DENYING IGS’ PETITION FOR PARTIAL RESCISSION

I. INTRODUCTION

In accordance with 52 Pa. Code Sections 5.572, the Office of Consumer Advocate (OCA) files the following Answer to Interstate Gas Supply, Inc.’s (IGS) Petition for Rehearing and/or Reconsideration of the Commission’s July 16, 2020 Order Denying IGS’ Petition for Partial Rescission (Petition) in the above-captioned proceeding. The OCA opposes IGS’ request for rehearing and/or reconsideration of the order¹ of the Pennsylvania Public Utility Commission (Commission) issued on July 16, 2020 denying IGS’ request to partially rescind the Commission’s March 16, 2020 Emergency Order². As the Commission found in the July 16th Marketing Order, the Petition of Interstate Gas Supply, Inc. for Partial Rescission of the March 16, 2020 Emergency Order (IGS Petition for Partial Rescission) did not satisfy the requirements for granting a petition

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

² 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).

for rehearing or reconsideration under Duick³ because IGS did not provide compelling reasons to justify the requested partial rescission of the Commission's Emergency Order.⁴ The OCA submits that nothing in IGS' Petition justifies rehearing or reconsideration of the Commission July 16th Marketing Order at this time.

II. BACKGROUND

On March 6, 2020, the Governor of the Commonwealth of Pennsylvania, Tom Wolf, issued a Proclamation of Disaster Emergency.⁵ 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...⁶

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 Order⁷ was issued by the Commission at Docket No. M-2020-3019254. The Emergency Order established a moratorium on door-to-door, public event

³ Duick v. Pennsylvania Gas and Water Company, 56 Pa. PUC 553 (1982).

⁴ See Commission's July 16th Order at 12.

⁵ See Proclamation of Disaster Emergency, (March 6, 2020) <https://www.governor.pa.gov/wpcontent/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>.

⁶ Id.

⁷ 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).

and in-person sales and marketing of competitive energy supply services in Pennsylvania.⁸ The moratorium was initiated “to help minimize non-essential personal social contact” during the COVID-19 emergency. As of July 31, 2020, Pennsylvania has experienced 108,907 confirmed COVID-19 cases and 7,189 deaths resulting from this pandemic.⁹

On June 3, 2020, Governor Wolf issued an Amendment to Proclamation of Emergency Disaster,¹⁰ 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.¹¹ The Commission’s basis for granting the narrow, partial rescission was that NRG’s petition met the standards under Duick, by presenting new and novel arguments that could not have been previously considered by the Commission in its Emergency Order.¹² Furthermore, the request filed by NRG proposed a very narrow exception to the Commission’s March 16, 2020 Emergency Order, namely seeking to allow

⁸ Id.

⁹ See PA Dept. of Health – <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx> (Last accessed July 31, 2020).

¹⁰ 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>.

¹¹ See Commission’s June 4, 2020 Marketing Order, Order (June 4, 2020) (June 4th Marketing Order).

¹² Id. at 9.

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 rescission of the March 16th Moratorium in the marketing and sales areas of residential door-to-door, in-person events, commercial and industrial “by appointment”.¹³ The Commission denied the petitions finding that, “StateWise, SFE, and IGS have not presented compelling reasons for partial recession of a final Commission order under Duick”¹⁴ and “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.”¹⁵

IGS filed a Petition for Rehearing and/or Reconsideration of the Commission’s July 16, 2020 Order on July 24, 2020. The OCA submits that the Commission fully considered the positions of all parties in making a determination on IGS’ Petition for Partial Rescission and properly concluded that circumstances surrounding the COVID-19 pandemic did not warrant a partial rescission of the Commission’s Emergency order to permit IGS to resume in-person sales.¹⁶ The OCA now files this Answer to IGS’ Petition for Rehearing and/or Reconsideration of the Commission’s July 16, 2020 Order and, for the reasons set forth below, respectfully requests that the Petition be denied.

III. ANSWER

A. Legal Standards.

¹³ See July 16th Marketing Order.

¹⁴ Id. at 12.

¹⁵ Id. at 16.

¹⁶ Id. at 19.

Pursuant to Sections 703(f) and (g) of the Public Utility Code, a party may seek relief of the issuance of a final Commission decision.¹⁷ Under Duick, the standards to be met for granting a petition for rehearing or reconsideration are as follows:

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.¹⁸

Further, the Commission has administrative discretion regarding whether to grant or deny a petition for rescission or amendment of an order filed under Section 703(g).¹⁹

B. Argument.

As stated by the Commission in the July 16th Marketing Order, the Duick standard contains a two-step analysis.²⁰ The first step is to determine whether new and novel arguments or considerations were overlooked or not addressed in the prior decision and the second step is to determine whether those new and novel arguments or considerations warrant a modification of the previous decision.²¹ This Commission did not overlook or fail to consider the developed safety measures or arguments related to the situation of COVID-19 in the Commonwealth presented by IGS in its Petition for Partial Rescission. Additionally, IGS has not introduced any “new or novel” arguments in this Petition which would warrant rehearing or reconsideration of the Commission’s

¹⁷ 66 Pa. C.S. § 703(f)-(g).

¹⁸ See Duick at 559.

¹⁹ See West Penn Power Co. v. Pa. Public Utility Commission, 659 A.2d 1055, 1065 (Pa. Cmwlth. 1995).

²⁰ See July 16th Marketing Order at 12.

²¹ Id.

July 16th Marketing Order in which the Commission determined that IGS did not present compelling reasons for the requested partial rescission of the Commission's Emergency Order.²²

At the outset of the Commission's discussion in the July 16th Marketing Order, the Commission clearly stated:

We note that any issues we do not specifically address herein have been duly considered and will be denied without further discussion. It is well settled that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993); see also, generally, *University of Pennsylvania v. Pa. Public Utility Commission*, 485 A.2d 1217 (Pa. Cmwlth. 1984).²³

In its Petition, IGS argues that the Commission erroneously considered the allegations against Statewise/SFE when it made its decision on IGS' Petition for Partial Rescission and that the Commission overlooked key factors, relating to IGS' ability to conduct sales remotely and the safety methods developed by IGS, in its July 16th Marketing Order, which warrants rehearing or reconsideration.²⁴ IGS also argues that the Commission failed to note the level of control IGS has over the HECs which are its own employees and neglected to consider IGS' request for "by appointment" in-person marketing.²⁵ As stated above, the Commission fully considered IGS' Petition for Partial Rescission and rejected IGS' proposals as they did not meet the standards under Duick. The Commission provided a clear and thorough explanation as to why IGS' requests, in light of the continued circumstances surrounding COVID-19, did not warrant the partial rescission

²² See July 16th Marketing Order at 12.

²³ Id. at 5.

²⁴ See Petition at 2-5.

²⁵ Id. at 6-8.

of the Emergency Order to allow in-person marketing and sales to resume.²⁶ Specifically, the Commission stated, “...the measures proposed by StateWise, SFE, and IGS are not adequate to mitigate the risks to the public and supplier employees of contracting COVID-19 associated with resuming door-to-door, public event, and in-person sales and marketing activities at this time.”²⁷ The Commission also addressed IGS’ request for “by appointment” sales finding that “by appointment” sales could be conducted electronically “thereby nullifying the need for in-person interaction.”²⁸ Although IGS may disagree with the July 16th Marketing Order, it has not established that the Commission overlooked key factors in its July 16th Marketing Order nor has it raised new arguments not previously considered by the Commission in the July 16th Marketing Order which would warrant rehearing or reconsideration. The Commission fully considered IGS’ proposals and was under no obligation “to consider express or at length each contention or argument raised by the parties” in its July 16th Marketing Order.²⁹

²⁶ Id. at 12-16.

²⁷ Id. 13.

²⁸ Id. at 14.

²⁹ Consolidated Rail Corporation v. Pa. Public Utility Commission, 625 A.2d 741 (Pa. Cmwlth. 1993).

IV. CONCLUSION

For the reasons set forth above, the OCA respectfully requests that the Commission deny IGS' Petition for Rehearing and/or Reconsideration of the Commission's July 16, 2020 Order Denying IGS' Petition for Partial Rescission in the above-captioned proceeding. IGS has not demonstrated that its additional arguments warrant rehearing or reconsideration nor has IGS demonstrated that the Commission overlooked key factors in its July 16th, 2020 order denying IGS' Petition for Partial Rescission of the Commission's Emergency Order.

Respectfully submitted,

/s/ Laura J. Antinucci

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