

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

 @pa_oca

 /pennoca

FAX (717) 783-7152
consumer@paoca.org

November 2, 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 the 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 the Petition of NRG Energy, Inc. for Expedited Relief in the above-referenced proceeding. The undersigned certifies that this filing contains no averments or denials of fact subject to verification and penalties under 52 Pa. Code Section 1.36.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Christy M. Appleby

Christy M. Appleby

Assistant Consumer Advocate

PA Attorney I.D. # 85824

E-Mail: CApplby@paoca.org

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

*298589

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 the 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 the Petition of NRG Energy, Inc. for Expedited Relief, 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 2nd day of November 2020.

SERVICE BY E-MAIL ONLY

Richard A. Kanaskie, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

John R. Evans, Esquire
Steven C. Grey, Esquire
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923

Daniel Clearfield, Esquire
Karen O. Moury, Esquire
Deanne M. O'Dell, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101

Gregory L. Peterson, Esquire
StateWise Energy PA LLC
201 West Third Street
Suite 205
Jamestown, NY 14701-4907

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101

/s/ Christy M. Appleby
Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAappleby@paoca.org

Laura J. Antinucci
Assistant Consumer Advocate
PA Attorney I.D. # 327217
E-Mail: LAntinucci@paoca.org

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: November 2, 2020
*298590

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 :

ANSWER
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 5.61 of the Public Utility Code, the Office of Consumer Advocate (OCA) hereby submits this Answer to NRG Energy, Inc.'s (NRG) October 22, 2020 Petition for Rescission of March 16, 2020 Emergency Order Establishing Moratorium on In-Person Sales and Marketing of Competitive Energy Supply Services (Petition) in the above-referenced docket. Subject to certain conditions, the Office of Consumer Advocate does not oppose granting of the limited request in the Petition regarding marketing at outdoor events.

I. BACKGROUND

On March 6, 2020, the Governor of the Commonwealth of Pennsylvania, Tom Wolf, issued a Proclamation of Disaster Emergency.¹ 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

¹ See Proclamation of Disaster Emergency, (March 6, 2020) <https://www.governor.pa.gov/wpcontent/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>.

of any statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency...²

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 Order³ 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.⁴ The moratorium was initiated “to help minimize non-essential personal social contact” during the COVID-19 emergency.⁵

On June 3, 2020, Governor Wolf issued an Amendment to Proclamation of Emergency Disaster,⁶ 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

² Id.

³ 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).

⁴ Id.

⁵ See PA Dept. of Health – <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Coronavirus.aspx>.

⁶ 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>.

are otherwise permitted to be open under future directives.⁷ The Commission's basis for granting the narrow, partial rescission was that NRG's petition met the standards under Quick 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.⁸ The previous 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. In the above situation, the retail establishments were already open and the in-person contact to conduct the marketing and sales were with customers who have voluntarily left their home and entered the business.

On August 31, 2020, Governor Wolf extended the Emergency Proclamation of Disaster Emergency Order for an additional 90 days until November 29, 2020.⁹

On October 6, 2020, Governor Wolf and Secretary Levine amended the prior Orders to permit adjusted capacity for gathering limits while maintaining the mitigation tools of wearing masks and maintaining social distancing. Petition at ¶ 18. As the Petition correctly noted, under the amended guidelines, occupancy at gatherings is based upon the maximum occupancy of the venue. Petition at ¶¶ 18-19. The Petition identified that:

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

⁷ See Commission's June 4, 2020 Marketing Order, Order (June 4, 2020) (June 4th Marketing Order).

⁸ Id. at 9.

⁹ See, <https://www.governor.pa.gov/wp-content/uploads/2020/09/20200831-TWW-amendment-to-COVID-disaster-emergency-proclamation.pdf>

best practices such as timed entry, multiple entry and exit points, multiple restrooms and hygiene stations.

Petition at ¶ 19.¹⁰ The Department of Health's website also provides:

When no fire code capacity is published or available for outdoor events or gatherings venues, establish occupancy as 67 people per 1000 square feet and then apply the maximum occupancy calculator. Venues may also contract their local building code officials if they are unaware of their occupancy limit.¹¹

Accordingly, the OCA files this Answer to NRG's Petition.

II. ANSWER

In its Petition, NRG seeks a partial rescission of the Commission's Order regarding bans on in-person sales and marketing by energy suppliers at outdoor public events that are held in accordance with the Orders and directives issued by Governor Wolf and/or the Pennsylvania Department of Public Health. Petition at ¶ 2. NRG argues that in-person retail marketing at these outdoor events cannot be replaced by teleworking or video meetings. Petition at ¶ 3. NRG argues that in light of the health officials' determination that outdoor gatherings are safer than indoor gatherings and the amendment of the Governor's Order addressing outdoor public gatherings, the Commission should rescind its Order restricting in-person marketing at outdoor events. Petition at ¶¶ 2, 7.

NRG's Petition provides that energy suppliers who opt to resume in-person sales and marketing activities at outdoor events must comply with the following:

- (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

¹⁰ See also, <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Guidance/Targeted-Mitigation-FAQ.aspx>

¹¹ Id.

(iii) any other applicable Commission regulations, including the marketing and sales practices regulations.

Petition at ¶ 5. NRG also proposes that suppliers must take: (1) 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; (2) steps to maintain six-foot social distancing requirements, including training and designations of such space; and (3) use of a ‘contactless’ enrollment process whenever possible. Petition at ¶ 6. NRG also stated that “NRG is willing to notify Commission Staff of its intent to engage in-person sales and marketing activities at outdoor events.” Petition at ¶ 33.

In consideration of the Governor’s new guidelines for outdoor events, subject to certain conditions, the OCA does not oppose NRG’s limited proposal to allow for in person marketing at outdoor events. The OCA recommends that the Commission include in its Order, the conditions set forth by NRG, and further require the following:

- To the extent that the Governor and/or the Department of Health issue additional subsequent guidelines, NRG must adhere to those directives at any outdoor public events.
- NRG must adhere to any restrictions or safety protocols set forth by the Pennsylvania Department of Community and Economic Development (DCED) and any modifications to those safety protocols.¹²
- NRG must adhere to any additional safety protocols established by the outdoor venue.
- If the Governor or Department of Health re-impose restrictions on outdoor events that limit outdoor events, or impose new restrictions on outdoor events, NRG must

¹² See, DCED Worker Safety Order, <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200415-SOH-worker-safety-order.pdf>

immediately cease marketing at outdoor events, notify the Commission and seek further guidance as to the status of marketing at outdoor events.

- To the extent that the Commission grants NRG's request, and applies the Partial Rescission to any other NRG affiliates and/or retail suppliers, the same restrictions must apply.
- The further reporting described below should be required on a routine basis.

As noted, NRG has proposed that the Company will notify Commission Staff of its intent to participate in marketing and retail activities at the outdoor events. See, Petition at ¶ 33. The Commission should ensure that it receives adequate information in these reports in a timely manner to properly oversee these activities. At a minimum, the Commission should be provided with documentation specifically indicating the name of the supplier, date, time, and address of the outdoor event at least three days before the outdoor event. The Commission should also be provided documentation of NRG's safety protocols for both employees and attendees on a continuing basis to ensure safe operation and to ensure compliance with the currently effective safety protocols.¹³ To the extent that the Commission grants the Partial Rescission and applies the Partial Rescission to any other NRG affiliates and/or retail suppliers, the same reporting requirements should apply.

¹³ If the rescission is to apply to all suppliers, the Commission would need to obtain this information for each supplier seeking to engage in this sales activity.

III. CONCLUSION

For the reasons set forth above, subject to the conditions set forth herein, the OCA does not oppose granting NRG Energy, Inc.'s October 22, 2020 Petition at this time regarding marketing at outdoor events. As the OCA noted in its conditions, if the Governor re-imposes restrictions on outdoor events that limits these events, or imposes new restrictions as this pandemic unfolds, NRG should be directed to immediately cease its activities and seek further guidance.

Respectfully Submitted,

/s/ Christy M. Appleby
Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CApplby@paoca.org

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Laura J. Antinucci
Assistant Consumer Advocate
PA Attorney I.D. # 327217
E-Mail: LAntinucci@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

DATE: November 2, 2020
*298616