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|  | **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17105-3265** |  |

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|  | Public Meeting held May 6, 2021 |
| Commissioners Present: |  |

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|  Gladys Brown Dutrieuille, Chairman |
|  David W. Sweet, Vice Chairman |
|  John F. Coleman, Jr. |
|  Ralph V. Yanora |
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| Supplier Door-to-Door and In-Person Marketing Moratorium, Proclamation of Disaster Emergency – COVID-19: Retail Energy Supply Association Petition for Partial Rescission  |  M-2020-3019254 |

**ORDER**

**BY THE COMMISSION:**

 Before the Commission for review and consideration is the Retail Energy Supply Association’s (RESA) Petition for Partial Rescission (Petition) of the March 16, 2020 Emergency Order in the above-captioned proceeding. RESA requests that the Commission rescind the portion of the Emergency Order that prohibits jurisdictional electric generation suppliers and natural gas suppliers (collectively, suppliers) from engaging in in-person sales and marketing activities with commercial and industrial customers that are open as a result of the orders or directives of the Governor and the Secretary of Health. For the reasons set forth below, the Commission will grant RESA’s Petition subject to the conditions established herein.

**BACKGROUND**

On March 6, 2020, pursuant to subsection 7301(c) of the Emergency Management Services Code, 35 P.S. §§ 7101, *et seq*., Governor Tom Wolf issued a *Proclamation
of Disaster Emergency* proclaiming the existence of a disaster emergency throughout the Commonwealth for a period of up to 90 days, unless renewed. Shortly thereafter, the World Health Organization declared COVID-19 a pandemic. The Governor’s *Proclamation of Disaster Emergency*, explicitly authorizes and directs the suspension of “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.”[[1]](#footnote-1) On June 3, 2020, the Governor renewed the *Proclamation of Disaster Emergency* for a period of 90 days and, since then, he has renewed it an additional three times. The most recent renewal was on February 19, 2021, and the *Proclamation of Disaster Emergency* will expire in May 2021, unless it is renewed again.[[2]](#footnote-2)

The Commission has promulgated sales and marketing regulations for suppliers under its jurisdiction at 52 Pa. Code §§ 111.1-111.14. Regarding door-to-door, public event, and in-person sales and marketing activities, the Commission’s regulations at
52 Pa. Code § 111.2 provide the following:

*Door-to-door sales – A solicitation or sales method whereby an agent proceeds randomly or selectively from residence to residence.*

. . .

*Public event – An event in a public location which may facilitate sales and marketing activities or may result in a customer enrollment transaction.*

*Sales and marketing – The extension of an offer to provide services or products communicated orally, electronically or in writing to a customer.*

52 Pa. Code § 111.2.

On March 16, 2020, Commission Chairman Gladys Brown Dutrieuille issued an Emergency Order prohibiting jurisdictional suppliers from engaging in door-to-door, public event, and in-person sales and marketing activities during the pendency of the Governor’s *Proclamation of Disaster Emergency*, or unless otherwise directed by the Commission. The Chairman directed the cessation of these sales and marketing activities to protect the health and safety of customers and supplier employees by minimizing social contact to reduce the spread of COVID-19. The Commission ratified the Emergency Order at the above-referenced docket number on March 26, 2020, finding
that it was in the public interest.

On March 19, 2020, the Governor issued an *Order Regarding the Closure of All Businesses that are Not Life Sustaining*, which directed the closure of the physical operations of non-life-sustaining businesses to reduce the spread of COVID-19, and required businesses that remained open to adhere to social distancing requirements.[[3]](#footnote-3) Then, on April 22, 2020, the Governor announced a phased plan for reopening businesses and easing social restrictions.[[4]](#footnote-4) The plan categorized counties into three color‑coded phases—red, yellow, and green—based on conditions in the counties with the “red phase” being the most restrictive and the “green phase” being the least restrictive. The first counties moved from the red phase to the “yellow phase” on May 8, 2020, and the first counties moved from the yellow phase to the green phase on May 29, 2020.[[5]](#footnote-5)

On May 21, 2020, NRG filed its first Petition for Partial Rescission of the Commission’s March 16, 2020 Emergency Order establishing a temporary moratorium on door-to-door, public event, and in-person sales and marketing activities by jurisdictional suppliers. NRG requested that the Commission rescind the portion of the Emergency Order that prohibits in-person sales and marketing activities as it pertains to activities at retail businesses open because of directives issued by the Governor.

By Order entered June 4, 2020, at the above-referenced docket number, the Commission granted NRG’s May 21, 2020 Petition for Partial Rescission with modification. The Commission lifted the moratorium on in-person sales and marketing activities for all jurisdictional electric generation suppliers and natural gas suppliers as it pertains to activities at retail businesses open as a result of the Governor’s directives regarding the yellow and green phases. The Commission directed suppliers to report their intent to resume in-person sales and marketing activities at retail businesses to the Commission’s Office of Competitive Market Oversight (OCMO) and the Bureau of Consumer Services (BCS). The Commission also directed suppliers engaging in
in-person sales and marketing activities at retail businesses to comply with all relevant orders and guidance of the Governor and the Secretary of Health.

On June 15, 2020, StateWise Energy Pennsylvania, LLC (StateWise) and SFE Energy Pennsylvania, LLC (SFE) filed a Petition for Partial Rescission, or alternatively, Petition for Waiver, of the Commission’s March 16, 2020 Emergency Order. StateWise and SFE requested relief from the prohibition on door-to-door sales and marketing activities for counties in the yellow and green phases of the Governor’s reopening plan.

Then, on June 18, 2020, Interstate Gas Supply, Inc. d/b/a IGS Energy’s (IGS) filed a Petition for Partial Rescission of the Emergency Order seeking relief from the prohibition on door-to-door, public event, and in-person sales and marketing activities.

By Order entered July 16, 2020, at the above-referenced docket number, the Commission denied StateWise and SFE’s June 15, 2020 Petition for Reconsideration as well as IGS’s June 18, 2020 Petition for Reconsideration. The Commission held that StateWise, SFE, and IGS did not offer sufficient justification to rescind the portions of the March 16, 2020 Emergency Order, as modified by the June 4, 2020 Order.

On July 13, 2020 Direct Energy Business, LLC, Direct Energy Services, LLC,
and Direct Energy Business Marketing, LLC’s (collectively, Direct Energy) filed a Petition for Clarification or Modification of the Commission’s June 4, 2020 Order and March 16, 2020 Emergency Order. Direct Energy requested relief from the portions of these Orders that prohibit in-person sales and marketing activities with commercial, industrial, and governmental customers that have reopened their businesses as result of the Governor’s directives.

Subsequently, on July 24, 2020, IGS filed a Petition for Rehearing and/or Reconsideration of the Commission’s July 16, 2020 Order. IGS sought reconsideration to allow door-to-door and by-appointment in-person sales and marketing activities.

On August 27, 2020, the Commission entered two Orders at the above-referenced docket number. In its first Order, the Commission denied Direct Energy’s July 13, 2020 Petition for Clarification or Modification finding that Direct Energy did not raise compelling reasons to alter the Commission’s June 4, 2020 Order or March 16, 2020 Emergency Order. In its second Order, the Commission denied IGS’s July 24, 2020 Petition for Reconsideration finding that IGS did not present arguments that warranted reconsideration of the Commission’s July 16, 2020 Order.

Subsequently, on October 22, 2020, NRG filed its second Petition for Partial Rescission of the Commission’s March 16, 2020 Emergency Order. NRG requested that the Commission rescind the portion of the Emergency Order that prohibits suppliers from engaging in in‑person sales and marketing activities at public events only as it pertains to outdoor public events held in accordance with orders and directives issued by the Governor and Secretary of Health.

Then, on November 23, 2020, the Governor issued an *Order for Mitigation, Enforcement, and Immunity Protections*.[[6]](#footnote-6) Among other things, the Order modified occupancy limits for outdoor gathering venues, setting a limit of up to 2,500 people under certain circumstances. This represented an increase from a previous limit of 250 people. The Order also required venues to comply with an *Updated Order of the Secretary of Health* *requiring Universal Face Coverings* as well as social distancing and best practices directives. The Governor’s Order became effective on November 27, 2020.

By Order entered December 3, 2020, at the above-referenced docket number, the Commission granted NRG’s October 22, 2020 Petition for Partial Rescission. The Commission lifted the moratorium on in-person sales and marketing activities for all suppliers as it pertains to activities at outdoor public events held in accordance with orders and directives issued by the Governor and Secretary of Health. The Commission also directed suppliers to report their intent to resume in-person sales and marketing activities at outdoor public events to OCMO and BCS. The Commission further directed suppliers engaging in in-person sales and marketing activities at retail businesses to comply with relevant orders and guidance from the Governor and the Secretary of Health.

The Commission’s December 3, 2020 Order did not otherwise impact the moratorium on door-to-door, public event, and in-person sales and marketing activities and, thus, the March 16, 2020 Emergency Order, as modified by the June 4, 2020 Order and the December 3, 2020 Order, remains in place.

On March 29, 2021, RESA filed its Petition for Partial Rescission of the
March 16, 2020 Emergency Order. No Answers were filed in response to the Petition.

**DISCUSSION**

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).

**Legal Standards**

Following the issuance of a final decision, relief may be sought pursuant to Sections 703(f) and (g) of the Public Utility Code, relating to rehearings as well as the rescission and amendment of orders. 66 Pa. C.S. § 703(f)-(g). Requests for such relief must comply with the 52 Pa. Code § 5.572 of the Commission’s regulations, relating to petitions for relief following the issuance of a final decision.

The standards for granting a petition for rescission or amendment were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. PUC 553 (1982) (*Duick*):

A petition for reconsideration, under the provisions of

66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that “[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them ….” *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.

*Id*. at 559 (emphasis added). Under the standards of *Duick*, a petition for rescission or amendment is likely to succeed only when it raises “new and novel arguments” not previously heard by the Commission or considerations which appear to have been overlooked or not addressed by the Commission. *Id*.

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). *West Penn Power Co. v. Pa. Public Utility Commission*, 659 A.2d 1055, 1065 (Pa. Cmwlth. 1995). Such a petition, however, should only be granted judiciously and under appropriate circumstances, because such action results in the disturbance of a final order. *Id.* (citing *City of Pittsburgh v. Pa. Dep’t of Transportation*, 416 A.2d 461 (Pa. 1980)).

**RESA Petition for Partial Rescission**

RESA represents competitive energy suppliers. RESA’s members operate throughout the United States and deliver electric and natural gas service to residential, commercial, and industrial energy customers. RESA Petition at 1, n.1.

On March 29, 2021, pursuant to 66 Pa. C.S. § 703(g), RESA filed its Petition for Partial Rescission of the Commission’s March 16, 2020 Emergency Order. RESA requests relief from the portion of the Emergency Order that prohibits suppliers from engaging in in-person sales and marketing activities with commercial and industrial customers that are open as a result of the orders or directives of the Governor and the Secretary of Health. RESA requests expedited consideration of its Petition in light of the prolonged nature of the COVID-19 pandemic and the Governor’s recent relaxation of certain mitigation measures. RESA Petition at 1, ¶ 2.

In support of its Petition, RESA claims that suppliers do not currently have a meaningful opportunity to conduct in-person business with commercial customers because virtual business-to-business meetings are not as effective as in-person meetings. RESA notes that the Governor’s recent directives allow other forms of commerce to expand in-person capacity and that the trend in mitigation efforts is moving toward more social interaction. RESA argues that the newly permitted activities translate into the business-to-business market in that a limited number of people can interact within the same physical space as long as certain guidelines are followed. RESA further argues that the resumption of in-person meetings with commercial and industrial customers is appropriate because commercial and industrial businesses offer a controlled environment. RESA notes that meetings with commercial customers are often pre-arranged so that there is no surprise, and businesses and sales representatives will know and adhere to the rules regarding masks and social distancing. RESA Petition at ¶¶ 2, 3, 13, 14.

RESA recommends that the Commission require suppliers who opt to resume
in-person sales and marketing activities with commercial and industrial customers to comply with (1) all orders, guidance, and other directives issued by the Governor and the Secretary of Health, (2) the safety protocols for any customer premise that suppliers visit; and (3) all applicable Commission regulations or orders. RESA also recommends that suppliers follow best practices to ensure customer and employee safety. In particular, RESA suggests that suppliers use temperature checks, face masks, disposable pens, hand sanitizers, and disinfectant wipes, and take steps to ensure social distancing, including using training programs and “contactless” enrollment. RESA Petition at ¶¶ 5, 16.

**Disposition**

Upon review, we find that RESA has met the standards for partial rescission of
a final Commission order under *Duick*, 56 Pa. PUC at 559. RESA presents new and novel arguments that could not have been previously considered by the Commission. RESA demonstrates in its unopposed Petition that circumstances have changed since the ratification of the Emergency Order and the entry of our June 4, 2020 Order and December 3, 2020 Order modifying the Emergency Order. Specifically, the Governor recently revised or lifted a number of previously imposed COVID-19 mitigation measures and restrictions. These changes justify revisiting the Emergency Order.

As RESA pointed out, on March 15, 2021, the Governor amended his prior *Order for Mitigation, Enforcement, and Immunity Protections*.[[7]](#footnote-7)In addition, the Secretary of Health issued a comparable *Order Amending the Order for Mitigation and Enforcement* on April 1, 2021.[[8]](#footnote-8) Both Orders lifted some of the restrictions on restaurants and other businesses, and further increased gathering limits effective April 4, 2021.[[9]](#footnote-9)

For example, under the Governor’s *Amended Order for Mitigation, Enforcement, and Immunity Protections*, restaurants that undergo a “self certification” process are now permitted to increase capacity to 75%, while other restaurants are permitted to increase capacity to 50%. Additionally, indoor businesses, including personal services facilities, gyms, and entertainment facilities, are now permitted to increase capacity to 75%. Further, the gathering limit for indoor events is now 25% of maximum occupancy, while the gathering limit for outdoor events is 50% of maximum occupancy.

Moreover, under the Governor’s prior *Order for Mitigation, Enforcement, and Immunity Protections*,[[10]](#footnote-10) all businesses were required to “conduct their operations remotely, through individual teleworking of their employees in the jurisdiction or jurisdictions in which they do business.” Businesses were only permitted to conduct in‑person operations where “telework [wa]s impossible.” In contrast, the *Amended Order for Mitigation, Enforcement, and Immunity Protections* does not require telework. While businesses are “strongly encouraged” to telework, they may choose to conduct in‑person operations provided that they comply with the *Amended Order for Mitigation, Enforcement, and Immunity Protections*, including any subsequent amendments, and all guidance issued by the Governor and the Secretary of Health.

In light of the easing of COVID-19 mitigation measures and restrictions, we agree that it is appropriate to lift the moratorium on in-person sales and marketing activities for all jurisdictional suppliers as it pertains to activities with commercial and industrial customers that are open as a result of the orders or directives of the Governor and the Secretary of Health. Importantly, we note that certain restrictions remain in place for businesses. Therefore, suppliers engaging in in-person sales and marketing activities with commercial and industrial customers must comply with all relevant orders and guidance of the Governor and the Secretary of Health, including, but not limited to, the Governor’s *Amended Order for Mitigation, Enforcement, and Immunity Protections* and the Secretary of Health’s *Order Amending the Order for Mitigation and Enforcement* as well as any guidance referenced therein and subsequently issued. Suppliers must also continue to adhere to all applicable Commission regulations and orders.

Additionally, suppliers should report to the Commission their intent to resume in‑person sales and marketing activities with commercial and industrial customers, including the general time period and geographic area in which the supplier will be active. Reports should be provided to OCMO as well as BCS at RA-OCMO@pa.gov and RA-PCDOORTODOOR@pa.gov before commencing such activities. Any reports containing confidential information should be made consistent with the Commission’s March 20, 2020 Emergency Order, and the July 27, 2020 Secretarial Letter supplementing that Emergency Order. *See Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (Emergency Order ratified March 26, 2020); *Modification to Filing and Service Requirements Emergency Order*, Docket No. M-2020-3019262 (Secretarial Letter issued July 27, 2020). The requirement for suppliers to report the resumption of in-person sales and marketing activities with commercial and industrial businesses will remain in place until it is rescinded by the Commission at the conclusion of the present emergency.

Further, although we will allow the resumption of in-person sales and marketing activities with commercial and industrial customers that are open as a result of the orders or directives of the Governor and the Secretary of Health subject to the conditions herein, suppliers should use remote means where possible. We encourage the use of other sales and marketing activities, including outbound telemarketing, inbound calls, website advertising and enrollment, media advertising, PaPowerSwitch, and utility Customer Referral Programs.

Finally, we note that this Order does not impact the portion of the March 16, 2020 Emergency Order establishing a moratorium on all other door-to-door, public event, and
in-person sales and marketing activities, as modified by our June 4, 2020 Order and December 3, 2020 Order, which remains in place during the pendency of the *Proclamation of Disaster Emergency*, or unless otherwise ordered by the Commission.

**CONCLUSION**

Due to the Governor’s recently revised or lifted COVID-19 mitigation measures and restrictions, circumstances have changed to warrant the partial rescission of the Commission’s March 16, 2020 Emergency Order. Therefore, RESA’s Petition for Partial Rescission is hereby granted as modified by this Order. The moratorium on in-person sales and marketing activities for all jurisdictional suppliers is lifted as it pertains to activities with commercial and industrial customers that are open as a result of the orders or directives of the Governor and Secretary of Health. Suppliers engaging in in-person sales and marketing activities with commercial and industrial customers must comply with all relevant orders and guidance of the Governor and Secretary of Health. Suppliers are also required to report their intent to resume in-person sales and marketing activities with commercial and industrial customers to OCMO and BCS as set forth herein. This Order does not impact the moratorium on all other door-to-door, public event, or in‑person sales and marketing activities; **THEREFORE,**

 **IT IS ORDERED:**

1. That the Retail Energy Supply Association’s Petition for Partial Rescission is hereby granted as modified by this Order, and the portion of the Commission’s
March 16, 2020 Emergency Order establishing a moratorium on in-person sales and marketing activities for all jurisdictional electric generation suppliers and natural gas suppliers is lifted as it pertains to activities with commercial and industrial customers that are open as a result of the orders or directives of the Governor and Secretary of Health.

2. That all electric generation suppliers and natural gas suppliers under the Commission’s jurisdiction engaging in-person sales and marketing activities with commercial and industrial customers must comply with all relevant orders and guidance of the Governor and the Secretary of Health and continue to adhere to all applicable Commission regulations and orders.

3. That all electric generation suppliers and natural gas suppliers under the Commission’s jurisdiction are directed to report their intent to resume in-person sales
and marketing activities with commercial and industrial customers with the general time period and geographic area in which the supplier will be active, before commencing such activities, to the Office of Competitive Market Oversight and the Bureau of Consumer Services at RA-OCMO@pa.gov and RA-PCDOORTODOOR@pa.gov. Any reports containing confidential information should be made consistent with the Commission’s March 20, 2020 Emergency Order, and July 27, 2020 Secretarial Letter.

4. That the provisions of the Emergency Order issued March 16, 2020,
as modified by the Orders entered June 4, 2020 and December 3, 2020, prohibiting all other door-to-door, public event, and in-person sales and marketing activities by electric generation suppliers and natural gas suppliers under the Commission’s jurisdiction remain in effect during the pendency of the *Proclamation of Disaster Emergency*, or unless otherwise directed by the Commission.

5. That this Order be served on all jurisdictional electric generation suppliers and natural gas suppliers, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: May 6, 2021

ORDER ENTERED: May 6, 2021

1. *Proclamation of Disaster Emergency*, Commonwealth of Pennsylvania, Office of the Governor
(March 6, 2020) available at <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>. [↑](#footnote-ref-1)
2. *Amendment to Proclamation of Disaster Emergency*, Commonwealth of Pennsylvania,
Office of the Governor (February 19, 2021) available at <https://www.governor.pa.gov/wp-content/uploads/2021/02/TWW-COVID-disaster-emergency-amendment-digital-sig-2-19-21.pdf>. [↑](#footnote-ref-2)
3. *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>. [↑](#footnote-ref-3)
4. *Reopening Targeted for May 8 in North-Central, Northwest*, Commonwealth of Pennsylvania, Office of the Governor (April 22, 2020) available at <https://www.governor.pa.gov/newsroom/gov-wolf-reopening-targeted-for-may-8-in-north-central-northwest/>. [↑](#footnote-ref-4)
5. *Gov. Wolf Adds Eight Counties to Yellow and 17 to Green on May 29, Remainder to Yellow on June 5*, Commonwealth of Pennsylvania, Office of the Governor (May 22, 2020) available at <https://www.governor.pa.gov/newsroom/gov-wolf-adds-eight-counties-to-yellow-and-17-to-green-on-may-29-remainder-to-yellow-on-june-5/>. [↑](#footnote-ref-5)
6. *Order for Mitigation, Enforcement, and Immunity Protections*, Commonwealth of Pennsylvania,
Office of the Governor (November 23, 2020) available at <https://www.governor.pa.gov/wp-content/uploads/2020/11/20201123-TWW-mitigation-enforcement-immunity-order.pdf>. [↑](#footnote-ref-6)
7. *Amended Order for Mitigation, Enforcement, and Immunity Protections, Commonwealth of Pennsylvania*, Office of the Governor (March 15, 2021) available at <https://www.governor.pa.gov/wp-content/uploads/2021/04/2021.4.1-TWW-v2-amended-mitigation-enforcement-immunity-order.pdf>. [↑](#footnote-ref-7)
8. *Order Amending the Order for Mitigation and Enforcement*, Commonwealth of Pennsylvania, Department of Health (April 1, 2021) available at <https://www.governor.pa.gov/wp-content/uploads/2021/04/2021.4.1-Amendment-to-Order-of-the-Secretary-Mitigation-and-Enforcement.pdf>. [↑](#footnote-ref-8)
9. *Effective April 4, More Options for Restaurants and Other Businesses, Mass Gathering Maximums Increase*, Commonwealth of Pennsylvania, Office of the Governor (March 15, 2021) available at <https://www.governor.pa.gov/newsroom/gov-wolf-effective-april-4-more-options-for-restaurants-and-other-businesses-mass-gathering-maximums-increase/>. [↑](#footnote-ref-9)
10. *Order for Mitigation, Enforcement, and Immunity Protections*, Commonwealth of Pennsylvania, Office of the Governor (November 23, 2020) available at <https://www.governor.pa.gov/wp-content/uploads/2020/11/20201123-TWW-mitigation-enforcement-immunity-order.pdf>. [↑](#footnote-ref-10)