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June 21, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
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:

On behalf of Energy Harbor LLC, enclosed for electronic filing please find Comments to the Tentative Order entered on May 6, 2021 in the above-captioned matter. 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 Energy Harbor LLC’s Comments 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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Karen O. Moury, Esq.

Dated: June 21, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Supplier Door-to-Door and In- :
Person Marketing Moratorium, : Docket No. M-2020-3019254
Proclamation of Disaster Emergency :
– COVID 19 :

**COMMENTS OF ENERGY HARBOR LLC
TO TENTATIVE ORDER ENTERED MAY 6, 2021**

I. INTRODUCTION

Energy Harbor LLC (“Energy Harbor”) is a licensed electric generation supplier and natural gas supplier (“energy supplier”) authorized by the Pennsylvania Public Utility Commission (“Commission”) to provide electric and natural gas supply services to all customer classes throughout Pennsylvania.¹ As a competitive energy supplier, Energy Harbor relies on the in-person sales and marketing channel, among other methods, to present offers to prospective retail customers. Compared to other channels, in-person interactions, including door-to-door sales and marketing activities, enable Energy Harbor to more effectively communicate to consumers how electric and natural gas choice programs work and how Energy Harbor can provide the energy products they want.

The unavailability of the door-to-door channel and the imposition of restrictions on other in-person sales for more than one year due to the Commission’s moratorium issued on March 16, 2020 has adversely affected Energy Harbor’s competitive energy business. On May 4, 2021, Governor Tom Wolf’s administration and the bipartisan COVID-19 Vaccine Joint Task Force (“Task Force”) announced the lifting of all mitigation measures, except for masking, effective May 31, 2021. Since then, Pennsylvania has made more strides to resume a sense of normalcy. In view of these actions, Energy Harbor respectfully requests

¹ Docket Nos. A-110078 (electric) and A-2020-3019389 (natural gas).

that the Commission eliminate the moratorium and allow competitive energy suppliers to resume in-person operations consistent with the administration’s directives and the Commission’s regulations.

II. DISCUSSION

A. Commonwealth’s Actions

On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency (“Disaster Proclamation”) stemming from the COVID-19 pandemic.² Following issuance of the Disaster Proclamation, the Wolf administration issued a series of other directives prohibiting or limiting the operation of businesses in Pennsylvania.³ Thereafter, Governor Wolf announced a phased approach to reopening businesses and easing social restrictions.⁴ The Governor and the Secretary of Health, throughout 2020 and into 2021, continued to expand opportunities for businesses and residents of Pennsylvania to engage in in-person interactions.⁵

In coordination with the bipartisan Task Force, Governor Wolf announced on May 4, 2021 that mitigation orders, except masking, would be lifted on Memorial Day, May 31, 2021 at 12:01 a.m. In accordance with the latest guidance from the Centers for Disease Control and Prevention, the announcement also noted that fully vaccinated Pennsylvanians are not required to wear a mask during certain activities. Members of the Task Force highlighted the roll-back of the restrictions that had been placed on businesses

² *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>.

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>.

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/>.

⁵ *See, e.g., 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>; *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/>.

at the outset of the pandemic, observing that this measure would assist businesses in getting back to prior sales levels and help grow the economy.⁶

On May 20, 2021, Governor Wolf renewed the 90-day Disaster Proclamation for the fifth time. In doing so, he recognized that COVID-19 vaccinations have increased dramatically in recent weeks and that the Commonwealth is making significant progress to stop the spread of COVID-19. The Governor also referenced the lifting of COVID-19 mitigation measures on Memorial Day. However, Governor Wolf explained that renewal of the Disaster Proclamation would ensure that Pennsylvania does not risk the loss of valuable resources, such as federal disaster recovery dollars, which will help the Commonwealth recover from the pandemic.⁷

On June 8, 2021, the House of Representatives passed House Resolution 106 to end the Disaster Proclamation, which the Senate approved on June 10, 2021.⁸ With the Department of State's certification of the May 18, 2021 primary election results, the Disaster Proclamation expired on June 15, 2021.⁹ Further, the mask mandate is set to be lifted no later than June 28, 2021.¹⁰

B. Commission's Actions

By Emergency Order signed by Chairman Gladys Brown Dutrieuille on March 16, 2020, the Commission imposed a moratorium on in-person sales and marketing activities by competitive energy suppliers. In issuing the Emergency Order, the Commission explained that the moratorium was consistent with the Governor's Disaster Proclamation. The Emergency Order reasoned that “[u]nder the unique circumstances presented by the COVID-19 pandemic, establishing a moratorium on in person sales and

⁶ <https://www.media.pa.gov/pages/health-details.aspx?newsid=1437>

⁷ <https://www.governor.pa.gov/newsroom/gov-wolf-signs-renewal-of-covid-19-disaster-declaration-to-aid-in-recovery/>

⁸ https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?syear=2021&sind=0&body=H&type=R&bn=106

⁹ <https://www.wtae.com/article/pennsylvania-covid-19-emergency-declaration-ends/36732400#>

¹⁰ <https://www.wgal.com/article/pennsylvania-department-of-health-says-mask-mandate-will-be-lifted-by-june-28/36557445#>

marketing of competitive energy supply services” would help minimize non-essential personal social contact, consistent with the Governor’s Disaster Proclamation.¹¹ The Commission ratified the Emergency Order at its March 26, 2020 Public Meeting.

In response to the phased reopening of the Commonwealth for business, energy suppliers requested that the Commission modify the Emergency Order to permit the resumption of various types of in-person sales and marketing activities. Consistent with the Governor’s directives gradually reopening Pennsylvania, the Commission modified the Emergency Order on three occasions to permit competitive energy suppliers, subject to specified conditions, to conduct in-person sales and marketing activities at retail establishments that were open for business,¹² at outdoor public events¹³ and at the business locations of commercial and industrial customers.¹⁴ However, the Commission has continued to ban door-to-door sales and marketing activities of suppliers,¹⁵ which by definition are aimed at residential customers.¹⁶

The Commission issued a Tentative Order on May 6, 2021 seeking comments on various topics related to the existing moratorium and restrictions on in-person sales and marketing activities by competitive energy suppliers. The topics upon which the Tentative Order requests comments are: (1) a timeline for further modifying or lifting the March 16, 2020 Emergency Order; (2) the metrics that the Commission should use to determine whether to modify or lift the marketing moratorium; (3) conditions

¹¹ March 16, 2020 Emergency Order at 1.

¹² *Supplier Door-to-Door and In-Person Marketing Moratorium, Proclamation of Disaster Emergency – COVID 19*, Docket No. M-2020-3019254 (Order entered June 4, 2020).

¹³ *Supplier Door-to-Door and In-Person Marketing Moratorium, Proclamation of Disaster Emergency – COVID 19*, Docket No. M-2020-3019254 (Order entered December 3, 2020).

¹⁴ *Supplier Door-to-Door and In-Person Marketing Moratorium, Proclamation of Disaster Emergency – COVID 19*, Docket No. M-2020-3019254 (Order entered May 6, 2021).

¹⁵ *Supplier Door-to-Door and In-Person Marketing Moratorium, Proclamation of Disaster Emergency – COVID 19*, Docket No. M-2020-3019254 (Orders entered July 16, 2020 and August 27, 2020).

¹⁶ 52 Pa. Code § 111.2 (definitions) (“Door-to-door sales-A solicitation or sales method whereby an agent proceeds randomly or selectively from residence to residence.”).

that the Commission should place on suppliers when modifying or lifting the Emergency Order; (4) measures the Commission should consider to ensure public health and safety, the duration of such measures and the metrics for later eliminating them; (5) the need for suppliers to attend mandatory training on the Commission's sales and marketing regulations; (6) the need for any additional reporting requirements beyond those in the Commission's regulations; (7) the need for any additional monitoring, oversight, or reporting requirements for supplier contractors, vendors, and agents; and (8) any additional action that may be necessary with regard to the Commission's June 4, 2020 and December 3, 2020 Orders that previously modified the Emergency Order.

C. Energy Harbor's Comments

1. Summary

Energy Harbor appreciates the opportunity to offer its views on the topics identified by the Tentative Order. As a competitive energy supplier, Energy Harbor relies on in-person sales and marketing activities as an important channel for presenting energy offers to prospective customers. In Energy Harbor's experience, in-person sales and marketing activities provide an effective opportunity to explain to consumers how energy choice programs work and to describe the energy products that it is offering. This channel allows for a simultaneous review of documents by consumers and the ability of consumers to ask specific questions about the terms and conditions of the offer. The loss of the door-to-door sales and marketing channel for what has already been fifteen months, combined with restrictions on the ability to conduct other in-person sales over the past year, has adversely affected Energy Harbor's business. As a result, Energy Harbor is eager to once again have full access to the panoply of sales and marketing channels that competitive energy suppliers rely upon to operate their businesses and sell energy to retail consumers.

While the comments address each of these issues below, Energy Harbor's overarching view is that with the Commonwealth's lifting of all mitigation measures, except masking, on May 31, 2021, the Emergency Order should be rescinded in its entirety as soon as possible. This approach is further supported

by Governor Wolf's recognition of the Commonwealth's significant progress in fighting the spread of COVID-19 and the limited purpose of his most recent renewal of the Disaster Proclamation of retaining access to valuable resources that will assist Pennsylvania's recovery. Notably, the Commonwealth's officials in charge of public health and safety, being the Governor and Secretary of Health, joined by the bipartisan Task Force, have determined that no additional measures are necessary at this time. In addition, the General Assembly has ended the Disaster Proclamation. As no justification exists for competitive energy suppliers to be subjected to restrictions on in-person sales and marketing activities that the Commonwealth is not imposing on other businesses, the moratorium should be lifted without any further delay.

2. Timeline for Lifting or Modifying Moratorium

The Tentative Order seeks comments on a timeline for lifting the moratorium on in-person sales and marketing activities by suppliers, which was imposed by the Emergency Order issued on March 16, 2020. Given that the original purpose of the moratorium no longer exists, Energy Harbor sees no reason to consider an appropriate timeline for lifting the moratorium. The time is now. In reality, the time has already passed since it should have occurred in conjunction with the Commonwealth's lifting of mitigation measures on Memorial Day. To that end, Energy Harbor urges the Commission to rescind the Emergency Order by Secretarial Letter as soon as possible or issue an Order via notational voting rather than waiting until a public meeting after expiration of the comment period. With the Disaster Proclamation ending on June 15, 2021, the Commission should immediately lift the moratorium.

Clearly, Pennsylvania has taken key steps forward in returning to some sense of normalcy. As evidenced by the elimination of restrictions that have interfered with the ability of businesses to operate for over a year, the circumstances prompting issuance of the Commission's Emergency Order are no longer present. Since the issuance of the Emergency Order, the Commission has modified the moratorium to

reflect changes in the directives issued by the Governor and the Secretary of Health.¹⁷ Likewise, consistent with the actions taken by the Wolf administration and the bipartisan Task Force in May 2021, and the General Assembly in June 2021, the Commission should allow energy suppliers to engage in in-person sales and marketing activities without restriction, provided they comply with the Commonwealth's rules, such as masking, and the Commission's regulations applicable to such activities.

3. Metrics for Determining Whether to Modify or Lift the Moratorium

In the Tentative Order, the Commission seeks comments on the metrics that should be used to determine whether to modify or lift the marketing moratorium. The only metric that Energy Harbor views as being relevant is whether the Commonwealth's public health officials, including the Governor, the Secretary of Health and the bipartisan Task Force, have imposed any restrictions on in-person sales and marketing activities of businesses operating in Pennsylvania. As the Commonwealth currently has no such limitations, other than the wearing of masks, this metric demonstrates that the Commission should immediately lift the moratorium in its entirety.

4. Conditions on Suppliers When Modifying or Lifting Moratorium

The Commission requests input on conditions that it should place on suppliers when modifying or lifting the moratorium. The only conditions that the Commission should impose on suppliers are to comply with the directives of the Commonwealth's public health officials as they pertain to the COVID-19 pandemic and to adhere to the Commission's regulations that are applicable to in-person sales, including door-to-door sales and marketing activities. As no other businesses operating in Pennsylvania are subject to additional conditions, no reason exists to impose further rules on competitive energy suppliers.

¹⁷ *Supplier Door-to-Door and In-Person Marketing Moratorium, Proclamation of Disaster Emergency – COVID 19*, Docket No. M-2020-3019254 (Orders entered June 4, 2020, December 3, 2020 and May 6, 2021).

5. Measures to Ensure Public Health and Safety

The Tentative Order seeks comments on measures that the Commission should consider to ensure public health and safety, the duration of such measures and the metrics for later eliminating them. Energy Harbor again notes that the Commonwealth's public health officials have already determined that mask-wearing is the only measure that is needed to ensure public health and safety, and is about to expire. Unless or until that guidance changes, competitive energy suppliers should not be subjected to any additional requirements.

6. Mandatory Training for Suppliers

Noting that by the time the marketing moratorium is lifted, well over a year will have elapsed since suppliers last engaged in certain types of sales and marketing activities, the Commission expressed concern that suppliers will rely on new and inexperienced vendors and agents. For that reason, the Tentative Order invites comments on the need for suppliers to attend Commission training to refresh their understanding of the Commission's marketing regulations before resuming these activities.

Energy Harbor does not believe that mandatory refresher training for suppliers is necessary. As businesses licensed to sell electricity to retail customers in Pennsylvania, energy suppliers have the resources they need to review the regulations that have been in place for a decade and to ensure that their employees, vendors and agents are aware of the applicable requirements. While Energy Harbor would welcome the opportunity to participate in any refresher training offered by the Commission, participation should not be a prerequisite to resuming in-person sales and marketing activities. If the Commission decides to require training, it should not make it a condition that delays the resumption of such activities, but rather should direct suppliers to comply with the requirement within a certain number of days after resuming in-person sales and marketing activities. It is important to allow competitive energy suppliers to fully get their businesses back in operation without delay.

7. Additional Reporting Requirements

In seeking comments, the Tentative Order asks whether any additional reporting requirements beyond those in the Commission’s regulations should be established. The existing regulations require energy suppliers to provide notifications to Commission staff and electric distribution companies in advance of commencing a door-to-door sales and marketing campaign.¹⁸

No additional reporting requirements are appropriate, given that industry standards must be established through regulations.¹⁹ Moreover, no justification exists to mandate that energy suppliers comply with reporting requirements that have not been suggested or imposed on other in-person activities engaged in by entities regulated by the Commission, such as taxicabs, transportation network companies and fixed utilities entering residences for a variety of reasons, including service calls and meter readings.

8. Additional Monitoring, Oversight or Reporting Requirements for Vendors

The Tentative Order seeks input on whether the Commission should impose any additional monitoring, oversight, or reporting requirements on supplier contractors, vendors and agents. Again, as industry standards must be established through the regulatory review process, the Commission should refrain from imposing any further requirements on suppliers with respect to their contractors, vendors and agents. Further, as suppliers would merely be resuming activities that they have been engaged in for many years, the only conditions to which they should be required to adhere are the Commission’s regulations governing in-person sales and marketing activities and applicable directives issued by the Governor and Secretary of Health.

¹⁸ 52 Pa. Code § 111.14.

¹⁹ See *Pennsylvania Human Relations Com. v. Norristown Area School Dist.*, 473 Pa. 334 (1977), 1977 Pa. LEXIS 721.

9. Any Additional Action

The Tentative Order requests comments on any additional action that may be necessary with regard to the Commission's June 4, 2020 and December 3, 2020 Orders modifying the Emergency Order. On June 4, 2020, the Commission revised the Emergency Order so that suppliers could engage in in-person sales and marketing activities at retail establishments that had reopened as a result of restrictions lifted by the Governor.²⁰ On December 3, 2020, the Commission permitted in-person sales and marketing activities at public outdoor events, again in accordance with orders and directives issued by the Governor and the Secretary of Health.²¹

In approving these modifications to the Emergency Order, the Commission required suppliers to comply with all relevant orders and guidance of the Governor and the Secretary of Health and to adhere to applicable Commission regulations. The Commission further directed suppliers to report their intent to resume in-person sales and marketing activities at retail businesses and public outdoor events and provide other specific details to Commission staff before commencing such activities.²² Energy Harbor has no concerns about complying with directives issued by the Governor and the Secretary of Health and applicable Commission regulations. However, regarding the notification requirements applicable to the resumption of sales and marketing activities in retail establishments and at outdoor events set forth by the June 4, 2020 and December 3, 2020 Orders, Energy Harbor suggests that eliminating them would be consistent with the Commonwealth's lifting of mitigation measures and getting businesses back on course.

²⁰ *Supplier Door-to-Door and In-Person Marketing Moratorium, Proclamation of Disaster Emergency – COVID 19*, Docket No. M-2020-3019254 (Order entered June 4, 2020).

²¹ *Supplier Door-to-Door and In-Person Marketing Moratorium, Proclamation of Disaster Emergency – COVID 19*, Docket No. M-2020-3019254 (Order entered December 3, 2020).

²² June 4, 2020 Order at Ordering Paragraph No. 3; December 3, 2020 Order at Ordering Paragraph No. 3. For sales and marketing activities at retail establishments, suppliers are required by the June 4, 2020 Order to provide the name and location of the retail business, including county. The December 3, 2020 Order requires suppliers to furnish the same, date, time and location of the outdoor public event.

III. CONCLUSION

For the reasons explained in these Comments, Energy Harbor LLC respectfully requests that the Commission rescind the moratorium in its entirety, forego the imposition of any new requirements or conditions, and eliminate the previously imposed reporting requirements established during modifications to the Emergency Order. In this manner, the Commission would enable competitive energy suppliers to operate their businesses in the same way that other businesses in Pennsylvania do.

Respectfully submitted,

/s/ Karen O. Moury

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Date: June 21, 2021

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