


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_oa

 /pennoca

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

June 21, 2021

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 Office of Consumer Advocate's Comments in the above-referenced proceeding. The OCA has attached the verification of Darryl A. Lawrence, Senior Assistant Consumer Advocate, pursuant to the requirements of 52 Pa. Code § 1.36.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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

Enclosures:

cc: Daniel Mumford, Office of Competitive Market Oversight (**email only:** dmumford@pa.gov)
Christian McDewell, Office of Competitive Market Oversight (**email only:** cmcdewell@pa.gov)
Hayley E. Dunn, Law Bureau (**email only:** haydunn@pa.gov)
Office of Special Assistants (**email only:** ra-OSA@pa.gov)
Certificate of Service

*311556

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 Office of Consumer Advocate's Comments, 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 21st day of June 2021.

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

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

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAAppleby@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: June 21, 2021
*311555

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Supplier Door-to-Door and In-Person :
Marketing Moratorium, Proclamation :
of Disaster Emergency – COVID-19 : M-2020-3019254
:

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

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

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

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

Counsel for:
Christine Maloni Hoover
Interim 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
Dated: June 21, 2021

Table of Contents

I. INTRODUCTION.....	1
II. COMMENTS.....	7
A. The OCA Strongly Recommends That the Commission Continue to Halt the Practice of Door-to-Door Sales In Pennsylvania Until Long-Standing Concerns With the Sales Method Are Addressed and Alleviated.....	7
B. If Suppliers Are Permitted to Conduct Door-to-Door Marketing Once Again, the OCA Recommends That the Commission Adopt Strict Safety Measures to Protect Customers At Their Homes.....	10
1. The Prohibition on Door-to-Door Should Not Be Lifted In Counties With Less Than 70% Overall Vaccination Rate Amount Eligible Adults.....	10
2. The OCA’s Recommendations In Regard to Supplier Requirements and Safety Measures.....	12
i. No Third-Party Sales Agents.....	12
ii. On-Site Supplier Supervision/Auditing.....	13
iii. Training.....	13
iv. Safety Requirements For Door-to-Door Interactions.....	15
v. Summary.....	16
III. CONCLUSION	18

I. INTRODUCTION

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 the COVID-19 Pandemic. 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...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 June 3, 2020, Governor Wolf issued an Amendment to Proclamation of Emergency Disaster, which extended the disaster declaration for 90 days to September 1, 2020. In total, the Proclamation of Emergency Disaster was renewed 5 times throughout the COVID-19 Pandemic and, most recently, the disaster declaration was extended for an additional 90 days on May 20, 2021. On May 26, 2021, the Pennsylvania General Assembly passed a Concurrent Resolution terminating the March 6, 2020, proclamation of disaster emergency, as amended and renewed, issued under the Governor.³

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

² Id.

³ Pa. Gen. Assemb. H.R. 106, Session of 2021 (2021). <https://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2021&sessInd=0&billBody=H&billTyp=R&billNbr=0106&pn=1753>.

On March 16, 2020, following the issuance of the Emergency Proclamation, an Emergency Order⁴ was issued by the Chairman of 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 during the pendency of the Governor's Proclamation of Disaster Emergency, or unless otherwise directed by the Commission.⁵ The moratorium was initiated "to help minimize non-essential personal social contact" during the COVID-19 emergency to protect the health and safety of customers and supplier employees by minimizing social contact to reduce the spread of COVID-19.⁶ 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 May 21, 2020, NRG filed its first Petition for Partial Rescission of the Commission's March 16, 2020 Emergency Order requesting 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. The OCA filed an Answer to NRG's Petition, on May 27, 2020, requesting that the Commission not grant NRG's Petition before further information on the request is provided and conditions are placed into effect to monitor any resumed in-person sales and marketing activities within retail establishments. On June 4, 2020, the Commission issued an Order which partially rescinded the Commission's March 16, 2020 Emergency Order 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

⁴ 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).

⁵ Id.

⁶ See PA Dept. of Health – <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Coronavirus.aspx>,

result of orders and directives issued by the Governor and/or Secretary of Health in counties in the green phase, or which are otherwise permitted to be open under future directives.⁷

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. On the same day, Interstate Gas Supply, Inc. d/b/a IGS Energy's (IGS) also filed a Petition for Partial Rescission to the Commission Emergency Order. Both petitions sought relief from the Emergency Order's prohibition on door-to-door, public event, and in-person sales and marketing activities. On June 25, 2020, the OCA filed an Answer to both StateWise's and IGS's petitions stating that the deadly COVID-19 pandemic was still spreading and causing mass hospitalizations and death in Pennsylvania and it remained unsafe for the sales agents of suppliers to approach customers at their own homes to market electricity or natural gas. By Order entered July 16, 2020, the Commission denied both StateWise's and IGS's petitions for failure to offer sufficient justification to rescind the portions of the March 16, 2020 Emergency Order, as modified by the June 4, 2020 Order.⁸ Specifically, the Commission found that "[t]he portions of the Emergency Order that remain in place continue to be necessary to ensure the protection of customers and supplier employees by minimizing social contact in response to the COVID-19 pandemic."⁹

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 or March 16, 2020 Emergency Order.

⁷ See Re: Supplier Door-to-Door and In-Person Marketing Moratorium Proclamation of Disaster Emergency-COVID-19, Docket No. M-2020-3019254, Marketing Order (June 4, 2020 Marketing Order).

⁸ See Re: Supplier Door-to-Door and In-Person Marketing Moratorium Proclamation of Disaster Emergency-COVID-19, Docket No. M-2020-3019254, Marketing Order (July 16, 2020 Marketing Order).

⁹ Id. at 19.

Specifically, Direct Energy sought relief from the portions of the June 4, 2020 Marketing Order and the Emergency Order that prohibit in-person sales and marketing activities as it pertains to activities with commercial, industrial, and governmental customers that opened their businesses as result of the Governor’s directives. On July 23, 2020, the OCA filed an Answer to Direct Energy’s Petition arguing that recent changes in circumstances did not warrant lifting the moratorium on in-person sales and marketing activities as it pertained to activities at commercial, industrial, and governmental businesses and, particularly, to door-to-door or by-appointment sales at these businesses. By Order entered August 27, 2020, the Commission denied Direct Energy’s Petition finding that Direct Energy did not raise compelling reasons to alter the Commission’s June 4, 2020 Order or March 16, 2020 Emergency Order.¹⁰

On October 22, 2020, NRG filed a second Petition for Partial Rescission requesting 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. The OCA filed an Answer to NRG’s Petition, on November 2, 2020, stating that the OCA did not oppose NRG’s request so long as the suppliers adhered to any subsequent directives issued by the Governor and the Secretary of Health, the Secretary of Health’s business safety order and any future modifications thereto, and the safety protocols established by outdoor venues. The OCA also argued that, if the Governor or the Secretary of Health re-impose restrictions to limit outdoor gatherings, the suppliers should be required to immediately cease in-person sales and marketing activities at outdoor public events, notify the Commission, and seek further guidance regarding the status of activities outdoor public events. On November 23, 2020, the Governor issued an

¹⁰ See Re: Supplier Door-to-Door and In-Person Marketing Moratorium Proclamation of Disaster Emergency-COVID-19, Docket No. M-2020-3019254, Marketing Order (August 27, 2020 Marketing Order).

Order for Mitigation, Enforcement, and Immunity Protections,¹¹ which, among other things, modified occupancy limits for outdoor gathering venues from 250 to 2,500 people under certain circumstances. By Order entered December 3, 2020, the Commission granted NRG's Petition and directed suppliers to report their intent to resume in-person sales and marketing activities at outdoor public events to OCMO and BCS.¹²

On March 29, 2021, the Retail Energy Supply Association (RESA) filed a Petition for Partial Rescission of the Commission's March 16, 2020 Emergency Order requesting that the Commission rescind the portion of the Emergency Order that prohibits in-person sales and marketing activities with commercial and industrial customers. The Petition filed by RESA is currently pending at the Commission.

On May 6, 2021, the Commission issued a Tentative Order seeking comments from various stakeholders on the terms to modify its March 16, 2020 Emergency Order with respect to door-to-door and in-person marketing by retail gas and electric suppliers to residential customers.¹³ The Commission's Tentative Order was published in the Pennsylvania Bulletin on May 22, 2021. Specifically, the Commission requested the stakeholders' input on (1) which metrics should be used by the Commission to determine whether to modify or lift the marketing moratorium; (2) any conditions to which the Commission should subject suppliers when the Commission modifies or lifts the Emergency Order; (3) what measures should be taken to ensure public health and safety,

¹¹ 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>.

¹² See Re: Supplier Door-to-Door and In-Person Marketing Moratorium Proclamation of Disaster Emergency-COVID-19, Docket No. M-2020-3019254, Marketing Order (December 3, 2020) (December 3, 2020 Marketing Order).

¹³ See Re: Supplier Door-to-Door and In-Person Marketing Moratorium Proclamation of Disaster Emergency-COVID-19, Docket No. M-2020-3019254, Tentative Order (May 6, 2021) (Tentative Order).

the duration of such measures, and the metrics for later eliminating such measures; (4) the need for suppliers to attend Commission training to refresh their understanding of the Commission's marketing regulations before resuming these sales and marketing activities; (5) the need for any additional reporting, monitoring, oversight for suppliers and/or their contractors, vendors, and agents; and (6) any additional action that may be necessary with regard to the Commission's June 4, 2020 Order lifting 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, and the Commission's December 3, 2020 Order lifting 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.¹⁴

The Office of Consumer Advocate (OCA) appreciates the opportunity to provide comments on this important issue and appreciates the efforts taken by the Commission to protect the health and safety of Pennsylvania consumers. The OCA recognizes that the primary purpose of the Tentative Order is to solicit comments on the conditions associated with resuming door-to-door sales and marketing to residential customers, an activity that is currently prohibited under the prior Emergency Order. The OCA welcomes what appears to be a careful concern by the Commission to not merely lift its moratorium on this sales channel, but to raise important issues that are relevant to the ongoing COVID-19 pandemic, as well as the potential for non-compliance or abuse due to the lapse of time since such marketing was routinely conducted by retail energy suppliers.

¹⁴ Tentative Order at 8-9.

As explained in greater detail below, the OCA's primary position is a request that the Commission continue the prohibition of residential door-to-door sales until longstanding concerns about this type of marketing are addressed and alleviated. If, however, the Commission allows door-to-door sales to resume in Pennsylvania, the OCA recommends that this type of sale only be permitted in counties with at least 70% of its adult population having been fully vaccinated. In addition, the OCA makes safety recommendations for: unvaccinated supplier agents to wear a mask, that all supplier agents remain 6ft. to 10ft. away from the customer's door throughout the interaction, and that no cards or paperwork be exchanged. Additionally, the OCA recommends that sales agents enhance the visibility of their identification badges and read-out a statement that identifies the sales agent and his/her purpose for knocking and asks the customer if they are comfortable with them remaining on their property to discuss the supplier's products and services. The OCA also expresses its view that, given the extra layer of rules and safety precautions needed as a result of the on-going pandemic, the suppliers should have greater control and supervision over the agents conducting these sales on their behalf. As a result, the OCA makes recommendations as to eligible sales agents, required training, and the manner in which sales agents are to be supervised and monitored. Overall, in taking action to consider lifting door-to-door marketing to residential customers, the OCA urges the Commission to take the strictest possible approaches for the reasons provided throughout these Comments.

II. COMMENTS

- A. The OCA Strongly Recommends That the Commission Continue to Halt the Practice of Door-to-Door Sales In Pennsylvania Until Long-Standing Concerns With the Sales Method Are Addressed and Alleviated.

The OCA will address in these Comments the issues surrounding a continuance of door-to-door marketing and propose conditions that are reasonable and that reflect the Commission's

explicit concerns. However, in responding to this Tentative Order the OCA respectfully suggests that it is time to consider permanently halting door-to-door sales to residential customers or imposing much stricter substantive restrictions on this activity. Our concerns reflect a long-standing series of abuses by a wide variety of marketers in Pennsylvania and elsewhere.¹⁵ The OCA submits that there have been too many occurrences of non-compliance while suppliers' agents conducted door-to-door sales before the pandemic to have any confidence that suppliers' agents will comply with further requirements and restrictions after the pandemic.

Prior to the COVID-19 pandemic and the Commission Marketing Moratorium, on November 6, 2019, the Public Utility Commission's Office of Competitive Market Oversight (OCMO) announced a review of the Residential Supplier Marketing Regulations at 52 Pa. Code Chapter 111 governing sales and marketing activities of Electric Generation Suppliers (EGSs) and Natural Gas Suppliers (NGSs) and requested informal comments on residential supplier marketing and possible revisions to the regulations. OCMO identified the following regulations as areas where OCMO was especially interested in obtaining advice and suggestions: telemarketing at 52 Pa. Code Section 111.10, sales verification procedures at 52 Pa. Code Section 111.7, quality control and oversight of marketing vendors at 52 Pa. Code Section 111.5, marketing of renewable energy products at 52 Pa. Code Section 54.6 and 52 Pa. Code Section 75.68, and rules for direct marketing and in-person marketing. The OCA submitted extensive Informal Comments on February 21, 2020. To our knowledge, no further action has occurred in that proceeding.

The OCA's Informal Comments documented the widespread and egregious abuses associated with the door-to-door sale and marketing of retail energy products. Experience in

¹⁵ Re: Guidance on Chapter 111 Residential Supplier Market, Docket No. L-2010-2208332 (Issued April 3, 2019) (Secretarial Letter reminding EGSs and NGSs of the requirements of Chapter 111 and warned them of the fines and penalties of non-compliance).

Pennsylvania and other states suggests that this marketing channel is particularly open to abuse resulting in harm to consumers. In addition, as the OCA, AARP and Dominion Retail pointed out, in 2010 when the Commission first considered allowing door-to-door marketing, that a door-to-door sales contact, where the customer does not have ready access to the necessary information to make an informed choice, and may feel pressured to make a quick decision in light of the sales agent standing at the door or home, does not result in the customer making an optimal choice about essential utility service.¹⁶ It is also difficult to enforce regulations related to door-to-door sales as the transactions happen at a customer's home where it may be difficult to respond in real time to infractions and the transactions are not recorded. The verification process has also not been sufficiently robust to detect or address unfair sales practices. These concerns, and others, have led the OCA to question the continued viability of the use of door-to-door marketing. In the absence of a prohibition on the use of this marketing channel, the OCA also proposed many changes in its February 21, 2020 Informal Comments to the Commission's regulations to better protect customers.

Given that the OCA raised many consumer protection concerns and offered various recommendations to enhance Chapter 111 and help alleviate existing shortcomings in its Informal Comments, and the OCMO's review of the Commission's regulations under Chapter 111 has not been completed, the OCA urges that the Commission continue to halt door-to-door sales until Chapter 111 is revised.

¹⁶ See Interim Guidelines on Marketing Sales Practices for Electric Generation and Natural Gas Suppliers, Docket No. M-2010-2185981, *Comments of the Office of Consumer Advocate, AARP, and Dominion Retail* (Aug. 16, 2010).

B. If Suppliers Are Permitted to Conduct Door-to-Door Marketing Once Again, the OCA Recommends That the Commission Adopt Strict Safety Measures to Protect Customers At Their Homes.

1. The Prohibition on Door-to-Door Should Not Be Lifted In Counties With Less Than 70% Overall Vaccination Rate Amount Eligible Adults.

In its Tentative Order, the Commission requested input from stakeholders as to what metrics should be in place before suppliers may resume in-person and door-to-door marketing.¹⁷ Given that Pennsylvania is still in the midst of a deadly pandemic, there is no guarantee that a customer or sales agent will not contract the virus through an unwanted, unsolicited door-to-door sales interaction. For instance, when suppliers conduct door-to-door sales during a global pandemic, the interaction at the customer's door carries health risks and raises important considerations about customer privacy. How will the customer be able to determine the safety of such interactions without knowing the vaccination status of the sales agent? What if the person answering the door has contracted the virus or has not been vaccinated, thus posing a risk to the customer and sales agent? How will suppliers determine the health and vaccination status of their sales agents? What about the cleanliness of the iPads or other devices used by the sales agent and offered to the customer for an electronic signature? Even with the vaccination rate increasing in Pennsylvania, there will remain customers and sales agents who may not receive the vaccine or remain vulnerable after vaccination and the Commission should consider the safety of these individuals if it decides to permit door-to-door sales to once again resume.

As of June 16, 2021, 61.1% of Pennsylvanians have received their first dose of vaccination and 57.8% of Pennsylvanian 18 and older have been fully vaccinated.¹⁸ The recent Pennsylvania

¹⁷ Tentative Order at 8-9.

¹⁸ Press Release: Over 11.2 Million Vaccinations To Date, 61.1% Of Entire Population Received First Dose, 57.8% Of Pennsylvanians Age 18 And Older Fully Vaccinated, (June 16, 2021) <https://www.media.pa.gov/pages/health-details.aspx?newsid=1494>.

Department of Health announcement keeps in place the requirement for Pennsylvanians to wear masks in compliance with state and CDC guidelines until June 28, 2021 or 70% of Pennsylvania adults receive their second dose of vaccination, whichever comes first.¹⁹ It also provides residents an incentive to get a COVID-19 vaccination: masking will be required until 70% of the state's 18-and-older population is vaccinated.

In line with the state's reasonable link between the vaccination rate of its population and the reduction in necessary safety precautions, the OCA recommends that the prohibition on door-to-door sales to residential customers should not be lifted in any Pennsylvanian county until the county has achieved a 70% adult vaccination rate. The OCA submits that this information on county vaccination rates is routinely published by the Pennsylvania Department of Health and provides some reasonable level of protection of the residents as well as the sales agents.²⁰ As suppliers are currently required, under 52 Pa. Code Section 111.14, to notify the Commission's Bureau of Consumer Services (BCS) of the geographical area where the supplier intends to conduct door-to-door sales campaign that day, this safeguard should be easy to administer as the supplier can check and report to BCS that the vaccination rate of the appropriate county is above 70% before going door-to-door in that county.

As stated above, allowing suppliers to resume door-to-door sales in counties with at least a 70% vaccination rate reduces the chance that a sales agent will encounter an unvaccinated residential customer during an unwanted, unsolicited door-to-door sale. While the OCA

¹⁹ Press Release: Department Of Health: Adult Vaccinations On Track; Mask Order To Be Lifted By June 28, (May 27, 2021) <https://www.media.pa.gov/pages/health-details.aspx?newsid=1469>.

²⁰ Pennsylvania Department of Health, Vaccine Dashboard, <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx> (Note: Philadelphia County's vaccination rate is not found here due to separate reporting requirements. Philadelphia County's vaccination rate can be found at: City of Philadelphia, PDPH Vaccination Dashboard, <https://www.phila.gov/programs/coronavirus-disease-2019-covid-19/data/vaccine/>).

acknowledges that there may still be interactions between an unvaccinated customer and sales agent in counties with at least a 70% vaccination rate, the OCA views this metric as a reasonable threshold to determine the safest populations in which door-to-door sales may resume in Pennsylvania.

2. The OCA's Recommendations In Regard to Supplier Requirements and Safety Measures.

i. No Third-Party Sales Agents.

The Tentative Order also requested input on conditions to which the Commission should subject suppliers when it modifies or lifts the prohibition on in-person and door-to-door sales and what measures should be taken to ensure public health and safety.²¹ As an initial matter, given the lack of control many suppliers have had over third-party agents conducting door-to-door sales on their behalf in the past—which has led to a longstanding history of repeated abuses and marketing violations—the OCA recommends that the Commission consider prohibiting suppliers from contracting with third-party vendors to send third-party agents door-to-door to conduct these unwanted, unsolicited at-home sales. As explained in more detail in Section (iii.) below, the training of third-party sales agents is often more difficult for suppliers to conduct and track the completion of. This is particularly important now given the extra layer of concern due to the COVID-19 pandemic and the additional safety measures that should be required of sales agents going door-to-door during a global pandemic. The OCA submits that, now, more than ever, suppliers should have the tightest level of control over the individuals it sends to customers' doors. Therefore, the OCA recommends that, if suppliers resume marketing to residential customers door-to-door, the Commission should require that the suppliers send their own employees as sales agents to conduct such sales.

²¹ Tentative Order at 8-9.

ii. On-Site Supplier Supervision/Auditing.

Regardless of whether the Commission adopts the OCA's recommendation that suppliers be limited to sending their own employees to conduct door-to-door sales, the Commission should require that suppliers have their own supervisors making field visits to audit the sales agents during their door-to-door campaigns on the supplier's behalf. Similarly, to improve the supplier's ability to monitor door-to-door marketing interactions, the OCA recommends that the Commission consider requiring all door-to-door sales agents to audio-record, and submit to the supplier to retain in its records, each interaction with a residential customer.²² As stated above, to protect the safety of customers and sales agents during these unsolicited at-home interactions during a pandemic, the interactions should be monitored to the fullest extent and it is the OCA's view that suppliers can better monitor and control their own employees than contracted third-party agents.

iii. Training.

The OCA shares the Commission's recognition and concern that resuming door-to-door marketing in Pennsylvania is likely to occur with untrained sales agents. It is the OCA's experience as a result of its participation in numerous enforcement proceedings that documented abusive sales practices by door-to-door sales agents in Pennsylvania, as well as our review of public orders and evidence in other states, that many retail suppliers do not have a manager or other office in Pennsylvania. Rather, many retail suppliers conduct their business for telemarketing and door-to-door sales through third-party agents, and those third-party agents (who may or may not be headquartered in Pennsylvania) then engage individuals (who may or may not

²² See PURA Development and Implementation of Marketing Standards and Sales Practices by Electric Suppliers – Revised Standards, Docket No. 14-07-20RE01 (Final Decision entered May 6, 2020) Final Decision at 7 [http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/e0d2ecaa643017d7852585600060b010/\\$FILE/140720RE01-050620.pdf](http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/e0d2ecaa643017d7852585600060b010/$FILE/140720RE01-050620.pdf).

be residents of Pennsylvania) to be trained and sent out to knock on the doors in locations in Pennsylvania where it is potentially profitable to do so.

The OCA submits that there is a serious concern with respect to how the Commission can or should ensure that each retail supplier has properly trained its third-party contractors and determine how those contractors actually train and supervise the conduct of their agents, most of whom are independent contractors whose earnings depend on a successful sale. This lack of transparency and oversight, coupled with the lack of any evidence of what the sales agent told the customer at the door to induce the sale, raises significant concerns that are exacerbated by the health and safety issues recognized by the Commission and the lack of evidence concerning training and oversight.

While the OCA's primary position is a ban on the use of third-party vendors and third-party sales agents to conduct door-to-door sales in Pennsylvania, the OCA recommends the following in response to the Commission's concerns with the use of untrained sales agents if the marketing moratorium is lifted:

1. The Commission, in collaboration with interested stakeholders, should jointly host marketing and sales compliance sessions for all suppliers' training managers. All training managers should attend the compliance sessions before the supplier may resume door-to-door sales and a supplier must notify the Commission if a training manager leaves and/or a new training manager is hired.
2. Additionally, given that there are managers who are not even located in Pennsylvania or directly responsible for the training and supervision of the sales agents that will conduct door-to-door sales in Pennsylvania, the Commission should require each retail supplier to identify and provide evidence of the actual training that has occurred both for its third-party contractors, as well as the contractor's sales agents. Suppliers should be required to provide: evidence of video meetings and content; identification of sales agents present for the training; certification that no agent is allowed to conduct door-to-door sales without a manager's explicit confirmation of the agent's training; date and place where training occurred; and copies of the content of such training materials. Until such evidence is submitted and determined to be sufficient and in compliance, no door-to-door sales should be allowed to occur.

3. The review of the training materials should also include certification of the compliance with the proposed health and safety protocols identified below.

Given the on-going pandemic situation and the need for strict safety measures, suppliers' sales agents must be trained to conduct ethical and safe in-person and door-to-door sales. Therefore, the OCA recommends that, if the ban on door-to-door sale is lifted in Pennsylvania, the Commission require suppliers and their sales agents to submit to the above-described training and provide proof of compliance.

iv. Safety Requirements For Door-to-Door Interactions.

As stated above, door-to-door sales interactions while a deadly virus is in circulation can potentially be dangerous for the customer and sales agent involved. While there is no definitive way to know the vaccination status of the customer answering the door during this unsolicited in-person interaction, the OCA recommends that any unvaccinated sales agents of retail suppliers be required to wear a mask for the duration of the interaction and remain 6ft. to 10ft. away from the customer's door at all possible times. Recognizing that 6ft. to 10ft. may make it difficult for the agent to, pursuant to the Commission's regulations at 52 Pa. Code Sections 111.8(a) and 111.9(d)(2), display a badge or provide a business card or other piece of material to identify themselves and the supplier they are representing and to show the requisite information to the customer, the OCA recommends that sales agents be required to hold or have displayed a large badge or sign with font large enough for any customer to read the information from that distance away.²³ Additionally, the OCA recommends that, to reduce close contact and the exchange of

²³ See 52 Pa. Code Section 111.8(a) ("A supplier shall issue an identification badge to agents who conduct door-to-door activities or appear at public events. The badge must:

- (1) Accurately identify the supplier, its trade name and logo.
- (2) Display the agent's photograph.

materials during the door-to-door sales interaction, the Commission should temporarily waive the requirement of sales agents to hand over a business card or document, pursuant to 52 Pa. Code Section 111.9(d)(2). Rather, the OCA recommends that the sales agent should be required to initiate the door-to-door interaction with the following statement:

“I am an agent of _____, a licensed supplier of electric/gas energy asking if you want to hear a sales presentation on my products and services. You are under no obligation to purchase my products and services to have your current electric and gas service continue. Are you comfortable to talk to me about the potential benefits of my product or service? If so, you may ask me to leave your property at any time.”

Given the unknown vaccination and health status of the customers at the door, the OCA recommends that the sales agent be required to ask the customer if they are comfortable speaking to the sales agent and to leave the property if the response is “no”.

The OCA also recommends that all sales agents should be equipped with contactless-tools for touching the customer’s door and/or door bell and sanitizing supplies to continuously clean any objects such as touch devices or clipboards used by any customers for providing their information and/or signatures during the interaction. All of the safety measures previously listed are aimed at preventing close contact and possible spread of the COVID-19 virus during a door-to-door sales interaction.

v. Summary.

-
- (3) Display the agent’s full name.
 - (4) Be prominently displayed.
 - (5) Display a customer-service phone number for the supplier”)

see also, 52 Pa. Code Section 111.9(d)(2) (“The agent shall offer a business card or other material that lists the agent’s name, identification number and title, and the supplier’s name and contact information, including telephone number. This information does not need to be preprinted on the material. When the information is handwritten, it shall be printed and legible.”)

If the Commission decides to lift the moratorium on door-to door sales to residential customers, the OCA recommends that the suppliers be required to report to BCS that the county in which a supplier intends to conduct door-to-door sales during the COVID-19 pandemic has a vaccination rate above 70% and only use its own employees as door-to-door sales agents. The OCA agrees with the Commission's concerns that sales agents should undergo appropriate training and the OCA recommends suppliers provide the Commission with evidence of training compliance. The OCA also recommends that supplier's sales agents wear masks, keep 6ft. to 10ft. from the customer's door at all times, continuously sanitize and clean any devices or materials handed to customers, display a large badge or sign with the required identifying information in large, legible font, refrain from handing out business cards and other physical materials, and notify the customers that the sales agent will leave the property upon the customer's request.

III CONCLUSION

The Office of Consumer Advocate appreciates the opportunity to provide these Comments. The OCA respectfully requests that the Commission determine that it is not yet time to lift the door-to-door marketing moratorium. If, however, the Commission lifts the marketing moratorium, the OCA respectfully requests that the Commission also implement the metrics, safety measures, reporting requirements, and necessary consumer protections provided in these Comments.

Respectfully submitted,

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

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

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

Counsel for:
Christine Maloni Hoover
Interim 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
Dated: June 21, 2021

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 :

VERIFICATION

I, Darryl A. Lawrence, Senior Assistant Consumer Advocate of the Office of Consumer Advocate, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 (relating to unsworn falsification to authorities).

DATED: June 21, 2021
*311576

Signature: /s/ Darryl A. Lawrence
Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682

Address: Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101