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June 16, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find retail Energy Supply Association's ("RESA")
Comments to the Tentative Order entered May 6, 2020 in the above-referenced matter. Copies
to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell

DMO/lww
Enclosure

cc: Todd Stewart, Esq. w/enc.
Certificate of Service w/enc.
Daniel Mumford w/enc. (dmumford@pa.gov)
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CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA'S Comments upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: June 16, 2021



Deanne M. O'Dell, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION
TO TENTATIVE ORDER ENTERED MAY 6, 2020**

By an Emergency Order entered March 16, 2020, the Pennsylvania Public Utility Commission, acting on the Authority of the Governor’s *Proclamation of Disaster Emergency*¹, prohibited Electric Generation Suppliers (“EGS”) and Natural Gas Suppliers (“NGS”) (collectively, “Suppliers”) from engaging in door-to-door, public event and in-person sales of electricity and natural gas.² The Commission has since modified the Emergency Order to allow for sales and marketing activities at: (1) retail establishments; (2) public events; and, (3) commercial and industrial businesses that are permitted to be open.³ However, in-person and door-to-door sales for residential customers continues to remain off limits after more than fifteen months. The Retail Energy Supply Association (“RESA”),⁴ a trade association of Suppliers, appreciates the Commission’s initiative in issuing the

¹ *Proclamation of Disaster Emergency*, Commonwealth of Pennsylvania, Office of the Governor (March 6, 2020) and the subsequent amendments available at <https://www.pema.pa.gov/Governor-Proclamations/Pages/default.aspx>. On June 10, 2021, the Legislature voted to end the Disaster Proclamation and the Governor has no power to veto the resolution.

² *Emergency Order Establishing Supplier Door-to-Door and In-Person Marketing Moratorium*, Docket No. M-2020-3019254, dated March 16, 2020.

³ *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 (permits activities at retail businesses open as a result of the Governor’s yellow and green phase directives). *Supplier Door-to-Door and In-Person Marketing Moratorium, Proclamation of Disaster Emergency – COVID-10; NRG Energy, Inc. Petition for Partial Recession*, Docket No. M-2020-3019254, Order entered December 2, 2020 (permits activities at outdoor public events held in accordance with orders and directives issued by the Governor and Secretary of Health). *Supplier Door-to-Door and In-Person Marketing Moratorium, Proclamation of Disaster Emergency – COVID-10; Retail Energy Supply Association Petition for Partial Rescission*, Docket No. M-2020-3019254, Order entered May 6, 2021 (permits activities with commercial and industrial customers that are open as a result of the orders or directives of the Governor and Secretary of Health).

⁴ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient,

above-captioned Tentative Order on May 6, 2021 seeking the input of stakeholders on how to get from where we are today to a complete re-opening that includes door-to-door and all other forms of in-person marketing for all customer classes. Ultimately, RESA supports an immediate and complete termination of the current in-person sales restrictions given the termination of the *Proclamation of Disaster Emergency*,⁵ the lack of similar restrictions on these sales channels for any other industry, and the move toward resumption of normal pre-pandemic activities. While some transitional measures may be appropriate, RESA cautions the Commission against imposing onerous and unnecessary requirements to slow the ability of Suppliers from marketing their competitive energy services to the consumers of Pennsylvania. In-person sales and marketing channels – which include more than just residential door-to-door sales – are an important part of educating Pennsylvania consumers about competitive supply options and supporting the ability of energy suppliers to develop and offer Pennsylvania consumers the competitive retail products they desire. In further support of this position, RESA is pleased to offer its comments below.

As of May 31, 2021, all businesses in Pennsylvania and all events and venues can return to 100% capacity. The current order requiring masks for unvaccinated citizens will remain in place until June 28, 2021, or until 70% of Pennsylvanians over the age of 18 have been fully vaccinated, whichever comes first. And while individuals must still wear masks on planes, trains, and buses as required by CDC guidance, by the end of June, masks will not be required for outdoor activities and will only be required for unvaccinated individuals engaging in indoor activity – but those activities

sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

⁵ See House Resolution No. 106 available at <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>

are still permitted.⁶ Moreover, On June 10, 2021, the Legislature voted to end the Disaster Proclamation and the Governor signed the legislation on June 11, 2021. This followed passage of voter-approved constitutional amendments which give the Legislature the power to end a disaster declaration and automatically ends any state of emergency declared by the governor after 21 days unless the Legislature extends it.⁷

In short, there no longer appears to be any public health inspired basis for a blanket prohibition on door-to-door or in-person marketing for the energy industry as many other businesses have resumed normal operations. The original premise, to prevent the spread of COVID-19, appears to be moot at this point based upon the above-listed modifications to the mitigation protocols. Moreover, the Commission has well developed and clear regulatory requirements governing the sales and marketing activities of Suppliers.⁸ The regulations are very clear about how Suppliers are required to interact with potential customers, process requests to switch supply service, train agents regarding door-to-door activities and Commission requirements, address consumer complaints, and report door-to-door sales activities to the Commission prior to commencement. These regulations, as well as other authority of the Commission, also address Supplier liability and give the Commission broad enforcement powers for any violations of the requirements.⁹ Given the lack of any public health inspired basis to continue the status quo and the strong regulatory framework in place setting forth the Commission's expectations of Suppliers, a continued blanket prohibition on this sales channel is not warranted. Rather, the Commission should rely on its strong regulatory framework in place and

⁶ <https://www.governor.pa.gov/newsroom/wolf-administration-pennsylvania-businesses-events-venues-return-to-100-capacity-on-memorial-day-masking-order-remains-until-70-of-adults-fully-vaccinated-or-june-28/>

⁷ See <https://www.dos.pa.gov/VotingElections/Pages/Joint-Resolution-2021-1.aspx> for the text of the voter approved constitutional amendments.

⁸ 52 Pa. Code §§ 111.1 to 111.14.

⁹ These include license revocation and levying substantial civil penalties. *See, e.g. HIKO Energy, LLC v. Pennsylvania Pub. Util. Comm'n*, 163 A.3d 1079 (Pa. Commw. Ct. 2017) (Court affirmed PUC's imposition of a \$1.8 million civil penalty on the basis that the EGS intentionally billed customers above a guaranteed price).

exercise enforcement as needed for those Suppliers who do not comply with the well-established requirements.

It is without question that Pennsylvania is moving steadily and deliberately toward a more “normal” existence where most of life’s activities can occur, so long as precautions are taken – but only when needed. In its Tentative Order, the Commission asked interested parties to comment on a number of subjects related to the resumption of supplier’s ability to engage consumers in face-to-face settings. Those subjects include: 1) a timeline for lifting the marketing moratorium; 2) what metrics could be used to determine whether to lift or simply modify the marketing moratorium; 3) and conditions that the Commission should impose on suppliers as a basis for rescinding the moratorium; 4) measures to ensure public safety, the duration of such measures and the metric to consider when ending such measures; 5) whether any additional training is needed because supplier’s personnel have been on the sidelines for over a year and may need a refresher before being allowed to market in Pennsylvania; and, 6) what, if any, additional reporting requirements might be needed. RESA addresses those subjects below:

Timeline. RESA suggests that the Commission enter an order removing remaining restrictions under its prior marketing moratorium immediately. As of the date of these comments, it will have been over 15 months since Suppliers have been able to engage with potential customers in face-to-face or in-person formats. When considering the 100% opening of all commercial venues, the imminent lifting of the mask requirement and the Legislature’s termination of the *Proclamation of Disaster Emergency*, RESA suggests that the Commission act immediately to permit Suppliers to resume these marketing activities consistent with the clear guidelines set forth in the Commission’s regulations. While RESA does not oppose reasonable health-related conditions and a requirement that Suppliers certify they will comply with such reasonable conditions, such process must not delay the forward movement of opening these sales channels. At this point, with the summer season upon

us, allowing Suppliers to engage with potential customers face-to-face is imperative and represents significant improvement at the right time to begin the process of moving toward pre-pandemic operations. Importantly, consumers benefit from the availability of competitive retail energy products and services. Without the ability of Suppliers to introduce these products and services to consumers and to interact with consumers to understand their desires, Suppliers may be hampered in their ability to continue to innovate and provide competitive supply options that bring value to Pennsylvania's consumers.

Metrics. At this juncture it appears that Governor Wolf has determined that Pennsylvania is moving in the correct direction with more than 10 million vaccines administered. The complete opening of restaurants and other venues makes it abundantly clear that it is safe to resume normal activities. Had the Governor not fully reopened restaurants, businesses, and entertainment venues, RESA would have suggested this as an appropriate milestone that would signal that Pennsylvania is ready for the next step on the path to normalcy. Likewise, if people are able to visit commercial and non-commercial venues with or without masks as the case may be, it also is appropriate that other in-person activities be permitted. Moreover, because there presently are no statewide restrictions on other businesses engaging in door-to-door or in-person marketing, it seems logical that customers would not be caught off guard if a representative of an energy company knocked on their door. It would be difficult to conceive, at this point in time, what further metrics might be necessary as part of the consideration of whether to allow door-to-door or in-person marketing. RESA suggests that none be required in light of the change in circumstances since the Commission issued its Tentative Order.

Conditions. The Commission asked commentors to address what conditions might be imposed on Suppliers who wish to engage in in-person and door-to-door marketing. With Pennsylvania poised to allow people to go without masks in most situations no later than June 28,

2021, it is difficult to consider what additional conditions might be appropriate for suppliers engaging in door-to-door or in-person marketing. Nonetheless, continued adherence to whatever CDC guidelines that remain in place is still critical and could be considered a condition. Social distancing, masks for close-quarters indoor settings, and other such restrictions could be considered appropriate under the existing CDC requirements. It would not be inappropriate to also require suppliers to self-certify that they will ensure that their direct representatives adhere to such requirements and any other reasonable public health related precautions that are required of all citizens. As discussed below under training, such certification could include a representation that the supplier will provide refresher training for its sales associates regarding the Commission's requirements for door-to-door marketing as well as any required safety protocols, to be permitted to engage the public. Any such requirement should be limited and specific so that suppliers can quickly and efficiently comply.

Public Health and Safety. The Commission requested that commentors address the need for additional conditions to ensure the safety of the public and marketing representatives. The most obvious public health requirement, that representatives continue to be screened (i.e., temperature checks and questions regarding other symptoms) and not be permitted to engage in any face-to-face marketing if they are symptomatic, should continue at least in the short term. However, the way that screening process is accomplished should be left to the Supplier. For door-to-door encounters, which typically take place outside, on a consumer's doorstep, particularly in summer months, the precautions of providing single-use marketing materials or the use of a sanitized tablet computer could be employed. The use of a mask, outdoors, could be required if the consumer requests it, but otherwise should be optional. Similarly, frequent washing of hands is an important practice, and if the Commission so desires, the mandatory wearing of masks if the conversation with the consumer takes place indoors would be reasonable. In-person marketing, which differs from door-to-door since it is typically a pre-arranged meeting, where the potential customer has made an appointment with

the marketing representative, should be less prescriptive, because the potential customer and the representative have the opportunity to address expectations prior to the appointment. The Commission has allowed Suppliers to resume in-person marketing activity at public events and retail locations. There is no public health reason to prevent in-person meetings between Suppliers and potential customers at other locations since the consumer can ultimately decide whether he or she wants to participate in the meeting with the Supplier's representative. Beyond these "ordinary" precautions, it does not appear that additional requirements are necessary at this stage.

Reporting Requirements. Commentors were asked to discuss the need for any additional reporting requirements. Apart from the still-required notifications to the BCS and OCMO prior to launching a door-to-door campaign,¹⁰ there are no general reporting requirements that seem necessary. RESA does not believe that it would be appropriate to require the reporting of any employee health data, such as number of positive tests, or the like, since such information does not appear to be within the Commission's purview. However, if the Commission has concerns on this topic, it could instead create a blanket rule that if an employee were to test positive after having had customer encounters in the prior two weeks, the supplier must cooperate, to the extent it is able, with the contact tracing organization to inform those people of possible contact. But it does not appear that the Commission receiving such a report would provide any public health or other benefit and would simply add additional requirements that serve no practical purpose. If the Commission believes that suppliers should be required to regularly report on face-to-face marketing efforts, it would be more appropriate to commence a rulemaking to address such concerns, but imposing additional reporting requirements now, without a clear understanding of how such information would be used, when considering the costs such requirements impose on suppliers, seems counterproductive.

¹⁰ 52 Pa Code §111.14.

Training. The Tentative Order raises the issue of what additional training may be required since Suppliers' marketing representatives have been off the job for over a year. At the outset, the Commission should know that many Suppliers did retain their in-person marketing staffs, to the extent possible, and repurposed those individuals to customer service or other related tasks. The point being that not all employees are likely to have stale recollections of the rules. That said, however, with a 15-month hiatus, a refresher training course performed by the Supplier would not be an unreasonable ask if the Commission felt it was needed. RESA is concerned, however, about requiring Suppliers to attend a Commission developed training curriculum as a precondition to opening this sales channel. More specifically, Suppliers desire to get back to work as soon as practical, and the time that would be needed to develop any Commission required curriculum which could slow the reopening process. Moreover, RESA notes that the Commission has very well established regulatory guidelines that already clearly direct the sales and marketing activities of Suppliers. These regulations do require Suppliers to ensure that their agents are trained regarding the Commission requirements.¹¹

Thus, rather than injecting further delay in the ability of Suppliers to resume normal sales and marketing operations, RESA suggests that the better course would be to direct Suppliers to develop and implement a refresher training course and certify to the Commission that they have done so or will complete the training within a reasonable time period. Ensuring that suppliers and their employees understand the rules is important, and RESA understands the Commission's intentions with asking about the need for training. However, such training should not be a barrier to the resumption of door-to-door and in-person marketing. Rather, RESA recommends that the Commission rely on the work that has already been done in developing its clear sales and marketing regulations to guide Suppliers and, for those Suppliers who fail to comply with the regulatory

¹¹ 52 Pa Code § 111.5.

requirements, the Commission should continue to pursue enforcement actions as appropriate. With most COVID-19 related restrictions soon to be lifted, Suppliers are anxious to once again open a marketing channel that has proven to be successful and vital for many of them and one that benefits the public interest by educating Pennsylvania’s consumers about the availability of competitive options for energy supply that best suit their individual needs and preferences.

Conclusion. Vaccination rates among Pennsylvanians still increasing steadily, albeit more slowly than desired. At the same time, all metrics on the [Commonwealth’s Covid-19 Early Warning Dashboard](#)¹² are heading in the right direction and there is an obvious implication from the Governor and the Acting Secretary of Health’s most recent relaxation of mitigation measures that we are approaching the end of the “emergency” phase of the pandemic. This is further highlighted by the Legislature’s action to terminate the current *Proclamation of Disaster Emergency*.

At this point, there does not appear to be any basis for the continuation of an outright prohibition of any marketing activities. The issue, rather, is what, if any, additional requirements does the Commission believe are needed to allow suppliers to re-engage in this sales channel. RESA believes that some “common sense” measures, that are for the most part already imbedded in the remaining public health requirements, may be warranted, but that intrusive or complex solutions are not indicated. To that end, the Commission should not erect onerous barriers that Suppliers must surmount to be able to reopen this sales and marketing channel which other industries are free to currently use. Allowing Suppliers to operate – consistent with existing regulatory requirements – as soon as possible recognizes the benefits to Pennsylvania consumers when competitive energy suppliers are free to market their products and service and are competing with one another to provide

¹² <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Monitoring-Dashboard.aspx>

the best value to consumers. In sum, the public interest is best served by a return to normal for the competitive energy supply market in Pennsylvania.

Respectfully submitted,



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