PUBLIC SERVICE COMMISSION OF MARYLAND

Reporting of Third-party Retail Energy Supplier Regulation and Enforcement Actions in Response to Prohibited Marketing Practices

December 1, 2024

Prepared in response to the 2024 Joint Chairmen's Report from the Senate Budget and Taxation Committee and House Appropriations Committee, addressing enforcement actions against third-party retail energy suppliers

MARYLAND
Public Service Commission

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I. Introduction

The Public Service Commission of Maryland ("PSC" or "Commission") hereby submits this report in response to the 2024 Joint Chairmen's Report ("JCR") from the Senate Budget and Taxation Committee and House Appropriations Committee (collectively, "Committees"), pertaining to actions taken by the Commission in enforcement matters involving third-party retail energy suppliers ("suppliers") in response to prohibited marketing practices. In this report, the Commission provides an update on complaints received by the Consumer Affairs Division against suppliers, the status of Commission enforcement efforts, the Commission's existing statutory authority to address complaints from consumers impacted by prohibited marketing practices, and information on whether additional statutory authority is needed for effective enforcement in response to consumer complaints.

II. Background and Statutory Authority

The Commission is an independent unit in the Executive Branch of State government and, in accordance with Public Utilities Article ("PUA") §2-101, carries out the functions assigned to it by law. Maryland law allows gas and electric utility account holders to decide whether to purchase electricity and gas supply from a utility or from a licensed third-party retail energy supplier. Under PUA §§7-507(a) and 7-603(a), the Commission is authorized to grant licenses to electricity and natural gas suppliers. However, although the Commission is authorized to regulate aspects of electric and gas supplier marketing practices, it is generally not authorized to regulate the rates that suppliers charge their customers. The Commission is further authorized, pursuant to sections 7-507(e) and 7-603(b), to adopt regulations or issue orders to, among other matters, protect retail electric and natural gas consumers from anticompetitive and abusive practices and ensure that customers have "adequate and accurate" information to enable customers to make informed choices regarding retail energy suppliers. In addressing violations of consumer protection laws, pursuant to PUA §7-507 and §7-603, the Commission has the power to revoke or suspend licenses of suppliers, impose a civil penalty under PUA §13-201, issue a cease and desist order under PUA §13-208, and other remedies. Code of Maryland Regulations ("COMAR") Title 20, Subtitles 53 and 59, prescribe regulations governing pre-enrollment, enrollment, transfers of service, and non-residential and residential consumer protections.

The Consumer Affairs Division ("CAD") is the department within the PSC responsible for the investigation and resolution of complaints by Maryland ratepayers against regulated companies in accordance with applicable laws, regulations, and tariffs. The Office of General Counsel ("OGC") is the division of the PSC that provides legal advice and assistance to the Commission and represents the Commission in federal and state administrative proceedings.

III. Complaints and Enforcement

A complaint refers to a completed online or print form received by CAD from a customer detailing a dispute with a regulated company. The dispute resolution process outlined in COMAR 20.32 provides that a customer must reach out to the company subject to dispute prior to making a complaint. For each individual complaint that CAD receives, staff investigates the complaint, renders a decision, and communicates that decision to the parties to a complaint. The table at Figure 1 contains complaints received by CAD against suppliers as compared to total complaints against all companies combined for calendar years 2010 to 2023.

FIGURE 1 – Complaints Received by CAD
Calendar Years 2010 to 2023

YEAR	COMPLAINTS AGAINST SUPPLIERS	TOTAL COMPLAINTS RECEIVED	PERCENTAGE OF TOTAL AGAINST SUPPLIERS	SUPPLIER UTILIZATION[1]
2023	514	2,476	20.8%	15.0%
2022	446	1,725	25.9%	16.6%
2021	414	1,868	22.2%	18.6%
2020	436	1,473	29.6%	20.0%
2019	702	2,800	25.1%	20.8%
2018	599	2,696	22.2%	21.2%
2017	403	2,659	15.2%	21.9%
2016	403	3,123	12.9%	23.3%
2015	667	3,737	17.8%	23.8%
2014[2]	2,288	5,258	43.5%	25.6%
2013	1,218	5,278	23.1%	28.1%

[1] Reported pursuant to PSC Case No. 8378, this figure refers to the percentage of all eligible customer accounts enrolled with electric suppliers as of December 31st of each calendar year. For additional enrollment data, please refer to the Commission's Monthly Enrollment Reports page: https://www.psc.state.md.us/electricity/electric-choice-monthly-enrollment-reports/.

[2] In 2014, the region experienced a polar vortex; during the winter months, due to the extreme cold, suppliers that offered variable rates saw an increase in the market price for electricity. Suppliers passed higher prices on to customers resulting in a complaint increase due to rate shock, company inaccessibility, and other related concerns. For more information, please refer to the Commission's 2014 Annual Report: https://www.psc.state.md.us/wp-content/uploads/2014-MD-PSC-Annual-Report.pdf.

2012[3]	N/A	5,734	N/A	25.7%
2011	N/A	5,318	N/A	21.8%
2010	N/A	5,508	N/A	15.7%

CAD monitors supplier compliance by identifying patterns of violations and potential violations of Maryland law and regulation throughout multiple complaints. When, in CAD's assessment, a company demonstrates a pattern of noncompliance, CAD makes a recommendation to initiate an enforcement action. Since peaking in January 2023, complaints against suppliers have declined, detailed below in Figure 2.

When the Commission launched its Maximum Enforcement initiative in response to an influx of complaints against suppliers on February 1, 2023, supplier complaints decreased 85%, comparing complaints in the first month of that year to the last.

Regarding the effectiveness of the Commission's enforcement actions in deterring prohibited marketing practices, the Commission submits that enforcement actions tend to be effective in bringing an errant supplier into compliance. When the Commission launched its multi-division Maximum Enforcement initiative in response to an influx of complaints against suppliers on February 1, 2023, supplier complaints decreased 85%, comparing complaints in the first month of that year to the last.

An additional limitation in the Commission's effectiveness is its reach. The Commission learns of patterns of violations and potential violations through citizens' utilization of the Commission's dispute resolution process. Citizens cannot avail themselves of this process if they do not know that the Commission both exists and serves this function. It is improbable that the complaints received by CAD depict the full universe of citizen issues with regulated companies. For instance, in Case No. 9613, testimony in the case demonstrated that SmartEnergy Holdings LLC d/b/a SmartEnergy ("SmartEnergy") mailed six million postcards to Marylanders, advertising their services in a manner ultimately found to be misleading and deceptive. Their six million postcards generated approximately 104,000 calls to the company from prospective customers where the callers were subjected to a company sales script also found to be misleading and deceptive. Of the 104,000 callers, approximately 32,000 were enrolled in SmartEnergy's service after hearing their sales pitch in a process which was found to be legally deficient under Maryland law. Of the 32,000 enrollees, only 34 filed complaints with CAD. Though courts at every level of Maryland's judiciary affirmed the Commission's decision that SmartEnergy engaged in

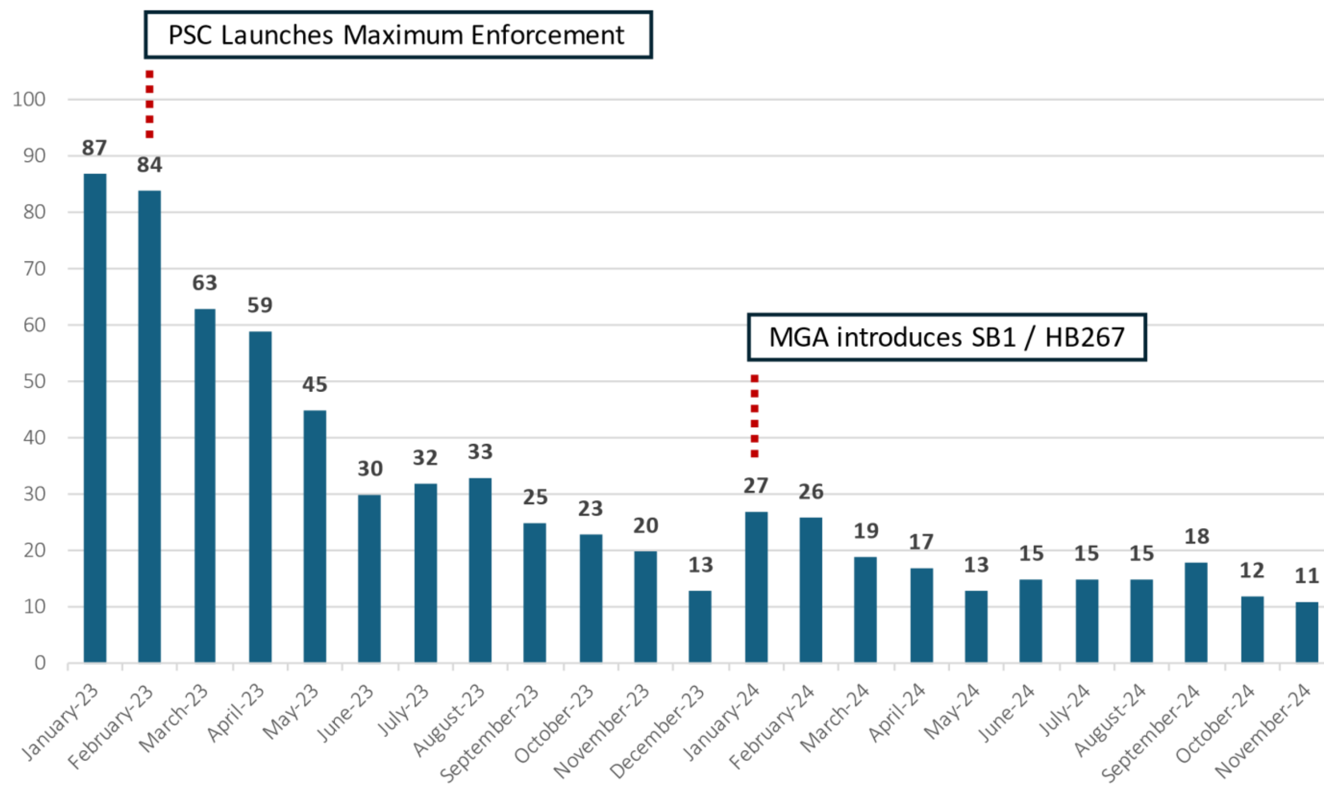
[3] Prior to 2013, complaints against utilities and complaints against suppliers were clustered together in CAD's legacy database.

systemic violations of Maryland law, the supplier conduct in question only netted 34 complaints against the company. This matter is currently open, though estimated refunds ordered currently total nearly $16 million. The 34 complaints received against SmartEnergy do not capture the totality of the ramifications of the company's noncompliance.

The PSC endeavors to expand its reach through in-person and online event participation in maintaining its MDEnergyChoice.com energy supply education and comparison-shopping pages, and through its partnership with the Maryland State Ad Agency.

FIGURE 2 – Complaints Received by CAD

January 1, 2023 – November 25, 2024



When, in CAD's assessment, a company demonstrates a pattern of noncompliance, CAD makes a recommendation to initiate an enforcement action. Under PUA §3-102 and governed by the procedures outlined in COMAR 20.07.03, when the Commission receives a filing alleging prohibited conduct in violation of Maryland law and regulation, it may investigate, initiate a docket and issue a show cause order, or dismiss the filing. Suppliers may avail themselves of the right to judicial review of Commission decisions to circuit and appellate courts where the PSC is represented by the OGC. A list of enforcement actions from 2010 through the present is below at Figure 3.

FIGURE 3 – Enforcement Actions
2010 – present

Case #	Company	Date Opened or Reopened	Date Closed	Duration (Days)	Civil Penalty
9691	Greenlight Energy	2/14/2023	4/20/2023	65	$40,000.00
9647	SunSea Energy	**2/13/2023**	-		
9690	SFE Energy	1/26/2023	12/29/2023	337	[4] $150,000.00
9661	StateWise Energy	12/10/2020	1/11/2022	397	$150,000.00
9647	SunSea Energy	6/4/2020	8/18/2021	440	$400,000.00
9624	Atlantic Energy	5/15/2019	6/15/2021	762	$250,000.00
9615	Maryland Gas & Electric	**5/15/2019**	-		
9614	Direct Energy	**5/15/2019**	-		
9617	Smart One Energy	5/10/2019	3/6/2020	301	$561,000.00
9613	SmartEnergy	**5/10/2019**	-		
9382	Blue Pilot Energy	5/29/2015	4/28/2016	335	$57,000.00
9347	Maryland Gas & Electric	4/1/2014	11/5/2014	218	$2,500.00
9346	American Power Partners	4/1/2014	12/17/2014	260	$ -
9346	Blue Pilot Energy	4/1/2014	12/1/2016	975	$140,000.00
9346	Xoom Energy	4/1/2014	12/1/2016	975	$40,000.00
9346	Major Energy	4/1/2014	2/26/2016	696	$300,000.00
9324	Starion Energy	5/13/2013	3/7/2014	298	$350,000.00
9255	Viridian Energy	1/26/2011	6/12/2012	503	$60,000.00
9253	North American Power & Gas	1/14/2011	6/9/2011	146	$100,000.00

IV. Status of Open Enforcement Actions

SmartEnergy, Case No. 9613

Case No. 9613 was initiated on May 10, 2019. In a reported opinion dated February 22, 2024, involving SmartEnergy Holdings LLC d/b/a SmartEnergy ("SmartEnergy"),[5] the Supreme Court of Maryland affirmed the decisions of the Appellate Court of Maryland, Montgomery County Circuit Court, and the Commission Order No. 89795, holding that the Maryland Telephone Solicitations Act

[4] In addition, SFE Energy must refund $400,000 to customers enrolled by door-to-door marketing, customers who paid early termination fees, and those who received state utility bill assistance but paid more than their utility's default rate.

[5] *In re Smart Energy Holdings, LLC*, 486 Md. 502, 311 A.3d 919 (2024).

(“MTSA”) requires contracts made pursuant to a telephone solicitation be reduced to writing and be signed by the consumer applies to retail energy suppliers contracting with Maryland customers. The court subsequently denied SmartEnergy’s motion for reconsideration and issued the Court’s mandate compelling enforcement of the Appellate Court’s decision.

The Appellate Court of Maryland held that: (1) PUA §7-507(k) expressly authorizes the Commission to impose penalties on licensed retail suppliers for violating a provision of the PUA or any other applicable consumer protection laws of the State; (2) SmartEnergy violated the MTSA; and (3) SmartEnergy’s inbound telephone call customer enrollments were not exempt pursuant to either the MTSA’s “marketing materials” or “preexisting customer” exemption.

During the 2024 Legislative Session, counsel for SmartEnergy also proposed an amendment to House Bill 1228 (“HB1228”) in the Senate Finance Committee on March 27, 2024, seeking to amend the MTSA to explicitly exempt consumer calls to merchants. The Committee declined to consider the amendment. HB 1228 passed, without amendment.

On August 12, 2024, SmartEnergy filed with the federal district court for the District of Maryland.[6] Case No. 9613 is still open and ongoing.

Direct Energy, Case No. 9614

Case No. 9614 was initiated on May 15, 2019. The Commission, in Order No. 90208, found that supplier Direct Energy Services, LLC’s (“Direct Energy” or “Direct”) telephone enrollments violated the MTSA and the enrollment agreements’ inclusion of the contract summary as part of the contract violated Commission regulations. Direct Energy filed a petition for judicial review in the Circuit Court for Anne Arundel County. The Office of People’s Counsel (“OPC”) also appealed the Commission order pertaining to the issuance of refunds. Following oral argument in April 2023, on May 10, 2023, the court ruled in favor of Direct Energy on the contract formation issue finding that Direct Energy may incorporate the contract summary by reference and the Commission's regulations do not prescribe a particular format for contracts between retail energy suppliers and customers. The Court held the MTSA issue in abeyance pending a decision in the *SmartEnergy* matter before the Maryland Supreme Court. On July 24, 2024, the Circuit Court issued an order accepting a stipulation between Direct Energy and the Commission wherein Direct withdrew its petition for judicial review of the Commission’s MTSA decision and the PSC withdrew its request for reconsideration of the Court's ruling on the contract formation issue. OPC's petition for judicial review regarding the Commission's discretion in determining remedies in the case remains pending in the Court. In accordance with the

[6] *SmartEnergy Holdings LLC d/b/a SmartEnergy v. Frederick H Hoover, et al.*, Case No. 1:24-cv-02336, Doc No. 4-1, at 17-19 (U.S. D. Md., Sept. 4, 2024).

July 24, 2024 order, Direct Energy and other suppliers must comply with the MTSA for inbound and outbound customer telephone enrollments and the "wet signature" requirements recognized in the *SmartEnergy* decision, as affirmed by the Maryland Supreme Court.

MDG&E, Case No. 9615

Case No. 9615 was initiated on May 15, 2019. The Commission, in Order No. 90311, found that the telephone enrollments of supplier U.S. Gas & Electric, Inc., d/b/a Maryland Gas & Electric ("MDG&E") violated the MTSA and the enrollment agreements' inclusion of the contract summary as part of the contract violated Commission regulations. MDG&E filed a petition for judicial review, appealing the Commission order, as did OPC, appealing the Commission's discretion in determining remedies. Oral argument is scheduled for December 3, 2024 in the Circuit Court for Baltimore City. In addition, MDG&E and the Commission have stipulated to terms similar to those in the *Direct Energy* matter; MDG&E would withdraw its petition for judicial review of the Commission's MTSA decision and the Commission would allow the court to adopt the *Direct Energy* contract formation decision. OPC's petition for judicial review regarding the Commission's discretion in determining remedies in the case remains pending in the court. MDG&E has filed a proposed order setting forth the stipulations and the parties are awaiting a decision from the court.

SunSea, Case No. 9647

The Commission, in Order Nos. 90581 and 90614, found that SunSea Energy, LLC ("SunSea") violated several PUA and COMAR provisions governing electricity and gas suppliers covering solicitation and enrollment of customers. In the Commission's first Order in Case No. 9647 (Order No. 90581), the Commission, in addition to finding that SunSea violated several statutory and regulatory provisions, delegated the matter to the Public Utility Law Judge ("PULJ") Division. The Commission then issued Order No. 90614 detailing its findings and ruling on a motion for clarification of its previous Order. Despite the delegation to the PULJ Division, SunSea filed a petition for judicial review in the Circuit Court of Baltimore City seeking to vacate the Commission's findings, arguing a lack of substantial evidence, and asserting that the rulings were arbitrary and capricious. The PULJ matter is stayed pending the Circuit Court decision. The court decision is pending following oral argument in April 2024.

Initiating Case No. 9647, the OPC filed a complaint with the Commission against SunSea on June 4, 2020, alleging fraud and deceptive marking and enrollment practices, failing to comply with provisions of the PUA, the MTSA, the Maryland Consumer Protection Act ("MCPA"), and Commission regulations. The Commission issued an order on August 18, 2021, upholding OPC's complaint. The

Commission assessed a civil penalty in the amount of $400,000 against SunSea and directed that, upon full payment of that fine, the moratorium that had been imposed upon SunSea prohibiting marketing, solicitation, and enrollment of new customers in Maryland would be lifted.

Less than two years later, CAD reported new allegations to the Commission regarding SunSea's marketing practices summarized in a January 30, 2023 memorandum. CAD's review of the consumer complaints against SunSea found a pattern of violations related to defective contracting practices, unauthorized enrollments, supplier misrepresentation, and customer service inaccessibility. On February 13, 2023, the Commission issued a Probable Cause Notice to SunSea, with the above-referenced CAD memorandum attached, directing the company to appear before the Commission at an Administrative Meeting. Following the probable cause proceeding, on April 11, 2023, the Commission issued Order No. 90581 with general findings and delegation to the PULJ Division for further, expedited evidentiary proceedings. Immediate interim protections were ordered, including suspension of SunSea's licenses, return of all Maryland customers to default utility service, cessation of marketing and enrollments, and an increase in the amount of SunSea's surety bonds with the Commission. To date, SunSea has not increased its bond to $1 million as required.

V. Conclusion

The Commission has broad statutory authority to enforce Maryland law and regulation against suppliers that engage in prohibited marketing practices. Presently and in the future, staff across the PSC is, and will continue to be, engaged in several rulemakings, workgroups, public conferences, and other efforts to implement Senate Bill 1/House Bill 267 ("SB1"). Enacted in 2024, SB1 is a sweeping alteration of regulatory requirements for the marketing and sale of electricity and gas by suppliers and related entities with most requirements related to residential service.

The PSC appreciates the opportunity to provide information about the status of its enforcement actions in response to prohibited supplier marketing. The Commission will continue to monitor supplier activity and engage with suppliers particularly in light of the requirements of SB1.