

ORDER NO. 90432

In the Matter of the Complaint of the Staff of
the Public Service Commission of Maryland
v. Direct Energy Services, LLC

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BEFORE
THE PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9614

Issue Date: November 30, 2022

ORDER DENYING REQUEST FOR RECONSIDERATION

1. On October 14, 2022, Direct Energy Services, LLC (“Direct Energy”) filed a Response to Order and Request for Reconsideration¹ of Commission Order No. 90268,² which granted Direct Energy’s request for a partial stay from complying with a portion of Order No. 90208 (Order on Appeals)³, pending the issuance of the Court of Special Appeals’ decision in SmartEnergy Holdings, LLC’s appeal in Case No. 9613.

2. In its Request for Reconsideration, Direct Energy requests the Commission reconsider portions of its Order on Appeals, and enter an order adopting certain actions related to the revision of its supplier contracts and the limitation of the Commission’s authority to investigate and rule on contract-related complaints against Direct Energy and its affiliates. Direct Energy described the requested actions as an effort to resolve the contract issues in the appeal “and promote clarity and transparency with respect to [Maryland Telephone Solicitations Act (“MTSA”)] compliance.” Specifically, Direct Energy proposes to request dismissal of its appeal of the contracts issue and

¹ Maillog No. 242661 (“Request for Reconsideration”).

² Order on Motion for Stay (Jun. 27, 2022).

³ *In the Matter of the Complaint of the Staff of the Public Service Commission Against Direct Energy Services, LLC*, Case No. 9614, Order No. 90208 (May 4, 2022).

request that the Circuit Court of Anne Arundel County hold in abeyance the remainder of its appeal regarding the MTSA issues.⁴

3. The Commission previously granted a partial stay of Order No. 90208 with the condition that Direct Energy request that the Circuit Court hold its entire petition for judicial review in abeyance pending the resolution of the SmartEnergy appeal decision. While Direct Energy did not request that the Circuit Court hold its case in abeyance, the Court of Special Appeals has since rendered its decision in the SmartEnergy appeal.⁵ In the interim, Direct Energy filed several requests for extension (from June 30 to September 16) with regard to the abeyance provision of Order No. 90268, which were granted.⁶ Compliance with the abeyance condition is no longer required, as it is now moot.

4. The Office of People’s Counsel (“OPC”) and Commission Staff (“Staff”) filed responses to Direct Energy’s request on October 20, 2022.⁷ Both OPC and Staff object to Direct Energy’s request and argue that the Commission no longer has jurisdiction over Case No. 9614, as Direct Energy has appealed Order No. 90208 to the Circuit Court.⁸ OPC argues the Commission should reject Direct Energy’s attempt to use a request for reconsideration of Order No. 90268 to facilitate a revision of findings in the Order on Appeals.⁹

⁴ Request for Reconsideration at 6-7.

⁵ On October 31, 2022, the Maryland Court of Special Appeals issued its Opinion and Order in the SmartEnergy appeal, affirming the Opinion and Order of the Circuit Court of Montgomery County’s findings that SmartEnergy’s telephone enrollment practices were subject to and violated the MTSA, and the MTSA applied to both inbound and outbound sales calls. *See In the Matter of SmartEnergy Holdings, LLC*, 2022 Md. App. LEXIS 799 (“SmartEnergy”). The Circuit Court and Court of Special Appeals decisions affirm the Commission’s decision in SmartEnergy, except as to the issue of retention of sales calls – which was not an issue in this case.

⁶ *See* Commission Order Granting Request for Extension IV, Maillog No. 242437.

⁷ Maillog No. 242820 (“OPC Comments”); Maillog No. 242811 (“Staff Comments”).

⁸ *See* CASE NO: C-02-CV-22-000856. A hearing on Direct Energy’s petition for judicial review is scheduled for argument on January 23, 2023.

⁹ OPC Comments at 10. Also, OPC notes that Direct Energy’s response and request for reconsideration of the stay order offers a number of proposals designed to resolve the appeals order “contract formatting” issue. *Id.* at 9.

5. Once a party appeals a Commission Order to the Circuit Court pursuant to Public Utilities Article, *Annotated Code of Maryland*, § 3-202, the circuit court has exclusive jurisdiction over the matter unless the circuit court relinquishes jurisdiction or the petitioners withdraw the matter.¹⁰ Accordingly, for lack of jurisdiction, Direct Energy’s Request for Reconsideration is denied.

IT IS THEREFORE, this 30th day of November, in the year of Two Thousand Twenty-Two, by the Public Service Commission of Maryland,

ORDERED: That Direct Energy Services, LLC’s Request for Reconsideration is denied.

By Direction of the Commission,

/s/ Andrew S. Johnston

Andrew S. Johnston
Executive Secretary

¹⁰ See, e.g., Order No. 64254, *In Re Central Delivery Service of Washington, Inc.*, Case No. 7298 (Mar. 26, 1980), 71 PSC 141 (1980). Even in the absence of a petition for judicial review—after the issuance of a final order—an application for rehearing (or reconsideration) is permissive, not mandatory; and “the granting or denial of the application is entirely discretionary with the Commission.” *Building Owners & Managers Ass’n v. Public Service Com.*, 93 Md. App. 741, 752 (1992).