

ORDER NO. 90311

In the Matter of the Complaint of the Staff of
the Public Service Commission of Maryland
v. U.S. Gas & Electric, Inc. and Energy
Service Providers, Inc., d/b/a Maryland Gas
& Electric

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9615

ORDER ON APPEAL

Before: Jason M. Stanek, Chairman
Michael T. Richard, Commissioner
Anthony J. O'Donnell, Commissioner
Odogwu Obi Linton, Commissioner
Patrice M. Bubar, Commissioner

Issued: August 16, 2022

I. BACKGROUND

1. This case is before the Commission on appeals by U.S. Gas & Electric, Inc. and Energy Service Providers, Inc., both doing business as Maryland Gas & Electric (“MDGE”), and the Maryland Office of People’s Counsel (“OPC”) from the Proposed Order issued by Public Utility Law Judge (“PULJ”) Jennifer Grace on March 18, 2022.¹ This matter comprises the second phase (“Phase II”) of litigation regarding complaints filed by the Commission’s Technical Staff (“Staff”) and OPC against MDGE.

2. Staff, OPC and MDGE reached a partial settlement, which was filed with the Commission on May 14, 2021, prior to the PULJ’s evidentiary hearing, proposing a civil penalty in the amount of \$150,000, and the issuance of refunds, or re-rates, to 164 customers. After the parties filed testimony in support of the Partial Settlement Agreement, the agreement was approved in a Proposed Order on August 30, 2021. The Proposed Order adopting the Partial Settlement Agreement became a Final Commission Order on September 30, 2021.² The parties also agreed to a Phase II of litigation related to their dispute regarding the Maryland Telephone Solicitations Act (the “MTSA”). The Proposed Order in Phase II was issued by the PULJ on March 18, 2022.³

3. In the Phase II Proposed Order, the PULJ found that MDGE violated the *Annotated Code of Maryland*, Commercial Law Article, MTSA § 14-2201 *et seq.*, as well as Code of Maryland Regulations (“COMAR”) 20.53.07.08(C)(4) and COMAR 20.59.07.08(C)(4).⁴ The PULJ determined that MDGE’s contracting practices fell within the scope of the MTSA, regardless of whether MDGE initially mailed the solicitation materials that prompted a call from a potential customer. Additionally, the PULJ found that MDGE did not provide customers with a signed

¹ Maillog No. 239643 (“Phase II Proposed Order”).

² Phase I Final Order (Order No. 89948), Maillog No. 236516.

³ Phase II Proposed Order.

⁴ *Id.* at 31.

contract within three days of the telephonic enrollment, nor did MDGE meet any of the applicable exemptions outlined in the MTSA.

4. The PULJ noted that while MDGE failed to send customers “a full written contract after a completed sale,” the supplier did send them a welcome letter, contract summary and statement of terms and conditions.⁵ The PULJ emphasized that the contract summary was insufficient to meet the requirements of disclosure of material contract terms, but acknowledged that MDGE was attempting to comply with consumer protection laws.⁶ The PULJ added that the evidence, as presented, revealed business practices that were deceptive but not as egregious as other “bad actors” the Commission has recently sanctioned.⁷ The PULJ also determined that the mailers MDGE used were inconsistent in terms of the information they contained and found the mailers to be deceptive and/or misleading.⁸

5. The PULJ recommended that MDGE ensure that any mailers it uses include all material terms and conditions of the sales offer; provide all terms and conditions of the contract to customers during telephone solicitations; and provide a full written contract, containing all terms and conditions, within three days for all future telephonic sales in Maryland, whether solicited by outbound calls or initiated by inbound calls.⁹ The PULJ acknowledged that these proposed directives exceeded the Commission’s regulatory requirements, but recommended them as a sanction for MDGE’s past practices and as an effort to clear up the confusion regarding how much detail should be provided to potential customers.¹⁰

⁵ *Id.* at 30.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 26.

⁹ *Id.*

¹⁰ *Id.*

6. The PULJ explained that all the material terms “should clearly define the full offer of the goods/services that will be in the contract and should at the very least include the rate, the length of contract if applicable, specific detailed incentives included, the time limit of the offer, and any restrictions and/or limitations on the offer.”¹¹ The PULJ noted further that, for guidance on what terms should be considered material, MDGE should look to COMAR 20.53.07.8(A)(2)(a)-(p) and COMAR 20.59.07.8(A)(2)(a)-(p).¹²

7. The PULJ found that no additional monetary penalty was warranted, noting that the penalty paid by MDGE—pursuant to the Partial Settlement Agreement—is within the scope of civil penalties imposed by the Commission on other suppliers for similar violations.¹³

II. EXECUTIVE SUMMARY

8. In this Order, the Commission affirms the PULJ’s Phase II Proposed Order findings that MDGE violated the MTSA and does not qualify for any exemptions under the Act,¹⁴ and alternatively, that MDGE violated Commission regulations, specifically COMAR 20.53.07.08(C)(4) and COMAR 20.59.07.08(C)(4). However, for the reasons discussed below, the Commission reverses the PULJ’s remedy related to requiring MDGE to: (1) ensure that any mailers it uses shall include all material terms and conditions of the sales offer; and (2) provide all terms and conditions of the contract to customers during telephone solicitations.

9. In finding that MDGE failed to comply with the MTSA’s contracting requirements for telephone solicitations during the complaint period of January 2016 - June 2019, the Commission additionally finds that all of MDGE’s telephonic enrollments without signed contracts are invalid.

¹¹ *Id.* at n. 91.

¹² *Id.*

¹³ *Id.*

¹⁴ Section 14-2203(b) requires that a contract made pursuant to a telephone solicitation be reduced to writing and signed by the consumer.

MDGE may not rely on its history with an individual customer to satisfy the MTSA exemption in § 14-2202(a)(2) unless it can properly document the initial (prior) enrollment. This restriction does not apply to the 6,617 previous MDGE customers re-enrolled during the complaint period, as stipulated by the Parties.

10. MDGE is directed to send a letter to all of its Maryland customers who were solicited and enrolled by telephone during the complaint period (“Commission-required letter”), within 30 calendar days of this Order, informing them of the invalidity of their contracts and to provide the customer with three choices: (1) enroll with MDGE by signing a valid contract (which comprises all terms and conditions, contract term, rates, and right of rescission); (2) return to their utility’s standard offer service (“SOS”); or (3) switch to service offered by a different retail supplier. MDGE must share the letter with Staff and OPC for review prior to sending the letter to MDGE customers.

11. The Commission further directs MDGE—within 60 days of this Order—to file with the Commission a plan to bring its invalid enrollments during the complaint period into compliance with applicable statutes, Commission orders, and regulations. The plan should include:

- a. The number of customers who received the Commission-required letter;
- b. An accounting of how many customers responded to the letter by either signing an enrollment contract, returning to SOS, or switching to another retail supplier within the 60-day period;
- c. A timeline and process for addressing any customers who did not respond to the Commission-required letter;
- d. A reporting schedule during the proposed timeline which would include the number of customers contacted, customers enrolled with a valid contract, customers dropped from MDGE’s service, and the rates charged to all affected customers; and
- e. A description of how MDGE intends to fund the costs of bringing its invalidly enrolled customers into compliance.

Once the Commission has reviewed and approved MDGE's compliance plan, it will determine a process by which any remaining customers without valid contracts must be returned to SOS within 180 days.

III. PROCEDURAL HISTORY

A. Staff's Complaint

12. On May 15, 2019, Staff filed a Complaint against MDGE pursuant to PUA § 7-507, alleging that MDGE committed fraud, engaged in deceptive business practices, and violated the Commission's consumer protection regulations through the unauthorized enrollment of customers.¹⁵

13. On May 17, 2019, the Commission directed MDGE to answer Staff's Complaint and to appear at the Commission's July 17, 2019 Administrative Meeting for a hearing on the Complaint.¹⁶

B. OPC Complaint

14. OPC also filed a complaint against MDGE on October 16, 2019, alleging customer slamming, enrollment of customers without written contracts and without providing contract summaries, misrepresentation, false and misleading advertising, and failure to provide customers with pricing information.¹⁷ OPC alleged that MDGE, through its door-to-door solicitations, failed to provide customers with a contract summary and terms and conditions, or the notice of cancellation required by Door-to-Door Sales Act.¹⁸ With regard to its MTSA-related claims, OPC alleged that MDGE enrolled residential customers without obtaining a signed written contract or

¹⁵ Staff Complaint, Maillog No. 225275. Staff filed supplemental exhibits to its initial complaint on July 8, 2019 (Maillog No. 225998), an Amended Complaint on July 31, 2019 (Maillog No. 226281) and a Second Amended Complaint on October 16, 2019 (Maillog No. 227146).

¹⁶ Maillog No. 225348 and 225349.

¹⁷ Maillog No. 227164.

¹⁸ *Id.* at 6-7.

making the disclosures required by the MTSA or COMAR 20.53.07.08C(1) or C(4) and 20.59.07.08C(1) or C(4).¹⁹ Additionally, OPC alleged that during unsolicited calls to customers, MDGE failed to inform them before, or during, the telephone solicitations, or subsequent third-party verifications (“TPVs”), about key applicable terms and conditions of the contract.²⁰ These key terms include “that the terms and conditions later mailed to them would supersede any oral or written statements made in connection with the sale, [that] the consumer agreed not to rely on any of MDGE’s previous oral advice, statements, recommendations, or representations unless it was also included in the written agreement,” that MDGE was not liable for consequential, exemplary, punitive, incidental, or indirect damages, that MDGE had disclaimed any type of warranty, and the circumstances under which MDGE could terminate its contract with the customer.²¹

15. OPC contended that other disclosures not made during TPVs included failing to inform a customer about MDGE’s privacy policy and information about the consequences of providing consent to view a customer’s credit report.²² OPC also alleged that the contract summary and terms and conditions sent to customers following their enrollments did not comply with the MTSA because, among other reasons, no contracts were ever signed.²³

16. On December 20, 2019, Staff filed an addendum by adoption, to its second amended complaint, of the entire OPC complaint.²⁴

C. Delegation and PULJ Proceedings

17. On July 12, 2019, the Commission docketed this matter as Case No. 9615 and delegated it to the PULJ Division, finding that there were genuine issues of material fact that warranted further

¹⁹ *Id.*

²⁰ *Id.* at 39.

²¹ *Id.* at 40.

²² *Id.*

²³ *Id.*

²⁴ Staff Addendum By Adoption To Second Amended Complaint, Maillog No. 227956.

proceedings to determine whether MDGE had engaged in a pattern or practice of systemic violation of the consumer protections in the Public Utilities Article and Commission regulations.²⁵ Prior to the evidentiary hearing, on May 14, 2021, the Parties filed a Joint Petition for Approval and Adoption of Partial Settlement Agreement and a Partial Settlement Agreement, describing the terms of the partial settlement agreement.²⁶ Pursuant to the Partial Settlement Agreement, the Parties agreed to proceed with litigation focused on the specific allegations in the complaint that MDGE violated the MTSA. Specifically, the Parties agreed to reserve the following MTSA-related issues for a second phase of the litigation:

- a. Whether inbound or outbound calls placed by or to customers who have received direct mail promotional materials and who agreed to enroll into MDGE’s electricity or natural gas supply service during the call, fall within the MTSA’s definition of “telephone solicitation;”
 - b. Whether MDGE’s telephone enrollments are exempt from the MTSA; and
 - c. Whether MDGE complied with the Commission’s regulations on enrolling customers by telephone pursuant to COMAR 20.53.07.08.C(4) and COMAR 20.59.07.08.C(4), if applicable.²⁷
18. The PULJ Division entered Order No. 89948 on September 30, 2021,²⁸ as a Final Commission Order adopting the PULJ’s Phase I Proposed Order, approving the Partial Settlement

²⁵ MDGE Delegation Order (Jul. 12, 2019). In the PULJ’s Ruling on Preliminary Motions and Notice of Procedural Schedule, in response to MDGE’s Motion for a More Definitive Statement and Partial Dismissal of Staff’s Amended Complaint, and Staff’s Motion to Strike the Motion for More Definite Statement, the PULJ refined the scope of the proceedings and directed Staff to identify: (1) the specific alleged behavior by MDGE or its agents in any of the Commission’s Consumer Affairs Division (“CAD”) complaints involving the supplier that amounts to violations of Maryland law; and (2) for each behavior identified, identify the specific statute or COMAR section that MDGE’s conduct allegedly violated. Dkt. No. 15 at 4.

²⁶ Joint Petition to Approve Settlement Agreement, Maillog No. 235277. See discussion of the Partial Settlement, *supra*.

²⁷ *Id.* at 10-11.

²⁸ Phase I Final Order, Order No. 89948.

Agreement, and finding the settlement to be both reasonable and in the public interest. The PULJ further found the \$150,000 civil penalty to be reasonable as well as a deterrent to both MDGE and other suppliers.²⁹ The PULJ determined that the penalty was significantly more than Staff recommended, and while it was less than OPC's recommendation, it was a reasonable amount based on the facts and circumstances of the case.³⁰

19. Before the Partial Settlement Agreement was adopted, on September 29, 2021, the Parties also filed a joint stipulation of facts, in which the Parties agreed to the following:

- a. In 2010 and 2011, the Commission granted MDGE's applications for licenses to provide retail electricity and natural gas supply and supply services to Maryland customers. The electric license was granted to "Energy Service Providers, Inc.," and the natural gas license was issued to "U.S. Gas & Electric, Inc.," and both companies operate in Maryland under the trade name "Maryland Gas & Electric."
- b. From January 2016 through June 2019, MDGE's marketing of its electricity and natural gas supply services in Maryland included telephonic communications with prospective customers, or "telesales."
- c. MDGE sent direct mailers to prospective, existing, and prior customers before enrolling them in supply contracts for electricity and natural gas via "telesales."
- d. Some of the telesales occurred during phone calls customers made to MDGE in response to these mailers, and the resulting enrollments are referred to as "inbound" enrollments or renewals.

²⁹ Phase I Final Order, Order No. 89948 (Sep. 30, 2021) slip. op. at 12.

³⁰ *Id.*

- e. MDGE also placed calls to prospective, existing, and prior customers, with certain calls resulting in an enrollment, re-enrollment, or renewal, and are referred to as “outbound” enrollments.
- f. MDGE’s telephone enrollment process included third-party verification (“TPV”), where MDGE required an affirmative response from the customer for each question asked before an account was enrolled. Subsequent to the telephone conversation, MDGE mailed or e-mailed to the customer a “welcome letter,” the terms and conditions, and the contract summary.
- g. Following the TPV, MDGE did not obtain signed contracts from the consumers it enrolled via telesales.
- h. MDGE enrolled a total of 16,575 of those residential customer accounts via telesales during the complaint period; including 2,131 accounts enrolled via inbound telesales, and 14,444 accounts enrolled via outbound telesales.
- i. Of the 16,575 total telesales enrollments during the complaint period, 9,958 were new customer account enrollments and 6,617 were re-enrollments of former customers.³¹

D. Proposed Order - Findings and Recommendations

20. On March 18, 2022, the PULJ entered the Phase II Proposed Order, finding that MDGE engaged in unlawful enrollment of customers through telephone solicitations in violation of State consumer protection laws, specifically the MTSA and, alternatively, Commission regulations, specifically COMAR 20.53.07.08(C)(4) and COMAR 20.59.07.08(C)(4).³² The PULJ recommended that the Commission require that MDGE ensure that any mailers it uses include all

³¹ Joint Response to Phase I Proposed Order, Maillog 237206, Attachment 1, at 1-3.

³² Phase II Proposed Order.

material terms and conditions of the sales offer; provide all terms and conditions of the contract to customers during telephone solicitations; and provide a full written contract, containing all terms and conditions, within three days for all future telephonic sales in Maryland, whether outbound or initiated by inbound calls. These proposed directives exceed the requirements of the Commission’s regulations.³³

21. In reviewing the PULJ’s findings, the Commission affirms findings that are: (1) supported by substantial evidence; (2) within the Commission’s statutory authority or jurisdiction; (3) not arbitrary or capricious; and (4) not affected by any error of law. With regard to PULJ recommendations, it is within the Commission’s discretion to adopt or reject such recommendations as long as in doing so the Commission’s decision is not arbitrary or capricious or unreasonably discriminatory.³⁴

IV. NOTICE OF APPEAL

22. MDGE and OPC each filed a Notice of Appeal of the Proposed Order on April 18, 2022.³⁵

A. MDGE’s Appeal

1. MTSA Applicability

23. MDGE argues that the PULJ erred in finding that the inbound sales calls were telephone solicitations as defined by the MTSA.³⁶ MDGE asserts that under the plain language of MTSA § 14-2201(f) – which defines a telephone solicitation as an attempt to sell that is made entirely by telephone and initiated by the merchant – inbound customer calls can never be telephone

³³ *Id.*

³⁴ See, *In the Matter of the Complaint of the Staff of the Public Service Commission v. SmartEnergy Holdings, LLC d/b/a SmartEnergy*, Case No. 9613, Order No. 89795 slip op. at 7, n. 12 (Mar. 31, 2021) (“*SmartEnergy*”). Cf., *Md. Office of People’s Counsel v. Md. Pub. Serv. Comm’n*, 246 Md. App. 388, 407 (2020) (“[W]e find nothing inappropriate in the Commission adopting the findings of the PULJ, since it was they who charged the PULJ with making those findings.”).

³⁵ MDGE Notice of Appeal, Maillog No. 240257, and OPC Notice and Memorandum of Appeal, Maillog No. 240258 (“OPC Memorandum”).

³⁶ MDGE Memorandum on Appeal, Maillog No. 240419 at 4.

solicitations.³⁷ MDGE disagrees with the recent Commission decision with a similar finding – in the *SmartEnergy* decision, which was later affirmed by the Circuit Court of Montgomery County³⁸ – and contends that applying the MTSA to the inbound sales calls contradicts the policy intent of the MTSA to protect consumers from cold-calls from unfamiliar merchants.³⁹

24. MDGE distinguishes the facts of its case from *SmartEnergy*, asserting that there is no evidence of a pattern and practice of fraud, or misleading and deceptive practices associated with MDGE’s marketing mailings and telephone solicitations.⁴⁰ MDGE contends that, unlike the supplier *SmartEnergy*, whose materials tended to obscure both the identity of the company and the substance of the offer, MDGE customers knew what they were purchasing, why they were calling, and the identity of MDGE.⁴¹

2. MTSA Exemptions

25. MDGE states that the PULJ correctly accepted the Parties’ stipulation that 6,617 of the 16,575 telephone enrollments during the complaint period were re-enrollments of prior customers, and did not dispute that the 6,617 were exempt from the MTSA.⁴² However, MDGE contends that the PULJ erred in determining there was no preexisting business relationship with other customers who received a mailing and then called MDGE to enroll.⁴³ MDGE maintains that the sending of the mailer, combined with the customer’s “informed, affirmative decision” to call MDGE is what establishes the preexisting business relationship, and based on the mailer, customers fully know

³⁷ *Id.*

³⁸ *In the Matter of SmartEnergy Holdings, LLC d/b/a SmartEnergy*, Circuit Court for Montgomery County, Case No. 485338V, slip. op. (Dec. 20, 2021).

³⁹ MDGE Notice of Appeal at 4-5.

⁴⁰ *Id.* at 5.

⁴¹ *Id.* at 4-5.

⁴² *Id.* at 6.

⁴³ *Id.*

who they are contacting.⁴⁴ MDGE acknowledges that it is applying its own interpretation of term "preexisting business relationship," which is not defined in the MTSA.

26. MDGE also argues that the PULJ erred in finding that it did not meet the marketing exemption of the MTSA. MDGE disputes the PULJ's interpretation that transactions initiated by marketing materials *contain all key terms of the contract*, noting that the statute instead requires the marketing materials to contain: (i) The name, address and telephone number of the merchant; (ii) A description of the goods or services being sold; and (iii) Any limitation or restrictions that apply to the offer.⁴⁵ MDGE asserts that the MTSA does not require that a marketing mailer or other marketing media include all material contract terms, and a supplier cannot reasonably include every term and condition of a retail energy contract in its marketing media.⁴⁶

3. Noncompliance with Commission Contracting Regulations

27. MDGE next argues that the PULJ erred in finding that MDGE violated COMAR 20.53.07.08(C)(4) and COMAR 20.59.07.08(C)(4) with regard to any telephone enrollments that were exempt from the MTSA contracting requirements, and takes issue with the PULJ's determination that insufficient information was provided to those customers about material contract terms.⁴⁷ MDGE also objects to the PULJ's finding that customers did not receive full written contracts within three business days.⁴⁸

28. MDGE contends that their outbound sales scripts and TPV scripts included the required terms under COMAR, and MDGE sent complete written contracts to customers within three business days, noting that the PULJ did not find that there were any material contract terms missing from the contracting documents that MDGE sent to customers. MDGE points to previous

⁴⁴ *Id.* at 7.

⁴⁵ *Id.* at 8.

⁴⁶ *Id.*

⁴⁷ *Id.* at 9.

⁴⁸ *Id.*

Consumer Affairs Division and Commission decisions that support contract formats and contents similar to those used by MDGE.⁴⁹

4. PULJ's Proposed Remedies

29. MDGE agrees with the PULJ's finding that, given its prior payment of the \$150,000 civil penalty in Phase I of the case, no further monetary penalty is required. However, MDGE disagrees with the PULJ's proposed remedy that it be required to include all material terms and conditions of the sales offer in its mailings; provide all terms and conditions of the contract to customers during telephone solicitations; and provide a full written contract, containing all terms and conditions, within three days for all future telephonic sales in Maryland, whether outbound or initiated by inbound calls.

30. MDGE asserts that the PULJ's recommendation that all terms be included on the mailings was unreasonable and requests that the Commission reject this remedy.⁵⁰ MDGE argues further that a recitation of all the terms and conditions can take more than 13 minutes to read, with the contract summary reading totaling another two minutes, causing the sales call to last an unreasonable amount of time for both the potential customer and the supplier, and lead to an unpleasant sales experience.⁵¹ MDGE emphasizes that customers would be listening to immaterial as well as material terms, and they should not have to hear about the immaterial terms that are unlikely to factor into the customer's decision-making process.⁵² MDGE adds that current customers who inquire about switching to a different MDGE plan are already familiar with the supplier and do not need to have the terms read to them.⁵³ MDGE requests that the Commission

⁴⁹ *Id.*

⁵⁰ MDGE Memorandum on Appeal at 12-13.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

instead allow the supplier to disclose the material terms and conditions, as defined by COMAR, instead of all terms and conditions.

31. Finally, MDGE argues against being directed to provide a full written contract, containing all terms and conditions, within three days for all future telephonic sales in Maryland, whether outbound, or initiated by inbound calls.⁵⁴ MDGE acknowledges that the Commission's regulations require the provision of a complete written contract within three business days of the contracting telephone conversation. MDGE maintains that it adheres to these regulations by sending a welcome letter with the terms and conditions and contract summary to inbound and outbound telephone-enrolled customers and disputes the PULJ's finding that the documents provided, including a contract summary, terms and conditions and welcome letter, do not collectively comprise a full contract.⁵⁵ MDGE emphasizes that the Proposed Order does not specify business or calendar days for the provision of the full written contract and requests that the Commission clarify that the contract must be provided in three business days.⁵⁶

32. On May 6, 2022, MDGE submitted a Reply Brief, in response to OPC's appeal memorandum, which was filed April 18, 2022 with its Notice of Appeal.⁵⁷ MDGE disagrees with OPC's position that the PULJ should assess an additional civil penalty and re-rate all MDGE customers enrolled by telephone.⁵⁸ MDGE emphasizes that the PULJ, in finding just cause to issue a penalty, decided during the settlement of Phase I that no further penalties were necessary for either phase beyond the \$150,000 civil penalty issued during Phase I of the litigation.⁵⁹ MDGE asserts that its alleged actions were not as severe as those suppliers where the Commission ordered

⁵⁴ *Id.* at 14.

⁵⁵ *Id.*

⁵⁶ *Id.* at 15.

⁵⁷ MDGE Reply Memorandum, Maillog No. 240594.

⁵⁸ *Id.* at 2.

⁵⁹ *Id.* at 3.

substantially higher civil penalties and re-rates.⁶⁰ MDGE also argues that OPC's request is overreaching, arguing that OPC had not previously proposed refunds for customers going back to 2010, which it asserts is well beyond the complaint period of January 2016 through June 2019, and which MDGE argues the record does not contain evidence regarding MDGE's enrollment processes prior to the complaint period.⁶¹

B. OPC Appeal

33. In its Memorandum on Appeal, OPC appeals only the PULJ's finding that no additional civil penalty beyond the \$150,000 assessed in Phase I was necessary, and limiting the re-rates to the customer complainants from Phase I.⁶²

34. OPC argues that the Proposed Order fails to provide any relief to the other customers affected by MDGE's actions and is therefore contrary to Commission precedent.⁶³ OPC cited several cases where the Commission provided relief to the entirety of customers impacted by a retail supplier's illegal actions, and imposed higher civil penalties.⁶⁴

35. With regard to sanctions, OPC argues that the Commission has just cause to impose a penalty that would provide relief for all of MDGE's unlawfully telephone-enrolled customers.⁶⁵ It argues that relief should reach beyond the complaint period to all customers who enrolled, or re-enrolled, from an unlawful telephonic solicitation in violation of the MTSA.⁶⁶ OPC further asserts that the Commission should assess an additional civil penalty on MDGE, with a fine of \$100 per unlawful telephonic enrollment, in order to send a strong message to the State's retail suppliers.⁶⁷

⁶⁰ *Id.*

⁶¹ *Id.* at 4-5.

⁶² OPC Memorandum on Appeal at 3.

⁶³ *Id.* at 4-5.

⁶⁴ *Id.* at 5-6.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 8.

OPC also argues that the Commission should provide relief to customers who re-enrolled from an unlawful telephonic solicitation if the previous enrollment was also in violation of the MTSA.⁶⁸

36. In its Reply Brief, OPC counters MDGE's assertions that the inbound calls are not subject to the MTSA, and that it sent a complete contract to customers, with OPC noting that MDGE's terms and conditions document, sent following the telephone enrollments, contains a statement that it supersedes any oral representations made in connection with the sale.⁶⁹ OPC argues that the statement creates a situation where a customer consents to enrollment but has to wait to see the terms to which he or she consented.⁷⁰ OPC reiterates its support of the PULJ's findings and emphasizes that MDGE has failed to prove that it has met an MTSA exemption or sent customers a complete signed contract.⁷¹

C. Staff Reply Briefs

37. In response to MDGE, Staff emphasizes that substantial evidence exists to support the PULJ's finding that the MTSA applied to MDGE's inbound telephone enrollments, that MDGE did not send valid contracts to the customers, and that MDGE did not meet any exemptions under the MTSA.⁷² Staff supports the PULJ's sanctions, including prohibiting MDGE from using an MTSA exception.⁷³ Staff argues that the Proposed Order is a reasonable remedy for MDGE's repeated, demonstrated misinterpretation of COMAR and the MTSA.⁷⁴

38. In response to OPC, Staff argues that substantial evidence exists to support the PULJ's proposed findings and remedies, and the Proposed Order provides appropriate and discretionary relief.⁷⁵ Staff emphasizes that, despite previous decisions where the Commission imposed more

⁶⁸ *Id.* at 9.

⁶⁹ OPC Reply Memorandum, Maillog No. 240745 at 2-4.

⁷⁰ *Id.*

⁷¹ *Id.* at 4-7.

⁷² Staff (MDGE) Reply Memorandum, Maillog No. 240746.

⁷³ *Id.* at 7-10.

⁷⁴ *Id.* at 10.

⁷⁵ Staff (OPC) Reply Memorandum, Maillog No. 240592 at 6.

stringent penalties, those cases differ from the present case in that there are no such examples of blatant and consistent misrepresentations by MDGE's agents in evidence in this case and, consequently OPC can cite to none.⁷⁶ Staff asserts that if the Commission were to mandate refunds now to all enrolled telephone contracts, the decision would not only second-guess the PULJ's discretionary determination of the facts, but also arbitrarily impose a penalty not supported by the evidence.⁷⁷

D. Motion to Strike and Responses

39. On June 6, 2022, MDGE filed a motion to strike statements OPC made in its Reply Memorandum.⁷⁸ MDGE argues that on page 6 of its Reply Memorandum, OPC misstates that the Proposed Order found that MDGE did not qualify for the MTSA's preexisting business exemption because the record contains no evidence that any of the customers in the CAD complaints were previously in a contract with MDGE.⁷⁹ MDGE requests that the statement be stricken because it asserts that it is undisputed that 6,617 of the 16,575 telephone sales during the complaint period were re-enrollments of prior customers.⁸⁰ MDGE also takes issue with OPC's argument that MDGE violated COMAR 20.53.07.08.C(4)(b) and 20.59.07.08.C(4)(b) because MDGE did not obtain signed contracts when the COMAR provisions do not require signed contracts for MTSA-exempt sales.⁸¹

40. OPC filed an opposition to the motion to strike, maintaining that its statements were not erroneous or prejudicial, contending that OPC has throughout the case disputed MDGE's position that the 6,617 telephone re-enrollments were sales to existing or prior customers, and MDGE failed

⁷⁶ *Id.* at 8-10.

⁷⁷ *Id.* at 10.

⁷⁸ Maillog No. 240951 at 1-2.

⁷⁹ *Id.* at 2.

⁸⁰ *Id.* at 3.

⁸¹ *Id.* at 4.

to meet its burden of proving that each of those customers comprised a preexisting business relationship with MDGE.⁸² OPC states that even if any of MDGE’s telephone enrollments are exempt from the MTSA, they do not comply with the Commission regulations for telephone sales under COMAR 20.53.07.08C(4)(b)(v) or COMAR 20.59.07.08C(4)(b)(v) because MDGE failed to disclose all the material terms of its offer during the sales calls.⁸³

41. MDGE filed a response, reiterating its earlier positions on June 27, 2022.⁸⁴

V. COMMISSION DISCUSSION

A. MTSA Application

42. In the Proposed Order, the PULJ noted that in the Commission’s *SmartEnergy* decision, both inbound calls resulting from marketing materials sent by a supplier, and outbound calls from a supplier, fall within the MTSA’s definition of a telephone solicitation. A similar finding was made in the Commission’s *Direct Energy* decision.⁸⁵ Furthermore, regardless of whether there was an initial mailing of marketing materials that prompted a call from a potential customer to initiate the sale, the Proposed Order found that the sale itself was made entirely by telephone, and the MTSA applies. Staff and OPC agree that the MTSA applies to the inbound calls to MDGE from customers who received its marketing mailings. MDGE disputes this finding, maintaining that the policy and purpose of the MTSA is to protect consumers from unfamiliar merchants making cold calls in an attempt to sell unfamiliar products.

COMMISSION DECISION

43. The Commission, consistent with its determinations in *Direct Energy* and *SmartEnergy*, and the decision of the Circuit Court of Montgomery County in *SmartEnergy*’s appeal, affirms the

⁸² MDGE Motion to Strike, Maillog No. 241169 at 4.

⁸³ *Id.* at 4-5.

⁸⁴ MDGE Reply in Support of Motion to Strike, Maillog No. 241225.

⁸⁵ *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).

PULJ's finding that the MTSA applies to the inbound customer calls to MDGE, in response to their marketing postcards and other mailed solicitation materials. The MTSA applies to all inbound calls, made pursuant to marketing materials, where the sale takes place entirely over the phone. Additionally, the Commission's telephone contracting regulation (COMAR 20.53.07.08C(4)) applies.

B. MTSA exemptions

44. The PULJ made findings regarding the applicability of two exemptions to the MTSA contracting requirements. The stipulation of facts provides that, of the 16,575 telesales enrollments during the complaint period, 6,617 were "re-enrollments of former customers."⁸⁶ Parties are entitled to rely on the facts agreed to in the "Stipulation of Facts" dated September 28, 2021.⁸⁷ Pursuant to the stipulated facts, the PULJ found that the 6,617 re-enrollments of former customers satisfy the MTSA exemption for soliciting businesses that made a "previous sale" to the customer, in accordance with § 14-2202(a)(2)(i).⁸⁸ This finding is distinct and separate from the reasoning and decision to exclude customers based on a preexisting business relationship under § 14-2202(a)(2)(ii). This distinction highlights the PULJ's valid finding that the mailing of marketing materials does not, in and of itself, create a preexisting business relationship.⁸⁹ The PULJ stated that the mailers initiated MDGE's offer of services and a request for inbound customer calls to MDGE in response to the mailer.⁹⁰ The PULJ therefore found that MDGE did not qualify for the preexisting business relationship exemption.

⁸⁶ Case No. 9615, Joint Response to Proposed Order of Public Utility Law Judge, Attachment 1 at 3 (Statement of Stipulated Facts) (Sept. 29, 2021) (Maillog No. 237206).

⁸⁷ See Statement of Stipulated Facts at 1: "The facts recited below may be relied upon by the Parties in these proceedings without submitting further proof or evidence."

⁸⁸ Case No. 9615, Phase II Proposed Order (March 18, 2022) (Maillog No. 239643) at 25.

⁸⁹ *Id.*

⁹⁰ *Id.*

45. The other exemption claimed by MDGE, MTSA § 14-2202(a)(5), requires that transactions be initiated by marketing materials containing all key terms of the contract, including: (i) The name, address, and telephone number of the merchant; (ii) A description of the goods or services being sold; and (iii) Any limitations or restrictions that apply to the offer.⁹¹ The PULJ found MDGE’s mailers to be deceptive and misleading.⁹² The PULJ explained that the MDGE mailers in the record “failed to contain the terms of the contract. Most of the mailers have no price listed and do not contain the rate to be charged.”⁹³ Similar to *SmartEnergy*, the PULJ found that the mailers used by MDGE “provide minimal information about the offer and did not include essential information such as price, renewal term, or other items outlined in COMAR 20.53.07.08.”⁹⁴

46. The PULJ determined that most of MDGE’s mailings did not satisfy the requirements for the exemption in MTSA § 14-2202(a)(5), noting that the evidence in the record did not clarify which mailer an inbound caller was referring to, since the MDGE sales agent only confirmed whether a call was in response to the receipt of a postcard.⁹⁵ The PULJ also noted that the mailers contained differing levels of compliance with the consumer protection laws, and it was therefore unclear which mailers led to a sale.⁹⁶ The PULJ acknowledged the Parties’ stipulation that 6,617 of the 16,575 sales were re-enrollments of prior customers, and indicated that of the 16,575 contracts at issue during the complaint period, some met an MTSA exemption and some did not.⁹⁷ However, the PULJ noted that none of the 16,575 received written contracts, and MDGE’s sales practices, “as a general business practice,” violated the MTSA.⁹⁸

⁹¹ *Id.* at 26.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at 27.

⁹⁶ *Id.*

⁹⁷ *Id.* at 22.

⁹⁸ *Id.*

COMMISSION DECISION

47. The Commission finds that MDGE's mailings were inconsistent in its contents and compliance with the consumer protection laws, were deceptive and misleading, and the supplier therefore violated the MTSA through its telephone enrollment processes. The Commission also finds that MDGE does not meet the MTSA preexisting business relationship or marketing exemptions for the reasons articulated by the PULJ, in accordance with the PULJ's findings as described in paragraph 48 of the Proposed Order.

48. The Commission affirms the PULJ's finding on the MTSA § 14-2202(a)(2) preexisting relationship exemption because there is no evidence of a preexisting business relationship with the customers that are the subject of this complaint, and the mailings themselves do not create a business relationship. MDGE's arguments notwithstanding, the evidence in this case does not clearly show that its mailers were directed to prior or current customers – or anyone – with whom MDGE had a preexisting relationship, and none received the full contracts as required by either MTSA or, alternatively, the Commission's contracting regulations.

49. The Commission also affirms the PULJ's finding that the MTSA § 14-2202(a)(5) marketing exemption does not apply, since customers were not enrolled under circumstances in which they had the opportunity to examine MDGE's services beforehand, particularly considering that the marketing information may not have contained all the important information needed to understand the offering such as price, contract term, renewal term, or other limitations.

C. Applicability of COMAR 20.53.07.08C(4) and COMAR 20.59.07.08C(4)

50. The PULJ also found that the MDGE telephone enrollments that did not meet an exemption under the MTSA and violated COMAR 20.53.07.08C(4) and 20.59.07.08C(4), which apply to suppliers' telephone solicitation enrollments that are exempt from all applicable State and federal

consumer protection laws.⁹⁹ Under these regulations, gas and electric suppliers must mail or otherwise transmit to customers a complete written contract within three business days of the telephone enrollment, and full disclosure of the terms and conditions during the enrollment conversation.¹⁰⁰

51. The PULJ found the contents of the TPV script provided by MDGE as evidence to be insufficient to satisfy the requirements of the regulations.¹⁰¹ The PULJ also noted that, per the stipulation of facts, MDGE provided customers with a welcome letter, terms and conditions and a contract summary.¹⁰² The PULJ determined that, consistent with recent Commission decisions, “a contract summary . . . is insufficient to meet the requirements of disclosure of material contract terms and conditions.”¹⁰³

52. The PULJ further determined that according to the Parties’ stipulation of facts, upon enrollment, MDGE provided the customers at issue in this matter a welcome letter, terms and conditions, and a contract summary.¹⁰⁴ MDGE argued that those documents comprised the required material contract terms and conditions that needed to be provided in accordance with the MTSA.¹⁰⁵ COMAR 20.53.07.08(A) sets forth the minimum contract requirements under the Commission’s competitive electricity supply regulations. Specifically, Regulation .08A(2) provides a comprehensive list of all material terms and conditions that a retail supplier’s contract must include.

53. COMAR 20.53.07.08B(2) requires that if the contract is completed through telephone solicitation, the supplier must send the contract summary to the customer, along with the contract,

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 28.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 28.

¹⁰⁵ MDGE Memorandum on Appeal at 10.

which must be signed by the customer and returned, as required by the MTSA. If the contract is exempt from the MTSA, the supplier must send the contract summary with the contract to the customer. In this case, since MDGE's telephone enrollments are not exempt from the MTSA, the telephone-enrolled customers should have received the contract and contract summary, and the customer should have signed and returned the contract to MDGE. MDGE acknowledged in the Parties' stipulation of facts that it did not obtain signed contracts from the consumers it enrolled via telesales.¹⁰⁶

54. Staff and OPC agree that MDGE did not provide telephone-enrolled customers with a complete contract, while MDGE maintains that it provided a complete contract to all customers.

COMMISSION DECISION

55. Pursuant to MTSA § 14-2203(a) a contract made pursuant to a telephone solicitation is not valid and enforceable against a consumer unless made in compliance with MTSA § 14-2203(b). The statute also requires that the contract be in writing and signed by the consumer; comply with all other applicable laws and regulations; match the description of goods or services as those described in the telephone solicitation; and contain the name, address, and telephone number of the seller, the total price of the contract, and a detailed description of the goods or services being sold. Contrary to the law, the items that MDGE identified as contracts are actually a group of documents that are incorporated by reference, including terms and conditions that do not contain all of the information required by MTSA § 14-2203(b). MDGE argues that the terms and conditions, which the supplier sent to customers, accompanied by the contract summary and welcome letter, comprise the entire contract, and that the PULJ's findings are inconsistent and confusing.¹⁰⁷ MDGE contends that its terms and conditions contain the required disclosures in

¹⁰⁶ Joint Response to Phase I Proposed Order at 7.

¹⁰⁷ MDGE Memorandum on Appeal at 10.

accordance with COMAR 20.53.07.08(A)(2) and COMAR 20.59.07.08(A)(2).¹⁰⁸ MDGE also references a previous Commission Letter Order where a customer challenged the validity of a door-to-door enrollment with MDGE, and contends that the Letter Order found MDGE's terms and conditions to comprise a valid contract.¹⁰⁹ MDGE notes that the Letter Order agreed with its argument that the Commission regulations "do not proscribe a particular contract format or prohibit contracts from consisting of multiple documents."¹¹⁰

56. The *Carter v. MDGE* Letter Order focuses on the validity of electronic enrollments and supplier contracts that contain more than one document, while the present case examines the contents of the supplier contract. Here, the PULJ did not focus on the supplier contract format. Instead, the PULJ made findings regarding the incomplete *content* of the contract, which relied upon a contract summary to convey information that should be contained within the terms and conditions, and contained disclaimer language stating that the written agreement supersedes any prior written or verbal statements.¹¹¹ The PULJ found the contracts to be incomplete, and the Commission affirms this finding. The fact that the required information is not contained within one document that is signed by the customer is cause for confusion. Therefore, this contract - even if signed - would not have satisfied the requirements of either the MTSA or the Commission's regulations.

57. In addition, the PULJ clearly found that the record establishes that no signed contracts were produced with regards to the customers at issue in this proceeding.¹¹² Having failed to comply with the MTSA's requirements, and admitting that failure in the stipulation of facts, the

¹⁰⁸ *Id.*

¹⁰⁹ *Carter v. U.S. Gas & Elec. d/b/a Maryland Gas & Elec.* (Oct. 12, 2021).

¹¹⁰ *Id.* at 11.

¹¹¹ Phase II Proposed Order at 29. *See also* OPC's Response to Motion for Partial Dismissal of Complaint, Maillog No. 227712 at 39-40.

¹¹² Phase II Proposed Order at 27.

Commission finds MDGE's contracts with all of its Maryland customers enrolled during the complaint period of 2016-2019 are invalid.¹¹³

58. The Commission affirms the PULJ's finding that any telephone enrollments that were exempt from the MTSA are, in the alternative, in violation of COMAR 20.53.07.08C(4) and COMAR 20.59.07.08C(4), because MDGE did not send customers entire written contracts within three days of the customers' telephone enrollments.

D. Motion to Strike

COMMISSION DECISION

59. As discussed above, MDGE requests that statements made by OPC in its Reply Brief be stricken. The Commission denies MDGE's motion. OPC's statements comprise arguments that OPC may make at its discretion, and those statements are not presented as part of the evidence of record in this matter. MDGE is free to present counter-arguments, and did so. The Commission considers all arguments presented in rendering its decisions.

E. PULJ's Proposed Remedies

60. The PULJ did not assess an additional monetary penalty for this phase of the case, determining that the \$150,000 penalty in Phase I was sufficient. All of the Parties agree, except for OPC, which requests additional monetary penalties as well as a rerate for *all* customers unlawfully enrolled through the telephone following a mailing – including those customers enrolled from 2011, the year of MDGE's electricity and gas licensing. OPC states that the PULJ's finding does not provide any relief to the majority of impacted customers, who fall outside the

¹¹³ See, *SmartEnergy* Order at 64, para. 148: "Where competitive retail suppliers have failed to comply with the MTSA's contracting requirements, the appropriate remedy has been cancellation of the supplier's Maryland invalid customer enrollments and requiring those customers to be returned to utility standard offer service." (*Cf.*, *Blue Pilot Energy*, Proposed Order, slip op. at 70-72, *aff'd*, Order No. 87925 (Dec. 12, 2016)). The same applies in this case. Customers with invalid contracts that have not been replaced with MTSA-compliant contracts within the period provided herein, shall be disenrolled upon the expiration of the compliance period and returned to utility standard offer service or, if requested, another Maryland licensed retail supplier of the customer's choice.

complaint period. Staff and MDGE agree with the PULJ's finding. The Parties compare the monetary penalty issued in Phase I of this matter to monetary fines assessed in other cases and the grounds for those assessments. MDGE notes that OPC's proposed expansion of penalties exceeds the time period specified in the complaints and in the stipulation of facts.

61. The PULJ additionally found that pursuant to PUA § 7-507(k)(1), in order to protect Maryland consumers from misleading telephone solicitations, MDGE was directed to ensure that any mailers it uses include all material terms and conditions of the sales offer; provide all terms and conditions of the contract to customers during telephone solicitations; and provide a full written contract, containing all terms and conditions, within three days for all future telephonic sales in Maryland, whether outbound or initiated by inbound calls. MDGE disagrees with the first two proposed directives, arguing that the denial of access to exemptions exceeds the Commission's authority under PUA § 7-507(k)(1) and citing a hardship on operations and telephone solicitations and a potential chilling effect on customers engaging in sales calls with the supplier. MDGE does not object to the proposed directive to provide the full contract, stating that it already does so, but requests that the Commission clarify that the contract is to be provided within three *business* days. OPC and Staff agree with all of the proposed remedies as a deterrent for suppliers who may employ practices similar to MDGE's when relying on mailers and telephone solicitations.

COMMISSION DECISION

62. The Commission affirms the PULJ's decision not to assess additional civil penalties. In this case, the Commission accepts the civil penalty as established in Phase I as adequate; however, in order to address OPC's concern that the proposed relief would be too limited, the Commission, as discussed above, directs MDGE to inform its telephone-enrolled customers from January 2016 through June 2019 within 30 days of this decision and that they may choose to continue with MDGE, return to SOS or select another supplier. MDGE is then directed to file with the

Commission, within 60 days of the date of this Order, a plan to address any remaining invalid enrollments. After reviewing the MDGE's plan, the Commission shall determine a process for MDGE to return any customers without valid contracts to their utility SOS provider within 180 days. The Commission denies MDGE's appeal, with the exception of clarifying that the full written contracts must be sent to enrolled customers within three *business* days in accordance with the above-referenced COMAR requirements.¹¹⁴

63. The Commission finds that, based upon the record of this case, including the stipulation of facts and the partial settlement agreement, there is no evidence in the record prior to the complaint period. Therefore, the Commission has no record to determine the validity of any MDGE customers enrolled by telephone from 2011 through 2015. For this reason, the Commission's remedies are limited to the complaint period of 2016-2019, and the Commission hereby denies OPC's appeal.

64. The evidence reflects that MDGE's actions arose from a misinterpretation of the MTSA. While there is no indication that MDGE *intended* to engage in fraud, or deceptive and misleading trade practices, the differing information contained within (or not included in) the mailers nevertheless points to deceptive and misleading practices that must be addressed. In considering this matter, and the statutory factors relevant to license actions under PUA § 7-507(l)(3), the Commission may consider good faith efforts, previous violations and the gravity of the current

¹¹⁴ Commissioner Linton dissents from this portion of the Order, noting as follows: I join the Majority Opinion in this case, which in large part affirms the Proposed Order. However, I do not support giving MDGE the opportunity to re-solicit Maryland households for whom the PULJ and the Commission have found the company's SOS arrangements to be invalid. This approach allows MDGE the benefit of directly marketing to those same impacted customers for an additional seven months after this Order issues, while simultaneously allowing the company to charge unknown rates under invalidated and illegal commodity agreements. This approach will be confusing to thousands of Maryland households and MDGE's customers, because it is not based on existing Commission regulations, tariff, educational materials, Maryland law, etc. Unfortunately, no party produced any record evidence to support additional relief beyond that obtained in the Phase I Settlement before the PULJ for customers enrolled prior to 2016 or, during the complaint period. I would have welcomed that evidence. In its absence, and as the Commission has directed in numerous other cases where supplier contracts were found to be invalid, I would return the affected customers immediately to utility Standard Offer Service as authorized in current COMAR and utility tariffs.

violation. Violations of the MTSA are a serious matter, and this decision reflects the Commission's serious concern with the violations found; however, the Commission determines that MDGE's violations are not intentionally fraudulent when compared to the actions of other suppliers where the Commission determined an intent to commit fraud and deceive existed, and assessed more stringent penalties and higher fines.

65. Therefore, the Commission rejects the PULJ's proposed remedy of MDGE including all material terms and conditions on its mailers, as this requirement would be onerous and difficult to satisfy. The Commission declines to require adherence to conditions that well exceed the statutory and regulatory requirements, as such authority is not vested in the Commission. Additionally, the Commission also rejects the PULJ's proposed remedy of MDGE reciting all terms and conditions of the contract to customers during telephone solicitations, for the same reasons.

66. Finally, the Commission affirms the PULJ's proposed directive that MDGE provide a full written contract, containing all terms and conditions, within three *business* days for all future telephonic sales in Maryland, whether outbound or initiated by inbound calls, regardless of whether an exemption would be allowed based on the MTSA. MDGE, in its Memorandum on Appeal, acknowledges that it already mails or emails written contracts to all inbound and outbound telephone enrolled customers within three business days.

VI. CONCLUSION

67. As discussed herein, the Commission affirms in part and reverses in part, the Phase II Proposed Order in this case, adopting the Phase II Proposed Order as part of the Final Order of the Commission in all aspects except the PULJ's findings that MDGE must include all material terms and conditions on its mailers, and MDGE must recite all terms and conditions of the contract to customers during telephone solicitations.

IT IS THEREFORE, this 16th day of August, in the year of Two Thousand Twenty-Two, by the Public Service Commission of Maryland, **ORDERED** that:

(1) Phase II Proposed Order of the Public Utility Law Judge in this matter is affirmed in part and reversed in part, as discussed herein, and all telephone-enrolled contracts during the complaint period are invalid. The appeals of the U.S. Gas & Electric and Energy Services, Inc., D/B/A Maryland Gas & Electric and the Office of People’s Counsel are denied;

(2) MDGE send a letter to all of its Maryland customers who were solicited and enrolled by telephone between 2016 and 2019, within 30 calendar days of the date of this Order, informing them of the invalidity of their contracts and providing them with the choice to either sign a valid contract (which comprises all terms and conditions, contract term, rates and right of rescission, and is accompanied by a contract summary) by a date certain, switch to a different supplier, or be returned to their utility’s standard offer service;

(3) Within 60 days of the date of this Order, MDGE file a compliance report with the Commission, containing the information discussed in the body of this Order;

(4) Pursuant to forthcoming Commission direction and within 180 days of the date of this Order, MDGE shall return all customers for which it does not have validly signed contracts to utility SOS service;

(5) MDGE provide a full written contract, containing all terms and conditions, within three business days for all future telephonic sales in Maryland, whether outbound or initiated by inbound calls;

(6) Any findings by the Public Utility Law Judge not expressly reversed, vacated, or modified herein, are adopted; and

(7) Any motion not otherwise granted by the Commission is hereby denied.

/s/ Jason M. Stanek

/s/ Michael T. Richard

/s/ Anthony J. O'Donnell

/s/ Odogwu Obi Linton

/s/ Patrice M. Bubar

Commissioners