

**ORDER NO. 86767**

IN THE MATTER OF THE  
INVESTIGATION INTO THE  
MARKETING PRACTICES OF  
STARION ENERGY PA, INC.

---

\*  
\*  
\*  
\*  
\*  
\*  
\*

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

---

CASE NO. 9324

---

**Issue Date: December 16, 2014**

On March 7, 2014, the Public Service Commission of Maryland (“the Commission”) issued Order No. 86211 finding, inter alia, that Starion Energy PA, Inc. (“Starion” or the “Company”) engaged in “thousands” of practices that violate State law and Commission regulations.<sup>1</sup> Stemming from that finding, the Commission directed Starion to provide Staff and the Maryland Office of People’s Counsel (“OPC”) every six months until further notice with a list of all statewide customer complaints, including the nature of the complaint and the resolution.<sup>2</sup> In response to this directive, Starion submitted on September 5, 2014, its list of all statewide customer complaints filed between March and August 2014.<sup>3</sup>

Following a review of Starion’s compliance filing, OPC propounded an initial set of data requests to the Company seeking information to verify statements and to further

---

<sup>1</sup> Order No. 86211 (March 7, 2014) at 1.

<sup>2</sup> *Id.* at 31.

<sup>3</sup> ML#158352: *Starion Compliance Filing – Case No. 9324, Order 86211* (“Starion Compliance Filing”) (Sept. 5, 2014).

understand the filing.<sup>4</sup> Starion objected to many of the inquiries contained in OPC's Data Request Set No. 1 as violative of the doctrines of collateral estoppel and *res judicata*, resulting in the filing of a Motion to Compel by OPC on October 6, 2014. Over the Company's objections, the Commission directed Starion to provide complete responses to all questions included in OPC Data Request No. 1, as modified by OPC's Response to Starion's Objections filed on September 26, 2014.<sup>5</sup> While the Motion to Compel was pending, the parties continued to engage in discovery for this matter, with OPC propounding additional sets of data requests.

On November 10, 2014, OPC served its third set of data requests on Starion, seeking additional information in preparation for the upcoming January 2015 evidentiary hearing.<sup>6</sup> According to OPC, its data requests are calculated to seek information regarding customers who have received refunds from Starion since the issuance of Order No. 86211 (*i.e.*, March 7, 2014).<sup>7</sup> OPC contends that the requested information is necessary to evaluate the Company's complaint handling procedures, especially in relation to complaints that did not escalate to the dispute process handled by the Commission's Office of External Relations ("OER").<sup>8</sup> Unable to resolve a disagreement with the Company regarding the proper scope of discovery, OPC filed a second Motion to Compel ("Motion") on December 4, 2014, requesting that the Commission direct Starion to provide complete responses to OPC Data Request Questions 3-4 and 3-5, and also

---

<sup>4</sup> ML#159260: *Motion to Compel of the Maryland Office of People's Counsel* (Oct. 6, 2014) at 2.

<sup>5</sup> Order No. 86720 (Nov. 21, 2014) at 6.

<sup>6</sup> ML#161189: *Motion to Compel of the Maryland Office of People's Counsel* ("OPC Dec. 4<sup>th</sup> Motion") (Dec. 4, 2014) at 1.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.*

requesting that the Commission establish specific timelines for discovery responses and objections.<sup>9</sup>

Starion filed its Response to OPC's Motion to Compel ("Response") on December 12, 2014.<sup>10</sup> In its Response, Starion alleges that OPC's Motion to Compel represents an attempt to improperly expand the scope of this proceeding, claiming that the scope of Case No. 9324, as well as previous discovery exchanges, were limited to complaints received by either OPC or the Commission's OER.<sup>11</sup> The Company argues that OPC's expanded scope of discovery provides no reasonable limitation on production and will impose an undue burden on Starion.<sup>12</sup> In an attempt to resolve the discovery dispute, however, the Company proposed to provide OPC with a description of customers' calls, the refund amount provided for these customers, and the original sales channel by which Starion contracted with these customers – albeit with all discovery limited by the Company's definition of the scope of this proceeding.<sup>13</sup> While extending this compromise, Starion requests that the Commission deny OPC's Motion to Compel and allow the Company at least 5 business days after the entry of an order to supplement its discovery responses as proposed above. Although the Company proposes a different timeline for discovery than OPC, Starion also requests that the Commission establish a procedural schedule.<sup>14</sup>

---

<sup>9</sup> *Id.* at 3.

<sup>10</sup> ML#161678: *Starion Energy PA, Inc.'s Response to the Office of People's Counsel's Motion to Compel* ("Starion Response") (Dec. 12, 2014).

<sup>11</sup> *Id.* at 1.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Id.* at 3-4. Starion notes that it does not keep a record of the refund amount requested by a customer, and thus cannot be responsive to OPC Data Request 3-5(b). *Id.* at 3, n.3.

<sup>14</sup> *Id.* at 4.

## **Commission Decision**

The Commission directs parties in litigated proceedings appearing before us to consider the Federal Rules of Civil Procedure as well as the U.S. District Court for the District of Maryland’s Discovery Guidelines as the principles governing the conduct of discovery.<sup>15</sup> In recognition of this guidance, Starion seeks to rely on Federal Rule 26(b)(2) in order to characterize OPC’s Data Request No. 3 as inappropriate, arguing that “the burden or expense of the proposed discovery outweighs its likely benefit.”<sup>16</sup> We find, however, that the Company’s unfavorable characterization of the OPC data request hinges on Starion’s misinterpretation of our previous Order.

Specifically, while Starion attempts to frame the scope of this proceeding as limited to those complaints received by either OPC or the Commission’s OER, we find that such an interpretation is neither consistent with a plain reading of Order No. 86211 nor aligned with applicable Commission regulations. Ordering Paragraph No. 6 clearly directs Starion to provide a list of *all statewide customer complaints* and implies no such limitation as the Company attempts to assert now.<sup>17</sup> Had the Commission sought to limit its Order No. 86211 directive as Starion incorrectly asserts, we could have done so expressly.<sup>18</sup>

Furthermore, we find that OPC Data Request 3-4 and 3-5 will not impose an undue burden on the Company, especially given that, contrary to Starion’s assertion, OPC did in fact provide both substantive and temporal limitations in its disputed data request; OPC

---

<sup>15</sup> See, e.g. Order No. 86622 (Sept. 22, 2014) at 6; Order No. 86720 (Nov. 21, 2014) at 4.

<sup>16</sup> Fed. R. Civ. P. 26(b)(2)(C)(iii).

<sup>17</sup> Order No. 86211 at 31.

<sup>18</sup> Including perhaps by referencing customer “disputes”, which is the COMAR terminology used with respect to complaints filed with the Commission’s OER. See COMAR 20.32.01.02.

confined its inquiry to those customers who have received refunds from Starion since the issuance of Order No. 86211, thereby spanning an approximate nine month term.<sup>19</sup> While we recognize and appreciate the Company's proffered compromise with respect to the instant discovery dispute, we find that its scope is inappropriately limited and therefore grant OPC's December 4<sup>th</sup> Motion to Compel, subject to the following modification. Given that Starion does not keep records of the refund amounts requested by customers, the Company is not compelled to answer OPC Data Request 3-5(b).

While both Starion and OPC requested that the Commission issue a procedural order establishing discovery timelines, we note that the parties are already reasonably bound by the discovery guidance previously issued in this matter.<sup>20</sup> Therefore, parties are reminded that responses to data requests are due within three business days and any objections to discovery requests must be served within one business day of service.<sup>21</sup> We also take this opportunity to remind all parties to this matter to consult with each other and attempt in good faith to resolve all discovery disputes prior to making an objection, and again prior to filing a motion seeking relief from the Commission.

**IT IS THEREFORE,** this 16th day of December, in the year Two Thousand Fourteen, by the Public Service Commission of Maryland,

**ORDERED:** (1) That Starion Energy PA, Inc. is directed to provide complete responses to questions 3-4 and 3-5, with the exception of question 3-5(b), included in

---

<sup>19</sup> OPC Dec. 4<sup>th</sup> Motion at 2.

<sup>20</sup> See ML#148848: *Notice of Revised Procedural Schedule* (Aug. 2, 2013).

<sup>21</sup> Note that electronic service of discovery requests, responses, and documents is sufficient so long as the recipient acknowledges actual receipt, which the sending party should obtain and maintain, and hard copies shall be made available if electronic service is not available.

OPC Data Request No. 3 no later than December 22, 2014; AND

(2) That all other responses to data requests are due within three business days and any objections to discovery requests must be served within one business day of service.

By Direction of the Commission,

*/s/ David J. Collins*

David J. Collins  
Executive Secretary