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CONSUMER AFFAIRS DIVISION

**Date:** January 30, 2023  
**To:** The Commission  
**From:** Stephanie Bolton, Director, Consumer Affairs Division  
**CC:** Andrew T. Johnston, Executive Secretary  
**RE:** SunSea Energy, LLC

**I. Summary**

The Compliance and Enforcement Unit (“CEU”) within the Consumer Affairs Division (“CAD”) of the Maryland Public Service Commission conducted an investigation into the business practices of SunSea Energy, LLC (“SunSea”) following complaints received from customers of SunSea. SunSea is a retail energy supplier, authorized to offer electricity and natural gas<sup>1</sup> to utility customers in Maryland. The CEU’s recommendations are based on: (1) review of consumer complaints against SunSea, and (2) review of responses and documents supplied by SunSea in response to individual consumer complaints.

The CEU uncovered evidence of violations of the following Maryland statutes and regulations:

- 1) Defects in contracting practices and documents: Code of Maryland Regulations (“COMAR”) 20.53.07 and COMAR 20.59.07; Commercial Law Article (Com. Law), *Annotated Code of Maryland*, §13-301, §14-301, and §14-302.
- 2) Unauthorized enrollment of customers: COMAR 20.53.07.05 and COMAR 20.59.07.05; COMAR 20.53.07.08C and 20.59.07.08C; COMAR 20.53.06.02 and COMAR 20.59.06.02; COMAR 20.53.01.02B(4) and COMAR 59.01.02B(2).
- 3) Misconduct by agents: COMAR 20.53.07.08C and COMAR 20.59.07.08C; COMAR 20.53.08.05B and 20.59.08.05B.

<sup>1</sup> As a retail energy supplier of both electricity and natural gas, the provisions of Code of Maryland Regulations (“COMAR”). Title 20, Subtitle 53 - Competitive Electricity Supply, as well as Subtitle 59 - Competitive Gas Supply are applicable. Where text is identical, citations to regulations in each Subtitle are included.

- 4) Inaccessibility of customer service representatives: COMAR 20.32.01.03.
- 5) Other unfair and deceptive marketing and trade practices: COMAR 20.53.07.07 and COMAR 20.59.07.07; COMAR 20.53.01.02B (definition); Public Utilities Article (“PUA”), *Annotated Code of Maryland*, §7-505(b)(7), §7-507(e) and § 7-604.

CAD and the CEU take seriously their mission to ensure that public service companies comply with established regulations. In light of our review of the complaint activity against SunSea, the CEU recommends the Commission commence proceedings against SunSea pursuant to PUA §3-102 with respect to violations identified by the CEU.

## II. Background

SunSea is an electricity and natural gas supplier licensed by the Commission to provide electricity supply<sup>2</sup> and natural gas supply<sup>3</sup> to Maryland customers since 2019.

On June 4, 2020, the Office of People’s Counsel filed a Complaint with the Commission for violation of State laws and consumer protection regulations. Following proceedings, the Commission found that SunSea enrolled nearly 1,000 customers over the phone but did not provide those customers with a written contract or have the customers sign a contract prior to enrollment, failed to provide an accurate Contract Summary to those customers, and engaged in deceptive solicitations. The Commission required SunSea to return customers solicited via phone to the default service offered by their respective utilities, provide refunds, and cease marketing, solicitation, and enrollment of customers in Maryland.

The Commission assessed a civil penalty of \$400,000 against SunSea in its Order of August 18, 2021. The Order further provided that, upon receipt of full payment, the Commission’s moratorium on SunSea’s marketing, solicitation, and enrollment of new customers in Maryland would be lifted. SunSea made this payment in full on August 23, 2021, resulting in the lifting of the Commission-ordered moratorium.

In 2021 and the first half of 2022, CAD received just one complaint against SunSea.

Based on complaints and supplier enrollment reports received, it appears that SunSea began soliciting customers in Maryland via door-to-door marketing on, at the latest, June 19, 2022.<sup>4</sup> CAD received 41 customer complaints against SunSea from July 1, 2022, through January 27, 2023.<sup>5</sup> Of those 41 complaints, the primary issue or dispute categorization cited in each complaint was as follows:<sup>6</sup>

- Unauthorized enrollment / slamming: 27

<sup>2</sup> License No. IR-4150, issued on January 23, 2019.

<sup>3</sup> License No. IR-4151, issued on April 3, 2019.

<sup>4</sup> Enrollment documentation in MPSC# 0003616 received from SunSea shows a customer enrollment date of June 19, 2022.

<sup>5</sup> Complaints are described as alleged by customer(s).

<sup>6</sup> Many complaints cited numerous issues; this list reflects each complaint’s primary issue only.

- Misrepresentation by supplier: 11
- Billing dispute: 2
- Start/stop service issue: 1

Of the 41 complaints received, 30 were resolved in favor of the customer and 2 were resolved in favor of the company. Nine complaints are still open at the time of this writing.

The Commission publishes a quarterly report containing data about complaints received by CAD against retail energy suppliers. For the period of July 1, 2022 – September 30, 2022, SunSea’s complaint total was second highest among all licensed suppliers in Maryland. Notably, SunSea reported having just [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] Maryland customers as of July 31, 2022. In the quarter that followed, October 1, 2022 – December 31, 2022, SunSea amassed the most complaints of any Maryland supplier. As of December 31, 2022, SunSea reported having [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] customers in Maryland.

Review of contracting documents from SunSea, information provided by complainants, and communications from SunSea sent in the course of the complaint resolution process led the CEU to determine that SunSea is not in full compliance with COMAR with regard to its door-to-door marketing practices.

### **III. Noncompliance**

#### **A. Defects in Contracting Practices**

Following the CEU’s investigation, it appears that SunSea is not providing customers with a contract that meets all regulatory requirements. The marketing professionals SunSea hires are agents of SunSea,<sup>7</sup> and are therefore required to comply with applicable Maryland regulations. Further, a supplier is responsible for the conduct of its agents.<sup>8</sup>

COMAR 20.53.07.08 and COMAR 20.59.07.08 detail the minimum contract requirements with regard to electricity and gas suppliers, respectively: “a supplier shall provide the customer a copy of the executed contract and completed Contract Summary” when the contracting process is complete.<sup>9</sup> A contract is defined as “the total legal obligation that results from the parties’ agreement,” under Com. Law § 1-201(12).<sup>10</sup> Under COMAR 20.53.01.02 B(5),

<sup>7</sup> COMAR 20.53.01.02 B(1)(a) and COMAR 20.59.01.02 B(1)(a) state, “Agent” means a person who conducts marketing or sales activities, or both, on behalf of a licensed supplier or broker.”

<sup>8</sup> COMAR 20.53.10 and 20.59.10

<sup>9</sup> COMAR 20.53.07.08 B(1) and COMAR 20.59.07.08 B(1) state, “At the time of completion of the contracting process, a supplier shall provide the customer a copy of the executed contract and completed Contract Summary on the form provided by the Commission.”

<sup>10</sup> Commercial Law § 1-201(12) defines a contract as, “the total legal obligation that results from the parties’ agreement as determined by the Maryland Uniform Commercial Code as supplemented by any other applicable laws”

the Contract Summary is defined as "a summary of the material terms and conditions of a retail energy supply contract, on a form provided by the Commission."

For most of the complaints received from customers, SunSea produced the following documents:

- A PDF document named some variation of “Electric Application,” “Gas Application” or “Wet Signature,” which typically contained:
  - “Residential and Small Commercial Electricity Service Agreement,”
  - “Customer Disclosure Statement” or “Maryland Electricity Contract Summary,”
  - “Terms of Service” or a second document titled similarly to the first but containing terms and conditions -- “Maryland Residential and Small Commercial Electric Service Purchase & Sale Agreement”
  - “Notice of Cancellation” which may include 1 or 2 copies and are frequently undated.
- A PDF document named some variation of “Welcome Letter,” sent by US Mail, which typically contained:
  - a welcome letter from SunSea,
  - “Maryland Electricity Contract Summary,”
  - “Maryland Residential and Small Commercial Electric Service Purchase & Sale Agreement.”
  - “Notice of Cancellation” which may include 1 or 2 copies and are sometimes undated.

For the listed documents referencing “Electricity,” the “Natural Gas” version is substantially similar.

The first document in the “Application” / “Wet Signature” package titled “Residential and Small Commercial Electricity Service Agreement” is one page long and contains handwritten customer contact information and account information. This document includes space for a customer’s signature. One version of this document contains an affirmation, “You are the customer of record or the spouse of the customer of record.”

In the package, this document is followed by either a “Customer Disclosure Statement” or a “Maryland Electricity Contract Summary.” The “Customer Disclosure Statement” differs from the form provided by the Commission, which is required to be used under COMAR 20.53.07.08B (electricity) and 20.59.07.08B (gas).

A signed contract is required pursuant to COMAR 20.53.07.08C(2) (electricity) and COMAR 20.59.07.08C(2) (gas). The signature in the first page of SunSea’s “Application” / “Wet Signature” package does not transform the company’s Terms and Conditions and/or

Contract Summary into the required signed contract.<sup>11</sup> Moreover, the company's incorporation of the Contract Summary and other documents, including those containing material terms, also does not create a valid contract.<sup>12</sup>

**The documents received in the "Welcome Letter" packet do not match the documents as purportedly received by the customer at the time of signing.** None of the documents contained in the Welcome Letter contain the customer's signature or even an indication that a customer signature was received by the company. Given the number of complainants who indicated they had not signed a contract with SunSea, this is particularly concerning. In many of CAD's complaint records it is unclear what, if any, documents customers reviewed and received at the time of their contracting.

Further, complainant's descriptions of their experience indicate that, where documents are presented at the time of sale, SunSea affirmatively misrepresents the nature of these contracting documents.

- MPSC# 0036737: Complainant describes, "...I am an energy geek and have considered switching to a third-party supplier many times. That's why when one of SunSea Energy, LLC's representatives knocked on my door and wanted to talk about my bill, I was interested in having the conversation. A woman by the name of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] who had a badge indicating she was a subcontractor of SunSea told me that if I showed her my electric and gas bills, she would help explain why PEPCO is overcharging and how I can save money on my bill. When I showed her my bills, she scrolled to the pages explaining the charges and spent about 5-10 seconds there, and then instantly scrolled to my residential service numbers and inputted it into her phone without my consent. At no point did she explain anything about my bill like she promised. She then handed me two Residential Service Agreements, one for natural gas and one for electric. She told me these Agreements were solely meant to acknowledge that we spoke today and assured me that I could think about whether I wanted to sign up or not. I told her, I can't sign these because these are Agreements explicitly stating that I would agree to sign up with SunSea as my third-party energy provider, despite me already stating I do not want to do that. She relented and took the forms back, but before she did I asked why the \$ per therm and \$ per kWh for variable and fixed rates were left blank, when she was just asking for my signature. She told me that is something that PEPCO calculates and then inputs. I knew this was entirely false but figured, since I didn't sign

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<sup>11</sup> *In the Matter of the Complaint of the Staff of the Public Service Commission of Maryland v. Statewise Energy Maryland LLC*, Case No. 9661, Order No. 90097 at 19.

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

anything and explicitly stated I was not interested in signing up, that everything would be fine.”

This Complainant then received a letter from PEPCO, notifying him that his energy supplier has changed to SunSea.

### **B. Unauthorized Enrollment of Customers (Slamming)**

The CEU’s investigation revealed instances of SunSea enrolling new customers without their knowledge and consent as well as using marketing practices that increase the likelihood of unauthorized customer enrollment.

A “customer” is defined as the “account holder”<sup>13</sup> and “a supplier may not enroll a customer without the customer’s consent.”<sup>14</sup> SunSea demonstrated a pattern of failures to safeguard against unauthorized enrollments. Complaints reflect allowing a spouse, not the customer of record, to enroll an account holder and SunSea’s documentation attests to this; one iteration of their “Residential and Small Commercial Electricity Service Agreement” signature page contains an affirmation, “You are the customer of record or the spouse of the customer of record.” A Complainant explained that:

- MPSC# 00036918: “This company unauthorize sign up by coming to my home asking for my bill number, claiming to be in partnership with BGE to save energy/money from BGE. The representative ask for my signature from my wife and she refused and the unauthorized service [happened] anyway.”

In addition, complainants describe SunSea agents soliciting the signature of an account holder’s housesitter (MPSC# 00036525) and an account holder’s fiancée (MPSC# 00036935). Complaints also indicate enrollments occurring after customers specifically declined SunSea’s offer:

- MPSC# 00036542: In filing against SunSea, Complainant stated, “I explicitly advised the representative when she came to my home that I was not interested in enrollment. I then receive an enrollment form in the mail [that] advised I have been enrolled...This is fraudulent and I want to ensure my BGE bill is corrected and I am not billed for something I never agreed to.”

Slamming, defined as the illegal practice of switching a customer’s electricity service without his or her permission,<sup>15</sup> is antithetical to the effective functioning of the retail supplier market. The Commission has consistently held that, “In a deregulated market, a customer’s

<sup>13</sup> Under COMAR 20.53.01.02 (4) and COMAR 20.59.01.02(5), a customer or consumer is defined as “the regulated utility retail electric customer account holder.”

<sup>14</sup> COMAR 20.53.07.05A and COMAR 20.59.07.05A provide, “A supplier may not enroll a customer without the customer’s consent.” COMAR 20.53.07.08C(1) and COMAR 20.59.07.08C(1) state, “A supplier may not enroll a customer using a process that does not require affirmative confirmation by the customer.”

<sup>15</sup> <https://www.mdelectricchoice.com/resources/glossary/> under “Slamming”

ability to make rational, well-informed choices among suppliers—and indeed the stability and growth of the supplier marketplace itself—is directly undermined by deceptive misrepresentations...”<sup>16</sup>

Unauthorized enrollment / slamming was cited by Complainants as the primary issue in 27 complaints and misrepresentation by supplier was cited as the primary issue in an additional 11 complaints. Several Complainants described how SunSea representatives obtained their account number<sup>17</sup> and/or signature<sup>18</sup> under false pretenses. Complainants explain how they are finding that SunSea has enrolled their account without authorization or even after affirmative and unambiguous denial of interest in the company’s offering.<sup>19</sup> One Complainant described his experience with SunSea as follows:

- MPSC# 00036845: “...on September the 2nd I received a knock on my door from a man claiming to be SMECO this is my first Apartment so I didn't find this unusual. he stated that SMECO was doing promotional offer where they were giving new residence a \$200 dollar gift card for residence living in these complexes the only information he said he needed was to see my SMECO bill which he took a photo on his iPhone he then asks for me to right my number down on this sheet of paper. I noticed he was wearing an xfinity band around his neck which I questioned him on it as it was weird of one company wearing another companies item he then proceeds to say he was just wearing it to hold his ID from there I knew it was a scam Automatically I went to my leasing office and asked them if they knew about any SMECO promotions going on which they said no.”

The Complainant advised that he received a letter, notifying him that his energy supplier has changed to SunSea. The numerous Complainants with similar allegations evidence a pattern of deceptive practices.

### C. Supplier Advertising, Claims of Misrepresentation

While a retail energy supplier is permitted to advertise its services, a supplier cannot engage in practices that are “unfair, false, misleading, or deceptive.”<sup>20</sup> Suppliers’ agents and representatives must take specific steps to immediately and accurately identify themselves and

<sup>16</sup> *Complaint of the Maryland Office of People’s Counsel against SunSea Energy, LLC*, Case No. 9647, Order No. 89914 at 22, discussing *In the Matter of the Investigation into the Marketing Practices of Starion Energy PA, Inc.*, Case No. 9324, Order No. 86211 at 3.

<sup>17</sup> MPSC# 00036455, 00036616, 00036737, 00036845, 00036918, 00036935, 00036989, 00037123, 00037193

<sup>18</sup> MPSC# 00036525, 00036711, 00037130, 00037167

<sup>19</sup> MPSC# 00036542, 000366665, 00036781, 00036825, 00036880, 00036921, 00036968, 00037041, 00037092, 00037100, 00037127, 00037181, 00037187, 00037237, 00037273, 00037363, 00037392, 00037450, 00037520, 00037599, 00037626, 00037657, 00037659, 00037664, 00037665, 00037691, 00037728, 00037752

<sup>20</sup> See COMAR 20.53.07.07A and COMAR 20.59.07.07A

the supplier for whom they work when interacting with the public, including when conducting door-to-door activities.<sup>21</sup>

Order No. 89914 in Case No. 9674 against SunSea, the Commission addressed SunSea’s pattern and practice of violating Maryland laws and regulations by intentionally providing false information and engaging in deceptive practices. In its findings, the Commission stated, “Although the Commission does not regulate retail supplier rates and is not penalizing SunSea for charging rates that Staff witness Mosier described as uncompetitive, the Commission does find that SunSea misrepresented its product to Maryland customers, including by promoting its product as “competitive.” One year and five months since the Commission’s issuance of Order 89914, SunSea is still advertising its rates as “competitive” on its website:<sup>22</sup>

**SunSea ENERGY** Home About Us Services Enroll Customer Care

## About Us

SunSea Energy offers competitive rates and flexible plans to residential, small to medium-sized businesses and large/industrial companies. Thanks to the deregulation of the energy industry, consumers can now choose who supplies their electricity and gas and take advantage of more competitive rates offered by national energy retailers such as SunSea Energy.

SunSea Energy is poised to become a leading energy supplier, we offer customers a good choice in their electricity and gas supply that is hard to ignore. Our continued growth as a company is hinged on providing quality service to all our customers.

**MANAGE MY ACCOUNT** Check rates & availability now: Enter zip code **CLICK TO SAVE**

**SERVICE TERRITORIES**  
SunSea Energy is licensed to provide Gas and Electric supply in the following states: **New York** – SUNS (E&G), **New Jersey** – ESL-0217 (E) // GSL-0190 (G), **Ohio** – 19-1435E (I)(E), **Mary Land** – IR-4150 (E) // IR-4151 (G) and **District of Columbia**. Please note that SunSea Energy is also, rapidly expanding its service territory to

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Complainants have commented on how unfavorably SunSea’s rates compare to their utility’s standard offer service. “Despite SunSea and their subcontractor telling me that I would save money on this program to which they fraudulently signed me up, they charged me at a rate of nearly 16 cents per kWh (15.8884 cents) compared to my Price to Compare of 8.86 cents per

<sup>21</sup> COMAR 20.53.08.05B and COMAR 20.59.08.05B provide, “Upon first contact with a customer, an agent shall (1) Identify the supplier that he represents; and (2) State that he is not working for and is independent of the customer’s local distribution company.”

<sup>22</sup> Sunseaenergy.com/about-us/ last accessed January 29, 2023.



kWh.”<sup>23</sup> Another Complainant stated, “who in the right mind will go from .0078 to .1115 charge per kwh”<sup>24</sup> indicating that they did not find SunSea’s rate to be competitive.

#### **D. Inaccessibility**

Pursuant to the Commission’s dispute resolution regulations,<sup>25</sup> “a utility, supplier, or subscriber organization shall investigate a customer dispute or inquiry and propose a resolution of the dispute to the customer or report its findings to the customer.”

Sixteen of the 41 complaints against SunSea described inaccessibility issues when attempting to reach SunSea to end service.<sup>26</sup>

- MPSC# 00036525: Complainant cited difficulties stopping service as their primary issue: “I reach out to BGE where I am told I need to get in contact with this company even though I have not initiated this request. I have called this company [SunSea] over 12x and sent numerous emails with no response.”<sup>27</sup>

A supplier cannot fulfill its obligations as a licensed entity to investigate and resolve customer disputes if it does not answer its phones or otherwise respond to customer communications in a timely manner. Four of the 16 complaints described how SunSea customer service told Complainants that they would have to wait two to three billing cycles before they were able to cancel SunSea’s service.<sup>28</sup> Between the pattern of reported accessibility difficulties and the erroneous information provided to citizens concerning the length of time required to cancel, there is evidence to support a finding that SunSea is thwarting customers’ efforts to cancel their service.

### **III. Recommendations**

The CEU’s investigation into SunSea’s marketing, contracting, and business practices resulted in the discovery of a pattern of regulatory noncompliance. The Commission made clear in Order No. 89914 in Case No. 9674 at page 26 (footnote 93) that “SunSea must ensure that it is compliant with all Maryland laws and regulations.” Based on the aforementioned, the CEU respectfully requests that the Commission begin proceedings in this matter and Order:

- 1) That SunSea identify and refund affected customers the difference between the billed amounts and the utility rates where no valid contract exists to support the enrollment.
- 2) That the moratorium prohibiting SunSea from acquiring or soliciting new customers in the State of Maryland be reinstated.

<sup>23</sup> MPSC# 00036737

<sup>24</sup> MPSC# 00036525

<sup>25</sup> COMAR 20.32.01.03

<sup>26</sup> MPSC# 00036455, 00036525, 00036616, 00036825, 00036845, 00036880, 00036935, 00036989, 0037167, 00037193, 00037237, 00037273, 00037599, 00037659, 00037665, 00037691

<sup>27</sup> MPSC# 00036525

<sup>28</sup> MPSC# 00037167, 00037237, 00037599, 00037665

- 3) That, within 20 days, SunSea file evidence showing why SunSea should not be subject to a civil penalty, as appropriate, pursuant to PUA §§7-507(1), 7-603, and 13-201 for engaging in misrepresentation and deceptive practice and for failing to comply with the identified consumer protection regulations under COMAR 20.53.07 and 20.59.07.
- 4) That this Commission take judicial notice of written documents in this matter that are currently in the possession of both CAD and SunSea, including: complaints filed with CAD against SunSea with accompanying attachments, responses to complaints sent by SunSea to CAD including any accompanying attachments, and decision letters sent by CAD to SunSea including any accompanying attachments.
- 5) That SunSea's license be suspended or revoked pursuant to PUA §§ 7-507(1) and 7-603 for (a) committing fraud, (b) engaging in deceptive practice, (c) slamming, and (d) failing to comply with the Commission's consumer protection regulations as contained in COMAR 20.53 and 20.59.
- 6) Such other relief as the Commission determines is appropriate.