**ORDER NO. 89219**

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| IN THE MATTER OF THE COMPLAINT OF THE STAFF OF THE PUBLIC SERVICE COMMISSION AGAINST SMART ONE ENERGY, LLC | * * * * * * * | BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND |
| | | CASE NO. 9716 |

**Issue Date: August 2, 2019**

**ORDER SUSPENDING RETAIL SUPPLY LICENSE, IMPOSING CIVIL PENALTY, AND DIRECTING THE TRANSFER OF SERVICE**

On May 10, 2019, the Technical Staff ("Staff") of the Maryland Public Service Commission filed a Complaint[1] against Smart One Energy, LLC ("SOE"). The Complaint alleged that SOE—a natural gas supplier licensed in Maryland since September 21, 2011—had committed fraud, engaged in deceptive practices, and violated the Commission's consumer protection regulations with regard to three Maryland customers[2] of SOE's natural gas supply business. Staff requested that SOE be directed to explain why its license to provide natural gas supply services in Maryland should not be suspended or revoked or, in the alternative, why SOE should not be precluded from soliciting additional customers and/or why it should not be subject to a civil penalty pursuant to Public Utilities Article ("PUA"), *Annotated Code of Maryland*, §§ 7-507(l) and 13-201. On May 16, 2019, the

[1] ML# 225228
[2] Staff's Complaint identified three customer complaints wherein it alleges SOE violated the Commission's consumer protection regulations: complaint numbers 118335976-W, 318337186-W, and 618339405-W.

Commission issued an Order, directing SOE to show cause why it should not face penalties, as requested by Staff.[3]

On June 18, 2019, SOE filed its Response to Staff's Complaint.[4] On July 12, Staff[5] filed a Reply to SOE's Response, requesting a civil penalty of $170,000 and injunctive relief. Also on July 12, the Office of People's Counsel[6] ("OPC") filed its Reply to SOE's Response, requesting a civil penalty of $950,000 in addition to injunctive relief.[7] Further filings from SOE[8] and OPC[9] followed on July 15, 2019. The Commission held a hearing on this matter at its July 17, 2019 Administrative Meeting.

In both its written responses and at the Commission's July 17, 2019 Administrative Meeting, SOE admitted to committing these alleged violations. SOE also admitted that, with regard to all of its customers in Maryland, it has never received signed written contracts or provided to those customers contract summaries, as required by Maryland law and Commission regulations.

After review of the evidence and argument, and as described below, the Commission finds that SOE has violated Maryland law and Commission regulations. Pursuant to PUA §§ 7-507, 7-603, and 13-201, the Commission now orders: (1) that SOE's Commission-issued license to supply natural gas in Maryland is suspended pending further

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3 ML# 225321
4 ML# 225791
5 ML# 226041
6 ML# 226051
7 As part of its July 12, 2019 filing, OPC also filed a Motion to Expand the Proceeding. OPC requested that the Commission expand this proceeding into an investigation of whether SOE has engaged in a pattern or practice of systematic violations of the PUA, Commission regulations, and other state and federal laws. The Commission orally denied that request on the record at the July 17, 2019 hearing, while leaving open the possibility of OPC or Staff filing a subsequent complaint addressing such broader, systemic claims. This Order, accordingly, addresses only those claims within the scope of Staff's Complaint and SOE's responses thereto.
8 ML# 226065
9 ML# 226080

action by the Commission; (2) that SOE shall pay a civil penalty in the amount of $561,000 within 10 business days from the date of issuance of this order; (3) that SOE shall, subject to any refunds already made, refund to the three customers identified in Staff's Complaint any amount it charged those customers above the applicable utility default service rates, calculated as a net difference over the period those customers were receiving supply from SOE; (4) that SOE shall provide notice to its customers as described herein by August 8, 2019, and provide notice to the Commission by August 9, 2019 of its compliance with that requirement; and (5) that all of SOE's existing customers shall be returned by their respective utilities to default service for natural gas supply.[10] This order shall have the effect of a drop transaction, and the utilities are requested to process those transactions as provided by COMAR 20.59.04.03.

## I. Background

The chronology and development of the parties' positions is as follows:

### A. SOE's Response

In its Response to Staff's Complaint, SOE admitted that its enrollment of the three customers was in violation of Commission regulations because, among other reasons, SOE had not obtained signed written contracts from the customers before enrolling them in its gas supply service. SOE stated also that it had offered refunds to the customers in question as part of the dispute resolution process following the customer complaints with the Commission's Consumer Affairs Division ("CAD"). SOE argued that this mistake had

[10] Competitive gas supply services compete with gas utilities' "default service," whose prices vary monthly.

caused only limited harm to the customers, however, because it claimed that it had obtained customer consent, as evidence of which it produced recordings of the solicitation calls for two of the customers.

Also in its Response, SOE stated more generally that it "did not require customers to execute written contracts when solicited via the telephone" and that all of its solicitations had been via telephone. SOE acknowledged that this practice was in violation of Commission regulations, though it noted that the relevant language in the regulation in question—COMAR 20.59.07.08, quoted below—was not in effect until 2016. SOE also acknowledged that this practice was in violation of the Maryland Telephone Solicitation Act ("TSA"), though it also argued that there was no specific reference to energy suppliers in the TSA.[11]

**B. Staff's Reply**

On July 12, 2019, Staff filed a Reply to SOE's June 18 Response. In its Reply, Staff addressed both SOE's Response and SOE's responses to data requests propounded to it by Staff and OPC.

On the question of the three customer complaints identified in the Complaint, Staff concluded that SOE had committed at least three violations of Maryland law and Commission regulations. First, Staff found that, for each customer, SOE had engaged in "slamming"—the enrollment of a customer without consent—based on the lack of a signed written contract. Second, Staff found that, for each customer, SOE had failed to provide a contract summary. Third and finally, for two of the customers, Staff found that SOE had

[11] Although the TSA identifies certain types of transactions to which it does not apply, none of which apply here, its language is general and does not specifically identify the retail energy industry or any other industry as being within its scope. Commercial Law Article, *Annotated Code of Maryland*, § 14-2201, et seq.

engaged in deceptive telephone solicitations, and for the third customer, Staff found that SOE had unlawfully failed to retain a recording of its telephone solicitation.

On the larger question of SOE's admission that it did not have signed written contracts or provide contract summaries for any of its customers, Staff concluded that SOE was "in continuing non-compliance with thousands of its accounts."

Based on these findings, Staff recommended that the Commission take five actions: (1) assess a civil penalty of $90,000 for SOE's violations with regard to the three identified customers; (2) assess an additional $80,000 civil penalty to reflect the duration of non-compliance; (3) order the cessation by SOE of all solicitation of new customers in Maryland until the completion of a remedial program approved by the Commission to bring each of SOE's customer accounts into compliance with Maryland law within six months; (4) require ongoing and regular reporting requirement to Staff and OPC concerning SOE marketing practices and customer solicitation for such time determined by the Commission; and (5) revoke SOE's license to operate if the above conditions are not met successfully within the time ordered.

### C. OPC's Reply

Also on July 12, 2019, OPC filed a Reply to SOE's Response. Like Staff, OPC concluded that SOE had committed multiple violations of Maryland law and Commission regulations with regard to the three identified customer complaints.

OPC independently concluded that SOE had committed 95 separate violations, a counting that included additional violations identified by OPC during its own review of the documents produced to OPC and Staff by SOE. Of particular note, based on its review of audio recordings produced by SOE of its sales calls to two of the customers in question, OPC identified multiple deceptive statements made by salespeople contracted by SOE to enroll customers.[12] Those alleged violations included, among other things, failing to identify SOE as a retail gas supply company distinct from the utility; promising a discount of up to 10 percent for two months on gas supply charges that was never given to either customer; and falsely stating that the customers would be remaining on the same plan they were previously on, without changes other than the application of a discount, when the customer was actually being moved to an entirely new plan at a new price with a new supplier. OPC argued that the $170,000 in penalties recommended by Staff ignores the numerous deceptive practices documented in OPC's Reply. As punishment for these violations, OPC recommended that the Commission impose on SOE a civil penalty of $950,000.

Also like Staff, OPC concluded that SOE's admitted practice of not obtaining signed written contracts from customers prior to enrollment and not providing customers with contract summaries was in violation of both Maryland law and Commission regulations, and OPC recommended that the Commission order SOE to cease soliciting new customers. OPC also recommended that the Commission direct SOE to not charge a rate that is higher than the prevailing utility rate for natural gas for any customer who has not entered into a contract in compliance with Commission regulations. OPC further recommended that the Commission order SOE to issue a refund for the difference between the rate charged by SOE and the prevailing utility rate for any customer for which SOE has not entered into a contract in compliance with Commission regulations. Lastly, OPC

[12] Copies of those recordings, as well as transcripts thereof, were filed with the Commission as part of OPC's July 12, 2019 filing (ML# 226051).

recommended that the Commission order SOE to send a letter to each of its existing customers explaining the situation and providing instructions to the customer on how to switch to another supplier or utility supply.

**D. SOE's Supplemental Comments**

On July 15, 2019, SOE filed Supplemental Comments regarding Staff and OPC's Replies of July 12. In the Supplemental Comments, SOE agreed with Staff's recitation of events and accepted liability. SOE further agreed to Staff's proposed civil penalty, totaling $170,000, and argued that OPC's proposed penalty "far exceeds anything that the Commission has ever ordered against a supplier, without any serious attempt to justify why SOE deserves a penalty so much higher than any other supplier has ever received."

SOE further argued that OPC's proposal to prohibit SOE from charging more than the prevailing utility rate for gas supply would exceed the Commission's authority under PUA § 7-509(a). SOE also argued that the Commission should not revoke SOE's license because that would result in "reverse-slamming" by sending SOE's customers back to utility supply without their consent.

Instead, SOE offered a counter-proposal for an injunctive remedy: (1) "SOE would send a notice to all current customers summarizing the contractual terms and providing them with a 30 day window to cancel service and receive a refund of the difference between standard offer service and the rate charged (if any);" (2) "SOE will not solicit any new customers under any circumstances until and unless the Commission has approved all aspects of SOE's solicitation policies, procedures, documents, etc.;" and (3) "SOE will provide a further update to the Commission summarizing the results of its notice and follow-up with customers within 60 days of the mailing of the information to customers."

### E. OPC's Supplemental Comments

On July 15, 2019, OPC filed Supplemental Comments responding to SOE's Supplemental Comments, filed earlier that same day. OPC's filing largely addressed procedural matters related to the hearing that was to follow, but also argued that SOE's proposed injunctive relief would inadequately protect SOE's existing customers who may be paying rates above the utility rate without a valid enrollment. OPC reiterated its proposal that the Commission cap the rate that SOE may charge at the utility standard rate and argued that such a remedy was within the Commission's authority under PUA § 7-507(k)(1). Alternatively, OPC argued that the Commission should suspend SOE's license and return its customers to utility supply.

### F. The July 17, 2019 Hearing[13]

During the Commission's July 17, 2019 Administrative Meeting, the Commission heard comments and arguments from the parties with regard to Staff's Complaint. During the hearing, counsel for SOE admitted that SOE had committed the violations alleged by Staff, including: (1) failure to obtain a signed, written contract from any customer in violation of COMAR 20.59.07.08; (2) failure to send each customer a contract summary in violation of COMAR 20.59.07.08; and (3) engaging in deceptive telephone solicitations—for two customers—and failure to retain recorded telephone solicitations for the third customer.

Counsel for SOE also identified on the record the enrollment date and last date of service for each of the three customers as follows: For the customer associated with

[13] Commissioners O'Donnell and Linton were not present for the July 17, 2019 administrative meeting but participated in this decision after reviewing the archived video recording and the parties' written submissions.

complaint number 118335976-W, counsel for SOE stated that the customer was enrolled on September 29, 2017, and supply continued through January 30, 2018—a total of 124 days. For the customer associated with complaint number 318337186-W, counsel for SOE stated that the customer was enrolled on January 24, 2017, and supply continued through November 15, 2017—a total of 296 days. For the customer associated with complaint number 618339405-W, counsel for SOE stated that the customer was enrolled on February 20, 2018, and supply continued through June 20, 2018—a total of 121 days.

Counsel for SOE also stated that SOE had served over 17,000 customers over the last five years and had over 10,000 customers currently. It was undisputed that SOE does not have signed written contracts for any of those customers, past or present.

At the conclusion of that hearing, the Commission took the matter under advisement but orally directed the parties to confer and attempt to further develop a draft notice to SOE's customers in regard to termination of supply service and refunds. The Commission directed the parties to file with the Commission their proposal by July 31, 2019, for Commission review. Lastly, the Commission imposed a moratorium prohibiting the Company from soliciting or enrolling any person in Maryland until further notice. These directives were memorialized in a letter order issued July 17, 2019.[14]

On July 31, 2019, Staff, SOE, and OPC each filed with the Commission their proposed notices to SOE's customers.[15]

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14 That letter order is available on the Commission's website, associated with ML# 225228, the Staff Complaint.

15 The parties were unable to reach a consensus on the draft notice.

## II. Applicable Law

PUA § 7-603 provides, in pertinent part:

> (a) The Commission shall license gas suppliers and shall have the same authority as the Commission has under § 7-507 of this title for electricity suppliers, including the authority to:
>
> (1) revoke or suspend a license;
>
> (2) impose a moratorium, civil penalty, or other remedy; or
>
> (3) order a refund for or credit to a customer.

PUA § 7-507 provides, in pertinent part:

> (a) A person, other than an electric company providing standard offer service under § 7-510(c) of this subtitle or a municipal electric utility serving customers solely in its distribution territory, may not engage in the business of an electricity supplier in the State unless the person holds a license issued by the Commission.
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> …
>
> (g)(1) An electricity supplier or any person or governmental unit may not, without first obtaining the customer's permission:
>
> > (i) make any change in the electricity supplier for a customer; or
> >
> > (ii) add a new charge for a new or existing service or option.
>
> …
>
> (k)(1) The Commission may revoke or suspend the license of an electricity supplier, impose a civil penalty or other remedy, order a refund or credit to a customer, or impose a moratorium on adding or soliciting additional customers by the electricity supplier, for just cause on the Commission's own investigation or on complaint of the Office of People's Counsel, the Attorney General, or an affected party.

(2) A civil penalty may be imposed in addition to the Commission's decision to revoke, suspend, or impose a moratorium.

(3) Just cause includes:

…

> (ii) switching, or causing to be switched, the electricity supply for a customer without first obtaining the customer's permission;

…

> (iv) committing fraud or engaging in deceptive practices;

…

> (vi) violating a Commission regulation or order;

…

> (viii) violating a provision of this article or any other applicable consumer protection law of the State;

…

> (x) suspension or revocation of a license by any State or federal authority.

Fines and penalties

(l)(1) An electricity supplier or person selling or offering to sell electricity in the State in violation of this section, after notice and an opportunity for a hearing, is subject to:

> (i) a civil penalty of not more than $10,000 for the violation; or
>
> (ii) license revocation or suspension.

(2) Each day a violation continues is a separate violation.

(3) The Commission shall determine the amount of any civil penalty after considering:

(i) the number of previous violations of any provision of this division;

(ii) the gravity of the current violation; and

(iii) the good faith of the electricity supplier or person charged in attempting to achieve compliance after notification of the violation.

…

(n) The Commission may order the electricity supplier to cease adding or soliciting additional customers or to cease serving customers in the State.

The Commercial Law Article ("CL"), *Annotated Code of Maryland*, § 14-2203[16],

provides:

(a) A contract made pursuant to a telephone solicitation is not valid and enforceable against a consumer unless made in compliance with this subtitle.

(b) A contract made pursuant to a telephone solicitation:

(1) Shall be reduced to writing and signed by the consumer;

(2) Shall comply with all other applicable laws and regulations;

(3) Shall match the description of goods or services as that principally used in the telephone solicitation;

(4) Shall 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;
(5) Shall contain, in at least 12 point type, immediately preceding the signature, the following statement:

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[16] Article 14 of the Commercial Law Article codifies the Maryland Telephone Solicitations Act, enacted in Chapter 588, Acts of Maryland 1988.

> "You are not obligated to pay any money unless you sign this contract and return it to the seller."; and
>
> (6) May not exclude from its terms any oral or written representations made by the merchant to the consumer in connection with the transaction.

COMAR 20.59.07.08 provides, in pertinent part:

> B. Contract Summary.
>
> (1) 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.
>
> (2) If the contract is completed through telephone solicitation, the supplier shall send the Contract Summary to the customer along with the contract that must be signed by the customer and returned as required by the Maryland Telephone Solicitations Act. If the contract is exempt from the Maryland Telephone Solicitations Act, the supplier shall send the Contract Summary with the contract to the customer.

## III. Commission Decision

Given that SOE has admitted to the violations identified by Staff above, the only question remaining before the Commission is to determine the appropriate remedy. As noted above, the parties have each proposed a combination of a civil penalty and injunctive relief.

Under PUA §§ 7-603 and 7-507(l), the Commission is authorized to impose a penalty of not more than $10,000 for each violation, and each day a violation continues is a separate violation. As noted above, SOE has admitted to three distinct types of violations for each of the three customers (*i.e.*, enrolling the customer without a signed contract, failing to provide a contract summary, and engaging in deceptive solicitations). Further, SOE has also admitted that it continued to supply natural gas to the three customers without a signed written contract for, respectively, 124, 296, and 121 days, or a total of 541 days.

After review of the evidence and argument presented, the Commission finds just cause to impose a civil penalty for SOE's failure to both obtain a signed contract and to provide a contract summary to the three identified customers.[17] In determining the penalty amount, the Commission finds that SOE enrolled and then continued to serve and bill those three customers without a valid contract for 541 days in total. Due to the serious nature of these violations and SOE's blatant disregard for the State's laws and regulations, the Commission finds that, pursuant to its discretionary authority under PUA § 7-507(l), a civil penalty in the amount of $1,000 per violation is appropriate. This results in an initial penalty of $541,000.

The Commission also finds that the audio recordings of customer solicitations produced by SOE establish that SOE, through multiple sales personnel, made deceptive marketing statements to the customers in question in violation of PUA § 7-507(k)(iv). As noted above, SOE has admitted to these violations. The numerous deceptive tactics and misleading statements captured in those recordings provide just cause to impose an additional civil penalty of $10,000 for each of the two customers in question, resulting in a total penalty of $561,000.

The Commission finds that the circumstances that led to the violations in question were not the result of an isolated mistake or misunderstanding of the law, but were part of an unlawful scheme by SOE to scam three utility customers in Maryland. In addition, SOE

[17] Each of the three customers was enrolled after the adoption of the Commission Regulations in 2016.

has admitted that none of its customers in Maryland, past or present, were provided a written contract, which is a direct contravention of Maryland law. Based on the findings in this order and the admissions of SOE, the Commission finds ample and just cause to suspend SOE's license to supply natural gas and natural gas services in Maryland.

Further, as noted above, because SOE has admitted that it does not have signed written contracts for *any* of its current customers, in violation of COMAR 20.59.07.08 and the Maryland Telephone Solicitation Act, none of the enrollments for its existing customers are valid. Given the scale and scope of the admitted violations, the Commission finds more than sufficient cause to order that SOE cease serving customers in Maryland, pursuant to PUA § 7-507(n). Consequently, all of SOE's existing customers shall be returned by their respective utilities to default service for natural gas supply. This order shall have the effect of a drop transaction, and the utilities are requested to process those transactions as provided by COMAR 20.59.04.03.

The Commission has reviewed the proposed customer notices filed by the parties on July 31 and now directs that SOE shall issue to each of its current customers by August 8, 2019 a notification that reads as follows:

> Smart One Energy (Smart One) is a natural gas supply company licensed in Maryland by the Maryland Public Service Commission, a state agency that regulates utility services and licenses natural gas suppliers like Smart One. You are receiving this letter because, according to Smart One's records, you are currently enrolled as a natural gas customer of Smart One.
>
> The Maryland Public Service Commission has determined that Smart One enrolled the customers in its supply program in violation of Maryland's customer protection laws and regulations. On August 2, 2019, the Maryland Public Service Commission ordered that current Smart One customers be returned to natural gas supply from their utility. Moving forward, you may elect to stay with your utility's natural gas supply or choose to enroll with one of the other

> licensed natural gas suppliers serving your utility's service area. There will be no disruption in your gas service from this change.

In their July 31 filings, the parties proposed multiple models for the provision of refunds to SOE's current and former customers. The Commission will address the question of refunds generally in a subsequent order. SOE shall retain its customer records until further notice. SOE shall, however, subject to any refunds already paid, refund to each of the three customers identified in Staff's Complaint any amount it charged those customers above the applicable utility default service rates, calculated as a net difference over the period those customers were receiving supply from SOE.

In light of the decision to suspend SOE's license to conduct business in the State of Maryland, this order does not reach the merits of Staff's proposal to establish a reporting requirement regarding SOE's solicitation and marketing practices.

**IT IS THEREFORE,** this 2nd day of August, Two Thousand Nineteen, by the Public Service Commission of Maryland,

**ORDERED:** (1) That Smart One Energy, LLC's Commission-issued license to supply natural gas in Maryland is suspended;

(2) That Smart One Energy, LLC shall pay a civil penalty in the amount of $561,000, payable to the "Public Service Commission of Maryland," within ten (10) business days from the date of this order;

(3) That Smart One Energy, LLC shall, subject to any refunds already paid, refund the customers identified in Staff's Complaint any amount it charged those customers above the applicable utility default service rates, calculated as a net difference over the period those customers were receiving supply from Smart One Energy, LLC;

(4) That Smart One Energy, LLC shall provide notice to its customers as described herein by August 8, 2019, and provide notice to the Commission by August 9, 2019 of its compliance with that requirement; and

(5) That all of Smart One Energy, LLC's existing customers shall be returned by their respective utilities to utility default service for natural gas supply. This order shall have the effect of a drop transaction, and the utilities are requested to process those transactions as provided by COMAR 20.59.04.03.[18]

*/s/ Jason M. Stanek*

*/s/ Michael T. Richard*

*/s/ Anthony J. O'Donnell*

*/s/ Odogwu Obi Linton*

*/s/ Mindy L. Herman*
Commissioners

[18] This directive is subject to an intervening, valid enrollment by a customer, electing retail supply with a new natural gas supplier. In such a case, the utility shall disregard this directive and process the enrollment.