

ORDER NO. 89526

In the Matter of the Complaint of the	*	BEFORE THE
Staff of the Public Service	*	PUBLIC SERVICE COMMISSION
Commission against Smart One	*	OF MARYLAND
Energy, LLC	*	_____
	*	
	*	CASE NO. 9617
_____	*	_____

Issue Date: March 6, 2020

ORDER DIRECTING REFUNDS

1. On August 2, 2019, the Maryland Public Service Commission issued Order No. 89219, concerning Smart One Energy, LLC’s (“SOE”) retail gas supply business in Maryland. In that Order, the Commission found that SOE violated the Commission’s regulations and Maryland law, and those violations extended to over 10,000 then-current and former customers of SOE within Maryland. Based on those violations, the Commission imposed a \$561,000 civil penalty, suspended SOE’s license as a retail gas supplier in Maryland, and returned all of SOE’s then-current customers to their respective utilities for default service. At that time, the Commission directed SOE to submit refunds to the three customers identified in the original Staff complaint¹ and stated it would “address the question of refunds generally in a subsequent order.”² After SOE failed to provide any notice or response to the Commission that they would adhere to the Commission’s Order, on September 19, 2019, the Commission issued a letter order revoking SOE’s license to supply natural gas services in Maryland.³

¹ There is no indication SOE complied with the Commission’s Order.

² Order No. 89219 at 16.

³ Maillog 226695.

2. On October 30, 2019, the Maryland Office of People’s Counsel (“OPC”) filed a motion requesting that the Commission “determine whether it has authority to take action to order refunds despite the revocation of [SOE]’s license, and if so, order refunds, in the appropriate amounts, to SOE’s defrauded customers pursuant to the Commission’s authority under Public Utilities Article (“PUA”), *Annotated Code of Maryland* § 7-507(k) and COMAR 20.59.07.05.”⁴ Shortly thereafter on November 7, 2019, SOE filed a Certificate of Cancellation with the Maryland State Department of Assessments and Taxation, effectively ceasing all business in Maryland.⁵

3. PUA § 7-507(k),⁶ states, in pertinent part: “The Commission may ... order a refund or credit to a customer ... 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.” Although PUA § 7-507(k) also empowers the Commission to suspend or revoke a license, it does not limit the power to issue refunds based on whether the supplier in question holds a license from the Commission. In this instance, there is no question that SOE committed the violations while operating under an active supplier license. Therefore, the Commission has the authority to order refunds for the period during which SOE did operate in Maryland with a license issued by this Commission.

4. The Commission has reviewed the filings by OPC in this matter. No other party has made any filings with regard to OPC’s request for refunds.⁷ As explained in Order No. 89219, SOE’s violations of law have been established and provide good cause to

⁴ Maillog 227317 (“OPC Motion”) (footnote omitted).

⁵ <https://egov.maryland.gov/BusinessExpress/EntitySearch/PreviewDocumentFromBusinessInformation?fileNumber=1000362012439776&departmentId=Z14105951>

⁶ Under PUA § 7-603, the provisions of § 7-507, which explicitly concerns electricity suppliers, are applied also to natural gas suppliers, such as SOE.

⁷ SOE has not asserted any affirmative defenses in this matter, including the statute of limitations.

impose a remedy under PUA § 7-507(k). The only remaining substantive issue is whether the Commission has a sufficient factual basis to order refunds to specific customers.

5. Through data requests to Maryland utilities, OPC has identified over 17,000 Maryland customers formerly enrolled with SOE and thus affected by SOE's unlawful customer enrollment practices—practices that SOE admitted affected all of its customers in Maryland from the date SOE acquired its supplier license to the date its license was suspended by the Commission.⁸ OPC and the utilities documented that nearly all of SOE's customers were located within the service territory of Washington Gas Light Company ("WGL"), with the remainder in Baltimore Gas and Electric Company's ("BGE") service territory. OPC attached to its filings confidential copies of records received from WGL and BGE, identifying affected customers and the respective amounts of the requested refunds.

6. Based on the records obtained from WGL, OPC calculated that "14,848 SOE customers collectively had paid \$14,186,409.81 more for gas supply than they would have paid had they simply remained on WGL's default service."⁹ The records also reflect that an additional 1,539 of SOE's WGL enrollees saved money or broke even, with the total amount saved among those customers being \$4,332.76.

7. Based on the records obtained from BGE, reflecting that 767 SOE customers were enrolled through BGE, OPC calculated that "754 SOE enrollees collectively paid \$137,120.11 more for gas supply than they would have paid had they simply remained on

⁸ Order No. 89219 at 2.

⁹ OPC Motion, Maillog 227317 at 2.

BGE’s default service.” BGE’s records also reflect that three SOE enrollees saved a total of \$26.02, with an additional 10 customers breaking even.¹⁰

8. The Commission finds that the uncontroverted evidence demonstrates that SOE unlawfully benefited to the detriment of its affected customers, and this evidence supports OPC’s request for refunds. Consistent with the Commission’s prior Order in this case, Order No. 89219—in which the Commission ordered SOE to provide refunds for three identified customers equal to “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”¹¹—OPC has for each SOE customer presented evidence of both SOE and utility supply charges and the amount of usage by the customer for each billing period, and based on that data calculated a net difference between what each customer paid SOE and what they would have paid if they had remained on utility standard offer service.

9. OPC has not, however, provided evidence of whether any of those customers were taking service from another retail supplier at the time that SOE wrongfully enrolled them, and therefore there are questions regarding the level of refund that have not been resolved.¹²

10. Accordingly, SOE is hereby directed within 10 business days of the date of this Order, less any refunds already paid, to pay refunds for the customers identified in OPC’s confidential attachments any amount it charged those customers above the applicable

¹⁰ OPC Letter dated November 26, 2019, Maillog 227661.

¹¹ Order No. 89219 at 2-3.

¹² In addition, there was limited discussion regarding whether SOE offered incentives to entice enrollment, which could further impact the level of refund. There is no evidence in this instance that such incentives were offered.

utility default service rates or, where applicable, the rate (or rates) that the customer would have been charged under a prior contract between the customer and a retail supplier but for the unlawful enrollment, calculated as a net difference over the period those customers were receiving natural gas supply service from SOE.¹³ Because the violations by SOE identified in Order No. 89219—including enrolling customers without valid signed contracts—constitute unauthorized enrollments, refunds shall follow the process laid out in COMAR 20.59.07.05C(2)(a) where applicable.¹⁴ SOE is further directed to submit a compliance filing within 30 days of this Order providing a status report of refunds consistent with this Order.

11. In issuing this Order, the Commission is aware that SOE is no longer an active business in Maryland, and has been unresponsive to Commission correspondence since the company’s license was suspended. In the event of a failure by SOE to comply with this Order, the Commission will not be able to collect funds from SOE on behalf of

¹³ This calculation satisfies the requirements in COMAR 20.59.07.05C(2), which provides:

Upon proof of the allegations that an enrollment was unauthorized, the Commissions Consumer Affairs Division (CAD) may order the supplier to issue a refund to the customer in an amount, determined by CAD, intended to hold the customer harmless relative to the price the customer would have paid had the unauthorized enrollment not occurred.

¹⁴ COMAR 20.59.07.05C(2)(a) provides:

If the charges have been billed by and the receivable purchased by the utility, the refund determined by CAD shall be remitted to the utility by the supplier. The refund determined by CAD shall be applied to the customers utility account current balance and the excess returned to the customer upon request. If the customer is no longer served by the utility, then the refund shall be returned to the customer.”

customers.¹⁵ Affected former customers of SOE in Maryland may need to pursue in court a private action against SOE to enforce this Order, or an action under the Maryland Telephone Solicitation Act,¹⁶ which includes provisions for attorney fees under the Maryland Consumer Protection Act.¹⁷ In such cases, the court will make the final determination of the amount of any refund for each customer. Affected customers should contact their utility directly if they wish to obtain their consumption and billing records and applicable rates, and WGL and BGE are directed to accommodate those requests.

/s/ Jason M. Stanek _____

/s/ Michael T. Richard _____

/s/ Anthony J. O'Donnell _____

/s/ Odogwu Obi Linton _____

/s/ Mindy L. Herman _____

¹⁵ The Commission also consults with the Maryland Attorney General's Office and the Office of the State Comptroller on issues related to the enforcement of State laws and regulations, and on the collection of fines and penalties.

¹⁶ Maryland Code Ann., Commercial Law Article ("CL"), § 14-2201, *et seq.*

¹⁷ CL § 13-408.