

ORDER NO. 89683

In the Matter of the Complaint of the Staff of the Public Service Commission of Maryland v. SmartEnergy Holdings, LLC d/b/a SmartEnergy

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BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND

CASE NO. 9613

Issue Date: December 22, 2020

ORDER IMPOSING MORATORIUM AND DIRECTING FURTHER PROCEEDINGS

I. BACKGROUND

1. On May 15, 2019, the Public Service Commission Staff (“Staff”) filed a complaint against SmartEnergy Holdings, LLC (“SmartEnergy”), alleging that SmartEnergy violated Maryland law governing retail supplier activities. On July 12, 2019, the Commission delegated this matter to the Public Utility Law Judge (“PULJ”) Division after finding that there were genuine issues of material fact that warranted further proceedings to determine whether SmartEnergy had engaged in a pattern or practice of systemic violation of the consumer protections contained in the Public Utilities Article and Commission regulations.⁵

2. On December 16, 2020, PULJ Kristin Lawrence entered a Proposed Order, finding that SmartEnergy engaged in systemic violations of the *Annotated Code of Maryland*, Public Utilities Article (“PUA”) § 7-505(b)(7) and various Commission

⁵ Order No. 89190.

regulations. The Proposed Order in this case would become a final order of the Commission on January 16, 2021, unless an appeal was taken before that date. The Commission takes up the matter on its own motion in order to consider the PULJ's penalty recommendations. The Commission also immediately imposes upon SmartEnergy the moratorium recommended by PULJ Lawrence prohibiting the supplier from adding or soliciting new customers in Maryland, and hereby directs further proceedings.

II. PROPOSED ORDER FINDINGS AND RECOMMENDATIONS

3. PULJ Lawrence entered a Proposed Order in this case on December 16, 2020, finding that SmartEnergy engaged in deceptive, misleading and unfair trade practices, and systemic violations of PUA § 7-505(b)(7), Code of Maryland Regulations (“COMAR”) 20.53.07.07A(2); COMAR 20.53.07.08B(1); COMAR 20.53.07.08C(4)(b)(i) - (iii), (v); COMAR 20.53.08.04E; and COMAR 20.61.04.01B and C. Based on these findings, she recommended—among other things—the Commission consider imposing upon SmartEnergy a moratorium prohibiting the supplier from adding or soliciting new customers, imposing an appropriate civil penalty (whether \$300,000 or some other amount), and requiring SmartEnergy to notify its current and former customers of the Commission's decision in this case.

4. PULJ Lawrence further recommended that SmartEnergy be required to cancel its existing customer enrollments (in Maryland) and return customers to utility Standard Offer Service (“SOS”), unless the customer takes affirmative action to remain with SmartEnergy. She also recommended the Commission require the rates charged by

SmartEnergy be re-rated to the utility SOS rate, and that current and former SmartEnergy customers be refunded the difference for each month of service.⁶

III. COMMISSION DECISION

5. PUA § 7-507(k)(1) authorizes the Commission to 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 ("OPC"), the Attorney General, or an affected party.⁷

6. Pursuant to PUA § 3-114(c)(2)(ii), the Commission hereby takes up the Proposed Order on its own motion. As recommended in the Proposed Order and, to preserve the *status quo* while the Commission gives further consideration of this matter, the Commission hereby imposes upon SmartEnergy a moratorium prohibiting the supplier from adding or soliciting new customers. The moratorium shall remain in effect until further order of the Commission.

7. The Commission also directs further proceedings in this matter as follows: Any party seeking exceptions to the Proposed Order shall file exceptions and briefs supporting exceptions on or before January 25, 2021. Reply exceptions (if any) and reply briefs shall be filed on or before February 25, 2021.⁸

⁶ When communicating with its customers, the PULJ recommended the Commission require SmartEnergy include the renewable portfolio standard (RPS) disclosures required under COMAR 20.61.04.01B and C.

⁷ OPC requested the Commission impose an indefinite suspension on SmartEnergy's operations in Maryland and a civil penalty of \$3,158,900. Staff requested revocation of the supplier's license and a civil penalty of \$500,000. SmartEnergy suggested a monetary penalty of \$300,000 and offered to send a letter to its customers informing them of the Commission's Order and findings--offering them the option to drop to utility SOS or contract with another supplier without penalty. SmartEnergy also offered its customers one month of free electricity.

⁸ Filings should discuss the number of current and former customers impacted, as well as estimated compliance costs.

IT IS THEREFORE, this 22nd day of December, in the year of Two Thousand Twenty, by the Public Service Commission of Maryland;

ORDERED: (1) That pursuant to the moratorium imposed herein, SmartEnergy, LLC shall desist from adding or soliciting new customers in Maryland until further order of the Commission in this matter;

(2) That exceptions (if any) to the Proposed Order and briefs supporting the exceptions shall be filed on or before January 25, 2021. Reply exceptions and briefs shall be filed on or before February 25, 2021.

By Direction of the Commission,

/s/ Andrew S. Johnston

Andrew S. Johnston,
Executive Secretary