ML 236695

ORDER NO. 89914

Complaint of the Maryland Office of People's Counsel against SunSea Energy, LLC	* * * * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND CASE NO. 9647

Issue Date: August 18, 2021

ORDER ASSESSING CIVIL PENALTY

1. Before the Commission is the issue of what civil penalty, if any, to assess against SunSea Energy, LLC (SunSea),[1] a licensed retail energy supplier, for violation of State laws and the Commission's consumer protection regulations. For the reasons discussed below, and pursuant to *Annotated Code of Maryland,* Public Utilities Article ("PUA") §§ 7-507 and 13-201, the Commission assesses a civil penalty of $400,000 against SunSea. Upon full payment of that fine, the moratorium on SunSea's marketing, solicitation, and enrollment of new customers in Maryland will be lifted, subject to the conditions described in this Order.

[1] SunSea is an electricity supplier with principal offices in Clementon, NJ 08021. On January 23, 2019, the Commission issued License No. IR-4150 to SunSea, authorizing it to supply electricity and electricity supply services in Maryland. On April 3, 2019, the Commission issued License No. IR-4151 to SunSea, authorizing it to supply gas and natural gas supply services in Maryland. In addition to Maryland, SunSea holds licenses as an electric and gas supplier in Washington, D.C., New Jersey, New York, and Ohio. Oct. 7 Hr'g. Tr. at 67 (Adigwe).

I. PROCEDURAL HISTORY

A. OPC Complaint and SunSea Answer

2. The Maryland Office of People's Counsel (OPC) initiated the present proceeding by filing a complaint against SunSea for violation of State laws and Maryland Public Service Commission consumer protection regulations. The Complaint was filed pursuant to PUA §§ 2-204(a)(3), 3-102(a), 7-507(k), 7-507(p), and 7-603(a), and Section 20.07.03 of the Code of Maryland Regulations ("COMAR"). OPC alleged that on May 14, 2020, SunSea attempted to enroll Deputy People's Counsel William F. Fields as an electric and gas retail customer through deceptive practices and other means prohibited under the PUA, the Maryland Telephone Solicitations Act ("MTSA"), the Maryland Consumer Protection Act, and the Commission's consumer protection regulations contained in COMAR 20.53.07 (electric) and 20.59.07 (gas).

3. In particular, the Complaint alleged that SunSea improperly solicited Mr. Fields by: intentionally providing false information, such as claiming falsely to be calling on behalf of a regulated utility; enrolling a customer by deception and failing to meet minimum contracting requirements; obtaining a customer Choice ID number without consent; failing to include the supplier's Maryland license number; failing to provide a contract prior to customer enrollment; failing to provide a contract summary prior to enrollment; and failing to state the current requirements of the Renewable Portfolio Standard when making a renewable energy offer.[2] OPC further claimed that these types

[2] The Complaint was supported by the Affidavit of William F. Fields, who appeared as a witness for OPC during the October 7, 2020 evidentiary hearing.

of improper marketing and contracting actions "extend to customers or potential customers other than Mr. Fields."[3] OPC asked the Commission to issue a show cause order directing SunSea to: (i) provide evidence showing why its license to provide electricity and electricity supply services should not be suspended or revoked; (ii) why the company should not be precluded from soliciting additional customers; and (iii) why SunSea should not be subject to a civil penalty pursuant to PUA §§ 7-507 and 13-201.

4. On July 6, 2020, SunSea filed its Answer, where it generally denied the allegations that it committed fraud or engaged in deceptive marketing and enrollment practices. The company claimed no cause existed to suspend or revoke its license, to preclude it from soliciting additional customers, or to impose a civil penalty. Although SunSea acknowledged that its contractor contacted Mr. Fields on May 14, 2020, SunSea contended that the caller was a "rogue agent"—only briefly employed by SunSea—whom the company "immediately terminated" upon learning of the allegations.[4] Nevertheless, SunSea voluntarily ceased enrollment of Maryland customers pending the resolution of the Complaint proceeding. SunSea conceded that it did not ask Mr. Fields for his signature; however, the company claimed it believed a signature was not required because the company's vendor—Blend BPO—informed SunSea that it had a pre-existing business relationship with Mr. Fields, which would exempt the transaction from the requirements of the MTSA.[5]

5. In Order No. 89582, the Commission found that OPC's Complaint raised important issues of fact about whether SunSea violated applicable laws and Commission

[3] OPC Complaint at 6.
[4] SunSea Answer at 3.
[5] *Id*. at 4.

regulations with regard to Mr. Fields' allegations, and more broadly, whether SunSea had demonstrated a pattern and practice of violations with regard to other Maryland customers.[6] Accordingly, the Commission ordered that SunSea file responses to certain questions presented by OPC in its Complaint and that discovery should commence. The Commission further ordered that an evidentiary hearing be held on October 7, 2020, to address: whether SunSea engaged in a pattern and practice of violating applicable Maryland laws and regulations; whether SunSea's license to provide electricity and electricity supply services should be suspended or revoked; whether SunSea should be precluded from soliciting additional customers; and whether SunSea should be subject to a civil penalty pursuant to PUA §§ 7-507 and 13-201.[7]

B. <u>Prehearing Testimony and Statements</u>

6. On October 2, 2020, Commission Staff filed the direct testimony of Kevin Mosier. Mr. Mosier testified that in reviewing the audio recordings of several third-party verification ("TPV") and sales calls associated with complaints filed with the Consumer Affairs Division ("CAD") against SunSea, the company violated Commission regulations because "none of the TPVs I reviewed ever stated the rate to be charged."[8] He also asserted that numerous customer allegations existed that SunSea's agents made statements in the course of the sales calls that were false and misleading in violation of COMAR 20.53.07.07 and 20.59.07.07, and that SunSea repeatedly failed to respond to

---

[6] Order No. 89582, *Complaint of Maryland Office of People's Counsel Against SunSea Energy, LLC*, Case No. 9647 (Jul. 28, 2020) (Order Establishing Virtual Evidentiary Hearing).
[7] Pursuant to Governor Hogan's March 16, 2020 Emergency Order related to the COVID-19 pandemic, the Commission ordered that the evidentiary hearing be held virtually.
[8] Mosier Direct Testimony at 3.

customer demands to cancel service.[9] Mr. Mosier further observed that CAD found multiple instances of slamming by SunSea. He concluded that "these deceptive solicitations show a pattern of deceit that I believe stems from the Company's general operations, and not just a single rogue agent."[10] He testified that SunSea's practices constituted unfair, false, misleading, or deceptive conduct prohibited under COMAR 20.53.07.07(A)(2).[11] Finally, Mr. Mosier also asserted that SunSea's rates were far above standard offer service ("SOS") rates.[12]

7. Given the similarities in violations to the Smart One Energy, LLC customer complaint proceeding,[13] Mr. Mosier recommended that the Commission issue a civil penalty against SunSea in the amount of $500,000.[14] He further recommended that SunSea's license be revoked.[15]

8. OPC filed a Pre-Hearing Statement noting that SunSea conceded it did not acquire signed contracts from any customer who enrolled via telephonic solicitation.[16] OPC alleged this conduct represented a pattern and practice of unauthorized enrollments in violation of MTSA § 14-2203, PUA § 7-507(k)(3), COMAR 20.53.07.05, and COMAR 20.59.07.05.[17] OPC also alleged that customer complaints on file with CAD demonstrate

---

[9] *Id*. at 4-8.
[10] *Id*. at 9.
[11] *Id*. at 11.
[12] Mr. Mosier testified, for example, that multiple customers were charged an initial variable rate of $0.1799 per kilowatt hour, in contrast to the SOS rate of the investor-owned utilities of under $0.08 per kilowatt hour. *Id*. at 4.
[13] *See* Order No. 89219, *In the Matter of the Complaint of the Staff of the Public Service Commission Against Smart One Energy, LLC,* Case No. 9617 (Aug. 2, 2019). In that case, the Commission issued a civil penalty against Smart One in the amount of $561,000.
[14] Mosier Direct at 11.
[15] *Id*. at 12.
[16] OPC Pre-Hearing Statement at 6, citing SunSea Answer to OPC DR 3-5.
[17] *Id*. at 5.

a pattern and practice of SunSea making false and deceptive statements in an effort to enroll customers, including false promises of savings and misrepresentations of the company's identity.[18] OPC further claimed that SunSea violated PUA § 7-507(j) by failing to post pricing information on the company's website.[19]

C. October 7, 2020 Hearing

1. Testimony

9. OPC presented the testimony of Deputy People's Counsel, William F. Fields. Mr. Fields testified that he received a telephone call to his home in Baltimore County, Maryland on May 14, 2020 at approximately 12:30 p.m., from a SunSea representative who identified himself as Richard White, wherein Mr. White claimed to be calling from "the BGE Verification Department."[20] The SunSea representative promised Mr. Fields savings of $30 to $40 per month, in addition to receiving a $50 per month shopping credit.[21] The SunSea representative already possessed Mr. Fields' Baltimore Gas and Electric ("BGE") Electric Choice ID number, and asked for his Gas Choice ID number, stating that "it would double my benefits." The SunSea representative did not inform Mr. Fields that he worked for a third-party retail supplier separate and distinct from BGE, nor did he describe any other terms of the agreement.

10. Mr. Fields testified that he received two subsequent calls at approximately 12:55 p.m. and 1:22 p.m., wherein the caller identified himself as a representative of SunSea, stated that Mr. Fields would receive a variable rate for electric and gas that would not

---

[18] *Id*. at 15-16. OPC alleged this conduct violated PUA § 7-507(k)(3), COMAR 20.53.07.07(A)(2), and COMAR 20.59.07.07 (A)(2).

[19] OPC Pre-Hearing Statement at 17, citing Affidavit of Mr. Harold G. Muncy, attached as Exh. 3.

[20] Oct. 7 Hr'g. Tr. at 24.

[21] *Id*. at 25.

necessarily be lower than the utility's rate, and completed the enrollment process.[22] On May 21, 2020, SunSea initiated a switch of Mr. Fields's electricity service to SunSea to begin on May 27, 2020, and a switch of Mr. Fields's natural gas service to begin on June 1, 2020. Mr. Fields testified that at the time SunSea initiated the switch of his electric and gas service, SunSea had not provided Mr. Fields with a contract to sign or a contract summary. He received a contract summary from SunSea on May 29, 2020—after enrollment, which did not require his signature.[23] Mr. Fields testified that he did not have any prior business relationship with SunSea.

11. In its May 29 correspondence to Mr. Fields, SunSea provided an initial rate of 12.99 cents per kWh, which Mr. Fields stated was not disclosed during the telephone calls.[24] Finally, the correspondence stated that SunSea's product was "100% Green Month to Month." This claim was not further explained in the material sent to Mr. Fields, nor did the material state the current Maryland Renewable Portfolio Standard requirements for all electricity service as required by COMAR 20.61.04.01(B). Mr. Fields testified that he cancelled the enrollment with SunSea on May 26, 2020.

12. SunSea presented the testimony of Jacob Adigwe, CEO of SunSea. Mr. Adigwe asserted that SunSea acted immediately to correct violations as soon as the company found out about them.[25] Responding to the allegations of Mr. Fields, Mr. Adigwe stated that he determined the calls were placed by Blend BPO, an agent located in Pakistan with

[22] *Id*. at 26-27.
[23] *Id*. at 28-29.
[24] *Id*. at 29-30.
[25] Oct. 7 Hr'g. Tr. at 68 (Adigwe).

which SunSea Energy contracted. He claimed that Blend BPO acted as a “rogue agent” by going outside the approved script, and that Blend BPO’s contract was terminated as soon as SunSea learned of its interactions with Mr. Fields.[26] Mr. Adigwe conceded that SunSea did not require a signature for any customer enrollment obtained through telephone solicitation.[27] However, he argued that “it was our understanding that [a customer signature] was not required since there was an existing relationship there.”[28] In particular, SunSea believed it was exempted from the MTSA because of the pre-existing relationship between a cable provider (who referred interested customers to SunSea) and the cable provider’s customers. Mr. Adigwe testified that upon learning from CAD that such conduct was unlawful, SunSea immediately stopped accepting customers through its cable affiliate and began enrolling customers only through inbound telephone sales.[29]

13. Similarly, Mr. Adigwe acknowledged that SunSea did not disclose actual customer rates in the TPV, stating only that the rate was variable. However, upon learning in May 2020 that the failure to state an actual rate was a violation of Ohio law, SunSea changed its policy in all states in which it operates to provide the rate in the TPV.[30] Regarding the green energy claim, Mr. Adigwe confirmed that SunSea’s script provided that its product was “100 percent green, environmental friendly.” He further

---

[26] *Id*. SunSea acknowledged that the “descriptions of the Second Call and the Third Call as outlined in the Complaint are largely correct, including that the calls were made by a representative of SunSea Energy, namely Blend BPO.” SunSea Answer at 3. SunSea further stated that the first call was made by Richard White, a contractor hired by SunSea. Oct. 7 Hr'g. Tr. at 156 (Adigwe).

[27] Oct. 7 Hr'g. Tr. at 154 (Adigwe). Mr. Adigwe stated that approximately 25% of SunSea’s customers were enrolled telephonically and the remaining 75% were enrolled via door-to-door solicitation. *Id*. at 154-55 (Adigwe). Regarding telephone enrollment, approximately 70% were inbound and 30% were obtained through the cable affiliate. *Id*. at 173.

[28] *Id*. at 76 (Adigwe).

[29] *Id*. at 83 (Adigwe).

[30] *Id*.

stated that the company purchased Tier 1 renewable energy credits to ensure compliance.[31]

2. October 7, 2020 Commission Findings and Directives

14. At the conclusion of the October 7 hearing, the Commission found that OPC met its burden of proof in this complaint proceeding and that the evidence presented by OPC and Staff witnesses was compelling.[32] Additionally, the Commission made the following findings: (i) SunSea intentionally provided false information and engaged in deceptive practices under PUA § 7-507(k)(3) as well as COMAR 20.53.07.7A(2); (ii) SunSea enrolled customers by deception and without meeting the minimum contracting requirements of COMAR 20.53.07.08 and COMAR 20.59.07.08, as well as MTSA § 14-2203 and PUA § 7-507(k)(3); (iii) SunSea failed to reduce the contract to writing signed by the customer in accordance with the MTSA § 14-2203(b)(1), COMAR 20.53.07.07D, and COMAR 20.59.07.07D; (iv) SunSea failed to include the oral representations made in connection with the transaction in a written contract, pursuant to MTSA § 14-2203(b)(6), COMAR 20.53.07.07D, and COMAR 20.59.07.07D; (v) SunSea failed to provide a contract of any sort prior to enrollment pursuant to COMAR 20.53.07.08A and COMAR 20.59.07.08A; (vi) SunSea failed to provide a contract summary of any sort prior to enrollment pursuant to COMAR 20.53.07.08B, COMAR 20.59.07.08B, and COMAR 20.59.07.8C(4); and (vii) SunSea failed to disclose all material contract terms

---

[31] *Id*. at 169 (Adigwe).

[32] Oct. 7 Hr'g. Tr. at 186-87. In contrast, the Commission did not find the testimony of SunSea credible. For example, the Commission observed that over 30 complaints were filed by customers with CAD, while SunSea asserted that not a single complaint was ever filed with the company, despite the fact that lodging a complaint with the provider is a prerequisite to the filing of a complaint with CAD. Tr. at 151-52 (Adigwe); 187-88 (Stanek).

and conditions to the customer over the telephone pursuant to COMAR 20.53.07.08C(4).[33]

15. The Commission also required that SunSea comply with several directives. ***First***, the Commission extended the moratorium on SunSea for all marketing and all solicitations of new customers until further direction of the Commission and ordered that all marketing violations be cured, including the description of the "green" product. ***Second***, the Commission directed SunSea to return all customers solicited via telephone, whether inbound or outbound solicitation, to SOS within 10 days of the hearing, and to provide a letter of explanation to those customers, including their right to a refund. ***Third***, the Commission required SunSea to rerate and refund all customers solicited via telephone the difference between SunSea's supply charges and the applicable SOS rate from the local utility for all periods these customers were served, whether the customers were existing or former customers. SunSea was also directed to provide an accounting to the Commission of the number of accounts and refunds sent to each of these customers. ***Fourth***, in consultation with Staff and OPC, the Commission required SunSea to send a letter to all remaining customers that: (i) provides that violations of state law and Commission regulations were found by the Commission; (ii) explains that all SunSea customers can return to SOS without penalty; and (iii) provides an accurate description of SunSea's renewable product.[34] The Commission further stated that it would address the civil monetary penalty at a later date, after the refund process was completed. The Commission observed that SunSea's compliance with this refund process would factor

---

[33] Oct. 7 Hr'g. Tr. at 189-91.
[34] *Id*. at 191-93.

into the consideration of any penalty amount that may be determined and calculated at a later date.

16. On October 9, 2020, the Commission issued a Supplemental Order requiring SunSea to provide a copy of the standard contract that SunSea used to establish service with all of SunSea's Maryland customers, including a description of the rate and all terms of service.[35]

D. Compliance with Commission Directives

1. December 14, 2020 Order

17. On December 14, 2020, the Commission issued a procedural order regarding the status of SunSea's compliance with the Commission's directives. Specifically, the Commission asked for party comments addressing "the appropriateness and nature of a civil penalty" against SunSea, and required that parties submit any written testimony on these issues by January 20, 2021.[36] The Commission also scheduled a virtual status conference for January 27, 2021, "to determine whether SunSea has complied with the Commission's directives in this proceeding, whether to impose a civil penalty, and if so, the size of the penalty."[37]

2. January 20, 2021 Written Testimony

18. On January 20, 2021, Staff filed the direct testimony of Kevin Mosier. In his testimony, Mr. Mosier stated that SunSea complied with the Commission's directives by mailing 1,258 refund checks to customers, which he further testified was "in line with the

[35] October 9, 2020 Supplemental Order on Refunds and Contracts, Maillog No. 232106.
[36] December 14, 2020 Order Establishing Virtual Status Conference, Order No. 89677 at 2.
[37] *Id*. The virtual status conference was scheduled to begin immediately after the Commission's regularly scheduled Administrative Meeting.

number of customers that SunSea failed to properly enroll."[38] Nevertheless, in accordance with his previous testimony, Mr. Mosier argued that SunSea should be assessed civil penalties for violating Commission regulations.[39] Additionally, Mr. Mosier argued that the October 7, 2020 hearing brought to light additional violations by SunSea. Specifically, SunSea's website provides: "No contract!" Mr. Mosier asserted that this is a false and misleading statement given that Maryland law requires a contract.[40] He further testified that SunSea's website contained the statement "Yes Competitive Rates!" He asserted this statement was misleading because SunSea charges rates ranging from $0.1292 to $0.1899 per kWh, in comparison to the SOS rate, which for all utilities is less than 8 cents per kWh.[41] Mr. Mosier concluded that SunSea's behavior demonstrated a "willful disregard with respect to any number of consumer protection laws" and he recommended a civil penalty of no less than $500,000 and revocation of SunSea's license.[42]

19. On January 20, 2021, SunSea filed the direct testimony of Jacob Adigwe. Mr. Adigwe testified that SunSea complied with all of the Commission's directives contained in its October 7, 2020 and October 9, 2020 Orders. He stated that SunSea returned customers to SOS as required by the Commission's October 7 Order, and provided customers with a letter dated October 16, 2020, notifying them of SunSea's violations as

---

[38] Mosier January 20, 2021 Direct at 2.
[39] *Id*. Mr. Mosier contended that SunSea violated COMAR 20.53.07.08(C)(1), 20.53.07.05, 20.59.07.08(C)(1), 20.59.07.05, and 20.59.07.07.
[40] Mosier January 20, 2021 Direct at 2, citing Exhibit KDM-2.
[41] *Id*. at 3. He noted further that there are "dozens of offers of 100 percent renewable for less than 8 cents per kWh." *Id*.
[42] *Id*. at 4.

well as their right to a refund.[43] SunSea also filed its four standard contracts with the Commission and rerated customers solicited by telephone by refunding to them the difference between the rate SunSea charged and the prevailing SOS rate at the time. Mr. Adigwe testified that SunSea sent a total of 1,258 checks totaling $66,675.91.[44] SunSea also worked with Staff and OPC to send an additional letter to customers containing an accurate description of SunSea's renewable product[45] and the right of customers to return to SOS without penalty.[46] Irrespective of the Commission's decision on SunSea's license, Mr. Adigwe asserted that SunSea will discontinue marketing, soliciting, and (re)enrolling customers by telephone as a result of the problems that arose from this form of solicitation.[47] Regarding the issue of a civil penalty, Mr. Adigwe testified that the Commission should consider SunSea's voluntary action in May 2020 to stop all enrollment of new customers in Maryland. Because door-to-door sales had ceased due to the COVID-19 pandemic, telephone enrollments had become the only source of new business for SunSea.[48] Finally, in order to avoid future violations, Mr. Adigwe testified that he hired a new Compliance Manager and a new Vice President.

---

[43] Adigwe Direct at 2. On October 16, 2020, SunSea filed a copy of this letter with the Commission. *See* Maillog 232222.
[44] Adigwe Direct at 2-3.
[45] Mr. Adigwe testified that SunSea changed the description of its product from "100% Green Energy" to "100% Renewable Energy," and the company added language about renewable energy that is required by COMAR 20.61.04.01.
[46] Adigwe Direct at 3. A copy of the form letter to customers was filed with the Commission on November 9, 2020. *See* Maillog 232529.
[47] Adigwe Direct at 3.
[48] *Id*. at 6.

3. January 27, 2021 Hearing

20. During the January 27, 2021 status conference, Staff stated that SunSea fulfilled its obligations under the Commission's Orders.[49] Nevertheless, Staff witness Mosier concluded that SunSea's statements regarding competitive rates were misleading and deceptive, including promises of competitive rates that were substantially higher than other offers.[50] Coupled with the other violations, Staff reaffirmed its recommendation that SunSea be assessed a civil penalty "up to $500,000"[51] and that SunSea's license be revoked.

21. OPC stated that it found discrepancies between the refunds issued by SunSea and those required by the Commission's orders. OPC therefore recommended that the company engage an independent auditor to be approved by the Commission.[52]

22. OPC also urged the Commission to impose a significant civil penalty to deter future violations by other retail suppliers. In response to SunSea's defense that it misunderstood the law, OPC argued that "ignorance of the law is not an excuse to violating the law," especially in a highly regulated industry.[53] OPC further argued that SunSea's "rogue vendor" defense should be given little weight, because if retail suppliers are not held responsible for the bad acts of their vendors, it will lead to an "infinite circle"

---

[49] Jan. 27, 2021 Hr'g. Tr. at 7 (Woolson).
[50] Jan. 27, 2021 Hr'g. Tr. at 24-25 (Mosier).
[51] Jan. 27, 2021 Hr'g. Tr. at 7 (Woolson).
[52] Jan. 27, 2021 Hr'g. Tr. at 14 (O'Laughlin).
[53] Jan. 27, 2021 Hr'g. Tr. at 9 (Lapp).

of suppliers avoiding liability by replacing vendors.[54] OPC recommended that the Commission impose a civil penalty of $2.5 million.[55]

23. SunSea stated that it has fully complied with all Commission orders and returned all its Maryland customers to SOS. The company clarified that even customers who were solicited via door-to-door solicitation, where no allegations of violations were made, were returned to SOS.[56] SunSea asserted that the refunds it issued to approximately 1,258 customers act "like a direct penalty that went directly to those customers that the Commission found were victims in this case."[57] SunSea also asked the Commission to consider that the company voluntarily ceased enrolling customers in May 2020, before OPC filed its complaint with the Commission.[58] SunSea proposed that the Commission adopt as a penalty that SunSea be prohibited from enrolling new customers via telephone, arguing that noncompliance with the MTSA "goes to the heart of the case and the penalty that directly addresses the violations."[59] SunSea pledged that it will only solicit customers in Maryland via door-to-door solicitation in the future.[60] Finally, SunSea expressed no opposition to OPC's request for an audit.

[54] *Id*. at 10-11 (Lapp).

[55] Jan. 27, 2021 Hr'g. Tr. at 15 (O'Laughlin). OPC states that this recommended fine amount was based on approximately $1,000 for each customer enrolled without a signature, $1,000 for each customer not provided with a contract summary prior to enrollment, the nine violations articulated in the Complaint related to Mr. Fields, and the eleven misrepresentations alleged in the CAD customer complaints. Oct. 7 Hr'g. Tr. at 177 (O'Laughlin).

[56] Jan. 27, 2021 Hr'g. Tr. at 27-28; 53.

[57] Jan. 27, 2021 Hr'g. Tr. at 18 (McGee).

[58] Counsel for SunSea stated that the company ceased enrolling customers as soon as OPC contacted it with information related to the enrollment of Mr. Fields.

[59] Jan. 27, 2021 Hr'g. Tr. at 18 (McGee).

[60] Jan. 27, 2021 Hr'g. Tr. at 49 (Adigwe).

4. January 27, 2021 Order

24. At the conclusion of the January 27 status conference, the Commission ordered SunSea to procure an audit, in consultation with the Commission's Staff and OPC, to determine the accuracy of the refunds issued by SunSea to customers acquired via telephone. Additionally, the Commission required an audit of the contracts used by SunSea to acquire customers via door-to-door sales, specifically with regard to whether proper signatures were obtained. The Commission established a deadline of April 1, 2021, to provide the audit report.[61] During the audit process, the Commission held that the moratorium on SunSea's solicitation, marketing, and enrollment of new customers in the State of Maryland would continue.

5. Audit Reports

25. On May 17, 2021, in compliance with the Commission's January 27, 2021 Order, SunSea filed with the Commission two audit reports, the Refund Audit Report and the Contract Audit Report.[62] In that correspondence, SunSea Energy requested that the Commission schedule a status conference for the Commission to receive comment on its audit reports, to decide whether or not any civil penalty should be levied upon the company, and to consider whether the moratorium barring SunSea Energy from acquiring new customers could be lifted.

26. On June 14, 2021, in advance of any request by the Commission to do so, OPC filed correspondence with the Commission commenting on the audit findings. OPC

---

[61] The Commission granted SunSea's request to extend the audit deadline to April 30, 2021, and its second request to extend the audit deadline to May 14, 2021. *See* Commission's April 1, 2021 and April 30, 2021 orders, Maillog Nos. 234573 and 235068, respectively.

[62] SunSea, OPC, and Staff agreed to select Joshua Price, CPA, and the accounting firm of HeimLantz to conduct the audits.

asserted that the audit findings "demonstrate that SunSea has made a good faith effort to comply with the Commission's order."[63] OPC observed that the average refund deficit was $0.25 and "resulted from "minor miscalculations rather than an effort to evade compliance."[64] OPC further noted that, overall, SunSea refunded customers more than it owed and that it rectified any deficiencies identified by the audit report. Given SunSea's compliance with the Commission's orders, OPC reduced its recommended civil penalty from $2.5 million to $1.5 million.

6. Status Conference

27. On July 26, 2021, the Commission granted SunSea's request for a status conference to hear oral argument on SunSea's audit reports, the civil penalty amount, and the status of the moratorium. The conference was held on August 11, 2021.[65]

28. Although it conceded multiple inadvertent violations of Commission regulations, SunSea argued that it should not be subjected to a civil penalty because of its good faith efforts to achieve compliance as soon as it became aware that certain behavior was prohibited by Commission regulation. In particular, SunSea emphasized its voluntary decision to stop acquiring new Maryland customers, which has continued for the past 15 months. SunSea pledged not to solicit or acquire new Maryland customers by telephone, and it requested that the moratorium on door-to-door solicitations be terminated.

29. Staff acknowledged that SunSea has generally complied with Commission orders throughout this proceeding, including the requirement to return customers to SOS and reimburse overcharges. Nevertheless, given the magnitude and gravity of violations,

---

[63] OPC June 14, 2021 correspondence at 1.
[64] *Id*.
[65] *See* Commission's July 26, 2021 letter order, Maillog No. 236263.

Staff maintained that a $500,000 civil penalty is appropriate. However, Staff asserted the Commission may want to consider reducing the penalty by the amount of refunds issued by SunSea. Finally, Staff argued that SunSea's license should be revoked because of the company's history of acquiring customers through deception, including false promises of savings and subsequent charging of excessive rates.

30. OPC argued that a $1.5 million civil penalty is appropriate given SunSea's numerous violations of Commission regulations. OPC further noted that in contravention of COMAR 20.51.03,01A(5), SunSea failed to report to the Commission that its supplier license was revoked in New York on May 18, 2021.[66] OPC also recommended that SunSea's license as a retail electric supplier be revoked.

II. COMMISSION DECISION

31. Based on the audit reports and the status conference, the Commission is satisfied that SunSea has returned all Maryland customers to SOS, and has rerated and refunded customers accurately as required by previous Commission orders. The remaining issues presently before the Commission are what civil penalties, if any, to assess against SunSea for the violations described above; the status of its license to provide electricity and electricity supply services; and the moratorium on its enrollment of new customers in Maryland.

32. PUA § 7-507(k) (Revocation or Suspension of License) provides that the Commission may revoke or suspend the license of an electricity supplier, impose a civil

[66] Under COMAR 20.51.03.01, a licensed electricity supplier is required to notify the Commission of a material change to the information contained in its license application, including where the licensee has had a license revoked, suspended, or restricted in another state.

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 OPC, the Attorney General, or an affected party. Just cause is defined to include: (i) intentionally providing false information to the Commission; (ii) switching, or causing to be switched, the electricity supply for a customer without first obtaining the customer's permission; (iii) failing to provide electricity for its customers; (iv) committing fraud or engaging in deceptive practices; (v) failing to maintain financial integrity; (vi) violating a Commission regulation or order; (vii) failing to pay, collect, remit, or calculate accurately applicable State or local taxes; (viii) violating a provision of the PUA or any other applicable consumer protection law of the State; (ix) conviction of a felony by the licensee or principal of the licensee or any crime involving fraud, theft, or deceit; and (x) suspension or revocation of a license by any State or federal authority. PUA § 7-507(k)(3).

33. PUA § 7-507(l) (Fines and Penalties) provides that an electricity supplier in violation of applicable PUA or COMAR provisions is subject to a civil penalty of up to $10,000 per day, per violation, in addition to possible license revocation or suspension. The PUA further provides that 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.

34. OPC and Staff witnesses have provided compelling evidence of a multitude of violations by SunSea over the short duration of its presence in Maryland. As the

Commission previously found at the October 7 hearing, SunSea has evidenced a pattern and practice of violating applicable Maryland laws and regulations by intentionally providing false information and engaging in deceptive practices. Although the Commission does not regulate retail supplier rates[67] 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." Its website contained the statement "Yes Competitive Rates!" even while charging customers prices that were multiple times higher than the SOS rate provided by Maryland utilities. In particular, SunSea charged rates ranging from 12.92 cents to 18.99 cents per kWh, in comparison to the SOS rate of less than 8 cents per kWh.[68] As Mr. Mosier testified, dozens of retail offers exist for 100 percent renewable products at under 8 cents per kWh, making SunSea's "competitive" claim misleading and deceptive.[69] That conclusion is also supported by the testimony of Mr. Fields, who testified that SunSea promised savings of $30 to $40 per month, while ultimately providing a variable rate starting at 12.99 cents per kWh.[70] The conclusion is further evidenced by the multiple customer complaints filed with CAD, replete with customer accusations that SunSea orally promised rates as low as 5 cents per kWh.[71]

35. Mr. Fields also provided testimony that SunSea misrepresented its identity, with Mr. White—a contractor hired by SunSea—claiming that he was calling from the "BGE Verification Department." The misrepresentation by a retail supplier that it is a regulated

[67] *See* Oct. 7 Hr'g. Tr. at 44 (Stanek) ("The prices that SunSea charges customers is its business. There are no caps in the competitive retail supply business.")
[68] Mosier January 20, 2021 Direct at 3.
[69] *Id.*; Jan. 27, 2021 Hr'g. Tr. at 24-25 (Mosier).
[70] Oct. 7 Hr'g. Tr. at 25, 34 (Fields).
[71] *See* Oct. 7 Hr'g. Tr. at 41-42 (O'Laughlin); 159-61 (O'Donnell).

utility—or directly affiliated with the utility—is especially pernicious in that it provides immediate name recognition and the false comfort to the consumer that the supplier is regulated.

36. SunSea's deceptive claims were further exacerbated by its violation of COMAR regulations that require suppliers to provide a clear and concise price description of its services.[72] The record indicates that SunSea failed to provide a specific charge per kilowatt hour, instead indicating only that the rate would be variable. In fact, SunSea failed to provide a contract summary of any sort prior to enrollment, in violation of COMAR regulations.[73] As OPC stated, the contract summary is a vital consumer protection requirement. "[T]hat's what informs the customer – lets the customer know all of the ins and outs of what it is that they're agreeing to. What they're signing up for."[74]

37. SunSea also misled customers by prominently advertising on its website that no contract was required. Its website contained the statement "No contract!" As Mr. Mosier asserted, that statement is false because Maryland law expressly requires a contract and contract summary.[75]

38. The Commission is particularly intolerant of deceptive statements by retail suppliers because they are inimical to the developing competitive market. As the Commission stated in *Starion*: "In a deregulated market, a customer's ability to make rational, well-informed choices among competing suppliers—and indeed the stability and

---

[72] *See* COMAR 20.53.07.08.

[73] Mr. Fields further substantiated SunSea's failure to provide a contract summary prior to enrollment. At the time SunSea initiated the switch of his electric and gas service, SunSea had not provided Mr. Fields with a contract to sign or a contract summary. He received a contract summary on May 29—after enrollment, which did not require his signature. Oct. 7 Hr'g. Tr. at 28-29 (Fields).

[74] Oct. 7 Hr'g. Tr. at 175 (O'Laughlin).

[75] Mosier January 20, 2021 Direct at 2, citing Exhibit KDM-2. Mr. Adigwe conceded that Maryland law does require a contract. Oct. 7 Hr'g. Tr. at 135 (Adigwe).

growth of the supplier marketplace itself—is directly undermined by deceptive misrepresentations..."[76] Companies that misinform, mislead or otherwise deceive consumers undermine the benefits that the General Assembly intended to accrue to customers as a result of fair competition. Retail suppliers that ignore and violate the law, deliberately or through ignorance of the law, thereby gain an unfair advantage over those suppliers that carefully comply with those laws.

39. In addition to its misleading statements, SunSea committed hundreds of violations by failing to require a customer signature on contracts obtained through telephone solicitation. Indeed, Mr. Adigwe conceded that SunSea did not require a signature for any customer enrollment obtained over the telephone.[77] As described above, SunSea also committed hundreds of violations by failing to provide contract summaries to customers prior to enrollment. SunSea acknowledged that it did not disclose actual customer rates in the TPV, stating only that the rate was variable.[78] In reviewing the CAD files, Staff witness Mosier testified that "none of the TPVs I reviewed ever stated the rate to be charged."[79]

40. The Commission finds unpersuasive SunSea's rogue vendor and pre-existing relationship defenses. SunSea argued, for example, that Blend BPO—the entity that made the second and third calls to Mr. Fields—was a rogue agent that went off script and

---

[76] *In the Matter of the Investigation into the Marketing Practices of Starion Energy PA, Inc.*, Case No. 9324, Order No. 86211 at 3.

[77] Oct. 7 Hr'g. Tr. at 154 (Adigwe). Mr. Adigwe stated that approximately 25% of SunSea's customers were enrolled telephonically, with the remaining 75% enrolled via door-to-door solicitation. *Id*. at 154-55 (Adigwe). Regarding telephone enrollment, approximately 70% were inbound and 30% were obtained through the cable affiliate. *Id*. at 173.

[78] *See* Oct. 7 Hr'g. Tr. at 17 (McGee).

[79] Mosier Direct Testimony at 3.

did not represent the business practices of SunSea.[80] Nevertheless, Mr. White made the first call to Mr. Fields, and SunSea acknowledged that it hired Mr. White as a contractor. Mr. White expressly claimed to call from the BGE Verification Department and falsely promised substantial savings of $30 to $40 per month. The Commission also agrees with OPC that the rogue vendor defense should be given little weight, because if retail suppliers are not held responsible for the bad acts of their vendors, it will lead to an "infinite circle" of suppliers avoiding liability by replacing vendors.[81]

41. The Commission likewise finds no merit to SunSea's pre-existing relationship argument. SunSea initially claimed it was not required to obtain a customer signature because its affiliate—a cable installation company—had a pre-existing business relationship with SunSea's prospective customer, which would ostensibly exempt it from the requirements under the MTSA.[82] However, SunSea subsequently conceded that it had no relationship with the prospective customer itself prior to the cable company's referral.[83] The lack of any pre-existing relationship was demonstrated in the following colloquy:

> Commissioner Herman: But the person who is being called to confirm their cable appointment, they do not have a preexisting relationship with Easy Sales and Marketing. They have a preexisting relationship with Comcast, isn't that right?

---

[80] *See* Oct. 7 Hr'g. Tr. at 68 (Adigwe).

[81] Jan. 27, 2021 Hr'g. Tr. at 10-11 (Lapp).

[82] *See* Oct. 7 Hr'g. Tr. at 76 (Adigwe): ("it was our understanding that that was not required since there was an existing relationship there.")

[83] In fact, SunSea's only relationship was with the company that does the work installing the cable for the cable company, not even the cable company itself. Oct. 7 Hr'g. Tr. at 165 (Adigwe).

> Mr. Adigwe: They have a preexisting relationship with Comcast. And they can create by the customer verbally agreeing to hear from an energy specialist, that's when they go ahead and create a pre-existing relationship with the company.
>
> Commissioner Herman: How can it be pre-existing if they're just creating it right then and there?[84]

42. Considering the multitude of violations demonstrated by OPC and Staff, in conjunction with the Commission's discretionary fining authority of $10,000 per violation, per day, under PUA § 7-507(l), SunSea could easily be subjected to a multi-million dollar civil penalty. However, in its October 7 Order, the Commission observed that SunSea's compliance with the refund process would factor into the consideration of any penalty amount that may be determined and calculated at a later date.[85] The parties agree that SunSea fully complied with the Commission's orders and has otherwise appeared to act in good faith to achieve compliance after notification of its violations. In particular, SunSea voluntarily ceased enrolling any Maryland customers prior to the filing of OPC's Complaint, upon learning of the allegations from OPC.

43. In addition, during the hearings, SunSea acknowledged its many mistakes and took steps to mitigate the resulting harm. Counsel for SunSea stated, for example, that "SunSea understands that the actions by its agents, who it subsequently terminated, are illegal and it is the same as if it committed those violations."[86] Upon learning of Blend BPO's actions, SunSea terminated its contract. Similarly, after CAD advised SunSea that it was not exempt from MTSA requirements regarding customer signatures, SunSea

[84] Oct. 7 Hr'g. Tr. at 167.
[85] *Id*. at 193.
[86] Oct. 7 Hr'g. Tr. at 16 (McGee).

immediately stopped accepting customers through its cable affiliate and began enrolling customers only through inbound telephone sales.[87] Additionally, upon learning in May 2020 that the failure to state an actual rate on the TPV was a violation of Ohio law, SunSea changed its policy in all states in which it operates to provide the rate in the TPV.[88]

44. The Commission agrees with OPC and Staff that during this complaint proceeding, SunSea has "made a good faith effort to comply with the Commission's order."[89] SunSea observed the Commission's directive not to market, solicit, or enroll customers in Maryland during the pendency of this proceeding. It also successfully returned all customers that had been solicited via telephone, whether inbound or outbound solicitation, to SOS, and in conjunction with Staff and OPC, SunSea drafted and sent a letter of explanation to customers informing them of their right to a refund. SunSea also rerated and refunded all customers solicited via telephone the difference between SunSea's supply charges and the applicable SOS rate from the local utility for all periods those customers were served. As of the January 27, 2021 hearing, SunSea had mailed 1,258 refund checks to customers, totaling $66,675.91.[90] In consultation with the Commission's Staff and OPC, SunSea provided an audit to ensure the accuracy of the refunds given to customers as well as an audit of contracts acquired via door-to-door sales, to ensure that proper customer signatures were acquired. Finally, SunSea worked

---

[87] Oct. 7 Hr'g. Tr. at 83 (Adigwe). OPC also acknowledged conflicting information from CAD regarding the so-called preexisting relationship with the cable affiliate. *See* Oct. 7 Hr'g. Tr. at 125 (O'Laughlin).
[88] Oct. 7 Hr'g. Tr. at 83 (Adigwe). *See also* Oct. 7 Hr'g. Tr. at 185 (McGee): ("When they found out from Ohio that the TPV was incorrect, then they decided to change it in Maryland and other places.")
[89] OPC June 14, 2021 correspondence at 1.
[90] Adigwe Direct at 2-3.

with Staff and OPC to develop an accurate description of its renewable product consistent with the requirements of COMAR 20.61.04.01.

45. Considering all of the requirements of PUA § 7-507(l), including the number of SunSea's previous violations,[91] the gravity of the current violations, and SunSea's subsequent good-faith efforts to achieve compliance, the Commission finds that a civil penalty in the amount of $400,000 is appropriate.[92] Payment of that fine shall be made within ten (10) business days of this Order.

46. The Commission denies the requests of Staff and OPC to revoke SunSea's license. Although SunSea has committed a multitude of violations, its subsequent actions to mitigate harm and achieve compliance indicate that it could provide future value to Maryland as a competitive retail supplier. The Commission will closely monitor SunSea's progress in that regard.[93]

47. The current moratorium on the marketing, solicitation, and enrollment of new customers in Maryland by SunSea will be lifted upon payment in full by SunSea of the civil penalty issued today. Beyond payment of the penalty, two additional conditions are hereby imposed on SunSea. First, until further notice, the Commission orders SunSea to provide to Staff and OPC a quarterly report that includes: (i) a list of all internal and external Maryland customer complaints filed against it during the reporting period,

---

[91] In considering previous violations in accordance with PUA § 7-507(1), the Commission is not aware of any violations by SunSea in Maryland not discussed in the body of this Order in the relatively short period of time since the Commission issued SunSea a license to supply electricity and electricity supply service on January 23, 2019.

[92] In assessing this civil penalty, the Commission has considered the $66,675.91 in customer refunds as part of SunSea's good faith efforts to comply with the Commission's orders and to rectify past violations.

[93] SunSea must ensure that it is compliant with all Maryland laws and regulations. The Commission notes, for example, that SunSea apparently failed to notify the Commission of its license revocation in New York, despite the requirement in COMAR 20.51.03.01A(5) to report this material change.

including the nature of each complaint and its resolution; (ii) a list of all marketing vendor companies used by SunSea, including their name, website, and contact information; and (iii) copies of the most current contract templates and marketing materials developed to solicit customers in Maryland, including all scripts related to customer solicitation. Second, Mr. Adigwe asserted that SunSea will no longer market, solicit, or enroll customers via telephone as a result of the problems stemming from this form of solicitation, and his counsel suggested that restriction as an appropriate remedy to avoid future violations.[94] The Commission accepts this proposal as an additional condition of this Order.

IT IS THEREFORE, this 18th day of August, in the year Two Thousand Twenty-One, by the Commission,

ORDERED: (1) That SunSea shall pay a civil penalty in the amount of $400,000 into the Retail Choice Customer Education and Protection Fund, pursuant to PUA §§ 7-310 and 13-201(e)(3), within ten (10) business days of the date of this Order. The check shall be payable to the "Maryland Public Service Commission" and be sent to Fiscal Division, Maryland Public Service Commission, 6 St. Paul Street, 16th Floor, Baltimore, Maryland 21202;

(2) That the requests to revoke SunSea's electric and gas licenses are denied;

[94] Jan. 27, 2021 Hr'g. Tr. at 49 (Adigwe); Jan. 27, 2021 Hr'g. Tr. at 18 (McGee) ("at the October hearing, SunSea pledged and does so here again, that as a penalty it will not enroll any customers via telephone any longer, which really goes to the heart of the case and the penalty that directly addresses the violations.")

(3) That following receipt of full payment of the civil penalty by SunSea, the moratorium on the marketing, solicitation, and enrollment of new customers in Maryland by SunSea will be lifted;

(4) That from the date of this Order until further notice, SunSea shall provide to Staff and OPC every three months a quarterly report that includes: (i) a list of all Maryland customer complaints filed against the company during the reporting period, including the nature of each complaint and its resolution; (ii) a list of all marketing vendor companies used by SunSea, including their name, website, and contact information; and (iii) copies of the most current contract templates and marketing materials developed and used by SunSea to solicit customers in Maryland, including all scripts related to customer solicitation; and

(5) That SunSea shall not market, solicit, or enroll customers by telephone in Maryland.

/s/ Jason M. Stanek

/s/ Michael T. Richard

/s/ Anthony J. O'Donnell

/s/ Odogwu Obi Linton

/s/ Mindy L. Herman
Commissioners