

**ORDER NO. 90614**

Complaint of the Maryland Office of  
People’s Counsel against SunSea  
Energy, LLC

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

\_\_\_\_\_  
CASE NO. 9647  
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**Issue Date: May 4, 2023**

**ORDER ON FINDINGS AND MOTION FOR CLARIFICATION**

1. On April 11, 2023, the Public Service Commission issued an order delegating this matter to the Public Utility Law Judge (“PULJ”) Division following a Probable Cause Hearing on April 5-6, 2023.<sup>1</sup> The Commission determined that SunSea Energy, LLC (“SunSea”) violated provisions of the Public Utilities Article (“PUA”), *Annotated Code of Maryland*, and provisions of the Code of Maryland Regulations (“COMAR”). The Commission also determined that the matter warranted further proceedings to determine the full extent to which the Company has violated Maryland laws and regulations in its marketing, enrollment and contracting practices, or any other violations of the consumer protection statutes and Commission regulations. This Order supplements Order No. 90581 and details the Commission’s findings that led to its decision to delegate and to implement several interim safeguards pending the resolution of this matter.

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<sup>1</sup> Order No. 90581.

## **BACKGROUND**

2. The Maryland Office of People’s Counsel (“OPC”) filed a complaint against SunSea on June 4, 2020, alleging violations of Maryland law by engaging in fraud and deceptive marketing and enrollment practices, and for failing to comply with the PUA, the Maryland Telephone Solicitation Act (“MTSA”), Com. Law § 14-2201 *et seq.*, the Maryland Consumer Protection Act (“MCPA”) (Com. Law § 13-101 *et seq.*), and the Commission's consumer protection regulations contained in COMAR 20.59.07 and 20.53.07.<sup>2</sup>

3. Following an evidentiary hearing on October 7, 2020, the Commission issued an order on August 18, 2021 (the “August 2021 Order”), determining that OPC proved the allegations in its complaint, concluding that the OPC and Commission Technical Staff (“Staff”) witnesses were credible, and SunSea’s witnesses were not credible.<sup>3</sup> The Commission assessed a civil penalty of \$400,000 against SunSea, and directed that upon full payment of that fine, the moratorium on SunSea’s marketing, solicitation, and enrollment of new customers in Maryland would be lifted.<sup>4</sup>

4. The Commission further directed that from the date of its August 2021 Order until further notice, SunSea was required to provide to Staff and OPC every three months a quarterly report that included: (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

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<sup>2</sup> Maillog No. 230585.

<sup>3</sup> Order No. 89914, *Complaint of the Maryland Office of People’s Counsel against SunSea Energy, LLC* (August 18, 2021).

<sup>4</sup> *Id.* at 27-28.

templates and marketing materials developed and used by SunSea to solicit customers in Maryland, including all scripts related to customer solicitation. The Commission prohibited SunSea from marketing, soliciting, or enrolling customers by telephone in Maryland.<sup>5</sup>

5. Subsequently, on January 30, 2023, the Commission's Consumer Affairs Division (“CAD”), following an investigation by its Compliance and Enforcement Unit (“CEU”), provided the Commission with a memorandum of its findings regarding new complaints filed against SunSea after the Company’s purported compliance with the August 2021 Order.<sup>6</sup>

6. According to the memorandum, after SunSea paid the \$400,000 penalty, the above-described moratorium was lifted, and the Company resumed soliciting Maryland customers door-to-door on or about June 19, 2022.<sup>7</sup> CAD noted that it received 41 customer complaints against SunSea from July 1, 2022, through January 27, 2023, including 27 disputes involving unauthorized enrollment/slamming, 11 disputes related to agent misrepresentation, two disputes involving billing and one dispute pertaining to an issue with starting or stopping service.<sup>8</sup> The memorandum indicated that CAD resolved 30 complaints in favor of the disputing customer and two in favor of SunSea, with nine complaints unresolved as of the date of its memorandum.<sup>9</sup> The resulting CEU review found violations related to defective contracting practices, unauthorized enrollments, supplier misrepresentation, and inaccessibility.<sup>10</sup> Based on its findings, CAD

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<sup>5</sup> *Id.* at 28.

<sup>6</sup> Maillog No. 301288 (attachment).

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 2-3.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.* at 3-9.

recommended that the Commission initiate evidentiary proceedings and consider a number of actions against SunSea, including reinstating the moratorium on marketing and imposing additional penalties.<sup>11</sup>

7. In response to CAD's memorandum, on February 13, 2023, the Commission issued a Probable Cause Notice to SunSea, directing the Company to appear before the Commission at an Administrative Meeting for the purpose of determining whether there is probable cause to refer this matter to the PULJ Division for evidentiary proceedings on CAD's alleged violations of Maryland law and regulations.<sup>12</sup> The Notice indicated that the Probable Cause Hearing would consider whether interim protections were necessary, including: (i) whether SunSea's license to provide electricity supply services and/or gas supply services in Maryland should be immediately suspended; (ii) whether SunSea should be precluded from soliciting additional customers in Maryland; and (iii) whether SunSea should be ordered to deposit all Maryland customer proceeds in excess of applicable standard offer service rates into an interest-bearing escrow account pending final resolution of this matter.<sup>13</sup> The probable cause hearing was held April 5-6, 2023.

### **PROBABLE CAUSE HEARING**

8. During the probable cause hearing, CAD and SunSea provided testimony, evidence, and arguments addressing the nature and resolution of the CAD complaints against SunSea, and the training and discipline of SunSea's third party agents, and SunSea's enrollment processes and upgrades, for the complaint period of July 1, 2022, to

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<sup>11</sup> *Id.*

<sup>12</sup> The probable cause hearing was eventually postponed to April 5, 2023, following requests for extension of time filed by SunSea on February 21, 2023 (Maillog No. 301437), and February 28, 2023 (Maillog No. 301557, confidential). On April 4, 2023, the Commission denied SunSea's third request for an extension of time, which SunSea filed on April 3, 2023 (Maillog No. 302238).

<sup>13</sup> *Id.*

January 27, 2023. Ms. Stephanie Bolton, Director of the Consumer Affairs Division and utility customer, Mr. Seth Yeazel, Esq., testified as witnesses for CAD. Mr. Jacob Adigwe, President and Chief Executive Officer of SunSea, testified on behalf of SunSea.

9. Ms. Bolton’s testimony examined a sampling of five consumer complaints filed against SunSea during the complaint period, revealing incomplete and unsigned contracts, missing, contradictory and inconsistent contract terms, including price, enrollment forms and contract signature pages that were purportedly signed by the same customer but with noticeably different handwriting.

10. Mr. Yeazel testified that he was enrolled with SunSea without his authorization after clearly informing an agent during a door-to-door solicitation that he was not interested in switching to SunSea at that time. He described his difficulty reaching SunSea representatives when he attempted to cancel his enrollment.

11. Mr. Adigwe devoted most of his testimony to the Company’s recently updated agent training, the Company’s new TPV360 electronic enrollment system and SunSea’s revised contract. He claimed that the agent who enrolled the consumers whose complaints were highlighted during CAD’s testimony had been terminated, and customers who complained about their SunSea enrollments were re-rated and refunded, regardless of whether their complaints held merit.

12. At the conclusion of the hearing, the Commission made several findings, and in addition to delegating the matter to the PULJ Division, implemented the following interim protections: (a) suspending SunSea’s license to supply electric and gas services, effective 5:00 PM on April 6, 2023; (b) directing that SunSea return all of its Maryland customers to utility Standard Offer Service (“SOS”) by 5:00 PM on April 10, 2023; (c) directing that

SunSea cease all current and future marketing and enrollments of its electric and gas services in Maryland; and (d) directing that SunSea, by 5:00 PM on April 20, 2023, double the amount of its current surety bonds with the Commission -- from \$250,000 for each of its supplier licenses (i.e., electric and gas) to \$500,000 for each -- totaling \$1 million in bonds to be filed with the Commission.

### **COMMISSION FINDINGS**

13. At the conclusion of testimony and Commission's questioning of the witnesses, the Commission found the following based on the evidence presented:

- a. CAD met its burden of proof that SunSea violated several consumer protection laws and Commission regulations.
- b. The testimony of CAD's witnesses, Ms. Bolton and Mr. Yeazel, was credible and knowledgeable.
- c. The testimony of Mr. Adigwe was evasive, unclear, and inconsistent. Although Mr. Adigwe did not attempt to rebut CAD's allegations, he focused more on protecting his company and himself, as opposed to accountability for the allegations by customers and CAD.
- d. No complaints against SunSea have been filed with CAD since the implementation of its solicitation and enrollment improvements in the last two weeks of the complaint period. However, the fact that CAD received 41 complaints against SunSea in a time period just shy of seven months, is of substantial concern to the Commission. Additionally, CAD testimony revealed that in the second and third quarters of 2022,

SunSea had the second highest, if not the highest number, of CAD complaints lodged against it.

- e. SunSea had defects in its contracting practices and documentation in violation of COMAR 20.53.07.08 and 20.59.07.08, by not providing customers with valid contracts that comply with COMAR requirements, and not properly following the “wet signature” requirements.
- f. SunSea engaged in instances of unauthorized enrollment/slamming in violation of COMAR 20.53.06.02, 20.59.07.02, 20.53.07.05, 20.59.07.05, 20.53.07.08, and 20.59.07.08 by engaging in a pattern of improper enrollments such as permitting unauthorized individuals, such as relatives and others to enroll, as opposed to the utility account holder, and obtaining account numbers and signatures under false pretenses.
- g. SunSea’s agents engaged in misconduct, in violation of COMAR 20.53.07.05, 20.59.07.05, 20.53.07.08, and 20.59.07.08 by providing false information about SunSea’s pricing in comparison to SOS pricing.
- h. The inaccessibility of SunSea’s customer service representatives violated COMAR 20.32.01.03 by failing to respond to, or being available to, customers who wished to cancel service.
- i. SunSea engaged in unfair and deceptive trade practices in violation of COMAR 20.53.07.07 and 20.59.07.07, as well as the PUA §§ 7-505(b)(7), §7-507(e) and § 7-604, and other consumer laws, such as failing to provide the required rescission language on contract signature

pages informing customers that they may cancel their contracts with SunSea, as set forth in Com. Law § 14-302.

- j. Although CAD was successful in proving its allegations, there remain disputes of material fact that warrant further proceedings to determine whether the Company has violated additional Maryland laws and regulations in its marketing and contracting practices during the complaint period.

14. The above-referenced findings warranted the Commission's delegation of this matter to the PULJ Division for further, expedited evidentiary proceedings of SunSea's activities and practices during the complaint period, and its requirement of several immediate interim protections, as detailed in Order No. 90581.

#### **AMOUNT OF SURETY BOND**

15. On April 24, 2023, during the PULJ's pre-hearing conference, SunSea indicated that it had increased the above-referenced bond amount to \$500,000 instead of the Commission-ordered \$1 million because its existing surety bond totaled only \$250,000.

16. In rendering its decision regarding the bond increase, the Commission relied upon information provided by SunSea and its witness. During the probable cause hearing, SunSea did not object to the Commission's findings regarding the Company's existing bonds and the order to increase the bonds to a total of \$1 million.

17. The PULJ found that SunSea, increasing its existing \$250,000 bond amount to \$500,000, complied with the Commission's directive to "double" the bond.

18. On April 26, 2023, Staff filed a motion for clarification, arguing that the total bond amount should be \$1 million, and the addition of a \$250,000 rider to increase the bond to

\$500,000 was inadequate to secure any liabilities resulting from SunSea’s illegal actions. Staff emphasized that SunSea never corrected the erroneous information provided by its counsel, and maintained that the plain language of Order No. 90581 and Commission regulations support a surety bond amount of a minimum of \$1 million.

19. On May 1, 2023, SunSea filed an answer and cross-motion for clarification in response to Staff’s motion, stating that during the second day of the probable cause hearing, on April 6, 2023, SunSea’s counsel erroneously stated that SunSea had posted \$500,000 in bonds, apparently misinterpreting information that SunSea had a single \$250,000 bond covering both electricity and gas licenses. SunSea indicated in its cross motion that it has sought a rider to its existing bond, doubling its amount to \$500,000, effective April 19, 2023, and SunSea intended to file the rider with the Commission once it is received.

20. SunSea argued further that Staff had no evidence to support increasing the bonds to \$1 million, which would result in quadrupling the bond, and an accounting of the lower bond amount has been filed with the Commission since February 2022.

21. SunSea requests that the Commission clarify Order No. 90581 and to permit an alternate form of financial guarantee as permitted by Commission regulations, such as a letter of credit attesting to its compliance with all applicable requirements.<sup>14</sup> SunSea further requests that if the Commission requires the \$1 million bond, that the Commission allow SunSea 45 days to obtain the necessary financial instruments to increase the bond.

### **COMMISSION DECISION**

22. The Commission finds that its directive that SunSea’s bond be increased to a total of \$1 million was made in reliance of information provided by SunSea. Regardless of the

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<sup>14</sup> See Code of Maryland Regulations (“COMAR”) 20.51.02.08(I)(3)-(4) and 20.54.02.08(A).

accuracy of the information, the amount is reasonable, given the amount of statutory and regulatory violations found by the Commission during the probable cause hearing. Furthermore, SunSea not only failed to correct the purported erroneous information provided by its counsel, it also did not raise any objection to the Order or inform the Commission of its intent to increase the bond amount to only \$500,000.

23. The Commission declines SunSea's alternative proposal to substitute a letter of credit in lieu of increasing its bond amount to \$1 million. The Commission has already directed SunSea to increase its bond to \$1 million by April 20, 2023, which it has failed to do. SunSea is now in violation of the Commission's directive and is hereby ordered to file evidence that it has secured a bond or bonds with a total face value of \$1 million by 5:00 PM on Wednesday May 10, 2023. SunSea's failure to post the required bond will result in a penalty assessment pursuant to PUA § 7-507(l) of \$10,000 per day for every day that the bonding requirement is not met, beginning on May 11, 2023.

**IT IS THEREFORE**, this 4<sup>th</sup> day of May, in the year Two Thousand Twenty-Three, by the Public Service Commission of Maryland, **ORDERED**:

1. that the Public Utility Law Judge Division, consider the Commission's findings in this Order, the transcript of the probable cause hearing, and the requirements described in the Commission's delegation order (Order No. 90581);

2. that SunSea must comply with all provisions of Order No. 90581, including the posting of a total surety bond with a value of \$1 million by 5:00 PM on May 10, 2023. Failure to post the required bond will result in a penalty being assessed in the amount of \$10,000 per day beginning on May 11, 2023; and

3. that Staff's motion for clarification of Order No. 90581 is hereby granted, and that SunSea's cross-motion is denied.

By Direction of the Commission,

*/s/ Andrew S. Johnston*

Andrew S. Johnston  
Executive Secretary