Ohio | Public Utilities Commission

DIS Case Number: 20-1268-GA-CRS

Section A: Application Information

A-1. Provider type:

☐ Retail Natural Gas Broker

☐ Retail Natural Gas Aggregator

☒ Retail Natural Gas Marketer

A-2. Applicant's legal name and contact information.

Legal Name: SunSea Energy OH LLC

Phone: 2157584077 **Extension (if applicable):**

Website (if any): https://www.sunseaenergy.com

Country: United States

Street: 1930 Marlton Pike East Suite N73

City: Cherry Hill **Province/State:** NJ

Postal Code: 08003

A-3. Names and contact information under which the applicant will do business in Ohio

Provide the names and contact information the business entity will use for business in Ohio. This does not have to be an Ohio address and may be the same contact information given in A-2.

Name	Type	Address	Active?	Proof
SunSea Energy OH, LLC	DBA	1930 Marlton Pike East, Suite N73 Cherry Hill, NJ 08003	Yes	File

A-4. Names under which the applicant does business in North America

Provide all business names the applicant uses in North America, including the names provided in A-2 and A-3.

Name	Type	Address	Active?	Proof
SunSea Energy DC, LLC	DBA	1930 Marlton Pike East, Suite N73 Cherry Hill, NJ 08003	Yes	File
SunSea Energy NJ, LLC	DBA	1930 Marlton Pike East, Suite N73 Cherry Hill, NJ 08003	Yes	File

SunSea Energy, LLC	Official Name	1930 Marlton Pike East Suite N73 Cherry Hill, NJ 08003	Yes	File
SunSea Energy OH, LLC	DBA	1930 Marlton Pike East, Suite N73 Cherry Hill, NJ 08003	Yes	File

A-5. Contact person for regulatory matters

Jacob Adigwe
1930 Mariton Pike East, Suite N73,
Cherry Hill,, NJ 08003
US
compliance@sunseaenergy.com
2157584077

A-6. Contact person for PUCO Staff use in investigating consumer complaints

Dorthea Stone
1930 Marlton Pike East Suite N73
Cherry Hill, NJ 08003
US
complaints@sunseaenergy.com
8442777517

A-7. Applicant's address and toll-free number for customer service and complaints

Phone: 844-277-7517
Extension (if applicable):
Fax:
Extension (if applicable):
Email: customercare@sunseaenergy.com

Country: United States
Street: Mariton 1930 Pike East. Suite N73.
City: Cherry Hill.
Province/State: NJ
Postal Code: 08003

A-8. Applicant's federal employer identification number

83-3885200

A-9. Applicant's form of ownership

Form of ownership: Limited Liability Company (LLC)

A-10. Identify current or proposed service areas

Ohio | Public Utilities Commission

Identify each service area in which the applicant is currently providing service or intends to provide service and identify each customer class that the applicant is currently serving or intends to serve.

Service area selection

Columbia Gas of Ohio
Dominion Energy Ohio
Duke Energy Ohio
CenterPoint Energy Ohio

Class of customer selection

Industrial
Residential
Small Commercial
Large Commercial

A-11. Start date

Indicate the approximate start date the applicant began/will begin offering services: 07-29-2021

A-12. Principal officers, directors, and partners

Please provide all contacts that should be listed as an officer, director or partner.

Name	**Email**	Title	Address
Emmanuel Adigwe	eadigwe@sunseaenergy.com	CFO	1930 Marlton Pike East N73 Cherry Hill, NJ 08003 US
Jacob Adigwe	compliance@sunseaenergy.com	CEO	1930 Mariton Pike East, Suite N73, Cherry Hill,, NJ 08003 US

A-13. Company history

SunSea Energy, LLC ('SunSea Energy'), the parent, is a Delaware limited liability company form in May 2012. The company was formed to participate in the deregulation energy markets for electricity and natural gas as a competitive retail Energy Supply Company (ESCO).

SunSea Energy OH, LLC, was organized as a domestic Delaware limited liability company in September 2017 and filed for foreign status with the State of Ohio in March 2019. SunSea Energy OH, LLC, a wholly owned subsidiary of SunSea Energy, LLC, was formed specifically to provide electricity and natural gas supply services to customers in Ohio.

In addition to Ohio, SunSea Energy has successfully received licenses in the District of Columbia (November 2019), Maryland (2019), New Jersey (January 2018), and New York (October 2017). Currently, SunSea Energy is marketing in the District of Columbia, Maryland, New Jersey, and Ohio.

SunSea Energy will offer both variable and fixed rate products to meet all customer requests.

SunSea Energy has assembled a team of experienced energy professionals and strategic relationships with the leading EDI, billing and financial risk platforms to ensure smooth operations within the State of Ohio. SunSea Energy has a structured finance agreement to support operations as a retail natural gas provider including power purchases and receivable funding.

A-14. Secretary of State

Secretary of State Link:

A-15. Proof of Ohio Employee and Office

Provide proof of an Ohio Office and Employee in accordance with Section 4929.22of the Ohio Revised Code. List the designated Ohio employee's name, Ohio office address, telephone number and web site address

Employee Name: Joy Faust
100 E. Campus Boulevard, St #250
Columbus, OH 43235
US
jfaust@sunseaenergy.com
6143338634

Section B: Applicant Managerial Capability and Experience

B-1. Jurisdiction of operations

List all jurisdictions in which the applicant or any affiliated interest of the applicant is certified, licensed, registered or otherwise authorized to provide retail natural gas service or retail/wholesale electric service as of the date of filing the application..

File Attached

B-2. Experience and plans

Describe the applicant's experience in providing the service(s) for which it is applying (e.g., number and type of customers served, utility service areas, amount of load, etc.). Include the plan for contracting with customers, providing contracted services, providing billing statements and responding to customer inquiries and complaints in accordance with Commission rules adopted pursuant to Sections 4928.10 and/or 4929.22 of the Ohio Revised Code.

File(s) attached

B-3. Disclosure of liabilities and investigations

For the applicant, affiliate, predecessor of the applicant, or any principal officer of the applicant, describe all existing, pending or past rulings, judgments, findings, contingent liabilities, revocation of authority, regulatory investigations, judicial actions, or other formal or informal notices of violations, or any other matter related to competitive services in Ohio or equivalent services in another jurisdiction..

File Attached

B-4. Disclosure of consumer protection violations

Has the applicant, affiliate, predecessor of the applicant, or any principal officer of the applicant been convicted orheld liable for fraud or for violation of any consumer protection or antitrust laws within the past five years?

No

B-5. Disclosure of certification, denial, curtailment, suspension or revocation

Has the applicant, affiliate, or a predecessor of the applicant had any certification, license, or application to provide retail natural gas or retail/wholesale electric service denied, curtailed, suspended, revoked, or cancelled or been terminated or suspended from any of Ohio's Natural Gas or Electric Utility's Choice programs within the past two years?

No

Section C: Applicant Financial Capability and Experience

C-1. Financial reporting

Provide a current link to the most recent Form 10-K filed with the Securities and Exchange Commission (SEC) or upload the form. If the applicant does not have a Form 10-K, submit the parent company's Form 10-K. If neither the applicant nor its parent is required to file Form 10-K, state that the applicant is not required to make such filings with the SEC and provide an explanation as to why it is not required.

Does not apply

C-2. Financial statements

Provide copies of the applicant's <u>two most recent years</u> of audited financial statements, including a balance sheet, income statement, and cash flow statement. If audited financial statements are not available, provide officer certified financial statements. If the applicant has not been in business long enough to satisfy this requirement, provide audited or officer certified financial statements covering the life of the business. If the applicant does not have a balance sheet, income statement, and cash flow statement, the applicant may provide a copy of its two most recent years of tax returns with **social security numbers and bank account numbers redacted.**

If the applicant is unable to meet the requirement for two years of financial statements, the Staff reviewer may request additional financial information.

Preferred to file this information confidentially

C-3. Forecasted financial statements

Provide two years of forecasted income statements **based <u>solely</u> on the applicant's anticipated business activities in the state of Ohio.**

Include the following information with the forecast: a list of assumptions used to generate the forecast; a statement indicating that the forecast is based solely on Ohio business activities only; and the name, address, email address, and telephone number of the preparer of the forecast.

The forecast may be in one of two acceptable formats: 1) an annual format that includes the current year and the two years succeeding the current year; or 2) a monthly format showing 24 consecutive months following the month of filing this application broken down into two 12-month periods with totals for revenues, expenses, and projected net incomes for both periods. Please show revenues, expenses, and net income (revenues minus total expenses) that is expected to be earned and incurred in **business activities only in the state of Ohio** for those periods.

If the applicant is filing for both an electric certificate and a natural gas certificate, please provide a separate and distinct forecast for revenues and expenses representing Ohio electric business activities in the application for the electric certificate and another forecast representing Ohio natural gas business activities in the application for the natural gas certificate.

Preferred to file confidentially

C-4. Credit rating

Provide a credit opinion disclosing the applicant's credit rating as reported by at least one of the following ratings agencies: Moody's Investors Service, Standard & Poor's Financial Services, Fitch Ratings or the National Association of Insurance Commissioners. If the applicant does not have its own credit ratings, substitute the credit ratings of a parent or an affiliate organization and submit a statement signed by a principal officer of the applicant's parent or affiliate organization that guarantees the obligations of the applicant. If an applicant or its parent does not have such a credit rating, enter 'Not Rated'.

This does not apply

C-5. Credit report

Provide a copy of the applicant's credit report from Experian, Equifax, TransUnion, Dun and Bradstreet or a similar credit reporting organization. If the applicant is a newly formed entity with no credit report, then provide a personal credit report for the principal owner of the entity seeking certification. At a minimum, the credit report must show summary information and an overall credit score. **Bank/credit account numbers and highly sensitive identification information must be redacted.** If the applicant provides an acceptable credit rating(s) in response to C-4, then the applicant may select 'This does not apply' and provide a response in the box below stating that a credit rating(s) was provided in response to C-4.

Preferred to file this information confidentially

C-6. Bankruptcy information

Within the previous 24 months, have any of the following filed for reorganization, protection from creditors or any other form of bankruptcy?

- Applicant
- Parent company of the applicant
- Affiliate company that guarantees the financial obligations of the applicant
- Any owner or officer of the applicant

No

C-7. Merger information

Is the applicant currently involved in any dissolution, merger or acquisition activity, or otherwise participated in such activities within the previous 24 months?

No

C-8. Corporate structure

Provide a graphical depiction of the applicant's corporate structure. Do not provide an internal organizational chart. The graphical depiction should include all parent holding companies, subsidiaries and affiliates as well as a list of all affiliate and subsidiary companies that supply retail or wholesale electricity or natural gas to customers in North America. If the applicant is a stand-alone entity, then no graphical depiction is required, and the applicant may respond by stating that it is a stand-alone entity with no affiliate or subsidiary companies.

File(s) attached

C-9. Financial arrangements

Provide copies of the applicant's financial arrangements to satisfy collateral requirements to conduct retail electric/natural gas business activities (e.g., parental guarantees, letters of credit, contractual arrangements, etc., as described below).

Renewal applicants may provide a current statement from an Ohio local distribution utility (LDU) that shows that the applicant meets the LDU's collateral requirements. The statement or letter must be on the utility's letterhead and dated within a 30-day period of the date the applicant files its renewal application.

First-time applicants or applicants whose certificate has expired must meet the requirements of C-9 in one of the following ways:

1. The applicant itself states that it is investment grade rated by Moody's Investors Service, Standard & Poor's Financial Services, or Fitch Ratings and provides evidence of rating from the rating agencies. If you provided a credit rating in C-4, reference the credit rating in the statement.
2. The applicant's parent company is investment grade rated (by Moody's, Standard & Poor's, or Fitch) and guarantees the financial obligations of the applicant to the LDU(s). Provide a copy of the most recent credit opinion from Moody's, Standard & Poor's or Fitch.
3. The applicant's parent company is not investment grade rated by Moody's, Standard & Poor's or Fitch but has substantial financial wherewithal i**n the opinion of the Staff reviewer** to guarantee the financial obligations of the applicant to the LDU(s). The parent company's financials and a copy of the parental guarantee must be included in the application if the applicant is relying on this option.
4. The applicant can provide evidence of posting a letter of credit with the LDU(s) listed as the beneficiary, in an amount sufficient to satisfy the collateral requirements of the LDU(s).

File(s) attached

Section D: Applicant Technical Capacity

D-1. Operations

<u>Gas Marketers:</u> Describe the operational nature of the applicant's business, specifying whether operations will include the contracting of natural gas purchases for retail sales, the nomination and scheduling of retail natural gas for delivery, and/or the provision of retail ancillary services, as well as other services used to supply natural gas to the natural gas company city gate for retail customers.

Ohio | Public Utilities Commission

File(s) attached

D-2. Operations Expertise & Key Technical Personnel

Given the operational nature of the applicant’s business, provide evidence of the applicant’s experience and technical expertise in performing such operations. Include the names, titles, e-mail addresses, and background of key personnel involved in the operations of the applicant’s business.

File(s) attached

Ohio | Public Utilities Commission

Application Attachments

DOC ID ----> 201907400552

DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPED	CERT	COPY
03/20/2019	201907400552	REGISTRATION OF FOREIGN FOR PROFIT LLC (LFP)	99.00	0.00	0.00	0.00

Receipt

This is not a bill. Please do not remit payment.

INCORP SERVICES, INC.
3773 HOWARD HUGHES PARKWAY
SUITE 500S
LAS VEGAS, NV 89169

STATE OF OHIO
CERTIFICATE
Ohio Secretary of State, Frank LaRose
4307015

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

SUNSEA ENERGY OH, LLC

and, that said business records show the filing and recording of:

Document(s)	Document No(s):
REGISTRATION OF FOREIGN FOR PROFIT LLC **Effective Date: 03/15/2019**	**201907400552**

United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 20th day of March, A.D. 2019.

Ohio Secretary of State

DOC ID ----> 201907400552

Form 533B Prescribed by:

OFFICE OF THE
Ohio Secretary of State

Date Electronically Filed: 3/15/2019

Toll Free: (877) SOS-FILE (877-767-3453) | Central Ohio: (614) 466-3910
www.OhioSecretaryofState.gov | Busserv@OhioSecretaryofState.gov
File online or for more information: www.OHBusinessCentral.com

Registration of a Foreign Limited Liability Company

Filing Fee: $99

Form Must Be Typed

CHECK ONLY ONE (1) BOX

☒ (1) Registration of a Foreign For-Profit Limited Liability Company (106-LFA) ORC 1705	☐ (2) Registration of a Foreign Nonprofit Limited Liability Company (106-LFA) ORC 1705
Jurisdiction of Formation: State DE, Country USA	Jurisdiction of Formation: State , Country
Date of Formation: 9/27/2017	Date of Formation:

Name of Limited Liability Company in its jurisdiction of formation

SUNSEA ENERGY OH, LLC

Name under which the foreign limited liability company desires to transact business in Ohio (if different from its name in its jurisdiction of formation) is:

Name must include one of the following words or abbreviations: "limited liability company," "limited," "LLC," "L.L.C.," "ltd.," or "ltd"

The address to which interested persons may direct requests for copies of the limited liability company's operating agreement, bylaws, or other charter documents of the company is:

Name: SUNSEA ENERGY OH, LLC

Mailing Address: 2031 RAVENWOOD DRIVE

City	State	Country	ZIP Code
FOLCROFT	PA	USA	19032

DOC ID ----> 201907400552

The limited liability company hereby appoints the following as its agent upon whom process against the limited liability company may be served in the state of Ohio. The name and complete address of the agent is

INCORP SERVICES, INC.

Name of Agent

9435 WATERSTONE BOULEVARD SUITE 140

Mailing Address

CINCINNATI	OH	45249
City	State	ZIP Code

The limited liability company irrevocably consents to service of process on the agent listed above as long as the authority of the agent continues, and to service of process upon the Ohio Secretary of State if:

a. an agent is not appointed, or
b. an agent is appointed but the authority of that agent has been revoked, or
c. the agent cannot be found or served after the exercise of reasonable diligence.

By signing and submitting this form to the Ohio Secretary of State, the undersigned hereby certifies that he or she has the requisite authority to execute this document.

Required

Must be signed by an authorized representative.

If authorized representative is an individual, then they must sign in the "signature" box and print their name in the "Print Name" box.

If authorized representative is a business entity, not an individual, then please print the business name in the "signature" box, an authorized representative of the business entity must sign in the "By" box and print their name in the "Print Name" box.

SUNSEA ENERGY, LLC

Signature

JACOB ADIGWE

By (if applicable)

Print Name

Signature

By (if applicable)

Print Name

Signature

By (if applicable)

Print Name

SunSeaEnergy
1930 Marlton Pike East, Suite N73, Cherry Hill, NJ 08003
compliance@sunseaenergy.com | www.sunseaenergy.com
Phone: 844.277.7517| Fax: 215.790.6224

Exhibit B-1
Jurisdictions of Operation

Current Markets Jurisdictions:

SunSea Energy, LLC (Maryland and New York)

SunSea Energy DC, LLC (District of Columbia)

Sunsea Energy NJ, LLC (New Jersey)

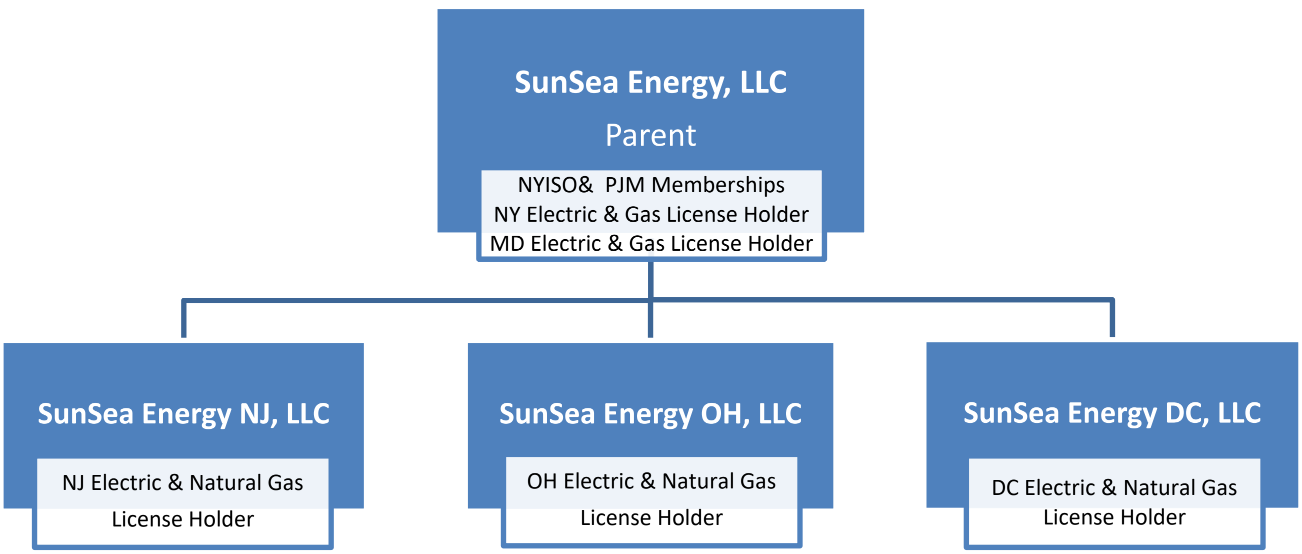
SunSea Energy OH, LLC (Ohio)

1930 Marlton Pike East, Suite N73, Cherry Hill, NJ 08003
compliance@sunseaenergy.com | www.sunseaenergy.com
Phone: 844.277.7517| Fax: 215.790.6224

Exhibit C-10
Corporate Structure

SunSea Energy OH, LLC is a wholly owned subsidiary of SunSea Energy, LLC. SunSea Energy OH, LLC is one of (3) wholly owned subsidiaries.

Please reference the company organizational chart below and the different licenses and/or memberships that they hold.



139 East Fourth
EM740
Cincinnati, Ohio 45202

June 27, 2022

SunSea Energy OH, LLC has met the Natural Gas Collateral obligations for Duke Energy Corporation as of June 27, 2022.

Donna Burns
Duke Energy Corp
Certified Supplier Business Center
Donna.Burns@Duke-Energy.com

SunSeaEnergy
1930 Marlton Pike East, Suite N73, Cherry Hill, NJ 08003
compliance@sunseaenergy.com | www.sunseaenergy.com
Phone: 844.277.7517| Fax: 215.790.6224

Exhibit D-2
Operations Expertise

The following Management Bios incorporate SunSea Energy personnel and strategic third-party representatives and reflect the Technical and Managerial Competence for SunSea Energy, LLC.

Enhanced Energy Services of America:
Enhanced Energy Services of America (Enhanced Energy) is an energy management and consulting firm for small to mid-size energy companies located in Texas. The focus of Enhanced Energy is to increase their client's bottom-line budgets, consequently making their client more profitable. Over the past ten plus (10+) years, Enhanced Energy has been working to increase their client's profitability, and help their client's reach their goals. Some of the services that Enhanced Energy offers are a solid procurement and budgeting strategy, delivering energy costs lower than many clients' competitors, providing daily pricing reports to allow their clients to capture the most up to date cost structures and bill accordingly, etc. All of these services offered by Enhanced Energy play a crucial role in increasing profitability for a small to mid-sized energy company.

SunSea Energy utilizes Enhanced Energy Services for their natural gas scheduling and storage and transportation requests. Enhanced Energy Services of America does not own any pipelines but is in charge of scheduling the capacity and transportation of the natural gas for SunSea Energy, LLC.

Following are the two key personnel at Enhanced Energy that SunSea Energy mainly works with.

Christopher Prejean
Christopher Prejean is the President of the Enhanced Energy Services of America. He is responsible for the daily oversight of gas procurement, operational issues, sales and marketing, and general administrative for Enhanced Energy. Prior to forming Enhanced Energy in 2005, Mr. Prejean served as the Director of Energy Management Consulting at Quantum Gas & Power, a national energy consulting firm. At Mr. Prejean's prior company, he oversaw the development and implementation of tailored energy strategies for commercial industrial clients. Christopher Prejean holds a B.B.A in Marketing from the University of Houston.

Rene Hightower
Rene Hightower oversees tracking budgets for clients with multi facility/multi state locations, setting up new locations with energy suppliers, benchmarking, payroll, company taxes, etc. Ms. Hightower has been working with Enhanced Energy since 2006 and she has had over thirty (30) years of financial and marketing experience.

EC Infosystems:

EC Infosystems is a New York based professional services firm that provides Electronic Data Interchange (EDI) services to allow exchange of data with the utilities and others, and a Billing Solution that allows for customer management, generation of bills for reconciliation purposes, and management of accounts receivable/payable functions.

POWWR

POWWR is a division of Cognitive Energy, a leader in retail energy supply managed software solutions and consulting services. Cognitive Energy was formed by a group of energy industry professionals all of whom have either owned or held top executive positions at successful retail energy supply companies.

With over fifty (50) years of combined experience in the energy field, management quickly realized that by leveraging their knowledge and experience they could help ESCOs avoid the time consuming and costly mistakes associated with the industry.

The company's core focus is in providing operation critical applications that allow ESCOs to reduce overhead while increasing efficiency, improving margins and profitability. In addition to their software solutions, they provide Risk Management and Demand Forecasting (DFS), Customer Relationship Management (CRM), Broker Relationship Management (BRM), Cognitive Energy also offers several industry specific consulting services.

SunSea Energy mainly works with the following key personnel at POWWR:

Stephanie Puntel: Senior Analyst

Ms. Stephanie Puntel serves as a Senior Analyst of Strategic Energy Services for POWWR. She has over seven (7) years of experience in the deregulated energy market specializing in risk management, scheduling, and position management. She started her career in the energy industry at Verde Energy in 2013 where she held numerous positions including Pricing Manager and Energy Operations Manager. As a Senior Analyst at POWWR, she works closely with clients on forecast accuracy, recommendations on position management and overall risk management. Stephanie has an M.B.A and B.S. in Finance from Sacred Heart University.

SunSea Energy, LLC

Jacob Adigwe, CEO, President

Mr. Adigwe is a senior level executive with more than ten (10) years of experience in executive management, sales and marketing, and more than eight (8) of those years in the deregulated energy industry. He has extensive experience with highly engineered systems which require a deep understanding of critical business drivers in multiple markets and industries. Jacob has been highly successful in building relationships with upper-level decision makers, seizing control of critical problem areas, and delivering on customer commitments.

Mr. Adigwe began his career in management and quickly advanced to lead three (3) global business units with a staff of 1,300 and $250 million in annual revenues with an additional unit integrated in 2004 to bring his total to 2,000 personnel and $400+ million in annual revenues. His career expanded to an oversee team of seven (7) directors across all units/functions including HR, finance, customer service, and business development, as well as sales, marketing, and R&D/engineering.

Mr. Adigwe successfully transitioned into the deregulated energy industry in 2010 where he built a large client-base selling deregulated energy products in both the residential and commercial markets. Through the efforts of building and maintaining a large customer base, Mr. Adigwe has been able to inherit and realize the different rules and regulations to maintain compliance with the governing agencies and consumer protection laws throughout many of the deregulated states within the PJM, NEISO and NYISO services territories.

Romaine Reid

Mr. Reid is a dynamic and well-seasoned professional with over sixteen (16) years of senior executive management experience in sales and marketing. His expertise ranges from training and development to project management and quality assurance. Romaine's skills are wide ranging and include a diverse array of business management skills and applications, customer service, team building, project management, budgeting, forecasting, and quality control and assurance.

Mr. Reid has demonstrated success in launching and growing new businesses and has proven effective in working with the upper management of Fortune 500 companies throughout Europe and North America. Romaine began his career in sales management and quickly advanced into upper-level operations where he was a key player in generating a record breaking 3.5 million dollars in sales and revenue in one year.

As CEO and President of Edge Solutions Inc., Mr. Reid provided steady and effective leadership that allowed the company to double its earning potential within a year of its launch. He provided strategic planning and execution of all call center operations which included the management and leadership of processes for the continuous improvement of the customer experience. In 2012, Mr. Reid launched Pro-Tel Marketing which quickly became one of the premier near-shore contact centers for energy suppliers in the United States looking for a quality and compliance-oriented contact center.

Mr. Reid holds an advanced Diploma in Management from the University of Leicester in the UK. He is an A+ Certified Computer Service Technician, certified in Information Technology, certified in the field of Communication and Customer Service, as well as holding a certificate in Microsoft Power Point and Access.

1930 Marlton Pike East, Suite N73, Cherry Hill, NJ 08003
compliance@sunseaenergy.com | www.sunseaenergy.com
Phone: 844.277.7517| Fax: 215.790.6224

Exhibit D-1
Operations

SunSea Energy OH, LLC, will perform all the necessary requirements and serve all potential natural gas customers within the State of Ohio service territories

SunSea Energy OH, LLC has internal risk management staff and risk management platform to accurately price, nominate, and deliver their obligations to the City Gates and ensure their storage and delivery obligations are maintained with the utilities and pipelines in which they are EDI tested to serve.

Competitive Retail Natural Gas Service Affidavit

County of Delaware

State of Pennsylvania

Jacob Adigwe, Affiant, being duly sworn/affirmed, hereby states that:

1. The information provided within the certification or certification renewal application and supporting information is complete, true, and accurate to the best knowledge of affiant, and that it will amend its application while it is pending if any substantial changes occur regarding the information provided.

2. The applicant will timely file an annual report of its intrastate gross receipts and sales of hundred cubic feet of natural gas pursuant to Sections 4905.10(A), 4911.18(A), and 4929.23(B), Ohio Revised Code.

3. The applicant will timely pay any assessment made pursuant to Sections 4905.10 and 4911.18(A), Ohio Revised Code.

4. Applicant will comply with all applicable rules and orders adopted by the Public Utilities Commission of Ohio pursuant to Title 49, Ohio Revised Code.

5. Applicant will cooperate fully with the Public Utilities Commission of Ohio and its staff on any utility matter including the investigation of any consumer complaint regarding any service offered or provided by the applicant.

6. Applicant will comply with Section 4929.21, Ohio Revised Code, regarding consent to the jurisdiction of the Ohio courts and the service of process.

7. Applicant will comply with all state and/or federal rules and regulations concerning consumer protection, the environment, and advertising/promotions.

8. Applicant will inform the Public Utilities Commission of Ohio of any material change to the information supplied in the application within 30 days of such material change, including any change in contact person for regulatory purposes or contact person for Staff use in investigating consumer complaints.

9. The facts set forth above are true and accurate to the best of his/her knowledge, information, and belief and that he/she expects said applicant to be able to prove the same at any hearing hereof.

10. Affiant further sayeth naught.

President

Signature of Affiant & Title

Sworn and subscribed before me this 6 day of July, 2022
Month Year

Signature of official administering oath

GBENGA A. OYETAYO

Print Name and Title

Commonwealth of Pennsylvania - Notary Seal
GBENGA A. OYETAYO, Notary Public
Delaware County
My Commission Expires August 27, 2022
Commission Number 12057520

My commission expires on August 27, 2022

1930 Marlton Pike East, Suite N73, Cherry Hill, NJ 08003
compliance@sunseaenergy.com | www.sunseaenergy.com
Phone: 844.277.7517| Fax: 215.790.6224

Exhibit B-3
Disclosure of Liabilities and Investigations

The entity seeking a license renewal, SunSea Energy OH, LLC, does not operate in states other than Ohio. Nevertheless, in a good faith effort to provide a full and complete response to this question the applicant is providing further details regarding certain affiliates.

New York: On December 22, 2022, the New York Public Service Commission (NYPSC) issued an Order to Show Cause (OTSC) against SunSea Energy, LLC (an affiliate of SunSea Energy OH, LLC) regarding its marketing practices. On May 18, 2021, the New York Public Service Commission issued an Order Revoking SunSea Energy, LLC's Eligibility to Serve Customers in New York (Revocation Order). SunSea denies the allegations and opposed the OTSC before the Commission. SunSea has petitioned for rehearing and reconsideration of the Revocation Order, which remains ongoing. Pursuant to an extension granted by the Secretary to the Commission, the directives of the Order were extended pending a final determination of Rehearing/Reconsideration. As such, there is currently no final agency action regarding this matter. Included in this filing is the OTSC and Revocation Order.

On May 18, 2021, the NYPSC issued an Order to Show Cause Regarding Denial of Energy Service Company Applications (2021 OTSC). The 2021 OTSC directed SunSea Energy LLC to show cause why its application for eligibility to operate in New York State should not be denied. SunSea responded to the 2021 OTSC and opposes the denial. No final agency action has occurred regarding the 2021 OTSC. This exhibit will be updated once the case in New York is closed/finalized.
SunSea is currently in the appeal process before the commission on both matters.

Maryland: The Maryland Public Service Commission (MDPSC) issued an order prohibiting SunSea Energy LLC from marketing and enrolling new customers and imposed monetary penalties on the company in response to a MDPSC investigation. Included with this submission is the MDPSC Supplemental and Final Order.

On August 21, 2021, the MD PSC communicated their Final Order with SunSea Energy, LLC. The final order allowed for the moratorium to market to new customer be lifted once a Civil Penalty of $400,000 is paid. In addition, the MDPSC recognized SunSea would no longer participated in Telesales, however, allowing for their license to remain and continue to conduct In-Person Sales. At this time, the Civil Penalty has been paid and the moratorium on marketing to new customers has been lifted.

October 4, 2020, a Supplemental Order was released instruction SunSea Energy, LLC to return all customer to their local standard offer and refunded the delta between kWh charged by SunSea and the standard offer at the time of service.

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compliance@sunseaenergy.com | www.sunseaenergy.com
Phone: 844.277.7517| Fax: 215.790.6224

Ohio: On March 30, 2022 SunSea Energy OH, LLC received an informal inquiry from the Public Utilities Commission of Ohio (PUCO) staff relating to timely responses to Staff customer reagarding customer complaint inquires. SunSea Energy OH is currently working with staff on resolving that matter.

SunSeaEnergy
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Maryland Order

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

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[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

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[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

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[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

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[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

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[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. <u>Compliance with Commission Directives</u>

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

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[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"

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[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.

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[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

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[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,

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[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

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[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?

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[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

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[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

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[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,

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[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

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New York Order

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on May 13, 2021

COMMISSIONERS PRESENT:

John B. Howard, Interim Chair
Diane X. Burman, concurring
James S. Alesi
Tracey A. Edwards

CASE 20-M-0589 - Proceeding on Motion of the Commission to Seek Consequences against SunSea Energy, LLC for Violations of the Uniform Business Practices.

ORDER REVOKING SUNSEA ENERGY LLC'S ELIGIBILITY TO SERVE CUSTOMERS IN NEW YORK

(Issued and Effective May 18, 2021)

BY THE COMMISSION:

INTRODUCTION

On December 22, 2020, the Public Service Commission (Commission) issued an Order to Show Cause (OTSC) against SunSea Energy, LLC (SunSea) for apparent failure to properly market to and enroll customers in accordance with the Uniform Business Practices (UBP). The Commission ordered SunSea to show cause within thirty days why the Commission should not revoke SunSea's eligibility to operate as an Energy Service Company (ESCO) in the State of New York, or why other consequences as provided in UBP §2.D.6. should not be imposed. SunSea responded to the OTSC on February 23, 2021.

In this Order, the Commission finds that SunSea has failed to comply with the UBP, and determines that the proper penalty is revocation of SunSea's eligibility to serve energy customers in New York State.

BACKGROUND

By letter dated October 17, 2017, Department of Public Service Staff (Staff) deemed SunSea eligible to serve residential and non-residential electric and natural gas customers in New York as an ESCO. SunSea currently serves residential and non-residential electric and natural gas customers in the service territories of Consolidated Edison Company of New York, Inc., Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corp. d/b/a National Grid, Orange and Rockland Utilities, Inc., Rochester Gas & Electric Corporation, New York State Electric & Gas Corporation, Central Hudson Gas and Electric Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, and National Fuel Gas Distribution Corporation.

In April of 2019, Staff initiated an investigation into SunSea's marketing practices based on complaints alleging that a SunSea agent used questionable marketing practices, such as promising a discount that never materialized, in their attempt to enroll customers. SunSea responded to the investigation by providing audio files of sales calls and Third Party Verification (TPV) calls. Upon review of these recordings, Staff identified UBP violations in both the sales script and the TPV. Additionally, Staff noted that during the sales call, the customers already knew to have their utility bills ready and did not ask questions, which indicated that they had possibly received a prior sales call that was not included in the material submitted by SunSea. SunSea provided a modified sales script to Staff for review, which was approved on May 13, 2019.

Between July 5, 2019, and July 30, 2020, Staff received 92 complaints against SunSea through the regular Quick Response System (QRS) and Standard Resolution System (SRS) complaint procedure. The enrollment or sales contact dates for

80 of the 92 complaints fell between May 2019 and June 2020, after the improvements to the sales script were purportedly implemented by SunSea. In 50 of the 92 complaints, customers stated that they were falsely promised savings, senior discounts, and/or rebates by the sales agents during the sales call. In 17 cases, customers complained that they felt misled into believing they were speaking with representatives from the utility company. The 92 QRS/SRS responses provided by SunSea failed to adequately address the sales tactics or other customer concerns, stating only that the enrollment was valid based on the TPV and, in most cases, that no refund would be provided.

Staff issued a Notice of Apparent Failure (NOAF) to SunSea on September 14, 2020, to address these complaints which again allege misleading and/or deceptive marketing tactics. SunSea responded to the NOAF on October 19, 2020, by submitting enrollment documentation, including sales calls, for 80 of the 92 cases and refund information for 32 of the 92 cases. SunSea stated that its internal investigation was unable to identify any misrepresentation, promised savings, discounts, rebates, or issues related to its marketing calls and/or TPV process. SunSea indicated that no disciplinary action was taken with regard to these complaints. No additional refunds were provided beyond what was promised in the QRS/SRS responses and no individual case explanations were included. As a proposed solution, SunSea stated that it plans to monitor 80-90% of all sales calls and include sales recordings with its QRS complaint responses.

In the Company’s NOAF response dated October 19, 2020, SunSea failed to adequately address customer concerns and stated that it enrolled all customers in question in accordance with the UBP based solely on the TPV. Upon review of SunSea’s response, additional QRS complaints, and additional sales calls recorded by the consumers that received them, Staff determined that SunSea's marketing is a three-part process. SunSea's marketing process appears to include an initial call to explain the benefits of the offer and obtain customer information, a second call in which the agents follow the script that was approved in May 2019 to confirm the customer's information and intent to enroll, and then the TPV. The sales recordings provided by SunSea are of the second call and the TPV. It appears to Staff that the majority of UBP violations occurred during the initial sales calls. Just as in the April 2019 complaints, customers were prepared for the second call with a bill in hand and rarely had any questions. In most cases during the second sales call, the sales agent had the customer's name and address in advance of the call, and in some cases, the customer does not provide their utility account number, but the TPV recording includes it.

In addition to the complaints above, two members of Staff received unsolicited "cold calls" on their personal phones, from representatives of SunSea in the same three-part format as described above. Affidavits from Staff were included with the OTSC and described the callers' claim to be from National Grid and promise of a bill discount. These calls were unrelated to their duties performed as Department of Public Service employees, but Staff quickly recognized the inappropriate nature of the outreach and reported the calls to the appropriate Staff.

From July 31, 2020, through November 4, 2020, Staff received 24 additional complaints against SunSea of the same nature. Of the 116 total complaints from July 5, 2019, to November 4, 2020, 34 included sales calls made after March 7, 2020, which is the first date of the State of Emergency in New

York. This failure to cease telemarketing during the State of Emergency is in violation of New York State Law,[1] and the UBP.

On December 22, 2020, the Commission issued the OTSC which alleged that SunSea was not in compliance with UBP requirements §§2.D.5.l, 2.D.5.m, 2.D.5.n, 10.c.2.f, 10.c.4.a, 10.C.4.b, and 5 Attachment 1.D. SunSea was directed to show cause why its eligibility should not be revoked, or why other consequences as set forth in the UBP should not be imposed as a result of alleged violations related to the use of deceptive marketing practices, enrolling customers without authorization, failure to follow record retention requirements, failure to remove customers from its marketing database upon customer request, and an apparent failure to cease telemarketing during the State of Emergency in New York State.

LEGAL AUTHORITY

The State legislature has delegated to the Commission "the authority to condition ESCOs' eligibility to access utility [distribution systems] on such terms and conditions that the

[1] On March 7, 2020, Governor Andrew Cuomo declared a State of Emergency due to the Covid-19 pandemic in New York. With this declaration comes the prohibition of telemarketing solicitations to New York State residents. New York General Business Law Section 399-z(5-a) states, "[i]t shall be unlawful for any telemarketer doing business in this state to knowingly make an unsolicited telemarketing sales call to any person in a county, city, town or village under a declared state of emergency or disaster emergency as described in sections twenty-four or twenty-eight of the executive law." While the Commission does not have jurisdiction to decide if there is a violation of this law, it can take note of such a violation in determining revocation under UBP §2.D.5.m.

[Commission} determines to be just and reasonable."[2] The Commission's UBP were adopted pursuant to this authority and set forth various regulatory eligibility requirements for ESCOs to begin accessing, and to continue accessing, utility distribution systems for the purpose of selling energy services to customers. The Commission has authority to enforce the terms and conditions by imposing certain consequences on ESCOs that fail to abide by the terms of the UBP.

DISCUSSION

In its February 23, 2021 response to the OTSC, SunSea gives several reasons why the Commission should not impose consequences against it. For the following reasons, we find SunSea's position unconvincing and impose appropriate consequences for SunSea's failure to abide by the UBP.

The Commission finds that SunSea has violated the consumer protection provisions of the UBP and moreover has not adequately remedied these violations in response to consumer complaints, Staff's investigation, nor the Commission's OTSC. Consequences against SunSea are appropriate as it has "a material pattern of consumer complaints on matters within the ESCO's control,"[3] failed to comply with "federal, state, or local laws, rules, or regulations related to sales or marketing,"[4] and has failed to comply with the marketing standards of UBP §10.[5] The Commission finds that 116 complaints regarding SunSea's

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[2] Matter of National Energy Marketers Assn. v. New York State Pub. Serv. Commn., 33 N.Y.3d 336 (2019); see Public Service Law §§5(1)(b), 65(1), 66(5), 66-d(2); see generally GBL §349-d(11).

[3] UBP §2.D.5.l.

[4] UBP §2.D.5.m.

[5] UBP §2.D.5.n.

marketing practices over a 16 month period represents a material pattern of complaints on matters within SunSea's control. Furthermore, SunSea has failed to comply with State laws related to sales or marketing as it continued to knowingly make unsolicited telemarketing sales calls during a declared State of Emergency.[6]

Turning to the marketing provisions of the UBP, SunSea violated the UBP by failing to remove customers from its marketing database after the customers asked to no longer be called by SunSea.[7] Additionally, the Commission finds that SunSea engaged in misleading or deceptive conduct in marketing to New York customers, including making false or misleading representations regarding the rates or savings offered by SunSea.[8]

The Commission further finds that SunSea's response to the OTSC did not remedy the numerous violations alleged. SunSea stated in its response that it is "committed to making whole all customers which were identified in Appendix A and B to the OTSC – as well as additional customers as a gesture of good faith."[9] Of the 93 total cases listed in the attachments to the Order, Staff identified 73 cases where the refund was denied or not provided in response to the QRS/SRS and NOAF, but then granted after the OTSC. This includes 12 that were confirmed to be checks dated February 2021 for refunds that had been promised on various dates ranging from February 19, 2020, through October 19, 2020. Based on SunSea's history of QRS/SRS responses and its NOAF response, including prior denials of refunds, we find

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[6] GBL §399-z(5-a).

[7] UBP §10.c.2.f.

[8] UBP §§10.c.4.a. and 10.C.4.b.

[9] SunSea OTSC response, p. 3 (emphasis in original).

these new refunds to be an attempt at self-preservation because the OTSC required it, rather than a gesture of good faith.

SunSea also remarked that it strives "to achieve the highest standards of customer satisfaction, and takes its compliance obligations, its relationship with regulatory authorities, and the handling of consumer inquiries and complaints very seriously."[10] The lack of adequate responses to the QRS/SRS complaints from July 2019-November 2020 directly contradicts the statement regarding SunSea's handling of consumer inquiries and complaints. Staff's review of the sales calls found that the majority of the agents spoke very quickly and merely completed the script and connected the customer to the TPV. That, combined with the consistent complaints about misleading sales tactics and promises of rebates, rewards, and/or discounts, is not indicative of high standards of customer service.

SunSea states that in response to the NOAF, SunSea denied the allegations against it and provided enrollment documentation. This is also not indicative of a company that has been taking its relationship with regulatory authorities seriously since the allegations included questionable marketing practices and misrepresentation, not just disputed enrollments.

Additionally, the enrollment documentation that SunSea is referring to was missing from 12 of the cases in the NOAF which prompted Staff to include the records retention violation to the OTSC.[11] The Commission recognizes that SunSea did provide the enrollment documentation with its response to the OTSC. Providing these documents remedied the allegation of records

[10] SunSea OTSC response, p. 3.

[11] UBP §5, Attachment 1.D.

retention violations, but not the deficient manner in which SunSea submitted QRS/SRS responses.

Regarding SunSea's claim that it takes its compliance obligations seriously, we note that SunSea has not only violated the UBP, and the telemarketing prohibition in New York State, but has recently been found in violation of regulations in the State of Maryland.[12]

Additionally, the vendor that had been named on the NOAF response for almost all of the cases was EZE Sales, Inc. located at 300 Macdade Blvd, Collingdale, PA. EZE Sales, Inc. was not mentioned in the OTSC response and was still listed as a vendor on SunSea's November 17, 2020 Revised Eligibility Application and SunSea's January 29, 2021 Annual Compliance filing. In response to the OTSC, SunSea provided a December 28, 2020 notice to a different vendor terminating their arrangement. The vendor that SunSea terminated was RMC BPO located at 446 Commerce Area, Lahore, Pakistan. This vendor was not named on any of the compliance documentation received by Staff, as is required under the UBP. SunSea stated that RMC BPO was the company responsible for the telemarketing calls that resulted in the Staff affidavits.

SunSea states that "this unfortunate circumstance is not due to willful noncompliance, but rather the rogue actions of marketing vendors. . ."[13] We find that after months of similar complaints without corrective action, the noncompliance

[12] The Maryland Public Service Commission's case number 9647 included an Order issued on October 7, 2020, to impose consequences against SunSea for violations of numerous provisions of the Public Utility Article and the Code of Maryland Regulations. SunSea was ordered to drop all of its telephonically enrolled customers back to the utility and provide a refund for all past and present customers enrolled telephonically.

[13] SunSea OTSC response, p. 13.

became willful. Moreover, the corrective action eventually taken to terminate a marketing vendor did not address these complaints which originated with an entirely different vendor.

SunSea has shown a pattern of consistent disregard for the consumer protections and regulations set forth in the UBP. Therefore, the Commission revokes SunSea's eligibility to serve as an energy services company in New York State. SunSea shall return its customers to full utility service within 60 days of the effective date of this Order. These transfers shall occur on the customers' regularly scheduled meter reading dates.

The Commission orders:

1. SunSea Energy, LLC's eligibility to operate as an energy services company in New York State is revoked, consistent with the discussion in the body of this Order and with the obligations described in Ordering Clause No. 2.

2. SunSea Energy, LLC shall, within 60 days from the effective date of this Order, return each of its customers to full utility service in the utility service territories it operates, with transfers occurring on the customers' regularly scheduled meter reading dates.

3. To further facilitate compliance, the distribution utilities in whose service territories SunSea Energy, LLC operates – Consolidated Edison Company of New York, Inc., Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corp. d/b/a National Grid, Orange and Rockland Utilities, Inc., Rochester Gas & Electric Corporation, New York State Electric & Gas Corporation, Central Hudson Gas and Electric Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, and National Fuel Gas Distribution Corporation - shall, as of 60 days from the effective date of this Order, switch any

customers who remain with SunSea Energy, LLC service to full utility service.

4. The Secretary is directed to provide notification of this Order to each distribution utility identified in Ordering Clause No. 3 above.

5. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

6. This proceeding is closed pending compliance with Clause Nos. 2 and 3.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary

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Ohio Investigation

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Exhibit B-2
Experience & Plans

Billing, Contracting with Customers
SunSea Energy OH, LLC ("SunSea Energy") will maintain all back-end functions with their EDI and Billing provider EC Infosystems, including EDI, Billing and CIS. SunSea Energy also has the ability and will EDI test with the utility to support dual bill customers, if required. SunSea Energy only operates in POR markets, and will be able to provide a UBR, URR or dual bill to meet the needs with any utility. SunSea Energy has streamlined the enrollment process to ensure expedient enrollments and more importantly the ability to send customer disclosures within the time frame to maintain compliance.

SunSea Energy has invested in building and maintaining a sales center in house to provide customer services and in-house sales that will provide compliant sales and reduce customer complaints rather than hiring third party vendors to acquire customers on their behalf.

Customer Management, Compliance and Customer Complaints
SunSea Energy has invested in a proprietary CRM system to ensure proper customer service and expedient response time to consumer complaints and other regulatory inquires. SunSea Energy has also contracted with a fulfillment center and telephonic verification company to ensure that we send customer disclosures and secure telephonic verifications on all sales. This is also important as it will provide evidence and back up information for any customer inquiries and or complaints.

SunSea Energy has a detailed customer complaint procedure that provides an outline of the events that are covered to maintain compliance and satisfy the customer. *See Attached.

Load Management
SunSea Energy has aligned themselves with a proprietary load forecasting and management platform that is managed by our In-house risk manager. This platform will allow SunSea Energy the ability to offer both fixed and variable products to consumers and most importantly protect the ESCO and consumers by properly hedging, forecasting and scheduling the consumers load to avoid any anomalies and continue to support their customer base.

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SunSea Energy OH, LLC
Complaint Procedure

All complaint staff is trained to initially try and resolve the issue or complaint with the customer if contacted directly by the customer. If a resolve cannot be found, SunSea Energy OH, LLC will inform the customer of the following rights.

Inform the consumer that they have the right to inform the Public Utilities Commission of Ohio to register formal complaint. The consumer can contact the Public Utilities Commission of Ohio by:

Telephone: (800) 686-PUCO (7826), 7-1-1 (TDD/TTY)
Register complaint on website: http://www.puco.ohio.gov/puco/
Mail: The Public Utilities Commission of Ohio, 180 E. Broad St., Columbus, OH 43215

In the unfortunate event that a customer submits a formal complaint to the commission, the following procedure will take place for all received formal complaints.

Step	Action	Owner
1.	All customer inquiries or complaints will be logged within the within the proprietary CIS system with the specific information regarding the background of the complaint and any offered resolution, accepted or denied.	Dedicated Complaint Staff
1.	If formal complaint is received from PUCO staff. A ticket is created and populated with all prior customer correspondence within the SunSea Energy ticket system.	Dedicated Complaint Staff
2.	A review is conducted regarding the customer complaint and billing history to conclude if and what actions need to be addressed.	Dedicated Complaint Staff
3.	Manager approves next step actions including any calculated refund if applicable.	Dedicated Complaint Staff
4.	A formal draft email response will be submitted to the commission manager within 3 days of receipt including all applicable and requested evidence to close the complaint. YOU MUST SEND RESPONSE TO PUCO STAFF WITHIN THE APPLICABLE TIME FRAME WHETHER THE COMPLAINT HAS BEEN SATISFIED OR NOT. EVEN IF IT IS TO NOTIFY THE COMMISSON THAT YOU ARE STILL WORKING ON A RESOLUTION WITH CUSTOMER.	Dedicated Complaint Staff
5.	SunSea Energy understands that if a resolve cannot be found or if the commission finds sufficient grounds, a formal hearing will take place and then decide following.	Dedicated Complaint Staff