

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

IN THE MATTER OF THE COMPLAINT)	
OF THE STAFF OF THE PUBLIC SERVICE)	
COMMISSION AGAINST SMART ENERGY)	Case No. 9613
HOLDINGS D/B/A SMARTENERGY)	

RESPONSE IN OPPOSITION TO MOTION OF SMARTENERGY HOLDINGS, LLC
D/B/A SMARTENERGY FOR AN IN PERSON HEARING

The Staff of the Public Service Commission of Maryland (“Staff”) files this Response in Opposition to Motion for In Person Hearing and states:

1. On September 12, 2019, the Court entered a Notice of Procedural Schedule which, among other things, scheduled an evidentiary hearing in this case to commence on May18, 2020.

2. On or about March 17, 2020, the Chairman of the Maryland Public Service Commission announced the closing of the Commission’s building in downtown Baltimore to the public and to most of its Staff and employees in response to the Covid-19 Pandemic and to the orders and state of emergency declared by Governor Hogan and the Mayor of the City of Baltimore.

3. Although the physical building was closed, the Commission and its employees continued to conduct business virtually from homes and other remote locations. From the onset of the emergency, Commission employees, utilities, public service companies, licensees, stake holders, and the public were informed that the Commission would remain open virtually and would “continue mission-critical functions and be responsive to regulated entities and the public.” To accomplish this goal, the Commission enacted a number of measures and changes of rules and procedures to allow business to proceed, such as paperless filings and the extension of

certain deadlines. The Commission also determined that all meetings and hearings should proceed virtually.

4. On April 1, 2020, the parties to this case requested that the procedural schedule, including the hearing date, be suspended due to difficulties presented by the pandemic and the belief that an in person hearing was preferable to one conducted remotely. That request was granted on April 7, 2020 and the procedural schedule was stayed for 75 days.

5. After consideration of a status report of the parties (June 5, 2020), a virtual status conference (June 10, 2020), and a revised proposed procedural schedule agreed to by all the parties (June 19, 2020), the Court issued a modified procedural schedule resetting the evidentiary hearing for September 22-25, 2020. Implicit in that schedule was the understanding that if an in person hearing was not possible at that time, it would proceed virtually. At this time, it is still unknown when an in person hearing could be possible and permitted.

6. In the interim from building shut down on March 17 to the present, the Commission has repeatedly demonstrated that it is capable of conducting all aspects of its business virtually, under its revised procedures, both fairly and effectively. The Commission has conducted successfully various evidentiary hearings, public hearings, administrative meetings, public conferences and rule making sessions. The Commission and the Public Utility Law Judge Division have hosted proceedings with the participation of multiple parties and have tackled complicated and contested issues. These have included adversarial hearings, such as rate cases and CPCN applications, which have determined legal and property rights involving tens of millions of dollars. Invariably, conducting these proceedings virtually has presented problems and inconveniences, but those impediments have been overcome with patience and accommodation. The Commission continues to be committed to conduct its mission-critical

functions despite the hardships caused by the current unique circumstances. The Commission recently demonstrated its commitment to hearing cases like this one remotely by scheduling a case with claims and allegations similar to those here (*OPC v. SunSea*, Case No. 9647) to be tried to the Commissioners in a virtual hearing on October 7, 2020.

7. Certainly, a virtual hearing is not ideal, and SmartEnergy has provided a laundry list of potential problems. Staff has expressed its preference for in person proceedings in several cases, particularly in those which are more complicated than this one (multiple methods of customer solicitation) and in which discovery was not as nearly complete at suspension as it was here. The Commission's duty to the public and its regulatory mission, however, is unabated by the current emergency. Under current circumstances, an ideal hearing may not be possible, but a fair hearing, as required by due process, can and will be provided by virtual means. None of the difficulties likely to be experienced in this case rise to the level of a denial of due process. If, during a hearing, technical or other problems arise that prove to be insurmountable or inherently unfair, the hearing can be suspended until an in person hearing becomes possible.

For the foregoing reasons, Staff requests the Court to deny SmartEnergy's Motion for an In-Person Hearing.

Respectfully submitted,

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Maryland Public Service
Commission

Cc: Parties of Record