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April 7, 2022

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: SmartEnergy Holdings License Updates  
A-2014-2416214 (Electric) and A-2020-3020776 (Natural Gas)

Dear Secretary Chiavetta:

Enclosed please find an update regarding the current status of Customer/Regulatory/Prosecutory Actions involving SmartEnergy responsive to question number 5.b of both the natural gas supplier application and the electric generation supplier application.

If you have any questions, please feel free to contact me.

Sincerely,



Deanne M. O'Dell

DMO/lww

Enclosure

## EXHIBIT A

### Investigations and Sanctions in Other States (Current as of March 31, 2022)

#### ILLINOIS

- Case Title: In the Matter of the Investigation by the Attorney General of SmartEnergy Holdings, LLC (“SE”)
- Case Number: No Case Number
- Agency Involved: Attorney General (“IL AG”)
- Status: Resolved July 2019
- Summary: The IL AG initiated an investigation to determine whether there had been any violation of Illinois law. Although SE disputed many of the allegations made in the case, SE elected to resolve the matter by entering into an Agreement for Voluntary Compliance on terms acceptable to SE and the IL AG, without any admission of wrongdoing.
- Conclusion: SE issued \$200,000 in refunds to customers. IL AG’s corrective action proposals were implemented by SE.

## OHIO

- Case Title: In the Matter of SmartEnergy Holdings LLC
- Case Number: 19-1590-EL-UNC
- Agency Involved: PUCO
- Status: Resolved November 2019
- Summary: SE responded to a Notice of Probable Non-Compliance from PUCO in connection with a sweepstakes offer made to OH consumers. Although SE disputed many of the allegations made in the case, SE elected to resolve the matter by entering into a Joint Stipulation on terms acceptable to SE and the PUCO without any admission of wrongdoing.
- Conclusion: PUCO Staff's corrective action proposals were implemented by SE. SE paid a \$19,000 forfeiture.

## MARYLAND

- Case Title: In The Matter of the Complaint of the Staff of the Public Service Commission Against SmartEnergy Holdings D/B/A Smartenergy
- Case Number: 9613
- Agency Involved: MD PSC
- Status: Stayed and on Appeal
- Summary: In 2019, the MD PSC Staff and the MD Office of People's Counsel filed complaints against SE for alleged violations of certain regulatory requirements and consumer protections applicable to energy suppliers operating in Maryland. SE answered each of the complaints and disputed many of the allegations. On December 16, 2020, a Public Utility Law Judge (PULJ) issued a Proposed Order finding, among other things, SmartEnergy violated certain Maryland laws such as engaging in conduct that had the capacity to be misleading or deceiving, but that SmartEnergy did not violate certain laws pertaining to telephone solicitations. On December 22, 2020, the Maryland Commission issued an Order imposing a moratorium on SE adding or soliciting new customers in Maryland. The Commission also established a briefing schedule related to the findings in the Proposed Order. On March 31, 2021, the Maryland Commission issued Order No. 89795 directing SE to: (1) continue the moratorium on soliciting or enrolling new customers; (2) return Maryland customers solicited via telephone to utility service; (3) re-rate and refund customers solicited via telephone; and (4) send a notice to customers explaining the Commission's findings and directives. SE thereafter filed a successful motion to stay Order No. 89795 pending SE's efforts to appeal Order No. 89795 in Maryland state courts, which remain ongoing.

## NEW YORK

- Case Title: In the Matter of Eligibility Criteria for Energy Service Companies Case; Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non- Residential Energy Markets in New York State; In the Matter of Retail Access Business Rules
- Case Number: Cases 98-M-134312-M-0476; 15-M-0127
- Agency Involved: NY PSC
- Status: SE Preparing to Respond to Adverse License Action Due to Alleged Misrepresentations on Application Materials<sup>1</sup>
- Summary: NY PSC required all ESCOs to submit a new eligibility application, which SE did in November 2020 and NY PSC approved in January 2021. In September 2021, NY PSC issued Order to Show Cause why SE's ESCO license should not be revoked because of alleged misrepresentations in response to a question in the application materials. SE responded comprehensively on October 22, 2021 explaining its answer to the question as a good faith response to an ambiguous question that was submitted with the assistance of experienced counsel, and did not amount to a statement that was knowingly false or intentionally misleading that would justify license action. On March 21, 2022, the NY PSC issued an Order to Deny SE's Application for Eligibility rejecting SE's arguments in the Response and requiring SE to return all residential customers to standard service within sixty days.  
SE is highly disappointed in the Order, which it views as based on findings lacking substantial evidence, arbitrary and capricious reasoning and/or errors of law. SE is currently engaged in preparing a comprehensive response to the Order which will likely include requests for a stay and for rehearing and/or reconsideration on several grounds, including legal defects in the Order, that SE cured the alleged misrepresentations, that NY Department of Public Service had already prior to the Order issued a March 4, 2022 letter order confirming SE's compliance with NY Uniform Business Practices law, that multiple other ESCOs interpreted the question in the same manner as SE, thereby confirming SE's claims relative to the ambiguous nature of the question asked, and that NY PSC departed from its longstanding and usual practice of advising companies of apparent noncompliance issues and allowing them to correct or update filings before taking any license action.
- Conclusion: Awaiting preparation and filing of pleading seeking relief from NY PSC Order (due in April 2022).