

The Order’s factual errors appear to be due to significant portions of Spark’s Order having been taken verbatim from a recent Order to Show Cause of *another ESCO*, only with Spark’s name substituted in place of the other ESCO. Specifically, almost the entire “Investigative Section” in Spark’s Order mirrors the language contained in the Order to Show Cause issued against another ESCO on September 16, 2016 (the “ESCO OTSC”).¹² The below sections are taken from the ESCO OTSC and the Order, respectively, and are highlighted for ease of reference in identifying those sections of the Order that are identical to the ESCO OTSC:

ESCO OTSC

“In the [Other ESCO] NOAF Department Staff sought documentation from [Other ESCO] related to 21 customer complaints. [Other ESCO] provided recordings of TPVs for only 9 of those complaints. Staff believes that the customer did not understand the terms of the sale nor to whom they were speaking in five of the 9 TPV recordings. That is, many of the customers asked questions regarding the specific terms of service during the TPV; once it was apparent the customer did not understand what they were being told, the call should have been terminated and the enrollment process ended. Moreover, the TPV recordings that [Other ESCO] provided do not meet the UBP requirements for telephonic authorizations because the TPV did not include an affirmative response to all questions contained in UBP Section 5, Attachment 1. Nor did [Other ESCO] provide proof that a sales agreement was sent to prospective customers within three days. Such non-compliant documentation undermines any conclusion that [Other ESCO] ever had actual customer authorization to transfer such customers. In sum and based on [Other ESCO]’s failure to provide each of the

Spark Order

“In the Spark NOAF Department Staff sought documentation from Spark related to 21 customer complaints. Spark provided TPV recordings for only 9 of those complaints. In five of the 9 TPV recordings, Staff believes that the customer did not understand the terms of the sale nor to whom they were speaking. That is, many of the customers asked questions regarding the specific terms of service during the TPV. Once it was apparent the customer did not understand what they were being told, Spark should have terminated the call and ended the enrollment process. Moreover, the TPV recordings that Spark provided do not meet the UBP requirements for telephonic authorizations because the TPV did not include an affirmative response to all the questions contained in UBP Section 5, Attachment 1. In addition, Spark did not provide proof that a sales agreement was sent to prospective customers within three days. Such non-compliant documentation undermines any conclusion that Spark ever had proper customer authorization to transfer such customers.

Spark’s failure and/or inability to provide each of the documents or

¹² Case 16-M-0407: *Proceeding on Motion of the Commission to Seek Consequences Against Smart One Energy, LLC for Violations of the Uniform Business Practices*, Order Instituting Proceeding and to Show Cause (Issued Sept. 16, 2016), at 6-8.

documents or confirmations listed above, Staff concludes that [Other ESCO] appears to have slammed the customer's account in 16 of the 21 complaints received by the Department.

False and Misleading Marketing

UBP Section 10.C.2 outlines the required process that ESCOs must follow when marketing to customers for the purpose of selling any product or service. [Other ESCO]'s NOAF response included two recorded sales calls along with the related TPVs. Upon review of [Other ESCO]'s sales calls, Staff concluded that [Other ESCO] used misleading marketing tactics when soliciting to customers. Specifically, the marketer states "My name is . . . and I am calling in regards to your National Grid bill from [Other ESCO]. Your account has been qualified to receive a discount, so from the next billing cycle you'll find a discount on the gas bill, OK? The discount is up to 10 percent for 2 months on the supply portion of your bill from [Other ESCO]." At no time did the marketer clearly state that they were representing an ESCO; nor did the ESCO marketer state that, as a condition of receiving the discount offered, the customer would be switched to [Other ESCO] from the utility for their energy supply service. Given the large number of slamming complaints filed with the Department against [Other ESCO], it is apparent [Other ESCO] did not provide sufficient information to make potential customers aware that they would be required to switch service providers.

Discussion and Conclusion

The Department's investigation, which included review of the documents [Other ESCO] provided in its NOAF response, demonstrate, among other things, numerous instances in which [Other ESCO] did not provide customers with the appropriate information regarding the contract that the customer was entering into, as specifically

confirmations, required when transferring customer accounts to an ESCO, is a violation of the UBP.

False and Misleading Marketing

UBP Section 10.C.2 outlines the required process ESCOs must follow when marketing to customers for the purpose of selling any product or service. Spark's NOAF response included two recorded sales calls along with the related TPVs. Upon review of Spark's sales calls, Staff concluded that Spark used misleading marketing tactics when soliciting to customers. Specifically, the marketer stated "My name is . . . and I am calling in regards to your National Grid bill from Spark Energy. Your account has been qualified to receive a discount, so from the next billing cycle you'll find a discount on the gas bill, OK? The discount is up to 10 percent for 2 months on the supply portion of your bill from Spark Energy." At no time did the marketer clearly state that they were representing an ESCO; nor did the ESCO marketer state that, as a condition of receiving the discount offered, the customer would be switched to Spark from the utility for their energy supply service. Given the large number of slamming complaints filed with the Department against Spark, it is apparent Spark did not provide customers sufficient information to make them aware that they were agreeing to switch service providers.

Discussion and Conclusion

The Department's investigation, which included review of the documents Spark provided in its NOAF response and review of the additional complaints subsequently received by the Department demonstrates, among other things, numerous instances in which Spark did not provide to customers adequate information about the sales

required by the UBP. The TPV recordings, considered in the broadest possible way, failed to show customers provided [Other ESCO] with the required customer authorization to access the customer's information from their utility. Several customers stated that [Other ESCO] failed to provide the customer with the sales agreements upon enrollment. Further, since April 17, 2016, when the NOAF was issued, the Department has continued to receive new customer complaints alleging that [Other ESCO] continues its slamming and deceptive marketing practices."¹³

agreement the customer was entering into, and which the UBP specifically requires be provided. The TPV recordings show that customers did not provide Spark with the required customer authorization to access the customer's account information from their utility. Several customers stated that Spark failed to provide the customer the sales agreement upon enrollment. Further, since the April 17, 2016 NOAF was issued, the Department has continued to receive new customer complaints alleging that Spark continues its slamming and deceptive marketing practices . . ."¹⁴

Clearly, the language from the ESCO OTSC is nearly identical to the corresponding language in the Order.¹⁵ The problem with this identical language is that the facts in the ESCO OTSC are *not* attributable to Spark. As a result, the Order erroneously attributes the conduct of another company to Spark. Spark understands and recognizes that this is simply an administrative oversight by Staff and the Commission; nonetheless, the language and allegations in these sections are clearly not applicable to Spark and should be corrected in the administrative record.

The Order contains other errors as well. For example, the Order states that "Attachment 1 identifies the complaint case numbers for the customers that Staff confirms were slammed since February 2016 including the eight (8) complaints for which Spark issued refunds after the April NOAF and the nine (9) complaints for which adequate documentation apparently does not exist to support an authorized switch."¹⁶ However, Attachment 1 does not contain any of the complaints referenced in the April NOAF.¹⁷ Nor does the list include complaints for which Spark

¹³ ESCO OTSC at 6-9.

¹⁴ Order at 5-6, 8.

¹⁵ See Order at 5-6; ESCO OTSC at 6-8.

¹⁶ Order at 6-7.

¹⁷ The NOAF requests information with respect to the following QRS complaints: 552624, 552840, 530031, 530179, 553556, 553506, 553450, 555528, 557536, 532301, 560096, 561232, 610343, 553078, 530709, 554134, 559506, 533215, 562582, 562892, 562952, 610081, and 614492. The Order on the other hand referenced the following QRS