

187 FERC ¶ 61,225  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;  
Allison Clements and Mark C. Christie.

SunSea Energy, LLC

Docket No. IN24-8-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued June 28, 2024)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and SunSea Energy, LLC (SunSea). This Order is in the public interest because it resolves on fair and equitable terms Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2023). The Investigation addressed whether SunSea violated Section 26.2.1.3 of the New York Independent System Operator's (NYISO) Market Administration and Control Area Services Tariff (Tariff) and the Commission's Market Behavior Rule, 18 C.F.R. § 35.41(b) (2023), by failing to timely inform NYISO of the existence of ongoing investigations by the New York Public Service Commission (NYPSC) that could have a material impact on its financial condition.
2. SunSea agrees to pay a civil penalty of \$5,000 to the United States Treasury. SunSea stipulates to the facts in Section II of the Agreement but neither admits nor denies the alleged violations in Section III of the Agreement.

**I. Facts**

3. SunSea is a privately owned competitive energy services provider, which started operating as a load serving entity in the NYISO energy and capacity markets in 2017. SunSea's primary business is the retail marketing of gas and electric supply to residential and non-residential customers in the District of Columbia, Maryland, New York, New Jersey, and Ohio. From December 2020 to May 2021 (Relevant Period), SunSea operated as an Energy Services Company (ESCO) in New York.
4. During the Relevant Period, SunSea was the subject of an investigative proceeding before the New York Public Service Commission (NYPSC). The proceeding addressed SunSea's marketing and enrollment practices based on customer complaints regarding questionable marketing and enrollment practices (Marketing Proceeding).

5. On December 22, 2020, NYPSC issued an order to show cause asking why it should not revoke SunSea's then-current eligibility to operate as an ESCO (Revocation OSC).
6. On November 17, 2020, SunSea submitted an eligibility application as required by NYPSC to continue to operate as an ESCO, which subjected SunSea to a second investigative proceeding to determine whether it could remain eligible to enroll new customers and/or renew existing contracts as an ESCO (Eligibility Proceeding).
7. NYISO requires customers to complete an annual credit questionnaire form (CQF) that includes a request for information regarding any ongoing investigations. In its March 25, 2021 response to the CQF, SunSea did not disclose that it was under investigation by the NYPSC in multiple proceedings and responded "N/A," to a question that required SunSea to list "any ongoing investigation of which Applicant/Customer is aware by [ ] any state or provincial entity responsible for regulating activity in energy markets [ ] that could foreseeably have a material financial impact on Applicant/Customer."
8. On May 18, 2021, NYPSC issued an order revoking SunSea's eligibility to serve customers in New York (Revocation Order).
9. On May 18, 2021, NYPSC also issued an order to show cause requiring SunSea to show cause why its eligibility application to continue to enroll new customers and/or renew existing contracts should not be denied on grounds that its eligibility application contained false or misleading information (Denial OSC).
10. On May 24, 2021, NYISO issued a formal notice of default to SunSea for failure to disclose the Marketing and Eligibility proceedings in its CQF. SunSea cured the CQF on May 25, 2021, which included disclosure of the Revocation OSC, Revocation Order, and Denial OSC.
11. SunSea fully cooperated with Enforcement during the Investigation.

## **II. Violations**

12. Enforcement determined that SunSea violated Section 26.2.1.3 of the credit reporting provisions of NYISO's Tariff and the Commission's duty of candor rule, 18 C.F.R. § 35.41(b).
13. NYISO Tariff section 26.2.1.3 provides that, "[u]nless prohibited by law, a Customer shall inform the ISO of the existence of any ongoing investigations of which the Customer is aware by the Securities and Exchange Commission, the Department of Justice, the Federal Energy Regulatory Commission, or the New York Public Service Commission which could have a material impact on the Customer's financial condition." Enforcement determined that SunSea failed to timely disclose in its March 25, 2021 CQF

submission that it was under investigation by the NYPSC in multiple proceedings that could have a material impact on its financial condition. The issuance of the Revocation OSC and Revocation Order, and Denial OSC by the NYPSC make it clear that the financial impact could be material and therefore should have been disclosed.

14. Section 35.41 (b) of the Commission's regulations requires that a Seller, "provide accurate and factual information and not submit false or misleading information, or omit material information [ ] in any communication with [ ] Commission-approved independent system operators." Enforcement determined that SunSea is a "Seller"<sup>1</sup> subject to Section 35.41(b) and that SunSea's failure to disclose that it was under NYPSC investigations in multiple proceedings that could have a material impact on its financial condition violated that section.

### **III. Stipulation and Consent Agreement**

15. Enforcement and SunSea have resolved the Investigation by means of the attached Agreement.

16. SunSea stipulates to the facts set forth in Section II of the Agreement, but neither admits nor denies the violations set forth in Section III of the Agreement.

17. SunSea agrees to pay \$5,000 in a civil penalty to the United States Treasury, by wire transfer, within ten days after the Effective Date of the Agreement.

### **IV. Determination of Appropriate Sanctions and Remedies**

18. In recommending the appropriate remedy, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines,<sup>2</sup> including the fact that SunSea cooperated with Enforcement during the investigation.

19. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness of the conduct and recognizes the specific considerations stated above and in the Agreement.

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<sup>1</sup> SunSea has a Commission-approved Market-Based Rate Tariff and is subject to the Commission's regulatory authority. *See Market Based Rate Authorization*, Docket No. ER17-2462-000, Letter Order (October 30, 2017).

<sup>2</sup> *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

Docket No. IN24-8-000

- 4 -

20. The Commission also concludes that SunSea's civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.<sup>3</sup>

21. The Commission directs SunSea to pay the civil penalty as required by the Agreement within ten days of the Effective Date of the Agreement.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission. Commissioner Rosner is not participating.

( S E A L )

Debbie-Anne A. Reese,  
Acting Secretary.

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

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

SunSea Energy LLC

Docket No. IN24-8-000

**STIPULATION AND CONSENT AGREEMENT**

**I. INTRODUCTION**

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and SunSea Energy, LLC (SunSea) enter into this Stipulation and Consent Agreement (Agreement) to resolve a nonpublic investigation (Investigation) conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2023). The Investigation addressed whether SunSea violated Section 26.2.1.3 of the New York Independent System Operator's (NYISO) Market Administration and Control Area Services Tariff (Tariff) and the Commission's Market Behavior Rule, 18 C.F.R. § 35.41(b), by failing to timely inform NYISO of the existence of ongoing investigations by the New York Public Service Commission (NYPSC) that could have a material impact on its financial condition.

2. SunSea stipulates to the facts in Section II, but it neither admits nor denies the violations described in Section III of this Agreement. SunSea agrees to pay a civil penalty of \$5,000 to the United States Treasury.

**II. STIPULATIONS**

3. Enforcement and SunSea hereby stipulate and agree to the following facts.

4. SunSea is a privately owned competitive energy services provider, which started operating as a load serving entity in the NYISO energy and capacity markets in 2017. SunSea's primary business is the retail marketing of gas and electric supply to residential and non-residential customers in the District of Columbia, Maryland, New York, New Jersey, and Ohio. From December 2020 to May 2021 (Relevant Period) SunSea operated as an Energy Services Company (ESCO) in New York.

5. During the Relevant Period, SunSea was the subject of an investigative proceeding before the New York Public Service Commission (NYPSC). The proceeding addressed SunSea's marketing and enrollment practices based on customer complaints regarding questionable marketing and enrollment practices (Marketing Proceeding).

6. On December 22, 2020, NYPSC issued an order to show cause asking why it should not revoke SunSea's then-current eligibility to operate as an ESCO (Revocation OSC).
7. On November 17, 2020, SunSea submitted an eligibility application as required by NYPSC to continue to operate as an ESCO, which subjected SunSea to a second investigative proceeding to determine whether it could remain eligible to enroll new customers and/or renew existing contracts as an ESCO (Eligibility Proceeding).
8. NYISO requires customers to complete an annual credit questionnaire form (CQF) that includes a request for information regarding any ongoing investigations. In its March 25, 2021 response to the CQF, SunSea did not disclose that it was under investigation by the NYPSC and responded "N/A" to a question that required SunSea to list "any ongoing investigation of which Applicant/Customer is aware by [ ] any state or provincial entity responsible for regulating activity in energy markets [ ] that could foreseeably have a material financial impact on Applicant/Customer."
9. On May 18, 2021, NYPSC issued an order in the Revocation Proceeding revoking SunSea's eligibility to serve customers in New York (Revocation Order).
10. On May 18, 2021, NYPSC also issued an order to show cause requiring SunSea to show cause why its eligibility application to continue to enroll new customers and/or renew existing contracts should not be denied on grounds that its eligibility application contained false or misleading information (Denial OSC).
11. On May 24, 2021, NYISO issued a formal notice of default to SunSea for failure to disclose the Marketing Proceeding and Eligibility Proceeding in its CQF. SunSea cured the CQF deficiencies on May 25, 2021, which included disclosure of the Revocation OSC, Revocation Order, and Denial OSC.
12. SunSea cooperated with Enforcement during the Investigation.

### III. VIOLATIONS

13. Enforcement determined that SunSea violated Section 26.2.1.3 of the credit reporting provisions of NYISO's Tariff and the Commission's duty of candor rule, 18 C.F.R. § 35.41(b).
14. NYISO Tariff section 26.2.1.3 provides that, "[u]nless prohibited by law, a Customer shall inform the ISO of the existence of any ongoing investigations of which the Customer is aware by the Securities and Exchange Commission, the Department of Justice, the Federal Energy Regulatory Commission, or the New York Public Service Commission which could have a material impact on the Customer's financial condition."

Enforcement determined that SunSea failed to timely disclose in its March 25, 2021 CQF submission that it was under investigation by the NYPSC in multiple proceedings that could have a material impact on its financial condition. The issuance of the Revocation OSC, Revocation Order, and Denial OSC by the NYPSC make it clear that the financial impact could be material and therefore should have been disclosed.

15. Section 35.41 (b) of the Commission's regulations requires that a Seller, "provide accurate and factual information and not submit false or misleading information, or omit material information [ ] in any communication with [ ] Commission-approved independent system operators." Enforcement determined that SunSea is a "Seller"<sup>1</sup> subject to Section 35.41(b) and that SunSea's failure to disclose that it was under NYPSC investigations that could have a material impact on its financial condition violated that section.

#### IV. REMEDIES AND SANCTIONS

16. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from or related to SunSea's conduct evaluated in Enforcement's Investigation, SunSea agrees with the facts as stipulated in Section II of this Agreement, but it neither admits nor denies the violations described in Section III of this Agreement. SunSea further agrees to undertake obligations set forth in the following paragraph.

17. SunSea agrees to pay a civil penalty of \$5,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined herein.

#### V. TERMS

18. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein that arose on or before the Effective Date as to SunSea and any affiliated entity, and their respective agents, officers, directors, or employees, both past and present.

19. Commission approval of this Agreement without material modification shall release SunSea and forever bar the Commission from holding SunSea, any affiliated entity, any successor in interest, and their respective agents, officers, directors, or employees, both past and present, liable for any and all administrative or civil claims arising out of the conduct covered by the Investigation, including conduct addressed and stipulated to in this Agreement, which occurred on or before the Agreement's Effective Date.

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<sup>1</sup> SunSea has a Commission-approved Market-Based Rate Tariff and is subject to the Commission's regulatory authority. *See Market Based Rate Authorization*, Docket No. ER17-2462-000, Letter Order (October 30, 2017).

20. Failure by SunSea to make the civil penalty payment or to comply with any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act (FPA), 16 U.S.C. §792, *et seq.*, and may subject Sunsea to additional action under the enforcement provisions of the FPA.

21. If SunSea does not make the required civil penalty payment described above within the time agreed by the parties, interest will be calculated pursuant to 18 C.F.R. § 35.19a(a)(2)(iii)(A), (B) from the date that payment is due, in addition to the penalty specified above and any other enforcement action and penalty that the Commission may take or impose.

22. This Agreement binds SunSea and its agents, successors, and assignees. This Agreement does not create any additional or independent obligations on Sunsea, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

23. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or SunSea has been made to induce the signatories or any other party to enter into the Agreement.

24. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor SunSea shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and SunSea.

25. In connection with the civil penalty provided for herein, SunSea agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b). SunSea waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

26. This Agreement can be modified only if in writing and signed by Enforcement and SunSea, and any modifications will not be effective unless approved by the Commission.

27. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.



28. The undersigned representative of SunSea affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

29. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and  
Accepted:



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Janel Burdick  
Director, Office of Enforcement  
Federal Energy Regulatory Commission

Date: 5/9/2024



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Jacob Adigwe  
CEO  
SunSea Energy LLC

Date: 4/29/2024

Document Content(s)

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