

Exhibit 2

ORDER NO: 84959

IN THE MATTER OF THE
COMPLAINT OF THE STAFF OF THE
PUBLIC SERVICE COMMISSION
AGAINST VIRIDIAN ENERGY PA,
LLC

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9255

Issue Date: June 7, 2012

This matter comes before the Public Service Commission of Maryland (“Commission”) from a Complaint filed by the Commission Staff alleging violations of customer protection regulations by Viridian Energy PA, LLC. Upon consideration of the record developed in this matter, and as more fully explained below, the Commission finds that Viridian violated Public Utilities Article § 7-507 and COMAR 20.53.07.07 and 20.53.07.08 by making false and misleading representations about Viridian’s relationship with utility companies and the savings customers would achieve in widely distributed advertisements, and by claiming that customers did not need to sign a contract. Based on the number and severity of these violations, the Commission imposes a civil penalty in the amount of \$60,000.00 (sixty-thousand dollars) pursuant to Public Utilities Article §§ 7-507 and 13-201.

I. Background

Viridian Energy PA, LLC (“Viridian” or “the Company”) is a residential electricity supplier that was formed in Connecticut in March 2009.¹ Viridian began providing service in Connecticut in August 2009, Pennsylvania in February 2010, and

¹ February 9, 2011 hearing, Transcript (“Tr.”), pp. 20 and 94.

New Jersey in May 2010.² It was licensed by this Commission on May 10, 2010 to supply electricity and electricity supply services in Maryland,³ and began marketing its services to the Baltimore Gas and Electric (“BGE”) service territory in July 2010 and to the Potomac Electric Power Company (“Pepco”) service territory in September 2010.⁴ As of February 9, 2011, Viridian had a total of over 140,000 customers in the jurisdictions in which it was licensed.⁵

Viridian employs a multi-level direct sales concept in which individuals join the company as associates, market Viridian’s services, and receive compensation based primarily upon the energy usage of the customers they enroll to receive Viridian’s services.⁶ The associates – who are agents, not employees, of Viridian⁷ – join the company under one of four categories, two of which are at no charge to the associate, one of which is at a one-time fee of \$199 to the associate, and one of which is at a one-time fee of \$399 to the associate.⁸ As of April 2011, Viridian had approximately 2,500 associates working in the State of Maryland.⁹

² At the February 9, 2011 hearing, Michael J. Fallquist, founder and CEO of Viridian, testified that the Company would begin service in New York as of the following week. Tr. p. 20.

³ January 14, 2011 Complaint of the Staff of the Public Service Commission of Maryland (“Staff’s Complaint”), p. 1, paragraph (“para.”) 2.

⁴ Joint Recommendation of the Staff of the Public Service Commission of Maryland and Viridian Energy, PA, LLC – public version (“Joint Recommendation”), Stipulation of Facts, p. 1, para. 3.

⁵ February 9, 2011 hearing, Tr. p. 21.

⁶ Joint Recommendation, Stipulation of Facts, p. 2, para. 8 and 10.

⁷ Joint Recommendation, Stipulation of Facts, p. 3, para. 11. It must also be noted that, while Viridian’s Policies and Procedures expressly state that its sales associates are not agents of the Company, Fallquist took the opposite position at the February 9, 2011 hearing, stating, “I would agree that they are the agent of Viridian.” February 9, 2011 hearing, Tr. p. 96.

⁸ “Viridian associates are offered four categories of enrollment. Two of these categories are available at no cost to the Viridian associate: one is customer acquisition plan (“CAP”) that allows Viridian associates to refer customers and, in return, earn a monthly fee based on the customer’s usage. The CAP program is not a multi-level sales approach. The other free category of associate enrollment is the fundraising option, in which non-profit companies or similar entities enroll as an associate and refer customers in order to raise funds for the benefit of their organization. The remaining two categories entail one time fees of \$199, for the right to make sales for Viridian within a single state and \$399, for the right to make sales for Viridian within each state where Viridian is licensed.” Joint Recommendation, Stipulation of Facts, p. 2, para. 9.

⁹ April 1, 2011 hearing, Tr. p. 84.

A Viridian associate's compensation is based upon an associate's rank and the kilowatt hour consumption of customers enrolled by the associate,¹⁰ as well as customers enrolled by the associate's "downline" associates.¹¹ Although Viridian's compensation scheme does not compensate associates directly for recruiting other associates, the prospect of compensation for the sales of "downstream" associates creates a potentially powerful incentive to recruit. As of January 2011, Viridian had paid a total of approximately \$114,000 to its Maryland associates.¹²

The relationship between Viridian and its associates is detailed in the company's Policies & Procedures ("Policies").¹³ Associates must accept the Policies in order to be enrolled as an associate.¹⁴ The Policies state that Viridian may unilaterally sanction or terminate any Viridian associate that is non-compliant with the Policies.¹⁵

Prior to Staff filing the complaint that initiated this matter, Viridian's associate training procedures were as follows:

1) Associates received a training guide which summarized deregulation matters and provided information pertaining to Viridian and its products;¹⁶

2) Viridian presented one or two live trainings each week that associates could choose to attend or listen to;¹⁷

3) Viridian sent weekly emails ("VTalk") and monthly newsletters ("VLife") to associates, both of which contained information on company events, employees of note-

¹⁰ Actual enrollments are handled by ESG (Energy Services Group), a provider of outsourced services to the retail energy industry.

¹¹ Joint Recommendation, Stipulation of Facts, p. 2, para. 10.

¹² February 9, 2011 hearing, Tr. p. 63.

¹³ February 9, 2011 hearing, Viridian Exhibit 1.

¹⁴ Joint Recommendation, Stipulation of Facts, p. 3, para 12.

¹⁵ *Id.*

¹⁶ February 9, 2011 hearing, Tr. pp. 25 and 26.

¹⁷ *Id.* at 32.

worthy performance, and compliance issues and guidelines, among other things¹⁸ (Viridian estimates that approximately 4,500 associates read VTalk each week¹⁹); and

4) At the discretion of the Associate Compliance Council,²⁰ telephone calls were made to associates for training purposes as needed.²¹

Also, before this case began, Viridian's associates were subject to the following marketing guidelines:

1) Associates were prohibited from telemarketing;²²

2) Associates were required to complete an application, pay a nominal fee, and submit to a background check prior to receiving corporate approval to perform door-to-door marketing;²³

3) Associates could purchase enrollment forms and marketing materials from Viridian for a nominal fee;²⁴

4) Associates could also use their self-created marketing materials provided they received corporate approval to do so;²⁵

5) Associates were given their own personal website under the Viridian domain name on which they were able to place customized content,²⁶ and

6) Associates were provided with Viridian's "Marketing Don'ts" document which

¹⁸ *Id.* at 36.

¹⁹ *Id.* at 36 and 37.

²⁰ The Compliance Council is comprised of 12 representatives from the field, including every member of Viridian's executive team except for the CFO. *Id.* at 125.

²¹ *Id.* at 39.

²² Joint Recommendation, Stipulation of Facts, p. 4, para. 14.

²³ *Id.* at para. 15.

²⁴ April 1, 2011 hearing, Tr. p. 69.

²⁵ Joint Recommendation, Stipulation of Facts, p. 4, para. 17.

²⁶ April 1, 2011 hearing, Tr. p. 30.

listed rules to be followed by associates when marketing Viridian to customers.²⁷

Eight complaints were filed with the Commission against Viridian in the eight months between May 10, 2010 (the date on which Viridian was licensed by the Commission) and January 14, 2011 (the date on which this matter commenced).²⁸

II. Procedural History

On January 14, 2011, the Commission Staff (“Staff”) filed a Complaint, pursuant to Code of Maryland Regulations (“COMAR”) 20.07.03, requesting that the Commission issue an Order to Show Cause why Viridian’s license to provide electricity or electric supply services should not be suspended or revoked or, in the alternative, why Viridian should not be precluded from soliciting additional customers and why they should not be subject to a civil penalty under § 7-507 and 13-201 of the Maryland Public Utilities Article (“PUA”). The complaint alleged that Viridian had engaged and was engaging in deceptive practices and that the Company had failed to comply with the Commission’s consumer protection regulations in COMAR 20.53.07.

On January 26, 2011 the Commission issued an Order to Show Cause to determine whether Viridian was engaging in misleading and deceptive practices and whether it had violated Maryland laws or regulations. Viridian was directed to appear before the Commission on February 9, 2011.

Viridian filed a Preliminary Response to the Complaint on February 4, 2011. On February 9, 2011 a Show Cause Hearing was held at which Viridian’s founder and Chief Executive Officer, Michael Fallquist, appeared and testified. At the conclusion of the

²⁷ The “Marketing Don’ts” document was first provided to Viridian associates as part of the August 27, 2010 VTalk and became transmitted to associates with regular frequency following the filing of Staff’s Complaint. Joint Recommendation, Stipulation of Facts, p. 4, para. 18.

²⁸ February 9, 2011 hearing, Tr. p. 126.

Show Cause Hearing, a discovery schedule was established and the date of April 1, 2011 was agreed upon for the continued hearing in this matter.

On March 29, 2011, Staff and Viridian filed public and confidential versions of a Joint Recommendation of Staff and Viridian Energy, PA, LLC (“Joint Recommendation”) which contained a Statement of Facts, Remediation Plan, and Monthly Report Form. The Joint Recommendation proposed development of a Code of Conduct for Viridian and payment by it of \$20,000.²⁹ The continued hearing was held on April 1, 2011 and Mr. Fallquist again testified. The Commission requested additional information from Viridian and took the matter under advisement. Viridian provided the requested information on April 8, 2011. Since that time Viridian has submitted monthly reports³⁰ pursuant to a proposal in the Joint Recommendation that Viridian file reports with Staff on a monthly basis for a period of one year³¹ “as a means of monitoring Viridian’s performance and progress in the Remediation Plan.”³²

III. The Alleged Violations

Staff filed its Complaint, pursuant to COMAR 20.07.03,³³ upon discovering what it alleged to be misleading and deceptive representations by Viridian with regards to its relationship with utilities and the services it provides, as well as violations by Viridian of

²⁹ Viridian proposed it be a donation to the Fuel Fund of Maryland, while Staff proposed the payment be a civil penalty. Joint Recommendation, p. 2.

³⁰ Viridian filed its monthly report for April 2011 on May 13, 2011; its monthly report for May 2011 on June 29, 2011; its monthly report for June 2011 on August 8, 2011; its monthly report for July 2011 on October 5, 2011; its monthly report for August 2011 on October 5, 2011; its monthly report for September 2011 on October 18, 2011; its monthly report for October 2011 on December 1, 2011; its monthly report for November 2011 on January 5, 2012; its monthly report for December 2011 on January 20, 2012; its monthly report for January 2012 on March 22, 2012; its monthly report for February 2012 on March 22, 2012; and its monthly report for March 2012 on April 13, 2012.

³¹ Joint Recommendation, p.1.

³² Joint Recommendation, Remediation Plan, p. 11.

³³ COMAR 20.07.03.01 Applicability. A. This chapter applies to complaints filed under Public Utilities Article, §3-102, Annotated Code of Maryland, against public service companies subject to the jurisdiction of this Commission, which allege a violation of the Public Service Commission’s law, orders, or regulations.

the Commission's customer protection regulations. Specifically, Staff was alerted to a flyer, a newspaper advertisement, and other marketing materials that it contends falsely represented guaranteed savings and utility affiliations as well as a "no contract requirement" to customers. Such representations would be direct violations of COMAR 20.53.07.07, prohibiting "unfair, false, misleading, or deceptive" marketing, and 20.53.07.08, setting forth the minimum requirements to be included in Supplier Contracts, and therefore Staff requested that the Commission impose certain consequences upon Viridian.

A. The Flyer

In September of 2010, a Viridian associate delivered 1,188 copies of a flyer advertising Viridian's services ("the Flyer")³⁴ to the leasing agent for the Seasons apartment complex.³⁵ The Flyer was created by the associate. Though the associate did not receive Viridian's approval to use the Flyer as marketing material, she did have it distributed to the Seasons' residents during the months of September, October, and November 2010.³⁶ The initial enrollment from a Seasons resident came on October 2, 2010.³⁷ Twenty-two additional Seasons residents subsequently enrolled with Viridian.³⁸

The Flyer prominently displays large BGE and Viridian logos next to each other, under which is a graphic of hands shaking – insinuating agreement – with the caption "Partners in Power."³⁹ The phrase "Customer Choice Program for Apartment and Townhome Renters" appears near the handshake, as do the additional phrases of "Save

³⁴ Staff's Complaint, Exhibit 1.

³⁵ Viridian's April 8, 2011 response to the Commission's April 1, 2011 data requests.

³⁶ *Id.*

³⁷ *Id.*

³⁸ February 9, 2011 hearing, Tr. p. 76.

³⁹ Staff's Complaint, Exhibit 1.

16.8% on your BGE Electric Bill” and “No Contracts. No Credit Checks. No Security Deposit.”⁴⁰ Finally, a second, smaller BGE logo is displayed at the bottom of the Flyer, reading “BGE, We’re on it.”⁴¹

Viridian became aware of the Flyer in early November 2010.⁴² Viridian acknowledges that, contrary to the Flyer’s content, neither the company nor its associates are authorized to use utility names or logos in marketing materials, to imply or claim affiliation or partnership with a utility, or to guarantee savings of a certain amount over other electricity suppliers.⁴³ Viridian admits that the Flyer’s references to a BGE affiliation, a specified savings percentage, and no contract being required were misleading.⁴⁴ Viridian also pointed out, however, that the associate failed to receive approval to distribute the Flyer, that Viridian would not have approved the Flyer for distribution, that the Flyer was “uneducated,” and that the specified savings percentage was, in fact, accurate, although for just a brief period of time.⁴⁵

At Viridian’s request, on November 11, 2010 the associate retrieved and discarded approximately 50 copies that remained of the Flyer from the Seasons apartment complex.⁴⁶ When questioned by Viridian, the associate admitted that she had not read the

⁴⁰ *Id.*

⁴¹ *Id.* “We’re on it” is a trademarked slogan commonly used by BGE in its advertising and customer communications.

⁴² Joint Recommendation, Stipulation of Facts, p. 5, para. 14.

⁴³ February 9, 2011 hearing, Tr. p. 44; Joint Recommendation, Stipulation of Facts, p. 5, para. 14 and 15, p. 6, para. 16

⁴⁴ April 1, 2011 hearing, Tr. pp. 89 and 90.

⁴⁵ Joint Recommendation, Stipulation of Facts, p. 5, para. 14 and p. 6, para. 16; April 1, 2011 hearing, Tr. pp. 89 and 90; Chairman Nazarian: Do you think the first flier was unintentional? Mr. Fallquist: I apologize. It was uneducated. But the company takes responsibility for its – partners in power is clearly inaccurate. Chairman Nazarian: You don’t dispute that this is misleading? Mr. Fallquist: The partners in power I believe is misleading. The 16.8 percent when it was produced was the factual amount of savings. I believe that the associate, had they been educated, and we would have never produced that as a company, but in October it was incorrect. Chairman Nazarian: So there were times where this was misleading? Mr. Fallquist: Correct.

⁴⁶ Viridian’s April 8, 2011 response to the Commission’s April 1, 2011 data requests.

Policies or the Marketing Don'ts.⁴⁷ She was subsequently put on probation for a period of six months and required to undergo unspecified additional training, during which time she continued to receive payment from Viridian.⁴⁸

B. The Newspaper Advertisement

On October 21, 2010, the Dundalk, Maryland-based periodical *The Dundalk Eagle* published an advertisement (“the Newspaper Ad”) marketing Viridian’s services.⁴⁹ The Newspaper Ad prominently displayed the phrases “BRING YOUR BGE bill to... Drug City Pharmacy and let us show you how to save up to 20% off your electric charges” and “NO contracts,” as well as a smaller notation under the Viridian logo stating, “BGE Approved.”⁵⁰ The Newspaper Ad was created and submitted by a Viridian associate who had not sought or received Viridian’s approval to use the Newspaper Ad as marketing material.⁵¹ The Newspaper Ad is believed to have been run on one occasion in *The Dundalk Eagle*.⁵² It is unknown if any enrollments resulted from the Newspaper Ad.

Viridian became aware of the Newspaper Ad when it received and reviewed Staff’s Complaint.⁵³ Viridian acknowledges that, contrary to the Newspaper Ad’s content, neither the company nor its associates are authorized to use utility names in marketing materials, to imply or claim affiliation with a utility, or to guarantee savings of a certain amount.⁵⁴ Viridian points out, however, that the associate had not read the Policies, was not aware of the Marketing Don'ts, and did not seek Viridian’s approval to

⁴⁷ Joint Recommendation, Stipulation of Facts, p. 5, para. 14; February 9, 2011 hearing, Tr. p. 50.

⁴⁸ February 9, 2011 hearing, Tr. pp. 50 and 51; April 1, 2011 hearing, Tr. pp. 52 and 53.

⁴⁹ Staff’s Complaint, Exhibit 2.

⁵⁰ *Id.*

⁵¹ Viridian’s February 3, 2011 Preliminary Response, p. 2.

⁵² February 9, 2011 hearing, Tr. p. 51.

⁵³ Joint Recommendation, Stipulation of Facts, p. 6, para. 18.

⁵⁴ February 9, 2011 hearing, Tr. p. 44; Joint Recommendation, Stipulation of Facts, p. 5, para. 19.

distribute the Newspaper Ad.⁵⁵ The associate was subsequently put on probation for a period of six months and required to undergo unspecified additional training, during which time he continued to receive payment from Viridian.⁵⁶

C. Viridian's "No Contract" Materials

From the time Viridian began marketing its services in the BGE and Pepco territories until a few days after the filing of Staff's Complaint, Viridian *as a company* advertised its services both orally and in writing as having "no contract" required.⁵⁷ For six months, Viridian used "no contract" language when recruiting its customers, despite having Terms and Conditions that the customers were required to agree to prior to completing their enrollment.⁵⁸ Viridian agrees that, despite using the phrase "no contract" in the marketing of its services, Maryland law requires that there be a contract for such services.⁵⁹ Viridian explains that its use of the phrase "no contract" was meant only to indicate to customers that they would be free to leave Viridian at any time without being subject to a termination fee.⁶⁰ Shortly after Staff filed its Complaint, Viridian replaced the oral and written use of the "no contract" language with "cancel service at any time."⁶¹

IV. Discussion

Staff's Complaint asks the Commission to find that, through the allegations detailed above, Viridian did violate COMAR 20.53.07.07 and 20.53.07.08, and therefore requests that the Commission impose penalties upon Viridian pursuant to PUA § 7-507

⁵⁵ Joint Recommendation, Stipulation of Facts, p. 6, para. 18.

⁵⁶ February 9, 2011 hearing, Tr. p. 51.

⁵⁷ Joint Recommendation, Stipulation of Facts, p. 7, para. 22; April 1, 2011 hearing, Tr. p. 55.

⁵⁸ Joint Recommendation, Stipulation of Facts, p. 7, para. 23; April 1, 2011 hearing, Tr. p. 55.

⁵⁹ February 9, 2011 hearing, Tr. p. 13.

⁶⁰ February 9, 2011 hearing, Tr. p. 53; Viridian's February 3, 2011 Preliminary Response, p. 2.

⁶¹ Viridian's February 3, 2011 Preliminary Response, pp. 2 and 3; February 9, 2011 hearing, Tr. p. 54; Joint Recommendation, Stipulation of Facts, p. 8, para. 24.

and 13-201. Viridian does not dispute that it is responsible for any violations of the law or regulations that the Commission would find to have been committed by one of its associates.⁶²

While the majority of the oral and written testimony taken from Viridian at the April 1, 2011 hearing centered on the resources and additional measures the Company intends to utilize and develop to ensure improved compliance with Maryland laws and regulations, the record also reveals Viridian's policies and practices prior to the filing of Staff's Complaint, which were inadequate to prevent the misleading and deceptive advertisements alleged in the complaint. Indeed, by characterizing the ads and the associates distributing them as "uneducated," Viridian effectively admits that its associate training and compliance processes did not prevent associates from preparing and distributing ads that violated Viridian's own policies, not to mention our regulations. Although we acknowledge and appreciate Viridian's efforts to better its operations, we have focused here on the violations, with Viridian's after-the-fact compliance measures considered as "good faith" mitigation efforts, not as a basis on which to overlook the violations committed here.

The Commission is charged with finding whether or not Viridian violated COMAR 20.53.07.07 by engaging in false, misleading, or deceptive marketing practices through the use of the Flyer, the Newspaper Ad, and the "no contract" materials. Each of the 1,188 Flyers distributed to potential customers contained large BGE and Viridian logos next to each other, a graphic of hands shaking in agreement next to the phrase "Partners in Power," a claim of an opportunity to "Save 16.8% on your BGE Electric Bill," a claim of "No Contracts," and a smaller BGE logo displayed next to the phrase,

⁶² February 9, 2011 hearing, Tr. p. 11.

“BGE, We’re on it.” Similarly, the Newspaper Ad, which was contained in a paper distributed to thousands of subscribers, contained a claim to assist customers in saving “up to 20%” off of their electric charges as well as the phrases “NO contracts” and “BGE Approved.” Lastly, for approximately six months Viridian used “no contract” language when recruiting customers statewide, despite requiring customers to consent to its Terms and Conditions.

It was false, misleading, and deceptive for Viridian to claim that there would be no contract required for its services, in part because COMAR 20.53.07.08 requires contracts for service from electricity suppliers, but also because Viridian itself requires its customers to enter into a contract by agreeing to its Terms and Conditions prior to the start of service. It was misleading and deceptive for Viridian to utilize the BGE name and logo as doing so implies affiliation with the utility – something Viridian does not have. Likewise, the use of the phrase, “BGE Approved” was also false, misleading, and deceptive, as BGE did not approve Viridian’s services in any manner. And the claims to save certain percentages off of an electricity bill are misleading and deceptive as they represent, at best, a brief potential savings opportunity based upon constantly fluctuating rates and fees, not to mention that the claims fail to acknowledge the possibility that Viridian’s services would be more costly than the utility’s. For these stated reasons we find that Viridian did engage in false, misleading, and deceptive advertising and solicitation practices and therefore violated COMAR 20.53.07.07. Each of these separate advertisements or representations was disseminated to thousands of Maryland residents, and thus constitutes many thousands of violations.

Staff also asks the Commission to find that Viridian violated COMAR 20.53.07.08, which requires there to be a contract for the provision of electricity services and further details the minimum requirements to be contained in such contract. Regardless of Viridian's past claims that no contract was needed as addressed in detail above, it appears that Viridian did, in fact, require all customers to consent affirmatively to the company's Terms and Conditions prior to completing enrollment with the company and beginning to receive its services. Furthermore, a review of Viridian's Terms and Conditions⁶³ shows that the minimum contract requirements listed in COMAR 20.53.07.08 are satisfied. For these stated reasons we find that Viridian did require customers to enter into a contract for services and that the contract was sufficient, and therefore did not violate COMAR 20.53.07.08.

Staff's Complaint asked us to, upon finding violations by Viridian, suspend or revoke the company's license, preclude the company from soliciting additional customers, and/or impose a civil penalty upon the company pursuant to PUA § 7-507 and 13-201. Those sections authorize us to take all forms of the requested action as Viridian's deceptive practices⁶⁴ and regulatory violations⁶⁵ are considered just cause for doing so. In imposing a civil penalty upon Viridian, PUA § 7-507(1)(3) and 13-201(d) require us to consider specified criteria when determining the penalty amount, including but not limited to the gravity of the offenses, the good faith efforts to correct the offenses, and any other matter that we consider appropriate and relevant.

While Viridian acknowledged the creation and dissemination of the Flyer and Newspaper Ad by its associates, it also spent much time offering explanations and

⁶³ A copy of Viridian's Terms and Conditions was attached to the Joint Recommendation.

⁶⁴ PUA §7-507(k)(3)(iv).

⁶⁵ PUA §7-507(k)(3)(vi) and 13-201(b)(1).

defenses for such behavior. It stated that the Flyer and Newspaper Ad were created by associates that were “uneducated” and that failed to seek and receive Viridian’s approval of the materials as required. While that may be true, we note that, prior to the filing of Staff’s Complaint, Viridian had no mandatory education procedures in place – periodic emails, newsletters, and seminars were read or attended by associates on a voluntary basis. Furthermore, while Viridian’s Policies stated that associate-created sales materials were to be considered denied until they were approved,⁶⁶ the company’s own website simultaneously read, “before you send out any marketing materials that have not been purchased directly from Viridian, be sure to send it to compliance@viridian.com first to be safe.”⁶⁷ These two messages are confusing, if not conflicting, and we find that any failure of an associate to be educated on or to fully understand compliance matters would thus have been Viridian’s own doing.

Viridian also acknowledged using the claim of “no contract” in its customer recruitment practices, despite admitting that the claim was wrong.⁶⁸ The company stated countless times that it didn’t intend to convey that no contract was needed, but rather that customers could cancel their service at any time at no additional cost. We are hard-pressed to find how Viridian could justifiably have thought – for approximately six months, if not longer – that “no contract” meant anything other than “no contract.” This claim was a blatant misrepresentation not only of regulatory requirements, but also of Viridian’s policies. Regardless of its alleged intentions, Viridian was recruiting

⁶⁶ Viridian’s February 3, 2011 Preliminary Response, Exhibit 2: Viridian’s Statement of Policies & Procedures section 3.3.2.

⁶⁷ April 1, 2011 hearing, Tr. p. 70.

⁶⁸ February 9, 2011 hearing, Tr. p. 13.

customers under the pretense of them not being subjected to a contract, and then enrolling them to receive company services only after they consented to the company's contract.

Viridian could have and should have devoted appropriate resources to compliance measures. The violations noted here are egregious, yet seemingly easily preventable had the company properly educated and controlled its associates and communicated its intentions to prospective customers. It must not go unnoted that, prior to the filing of Staff's Complaint, Viridian had only one employee monitoring the marketing behavior of associates and one employee performing enrollment verifications through the placement of outbound calls,⁶⁹ and allowed associates to customize the content found on their individual pages within the company's website. As was stated at the February 9, 2011 Show Cause hearing, even the company's CEO agreed that the company needed to take a stronger approach to compliance.⁷⁰

We appreciate the compliance measures that Viridian has implemented and claims to intend to continue to implement since the filing of Staff's Complaint. In addition to replacing the "no contract" language with "cancel service at any time," the company voluntarily terminated its door-to-door marketing program,⁷¹ created "Viridian University" to ensure appropriate and ongoing training and education for its associates,⁷² ceased allowing associate-generated marketing materials,⁷³ and placed an increased focus on third-party verification measures.⁷⁴ We encourage Viridian to continue on this path of compliance. We also encourage Viridian to follow through on its stated intention to

⁶⁹ February 9, 2011 hearing, Tr. pp. 24 and 25.

⁷⁰ *Id.* at p. 23.

⁷¹ April 1, 2011 hearing, Trans. p. 24.

⁷² Joint Recommendation, Remediation Plan, p. 4.

⁷³ April 1, 2011 hearing, Tr. p. 23.

⁷⁴ *Id.* at p. 21.

support the competitive retail energy industry and to provide the public and its customers with honest, accurate information.⁷⁵

As previously stated, we have found that Viridian engaged in deceptive practices⁷⁶ and violated a Commission regulation.⁷⁷ The statutes allowing us to impose civil penalties in such circumstances expressly state that, while the penalty for each violation cannot exceed \$10,000,⁷⁸ each day that a violation occurred is to be considered a separate violation.⁷⁹ It follows that we are authorized to treat each Flyer and newspaper distributed as a separate violation for each day of distribution, as well as every misrepresentation made by Viridian as a separate violation for each of its intended recipients.

The gravity of these violations is one factor we are statutorily required to consider when imposing a civil penalty,⁸⁰ and there must be no doubt that we consider the violations at issue to be very serious. We are also required, however, to consider the number of previous violations committed by Viridian, as well as the good faith attempts by Viridian to achieve compliance after receiving notification of the violations – two factors that we find to have a somewhat mitigating effect on the penalty to be imposed, as these violations are Viridian’s “first offense” and, as previously stated, they have implemented several compliance measures since the filing of Staff’s Complaint.⁸¹ After careful consideration of all required factors, we direct Viridian to pay a civil penalty in the amount of \$60,000.00 (sixty-thousand dollars).

⁷⁵ *Id.* at p. 105.

⁷⁶ PUA §7-507(k)(3)(iv).

⁷⁷ PUA §7-507(k)(3)(vi) and 13-201(b)(1).

⁷⁸ PUA §7-507(l)(1)(i) and 13-201(b)(1).

⁷⁹ PUA §7-507(l)(2) and 13-201(c)(2) and (3).

⁸⁰ PUA §7-507(l)(3)(ii) and 13-201(d)(2).

⁸¹ Under PUA §13-201(d)(4), we are also authorized to consider “any other matter that the Commission considers appropriate and relevant.”

V. Conclusion

Based upon the foregoing reasons, we find that Viridian Energy PA, LLC violated Code of Maryland Regulation 20.53.07.07 by engaging in false, misleading, and deceptive advertising and solicitations. We further find that Viridian did not violate Code of Maryland Regulation 20.53.07.08 governing supplier contracts. As previously stated, and based upon the criteria enumerated in §§ 7-507 and 13-201 of the Public Utilities Article of the Annotated Code of Maryland, Viridian Energy PA, LLC shall pay a civil penalty in the amount of \$60,000.00 (sixty-thousand dollars).

IT IS, THEREFORE, this 7th day of June, in the year Two Thousand Twelve, by the Public Service Commission of Maryland,

ORDERED: (1) That the January 14, 2011 Complaint filed by the Commission Staff against Viridian Energy PA, LLC is hereby granted in part and denied in part as follows:

- (a) The request by Commission Staff that the Commission suspend or revoke Viridian Energy PA, LLC's license to provide electricity or electric supply services is denied;
- (b) The request by Commission Staff that the Commission preclude Viridian Energy PA, LLC from soliciting additional customers is denied;
- (c) The request by Commission Staff that the Commission impose upon Viridian Energy PA, LLC a civil penalty pursuant to §§ 7-507 and 13-

201 of the Public Utilities Article of the Annotated Code of Maryland is granted as detailed below;

(2) That Viridian Energy PA, LLC shall pay a civil penalty of \$60,000.00 (sixty-thousand dollars) based on the findings stated herein;

(3) That the Remediation Plan within the March 29, 2011 Joint Recommendation of the Staff of the Public Service Commission of Maryland and Viridian Energy PA, LLC is hereby accepted in part and denied in part as follows:

- (a) The “Development of Code of Conduct” provision found on page 5 of the Remediation Plan is hereby denied in that the Commission does not order, approve, authorize, or accept the development of a Viridian Code of Conduct by Viridian and the Commission Staff;
- (b) The “Development of guidelines for information sharing between Staff and Viridian” provision found on page 5 of the Remediation Plan is hereby denied in that the Commission does not order, approve, authorize, or accept the development of guidelines by Staff and Viridian for Staff to follow in transmitting certain information of issue or concern to Viridian;
- (c) The “Reports to Be Filed with the Commission Staff” provision found on page 11 of the

Remediation Plan is hereby accepted in that the Commission acknowledges that Viridian did voluntarily agree – without submission or direction from the Commission – to submit, and did, in fact, submit a monthly report to the Commission for a period of one year;

- (d) Any and all other proposals contained within the Remediation Plan, whether made by the Commission Staff, Viridian, or the parties jointly, shall not be deemed accepted by the Commission in any manner;

(4) That all other requests contained within the March 29, 2011 Joint Recommendation of the Staff of the Public Service Commission of Maryland and Viridian Energy PA, LLC are hereby denied; and

(5) That this proceeding is hereby closed on the Commission's docket.

/s/ Douglas R. M. Nazarian

/s/ Harold D. Williams

/s/ Lawrence Brenner

Commissioners