

February 18, 2025

Grant Young
ATTYX LLC
150 Eileen Way, Suite 5
Syosset, New York, 11791
Email: grant@attyx.com

NOTICE OF APPARENT VIOLATION

Dear Grant Young,

By this letter, Staff of the New York State Department of Public Service (DPS Staff or Staff) hereby notifies ATTYX, LLC (ATTYX or the Company) that the Company is under investigation for apparent non-compliance with various regulatory requirements under the Uniform Business Practices for Distributed Energy Resource Suppliers (UBP-DERS). As summarized below, it is Staff's opinion that ATTYX apparently violated Section 3C.C of the UBP-DERS on multiple occasions by failing to include required provisions designed to inform customers about the Company's service in its sales agreements. Further, in complaints DPS Staff received from consumers about ATTYX's conduct, consumers have reported that the Company apparently misled them into signing up for service with promises of a "no cost" roof or by indicating that government incentives would pay for service entirely.¹ Such complaints relating to improper marketing activities represent additional apparent violations of UBP-DERS Section 2B.

It is worth noting that, when ATTYX registered with the Department², the Company had the capability, and obligation, to include all applicable provisions that pertain to on-site mass market distributed generation (i.e., rooftop solar) in its sales agreements, as outlined below. However, upon execution of the agreements cited herein, the Company did not include, fill in, or otherwise remark on sections required by the UBP-DERS. By omitting this critically important, and required, information, ATTYX apparently failed to adequately inform their customers about potential issues and liabilities that might have dissuaded prospective customers from enrolling with the Company.

¹ See Consumer Complaint Case Numbers 433698/432408, 441915/452407/440118, 443943/434032, and 454957. The complaint numbers bundled together represent complaints from the same consumer.

² Staff DER Registration Review letter to ATTYX, LLC, June 25, 2024.

Thus, in reviewing complaints ATTYX's customers submitted to DPS Staff, Staff identified several apparent UBP-DERS violations in the Company's executed contracts. Upon completion of its review, DPS Staff has determined that ATTYX's executed contracts appear to violate multiple provisions of Section 3.C.C of the UBP-DERS. Specifically, based on the complaints that DPS Staff received, ATTYX's contracts apparently failed to include an itemized breakdown of system components, a loss analysis that informs the customer about the available solar resource that the system will yield (accounting for losses from normal operation), the installation location for the system, the potential value of all federal, state, local tax credits, and any other relevant incentives that would assist the customer in purchasing the generation system, as required by UBP-DERS Section 3.C.C.³

In addition, as Staff continued to investigate the customer complaints against the Company, Staff identified a noticeable trend of claims referencing misleading marketing practices, constituting an apparent violation of UBP-DERS Section 2B. In the customer complaints Staff received, it appears that ATTYX used social media advertisements that promised prospective customers a "no cost" roof for signing up with the Company and stated that government incentives would cover the total cost of purchase for the solar system.⁴ For instance, the customer in consumer complaint 440118 stated that they were pressured in a short sales pitch to enroll with the Company and informed that government incentives would pay for the entire solar system. In this case, it is apparent that ATTYX's misleading offer of a "no cost" roof was the catalyst that prompted the customer to enroll. Similarly, in consumer complaint 432408, the customer was subjected to a high-pressure sales pitch where ATTYX's marketing agent offered a "no cost" roof to entice the complainant to enroll in a costly sales agreement that was tied to an unfavorable loan agreement to fund the installation of the solar system. Consumer complaint 434032 also mirrors the scenarios outlined in the previous cases. The customer in this case saw an advertisement for a "no cost" roof on Facebook and, after responding to the advertisement, an ATTYX marketing agent contacted the customer, resulting in another high-pressure enrollment.

³ Specifically, the itemized breakdown is required by UBP-DERS Section 3C.C.1; the loss analysis is required by Section 3C.C.3; the installation location is required by Section 3.C.C.5; and the potential value of incentives is required by Section 3.C.C.7.

⁴ Consumer Complaint Case Numbers 433698/432408, 441915/452407/440118, 443943/434032, 454957. The complaint numbers bundled together represent complaints from the same consumer.

In addition to the apparent UBP-DERS violations outlined above, DPS Staff has identified another UBP-DERS violation with respect to ATTYX's conduct when communicating with the Department. UBP-DERS Section 2.C.B.3 states that "[v]erification records shall be provided by a DER supplier, upon request of the Department, within five calendar days after a request is made." On December 6, 2024, Staff requested that ATTYX provide the contracting and enrollment documentation, as well as the customer-specific communications, associated with consumer complaint number 454957, that articulated concerns similar to the other, above-referenced consumer complaints. Pursuant to the UBP-DERS, ATTYX was required to provide the requested documentation by December 11, 2024. The Company has yet to provide that required information. Further, when Staff contacted ATTYX on December 10, 2024 for an update on when it would submit the materials for review, the Company stated that it had all of the requested materials readily available, but was not willing to provide them to Staff until the Company was granted an opportunity to have a conference call with Staff to discuss the Company's ongoing issues. DPS Staff compromised on this request by informing the Company that a conference call would be arranged after the Company provided the requested materials for review.⁵ As of the date of this letter, ATTYX has not provided Staff with the requested materials.

Finally, DPS Staff notes that ATTYX LLC (f/k/a SUNco Capital LLC) filed an appeal of an informal decision rendered in favor of a complainant that had filed a complaint with the Department about ATTYX's alleged conduct as a DER provider.⁶ ATTYX's appeal of the informal decision was subsequently brought before the Commission. The Commission's determination regarding ATTYX's appeal, filed on October 17, 2024, brought several concerning facts to light, indicating that further investigation into the Company's business practices is warranted. Notably, in that October 17, 2024 determination, the Commission affirmed the informal hearing officer's (IHO) decision that found the Company's contract with the complainant did not comply with the UBP-DERS. Further, the Commission affirmed that the Company's contract at issue was non-compliant for the very same reasons Staff identified above. Specifically, as detailed in the Commission's determination, it is undisputed that the contract at issue failed to include an itemized breakdown of system components, a description of the solar system that details the make and model of major

⁵ Staff correspondence to ATTYX, December 10, 2024.

⁶ Case 24-M-0320, In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR in Relation to Complaint Procedures - Appeal by SUNco Solar LLC of the Informal Decision Rendered in Favor of Brian Williams. (264891), Filing No. 2 (submitted May 23, 2024).

components, the installation location, an estimate of the annual energy output (including a loss analysis)⁷, and the potential value of all tax credits and utility credits the customer may receive for the solar system.⁸

ATTYX's apparent violations involving misleading and/or deceptive marketing conduct outlined above are also at issue in the Company's appeal of the informal hearing decision. In the appeal, the Commission held that the ATTYX's use of an affiliate company (New York Roofing), which oversaw the advertising for the "no cost" roof, was false and misleading, and thus a violation of UBP-DERS. Additionally, the Commission upheld the determination by the IHO that the "no cost" roof marketing on Facebook by ATTYX's affiliate, New York Roofing, which caused the complainant to engage with ATTYX, was consumer oriented. The complainant clicked the social media advertisement to obtain a free roof and, after filling in their personal information, was contacted by a ATTYX representative. ATTYX's and New York Roofing's marketing of the "no cost" roof caused the complainant to enter into a contract with the Company and a financing agreement for over \$70,000 for the solar system. The Commission maintains that ATTYX's and New York Roofing's "no cost" roof marketing tactic that was used to funnel business to ATTYX, enabling the company to merge and aggregate the cost of the roof and solar system, is misleading and deceptive and therefore a violation of the UBP-DERS.⁹

In sum, by March 4th, 2025, ATTYX shall provide the following to the Secretary to the Public Service Commission through our Document and Matter Management (DMM) system for DMM Matter Number 24-02573:

1. Provide a list of the company's enrollments with consumers in New York State from January 1, 2024 through December 31, 2024. The list should include the customer's name, address, phone number, email address, enrollment method, name and affiliation of the marketing representative, and the date of enrollment.
2. Provide each contract and enrollment package that directly corresponds to each consumer in the Company's enrollment list.

⁷ In the case of a solar system, a loss analysis pertains to the percentage of the available solar resource that the solar electric system will receive, accounting for losses from shading, array azimuth, and tilt.

⁸ Case 24-M-0320, In the Matter of the Rules and Regulations of the Public Service Commission, contained in 16 NYCRR in Relation to Complaint Procedures - Appeal by SUNco Solar LLC of the Informal Decision Rendered in Favor of Brian Williams (264891), Commission Determination (issued October 17, 2024), p. 25.

⁹ Case 24-M-0320, In the Matter of the Rules and Regulations of the Public Service Commission, contained in 16 NYCRR in Relation to Complaint Procedures - Appeal by SUNco Solar LLC of the Informal Decision Rendered in Favor of Brian Williams (264891), Commission Determination (issued October 17, 2024), pgs. 26-27.

3. Provide all advertisements the Company and its affiliates have utilized from social media, email, direct mailings, or from any other medium.
4. Provide confirmation and attestation in response to this NOAV that the Company acknowledges it is forbidden from engaging in marketing activities and enrolling new customers until the Company has sufficiently responded to the issues outlined in this notice.
5. Provide ATTYX's policies, processes, and contractual arrangements with all lending entities the Company uses so Staff can review how the Company refers customers to each lending entity.

All responses to the letter should be submitted in DMM Matter Number 24-02573 within 10 business days. If you have specific questions, please contact John Sheevers at john.sheevers@dps.ny.gov and Alison Wrynn at alison.wrynn@dps.ny.gov for assistance. DPS Staff requests that you acknowledge receipt of this notice within five business days by contacting the individuals listed above.

Regards,



Richard Berkley
Consumer Advocate and Director
Office of Consumer Services

cc: Alison Wrynn, Managing Attorney, OIE