

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Investigation into Verde Energy USA Ohio,)	Case No. 19-0958-GE-COI
LLC's Compliance with the Ohio)	
Administrative Code and Potential Remedial)	
Actions for Non-Compliance.)	

**MOTION TO STRIKE VERDE ENERGY'S UNAUTHORIZED REPLY TO OCC'S
MEMORANDUM CONTRA
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

On December 23, 2019, Verde Energy USA Ohio, LLC ("Verde") filed a Reply Memorandum ("Reply") that is not authorized by a PUCO ruling. Verde filed the Reply to continue its claim for secrecy (in support of its Motion for Protective Order) that would deny public access to information about its bad business practices. As explained in the attached Memorandum, Verde is violating a PUCO ruling (May 6th Entry) that limited filings in this case. Verde's Reply should be stricken.

Respectfully submitted,

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Consumers' Counsel

/s/ Angela D. O'Brien

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**MEMORANDUM IN SUPPORT
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

Verde filed a Motion for Protective Order (“Motion”) to conceal from the public information regarding the rates it charges to Ohio consumers and the number of customers it serves through the non-competitive Dominion East Ohio monthly variable rate program.¹ On December 16, 2019, OCC filed its Memorandum Contra to Verde’s Motion. OCC explained in its Memorandum Contra that the information, which was contained under seal in OCC witness James Williams’ direct testimony, is not a trade secret and should be disclosed to inform and educate the Ohio consumers that Verde exploits.

On December 23, 2019, Verde filed a Reply to OCC’s Memorandum Contra that largely repeats the arguments in Verde’s Motion and criticizes OCC for shining a bright light on Verde’s unscrupulous and abusive consumer marketing practices. Verde’s Reply directly violates the Attorney Examiner’s Entry in this case, which expedites the pleading cycle *and prohibits replies*

¹ This information, hereinafter referred to as the “concealed information,” is fully described in OCC’s Memorandum Contra Verde’s Motion for Protective Order that OCC filed in this case on December 16, 2019.

to any memorandum contra.² Accordingly, the PUCO should strike Verde's unauthorized Reply. And the PUCO should deny Verde's Motion.

II. ARGUMENT

Verde's Reply is improper and should be stricken because it violates the Attorney Examiner's directive that no replies may be filed in this case. The PUCO ruled, by its May 6th Entry, that:

Finally, in light of the time frame for this proceeding, the attorney examiner requires that, in the event that *any motion is made in this proceeding*, any memorandum contra shall be filed within five business days after the service of such motion, *and a reply memorandum to any memorandum contra will not be accepted.*³

In accordance with the May 6th Entry OCC timely filed its Memorandum Contra Verde's Motion on December 16, 2019, five business days after Verde filed its December 9, 2019 Motion. That should have been the final word until a ruling on the matter.

But instead, right before the holidays, Verde filed its impermissible Reply. Verde states that its Reply is filed "[i]n accordance with O.A.C. 4901-1-12(A)(2)."⁴ But Verde's reply violates the Attorney Examiner's ruling that modified the PUCO's rule.

To begin, there is no "Ohio Adm. Code 4901-1-12(A)(2)" as cited by Verde. There is a rule, Ohio Adm. Code 4901-1-12(B)(2), allowing that "Any party may file a reply memorandum within seven days after the service of a memorandum contra, *or such other period as the commission, the legal director, the deputy legal director, or the attorney examiner requires.*" (emphasis added). But, as provided in the rule, the Attorney Examiner may modify the rule. In

² May 6, 2019 Entry at ¶ 9 ("May 6th Entry").

³ May 6th Entry, at ¶ 9 (emphasis added).

⁴ Verde Reply, at 1.

fact, the Attorney Examiner did modify the rule. Therefore, Verde's Reply was impermissible and should be stricken.

III. CONCLUSION

Verde's current predicament with government and Ohio consumers involves its brazen disregard for PUCO rules and Ohio law. It's thus not surprising that Verde would violate the Attorney Examiner's May 6th Entry on impermissible filings. The PUCO should strike Verde's Reply. In any event, there is nothing in Verde's unauthorized Reply that would warrant concealing from the public the information about Verde's bad business practices. The public has a right to know this information about Verde's harmful practices.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Strike Verde Energy's Unauthorized Reply to OCC's Memorandum Contra was served via electronic transmission upon the parties this 27th day of December 2019.

/s/ Angela D. O'Brien
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Summary: Motion Motion to Strike Verde Energy's Unauthorized Reply to OCC's Memorandum Contra by the Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of O'Brien, Angela D