

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Renewal Application)	
of Verde Energy USA Ohio, LLC for)	Case No. 13-2164-GA-CRS
Certification as a Retail Natural Gas)	
Marketer.)	

**MOTION TO REQUIRE VERDE ENERGY TO PROVIDE NOTIFICATION OF A
MATERIAL CHANGE IN INFORMATION FOR ITS RENEWAL APPLICATION
OR, IN THE ALTERNATIVE,
MOTION FOR ADMINISTRATIVE NOTICE OF AN INVESTIGATION INITIATED
BY THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

OCC moves to require Verde Energy – a rip-off artist that preyed on the good people of Ohio in its marketing of natural gas – to formally notify the PUCO about a January 30th complaint filed against its Pennsylvania affiliate by a Bureau of the PUCO’s counterpart, the Pennsylvania Public Utility Commission:

In addition to this monetary civil penalty, as a result of the egregious behavior described herein and in the best interest of the consumers of this Commonwealth, I&E seeks the revocation of Verde’s license to provide electric generation services in Pennsylvania....¹

Additionally, this new Pennsylvania complaint seeks over \$8.8 million in civil penalties against Verde’s affiliate, Verde Energy USA, Inc. Alternatively, OCC moves for administrative notice of the Pennsylvania commission complaint.

¹ *Pennsylvania Public Utility Comm’n, Bureau of Investigation and Enforcement v. Verde Energy USA, Inc.*, Pennsylvania Public Utility Comm’n Docket No. C-2020-, Formal Complaint (January 30, 2020) at ¶64. (*See* Attachment)

Granting these motions by the Office of the Ohio Consumers' Counsel ("OCC") would be in accordance with Ohio Adm. Code 4901:1-27-11, regarding notification of a material change to the information in Verde's Renewal Application to market natural gas to Ohioans. There is good cause to grant OCC's motions because information regarding the Pennsylvania complaint is directly relevant to whether Verde is capable (it's not) of continuing to provide gas service to Ohioans and whether Verde is able to comply with PUCO rules and orders.

The reasons the PUCO should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

Bruce Weston (0016973)
Consumers' Counsel

/s/ Angela D. O'Brien
Angela D. O'Brien (0097579)
Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-3485
Telephone [O'Brien]: (614) 466-9531
angela.obrien@occ.ohio.gov
(willing to accept service by e-mail)

Kimberly W. Bojko (0069402)
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4100
bojko@carpenterlipps.com
(willing to accept service by e-mail)

*Special Counsel for the
Office of the Ohio Consumers' Counsel*

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Renewal Application of)
Verde Energy USA Ohio, LLC for) Case No. 13-2164-GA-CRS
Certification as a Retail Natural Gas)
Marketer.)

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

I. INTRODUCTION

This case is about whether Verde has the “managerial, technical, and financial capability” to continue to provide gas service to Ohio utility consumers – and whether Verde should be allowed to expand service to Dayton-area consumers.² It doesn’t, and it shouldn’t. And it is about whether Verde is able to comply with the PUCO’s rules and orders.³ Information suggests not. The PUCO Staff recently stated in another case: “Verde does not currently possess the fitness or managerial capability to provide competitive services in the state of Ohio.”⁴ OCC agrees.

On January 30, 2020, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission filed a complaint against Verde’s affiliate alleging *thousands* of consumer protection violations, seeking over \$8.8 million in civil penalties and requesting the revocation of Verde’s license to serve Pennsylvania consumers.⁵ Violations alleged against Verde’s affiliate in Pennsylvania include, but are not limited to:

² R.C. 4929.20(A).

³ Ohio Adm. Code 4901:1-27-05(A).

⁴ *In the Matter of the Commission’s Investigation into Verde Energy USA Ohio, LLC’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-0958-GE-COI, Staff Report (May 29, 2019) at 27.

⁵ See attached Pennsylvania complaint.

- Enrolling dead customers;
- Spoofing Caller ID information to mislead customers into believing telemarketing calls were coming from local utilities;
- Slamming customers by switching customers' service suppliers without authorization;
- Threatening to disconnect customers' service;
- Suggesting that customers were required to choose Verde for service;
- Claiming that customers' energy suppliers are going out of business; and
- Falsely claiming to be a representative of the local utility.⁶

This information is highly relevant to Verde's Renewal Application in this case. It provides more evidence of systemic issues within the Verde system that make Verde not fit or capable of providing service to Ohioans. The PUCO should consider the Pennsylvania complaint in deciding whether to renew Verde's certificate to serve Ohio consumers. Verde's certificate should not be renewed, much less expanded to Dayton-area consumers.

II. ARGUMENT

A. Verde should be required to file with the PUCO a notification of material change regarding the Pennsylvania complaint.

The PUCO's rules require Verde to disclose in the Renewal Application liabilities and investigations against its affiliates.⁷ Ohio Adm. Code 4901:1-27-11(A) further provides that Verde "shall file with the [PUCO] notification of any material change to the information supplied" in the Renewal Application within 30 days. Although regulatory investigations

⁶ *Id.*

⁷ *See* Ohio Adm. Code 4901:1-27-05(A), 4901:1-27-05(B)(1)(f).

initiated after the filing of a certification renewal application are not specifically identified as material changes in information under Ohio Adm. Code 4901:1-27-11(B), the rule expressly states that material changes “include, *but are not limited to*” the items listed in Ohio Adm. Code 4901:1-27-11(B)(1-9).

The Pennsylvania complaint, which involves thousands of alleged egregious consumer protection violations, is a material change in the information provided by Verde in the Renewal Application and is directly relevant to whether Verde has the managerial and financial ability to serve Ohio consumers. The Pennsylvania complaint is more evidence that the issues raised by the PUCO Staff reflect a pattern of misdeeds by Verde management. This information is important for the PUCO to consider when it is ruling upon whether Verde is fit or capable of providing service to Ohioans or complying with Ohio rules and regulations that protect customers from deceptive sales practices. Verde should be required to file a notification with the PUCO of the new Pennsylvania complaint so that the PUCO can consider this information in ruling in this case.

B. If the PUCO does not require Verde to file a notification of material change, the PUCO should take administrative notice of the Pennsylvania complaint.

In the alternative, the PUCO should take administrative notice of the Pennsylvania complaint. (See Attachment) The PUCO has broad discretion to conduct its own hearings.⁸ The PUCO is not stringently confined to the rules of evidence,⁹ but is directed by statute to observe the practice and rules of evidence in civil proceedings.¹⁰

⁸ See, e.g., R.C. 4903.02, 4903.03, 4903.04; Ohio Adm. Code 4901-1-27.

⁹ See *Greater Cleveland Welfare Rights v. Pub. Util. Comm.* (1982), 2 Ohio St.3d 62.

¹⁰ R.C. 4903.22.

Under Rule 201 of the Ohio Rules of Evidence, judicial notice may be taken of any adjudicative fact that is not subject to reasonable dispute. This rule permits courts to fill gaps in the record. Accordingly, courts have judicially noted documents filed, testimony given, and orders or findings. Under subsection (F) of Rule 201, “Judicial notice may be taken at any stage of the proceeding.”

The Supreme Court of Ohio has held that while there is no absolute right for the taking of administrative notice, there is no prohibition against the PUCO taking administrative notice of facts outside the record in a case.¹¹ The important factors for applying administrative notice, according to the Court, are that the complaining party has prior knowledge of and an opportunity to rebut the materials judicially noticed.¹² The appropriate scope of notice is broader in administrative proceedings than in trials.¹³

The PUCO itself has recognized that it may take administrative notice of adjudicative facts,¹⁴ cases,¹⁵ entries,¹⁶ expert opinion testimony, and briefs and other pleadings filed in

¹¹ See *Canton Storage and Transfer Co. v. Pub. Util. Comm.* (1995), 72 Ohio St.3d 1, 8 (citing to *Allen, D.B.A. J & M Trucking, et al., v. Pub. Util. Comm.* (1988), 40 Ohio St.3d 184, 185).

¹² See, e.g., *Allen*, 40 Ohio St.3d at 186.

¹³ See *Banks v. Schweiker*, 654 F.2d 637, 641 (9th Cir. 1981).

¹⁴ *In the Matter of the Review of the Interim Emergency and Temporary PIP Plan Riders Contained in the Approved Rate Schedules of Electric and Gas Companies*, Case No. 83-303-GE-COI, Entry (February 22, 1989) at ¶6 (administrative notice taken of facts adduced at hearing in another investigation, information compiled by Staff from the 1980 Census Report, and customer information reported pursuant to the Ohio Administrative Code).

¹⁵ *In the Matter of the Amendment of Chapter 4901:1-13, Ohio Administrative Code, to Establish Minimum Gas Service Standards*, Case No. 05-602-GA-ORD, Entry on Rehearing (May 16, 2006) at ¶25 (administrative notice taken of case filed where utility presented problems with remote technology, and sought to discontinue new installation of remote meters).

¹⁶ *In the Matter of the Application of Ohio Edison Company for Authority to Change Certain of Its Filed Schedules Fixing Rates and Charges for Electric Service*, Case No. 89-1001-EL-AIR, Opinion and Order (August 16, 1990) at p. 110 (administrative notice taken by the Attorney Examiner of entries and orders issued in an audit proceeding and an agreement filed in the audit docket).

separate proceedings.¹⁷ The PUCO has also taken administrative notice of the entire record¹⁸ and evidence presented in separate cases.¹⁹ In addition, the PUCO has taken administrative notice of statutes and decisions in jurisdictions outside Ohio.²⁰

In this case, the PUCO should take administrative notice of the Pennsylvania complaint, which involves issues directly relevant to Verde's Renewal Application in this case. The Pennsylvania complaint was filed after Verde filed its Renewal Application.

The taking of administrative notice of the Pennsylvania complaint would not prejudice Verde. Verde should be well aware of the complaints against it and its affiliates. The record in this case should reflect that the PUCO is aware of the Pennsylvania complaint as it considers Verde's pending Renewal Application. Verde will have an opportunity to respond to the Pennsylvania complaint in this case and will be able to state its case regarding administrative notice in this case.

¹⁷ See *In the Matter of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at p. 37 (finding that the Court has placed no restrictions on taking administrative notice of expert opinion testimony, and that it declined to impose such restrictions); *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Entry (April 6, 2010) at ¶6, *aff'd* by Entry on Rehearing (May 13, 2010) at ¶14 (both Entries allowing the entire record of a prior proceeding to be administratively noticed in the ESP proceeding and ruling that all briefs and pleadings "may be used for any appropriate purposes").

¹⁸ Case No. 10-388-EL-SSO, Entry (April 6, 2010) at ¶6, *aff'd* by Entry on Rehearing (May 13, 2010) at ¶14.

¹⁹ *Id.*; *In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in Electric Rates in its Service Area*, Case No. 91-410-EL-AIR, Opinion and Order (May 12, 1992) at pp. 18-19 (administrative notice taken of the record in the Zimmer restatement case and evidence presented in the case).

²⁰ See e.g. *In the Matter of the Application of The Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation, In the Matter of the Complaint of the Office of the Consumers' Counsel v. The Ohio Bell Telephone Company*, Case Nos. 93-487-TP-ALT, 93-576-TP-CSS, Opinion and Order (November 23, 1994), at pp. 105-06.

III. CONCLUSION

The new Pennsylvania complaint is additional information that Verde is not fit or capable of providing service to Ohio natural gas customers – and its Renewal Application should be denied. In accordance with the PUCO’s rules, Verde should be required to notify the PUCO of this material change in the information that it originally provided in its Renewal Application. Alternatively, the PUCO should take administrative notice of the Pennsylvania complaint.

Respectfully submitted,

Bruce Weston (0016973)
Consumers’ Counsel

/s/ Angela D. O’Brien
Angela D. O’Brien (0097579)
Counsel of Record
Assistant Consumers’ Counsel

Office of the Ohio Consumers’ Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-3485
Telephone [O’Brien]: (614) 466-9531
angela.obrien@occ.ohio.gov
(willing to accept service by e-mail)

Kimberly W. Bojko (0069402)
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4100
bojko@carpenterlipps.com
(willing to accept service by e-mail)

*Special Counsel for the
Office of the Ohio Consumers’ Counsel*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Require Verde Energy to Provide Notification of a Material Change in Information for Its Renewal Application or, in the Alternative, Motion for Administrative Notice of an Investigation Initiated by the Pennsylvania Public Utility Commission was served via electronic transmission upon the parties this 5th day of February 2020.

/s/ Angela D. O'Brien
Angela D. O'Brien
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

SERVICE LIST

John.jones@ohioattorneygeneral.gov

Attorney Examiner:

Dan.fullin@puco.ohio.gov

kwhite@sparkenergy.com
mleclerc@sparkenergy.com
dproano@bakerlaw.com
kkash@bakerlaw.com
dlemon@bakerlaw.com
tathompson@bakerlaw.com
bclay@sparkenergy.com
mlundstrom@sparkenergy.com



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

January 30, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Verde Energy USA, Inc.
Docket No. C-2020-
Formal Complaint (Non-Proprietary Version)

Dear Secretary Chiavetta:

Enclosed for electronic filing is the **Formal Complaint (Non-Proprietary Version)** of the Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission in the above-referenced matter. The exhibits have been omitted from this filing since they contain proprietary information.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please do not hesitate to contact me.

Sincerely,

Kayla L. Rost
Prosecutor
Bureau of Investigation & Enforcement
PA Attorney ID No. 322768
(717) 787-1888
karost@pa.gov

KLR/jfm
Enclosure

cc: Per Certificate of Service
Daniel Mumford, Office of Competitive Market Oversight
Michael J. Shafer, Esq., PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2020-
	:	
Verde Energy USA, Inc.	:	
Respondent	:	

FORMAL COMPLAINT

Non-Proprietary Version

Notice

A. You must file an Answer within 20 days of the date of service of this Complaint.

The date of service is the mailing date as indicated at the top of the Secretarial Letter. *See* 52 Pa. Code § 1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. You may file your Answer by mailing an original to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Or, you may eFile your Answer using the Commission's website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage. If your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary's Bureau.

Additionally, please serve a copy on:

Kayla L. Rost, Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
karost@pa.gov

- B. If you fail to Answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the request relief.
- C. You may elect not to contest this Complaint by paying the civil penalty within 20 days. Send only a certified check or money order made payable to the "Commonwealth of Pennsylvania," with the docket number indicated, and mailed to:
- Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
- D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request that Commission to issue an Order imposing the requested relief set forth in this Complaint.
- E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint and may impose additional and/or alternative penalties as appropriate.
- F. If you are a corporation, you must be represented by legal counsel. *See* 52 Pa. Code § 1.21.
- G. Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at 717-787-8714.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2020-
	:	
Verde Energy USA, Inc.	:	
Respondent	:	

FORMAL COMPLAINT

(Non-Proprietary Version)

NOW COMES the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorneys, pursuant to Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, and files this Formal Complaint against Verde Energy USA, Inc. (“Verde” or “Company” or “Respondent”), alleging violations of the Public Utility Code and/or Pennsylvania Code. In support of its Formal Complaint, I&E respectfully represents the following:

I. Commission Jurisdiction and Authority

1. The Pennsylvania Public Utility Commission (“Commission”), with a mailing address of the Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.*
2. The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement

responsibilities. *Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11). Complainant's attorneys are as follows:

Kayla L. Rost
Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-1888
karost@pa.gov

Matthew C. Fallings
Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 783-6150
mfallings@pa.gov

3. Respondent is Verde Energy USA, Inc. which maintains a business address of 12140 Wickchester Lane, Suite 100, Houston, TX 77079.
4. Verde is a jurisdictional electric generation supplier ("EGS")¹ licensed by the Commission at Docket No. A-2010-2151038 to operate in the Pennsylvania electric distribution company ("EDC") service territories of Allegheny Power ("West Penn Power Company"), Duquesne Light

¹ "Electric generation supplier" is defined in Section 2803 of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812 ("Competition Act"); *see also*, 52 Pa. Code § 57.171.

Company (“Duquesne Light”), Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, PECO Energy Company (“PECO”), PPL Electric Utilities, Inc. (“PPL”), and UGI Utilities, Inc.

5. Verde, as an EGS in Pennsylvania, is a public utility as defined by Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, only for the limited purposes as described in Sections 2809 and 2810 of the Competition Act, 66 Pa.C.S. §§ 2809-2810.
6. Verde, as a provider of electric generation service for compensation, is subject to the power and authority of the Commission and must observe, obey, and comply with the Commission’s regulations and orders pursuant to Section 501(c) of the Public Utility Code, 66 Pa.C.S. § 501(c).
7. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of Verde in its capacity as an EGS serving consumers in Pennsylvania.
8. Section 501(a) of the Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.
9. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission’s authority for violations of the Code or Commission regulations or both. Section 3301 further allows for

the imposition of a separate fine of up to \$1,000.00 for each violation and for each day's continuance of such violation(s).

10. Section 54.42 of the Commission's regulations, 52 Pa. Code § 54.42(a)(7)-(9), authorizes the Commission to impose fines and/or suspend or revoke an EGS's license for violation of applicable provisions of the code, violation of Pennsylvania consumer protection law, and/or the transfer of a customer without the customer's consent.
11. Section 111.3 of the Commission's regulations, 52 Pa. Code § 111.3, provides that an EGS is responsible for fraudulent, deceptive, or other unlawful marketing acts performed by its agent.

II. Background

12. From February 2017 to present, Verde, and/or a third-party marketing agent acting on Verde's behalf, has conducted deceptive and misleading sales tactics, enrolled customers without authorization (i.e., slamming) and accessed customer accounts without authorization while participating in Pennsylvania's competitive supplier retail market.
13. On or about June 12, 2019, the Commission's Office of Competitive Market Oversight ("OCMO") held its routine monthly phone call with PPL. PPL alerted OCMO to its concerns of Verde's deceptive marketing practices and unauthorized account access and enrollment within PPL's service territory.

14. Of grave concern, PPL alerted OCMO to Verde's potential use of the Eligible Customer List to employ deceptive practices and access approximately 4,000 customer accounts on PPL's website without the customer's knowledge or authorization.
15. Pursuant to Sections 802 and 1307 of the Commission's Procedures Manual, OCMO brought PPL's concerns to I&E's attention for review and investigation.
16. I&E initiated an informal investigation of Verde on September 9, 2019, as a result of information provided by OCMO relating to allegations of deceptive and misleading telemarketing practices, deceptive and misleading door-to-door sales, unauthorized account access, and unauthorized enrollment.
17. As part of the investigation, I&E served two (2) sets of I&E data requests to Verde on September 9, 2019 and December 4, 2019, respectively.
18. Additionally, I&E served a data request letter to PPL on September 18, 2019.
19. After reviewing both data requests responses, I&E determined that the issues identified in PPL's responses were much broader and encompassed more customers than the responses provided by Verde.
20. Notably, in its response, PPL identified and provided 339 customer accounts that revealed deceptive or unauthorized behavior by Verde.

21. Of the 339 customer accounts affected/impacted by Verde's deceptive conduct, forty-one (41) identified as senior citizens, three (3) of the customers were deceased, twelve (12) of customers identified as infirmed/disabled or unwell, and at least twelve (12) of the customers alleged that Verde refused to cancel enrollments once the customer complained or brought the deceptive acts to its attention.²
22. The allegations set forth below are the result of I&E's investigation.

III. Misleading and Deceptive Telemarketing Conduct

23. The foregoing paragraphs are incorporated herein.
24. Of the referenced 339 consumer complaints against Verde received by PPL, 288 or 85% of the complaints alleged that Verde conducted misleading and deceptive telemarketing conduct.
25. The 288 telemarketing complaints alleged an average of five (5) regulations and/or code sections violated per customer account.
26. The misleading and deceptive telemarketing conduct includes but is not limited to:
- a) The Verde agent or agents failed to identify themselves, identify the supplier he or she represents, and failed to provide the reason for the phone call upon first contact.
 - b) The Verde agent or agents misrepresented themselves as PPL or other electric generation suppliers.

² I&E notes that not every customer provided identifying information as to age, social status, or capability in their complaint.

- c) The Verde agent or agents misrepresented a relationship with PPL or other electric generation suppliers that does not exist, such as:
 - i) Representing that Verde is affiliated or a part of PPL; or
 - ii) Representing that Verde is affiliated with or a part of other, unrelated electric generation suppliers.
- d) The Verde agent or agents provided false or misleading information as to the status of the customer's current electric generation supplier, such as:
 - i) Representing that the customer's current electric generation supplier was going out of business, bankrupt, or not providing services in Pennsylvania; or
 - ii) Representing that the customer's current electric generation supplier was bought out or merged with Verde.
- e) The Verde agent or agents provided false and misleading information as to the customer's current status with other electric generation suppliers by providing incorrect contract or rate information, misrepresenting that the customer's current electric generation supplier was overcharging the customer, or stating that a cancellation fee is illegal.
- f) The Verde agent or agents provided false and misleading representations of rates.

- g) The Verde agent or agents provided false and misleading representations of savings.
- h) The Verde agent or agents provided false and misleading representations of the charges incurred by the customer. The misrepresentations included stating that Verde's rate contained all charges including the distribution charge or stating that some of the charges, such as the distribution or customer charge, are illegal.
- i) The Verde agent or agents threatened to disconnect the customer's services.
- j) The Verde agent or agents spoofed PPL's or other local phone numbers.
- k) The Verde agent or agents made misrepresentations suggesting that the customer is required to switch or choose Verde.
- l) The Verde agent or agents misrepresented that Verde is a discount program.

IV. Misleading and Deceptive Door-to-Door Sales Conduct

- 27. The foregoing paragraphs are incorporated herein.
- 28. Verde did not provide notice to the local distribution company with general, non-proprietary information about door-to-door sales and marketing activity pursuant to 52 Pa. Code § 111.14(b). Specifically, Verde failed to provide notice to PPL for the periods of June 1, 2019 through June 30,

2019; July 1, 2019 through July 31, 2019; and August 1, 2019 through August 31, 2019.

29. Of the referenced 339 consumer complaints against Verde received by PPL, 39 of the complaints indicated that Verde conducted misleading and deceptive door-to-door sales conduct.
30. The 39 door-to-door complaints alleged an average of six (6) regulations and/or code sections violated per customer account.
31. The misleading and deceptive door-to-door sales conduct includes but is not limited to:
 - a) The Verde agent or agents did not identify themselves nor their representation of Verde upon first contact.
 - b) The Verde agent or agents misrepresented themselves as PPL representatives, employees, personnel, or as being from PPL. Some customers alleged that the Verde agent wore clothing with the PPL logo or provided documentation with the PPL logo.
 - c) The Verde agent or agents suggested a relationship with PPL that does not exist, such as misrepresenting that Verde is affiliated or a part of PPL.
 - d) The Verde agent or agents provided false or misleading information as to the status of the customer's current electric generation supplier, stating that Verde acquired or merged with the electric supplier.

- e) The Verde agent or agents made misrepresentations suggesting that the customer is required to switch or choose Verde.
- f) The Verde agent or agents provided false and misleading representations of rates.
- g) The Verde agent or agents provided false and misleading representations of savings and/or rebates.
- h) The Verde agent or agents refused to leave the customer's premises after the customer expressed no interest in the service.
- i) The Verde agent or agents failed to terminate contact with a potential customer after being informed of a language barrier and the customer's inability to understand and respond to the information.
- j) The Verde agent or agents used deceptive tactics to contact and solicit the customer. Examples include representing that the agent was sent or contracted by PPL to check the meters or was checking the customer's rate/bill to ensure the customer was not being overcharged.

V. Slamming/Unauthorized Switch

- 32. The foregoing paragraphs are incorporated herein.
- 33. Of the referenced 339 consumer complaints against Verde received by PPL, 179 or 52% of the complaints indicated that Verde processed and

completed an unauthorized switch by slamming or upon false information.³

34. Eighty-three (83) of the complaints received by PPL relate to allegations of an unauthorized switch or slamming.

35. Ninety-six (96) of the complaints relate to allegations that the deceptive conduct and representation of the Verde agent resulted in the unauthorized switch or switch based upon false information.

36. Of grave concern, three (3) of the unauthorized switches involved Verde enrolling a customer who was deceased.

VI. Releasing Private Customer Information/Unauthorized Account Access

37. The foregoing paragraphs are incorporated herein.

38. Of the referenced 339 consumer complaints against Verde received by PPL, 29 of the complaints indicated that Verde released private customer information to a third party.

39. Of the referenced 339 consumer complaints against Verde received by PPL, 16 of the complaints indicated that Verde used private customer information to falsely report a power outage or falsely submit a disconnection of service request.

40. In addition to complaints received by customers, PPL identified 3,922 incidents where a Verde agent either attempted to or successfully accessed online customer accounts without the customer's consent or authorization.

³ It should be noted that while 177 customer accounts are identified in Propriety Exhibit A, two (2) accounts alleged that Verde completed an unauthorized switched on two (2) separate occasions, thus resulting in 179 total complaints.

VII. Failure to Maintain Verification Records

41. On December 4, 2019, I&E issued a letter advising Verde of the investigation and requesting information, hereinafter label “I&E’s Data Requests-Set II letter.”
42. In I&E’s Data Requests-Set II- Questions 12 and 13, I&E requested the record of verification for a list of customer accounts who were enrolled with Verde.
43. In its response, Verde admitted it could not produce the record of verification for five (5) customer accounts.

VIII. Violations

44. I&E identified 179 incidents where customers alleged slamming or an unauthorized switch in violation of 52 Pa. Code § 54.42(a)(9), 52 Pa Code §§ 57.171-57.180, and 52 Pa. Code § 111.7. See Proprietary Exhibit A for the affected customer accounts. The Commission has a zero-tolerance policy for slamming. *See, e.g., Pa. PUC v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric, et al.*, Docket No. M-2013-2325122 (Order entered October 2, 2014); *Pa. PUC v. MXenergy Electric Inc.*, Docket No. M-2012-2201861 (Order entered December 5, 2013); *Pa. PUC v. AP Gas & Electric (PA), LLC, d/b/a APG&E*, Docket No. M-2013-2311811 (Order entered October 17, 2013); and *Pa. PUC v. IDT Energy, Inc.*, Docket No. M-2013-2314312 (Order entered October 17, 2013). I&E

proposes a civil penalty of \$1,000.00 per incident, resulting in a civil penalty of \$179,000.00.

45. I&E identified 35 incidents where Verde representatives released private customer information to a third party in violation of 52 Pa. Code § 54.8(a). See Proprietary Exhibit B for the affected customer accounts. I&E proposes a civil penalty of \$1,000.00 per incident, resulting in a civil penalty of \$35,000.00.
46. I&E identified 91 days where Verde conducted door-to-door sales and marketing activity without providing notice to the local distribution company in violation of 52 Pa. Code § 111.14(b). See Proprietary Exhibit C. I&E proposes a civil penalty of \$1,000.00 per day, resulting in a civil penalty of \$91,000.00.
47. I&E identified 29 incidents where Verde representatives failed to prominently display an identification badge in violation of 52 Pa. Code § 111.9(c). See Proprietary Exhibit D for the affected customer accounts. I&E proposes a civil penalty of \$1,000.00 per incident, resulting in a civil penalty of \$29,000.00.
48. I&E identified 29 incidents where Verde representatives failed to prominently display an identification badge in violation of 52 Pa. Code § 111.8(a)(4). See Proprietary Exhibit E for the affected customer accounts. I&E proposes a civil penalty of \$1,000.00 per incident, resulting in a civil penalty of \$29,000.00.

49. I&E identified 6 incidents where Verde representatives wore apparel or carried items displaying the branding elements or logo of the local distribution company in violation of 52 Pa. Code § 111.8(c). See Proprietary Exhibit F for the affected customer accounts. I&E proposes a civil penalty of \$1,000.00 per incident, resulting in a civil penalty of \$6,000.00.
50. I&E identified 66 incidents where Verde representatives failed to immediately identify themselves, the supplier the agent represents, the reason for the visit, and the fact that the agent is not working for the local EDC in violation of 52 Pa. Code § 111.9(d). See Proprietary Exhibit G for the affected customer accounts. I&E proposes a civil penalty of \$1,000.00 per incident, resulting in a civil penalty of \$66,000.00.
51. I&E identified 2 incidents where Verde representatives failed to terminate contact with a potential customer after being informed of a language barrier and the customer's inability to understand and respond to the information in violation of 52 Pa. Code § 111.9(e). See Proprietary Exhibit H for the affected customer accounts. I&E proposes a civil penalty of \$1,000.00 per incident, resulting in a civil penalty of \$2,000.00.
52. I&E identified 4 incidents where the customer informed the Verde agent that he or she was not interested in the service or requested that the agent leave the residence, but the agent did not terminate contact in violation of 52 Pa. Code § 111.9(g). See Proprietary Exhibit I for the affected customer

accounts. I&E proposes a civil penalty of \$1,000.00 per incident, resulting in a civil penalty of \$4,000.00.

53. I&E identified 244 incidents where Verde failed to comply with the regulations governing marketing, consumer protection, and door-to-door sales in violation of 52 Pa. Code § 111.9(b). See Proprietary Exhibit J for the affected customer accounts. I&E proposes a civil penalty of \$1,000.00 per incident, resulting in a civil penalty of \$244,000.00.
54. I&E identified 315 incidents where Verde representatives failed to identify the supplier he/she represents and/or failed to state that he or she is not working for and is independent of the local distribution company or other supplier in violation of 52 Pa. Code § 111.8(b). See Proprietary Exhibit K for the affected customer accounts. I&E proposes a civil penalty of \$1,000.00 per incident, resulting in a civil penalty of \$315,000.00.
55. I&E identified 68 incidents where Verde representatives said or suggested that a customer is required to choose a supplier, such as threatening to disconnect service if the customer did not switch or providing false information relating to the current supplier to suggest that the customer must switch, in violation of 52 Pa. Code § 111.8(f). See Proprietary Exhibit L for the affected customer accounts. I&E proposes a civil penalty of \$1,000.00 per incident, resulting in a civil penalty of \$68,000.00.
56. I&E identified 310 incidents where Verde representatives violated 52 Pa. Code § 111.10(b) by

- a) Failing to identify themselves;
- b) Failing to identify the supplier the agent represents and the reason for the call;
- c) Failing to state that the agent is not working for and is independent of the local distribution company or another supplier; and/or
- d) Stating or suggesting that the customer is required to choose a competitive energy supplier.

See Proprietary Exhibit M for the affected customer accounts. I&E proposes a civil penalty of \$1,000.00 per incident, resulting in a civil penalty of \$310,000.00.

- 57. I&E identified 1,422 incidents where Verde failed to comply with the regulations governing marketing, consumer protection, and telemarketing sales in violation of 52 Pa. Code § 111.10(a). See Proprietary Exhibit N for the affected customer accounts. I&E proposes a civil penalty of \$1,000.00 per incident, resulting in a civil penalty of \$1,422,000.00.
- 58. I&E identified 763 incidents where Verde representatives engaged in misleading and deceptive conduct in violation of 52 Pa. Code § 111.12(d)(1) (prohibiting suppliers from engaging in misleading or deceptive conduct as defined by state or federal law, or by Commission

rule, regulation, or order).⁴ See Proprietary Exhibit O for the affected customer accounts. I&E proposes a civil penalty of \$1,000.00 per incident, resulting in a civil penalty of \$763,000.00.

59. I&E identified 755 incidents where Verde made false and misleading representations, including rates and savings, in violation of 52 Pa. Code § 111.12(d)(2). See Proprietary Exhibit P for the affected customer accounts. I&E proposes a civil penalty of \$1,000.00 per incident, resulting in a civil penalty of \$755,000.00.
60. I&E identified 588 incidents where Verde representative engaged in false or deceptive advertising to customers to the retail supply of electricity in violation of 52 Pa. Code § 54.122(3). See Proprietary Exhibit Q for the affected customer accounts. I&E proposes a civil penalty of \$1,000.00 per incident, resulting in a civil penalty of \$588,000.00.
61. I&E identified 3,922 incidents where Verde representatives failed to maintain the confidentiality of customers' personal information by utilizing personal customer information to access or create the customer's online account without consent or authorization in violation of 52 Pa. Code §

⁴ Consumer Protection Law prohibits fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding. 73 P.S. § 201-2(4)(ii), (iii), (v), (viii), (xi), (xvii), and (xxi). The Telemarketer Registration Act prohibits a telemarketer from initiating a telephone call to a person who previously stated that the person does not wish to receive the call. 73 P.S. § 2245(a)(2). The Telemarketer Registration Act also requires that telemarketers disclose the purpose of the call, the name of the telemarketer, the name of the business, and the nature of what the business is selling. 73 P.S. § 2245(a)(5). Federal law prohibits the transmission of inaccurate or misleading caller identification information, i.e., spoofing. 47 U.S.C. § 227(e); 47 C.F.R. § 64.1200; and 47 C.F.R. § 64.1604.

54.43(1)(d). I&E proposes a civil penalty of \$1,000.00 per incident, resulting in a civil penalty of \$3,922,000.00.

62. I&E identified 5 incidents where Verde failed to maintain a record of verification in violation of 52 Pa. Code § 111.7(b)(4) and 52 Pa. Code § 111.13(b). See Proprietary Exhibit R for the customer accounts and dates of enrollment. I&E proposes a civil penalty of \$1,000.00 per incident, resulting in a civil penalty of \$5,000.00.

IX. Requested Relief

63. I&E seeks a civil penalty of \$1,000.00 for every violation identified above, resulting in a total civil penalty of \$8,833,000.00.
64. In addition to this monetary civil penalty, as a result of the egregious behavior described herein and in the best interest of the consumers of this Commonwealth, I&E seeks the revocation of Verde's license to provide electric generation services in Pennsylvania for failing to follow the principles of 52 Pa. Code § 54.43, violating multifarious applicable provisions of the Public Utility Code, violating the Pennsylvania consumer protection law, and transferring customer accounts without the customer's consent, i.e., slamming. *See* 52 Pa. Code § 54.42(a)(6)-(9).
65. Moreover, I&E proposes that Verde provide a refund for any bills rendered during the first two billing periods to any customer whose supplier was changed to Verde without the consent of the customer pursuant to 52 Pa. Code § 57.177(b).

66. I&E proposes that Verde reimburse any customer who was charged a cancellation fee from their prior supplier as a result of an unauthorized switch pursuant to 52 Pa. Code § 57.177(c).

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement hereby requests that the Commission: (1) find Verde Energy USA, Inc. to be in violation of the Public Utility Code for each violation set forth herein; (2) impose a cumulative civil penalty upon Verde in the amount of \$8,833,000.00; (3) revoke Verde's license to provide electric generation services in Pennsylvania; and (4) order other such remedies as the Commission may deem appropriate.

Respectfully,

A handwritten signature in black ink that reads "Kayla L. Rost". The signature is written in a cursive, flowing style.

Kayla L. Rost
Prosecutor
PA Attorney ID No. 322768

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-1888
karost@pa.gov

Dated: January 30, 2020

Proprietary Exhibit A

(Omitted - Proprietary)

Proprietary

Exhibit B

(Omitted - Proprietary)

Proprietary Exhibit C

(Omitted - Proprietary)

Proprietary Exhibit D

(Omitted - Proprietary)

Proprietary

Exhibit E

(Omitted - Proprietary)

Proprietary

Exhibit F

(Omitted - Proprietary)

Proprietary Exhibit G

(Omitted - Proprietary)

Proprietary

Exhibit H

(Omitted - Proprietary)

Proprietary Exhibit I

(Omitted - Proprietary)

Proprietary Exhibit J

(Omitted - Proprietary)

Proprietary

Exhibit K

(Omitted - Proprietary)

Proprietary Exhibit L

(Omitted - Proprietary)

Proprietary Exhibit M

(Omitted - Proprietary)

Proprietary

Exhibit N

(Omitted - Proprietary)

Proprietary Exhibit O

(Omitted - Proprietary)

Proprietary

Exhibit P

(Omitted - Proprietary)

Proprietary Exhibit Q

(Omitted - Proprietary)

Proprietary Exhibit R

(Omitted - Proprietary)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,
Complainant

v.

Verde Energy USA, Inc.
Respondent

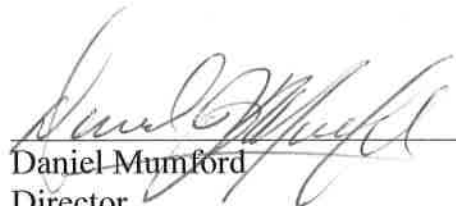
Docket No. C-2020-

VERIFICATION

I, Daniel Mumford, Director, Office of Competitive Market Oversight, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date:

1/30/20


Daniel Mumford
Director
Office of Competitive Market Oversight
Pennsylvania Public Utility Commission
400 North Street
3rd Floor, North
Harrisburg, PA 17120

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,
Complainant

v.

Verde Energy USA, Inc.
Respondent

Docket No. C-2020-

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Formal Complaint (Non-Proprietary Version)** dated January 30, 2020, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Served by Certified Mail

Nathan Kroeker
President, Chief Executive Officer
Verde Energy USA, Inc.
12140 Wickchester Lane
Suite 100
Houston, TX 77079

Served by Certified Mail and Electronic Mail

Michael A. Gruin, Esq.
Timothy K. McHugh, Esq.
Stevens & Lee
17 North 2nd Street
16th floor
Harrisburg, PA 17101
mag@stevenslee.com



Kayla L. Rost
Prosecutor
Bureau of Investigation & Enforcement
PA Attorney ID No. 322768
(717) 787-1888
karost@pa.gov

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in

Case No(s). 13-2164-GA-CRS

Summary: Motion Motion to Require Verde Energy to Provide Notification of a Material Change in Information for Its Renewal Application or, in the Alternative, Motion for Administrative Notice of an Investigation Initiated by the Pennsylvania Public Utility Commission by The Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of O'Brien, Angela D