**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

**TO VERDE’S MEMORANDUM CONTRA OCC’S MOTION TO REQUIRE VERDE TO PROVIDE NOTIFICATION OF A MATERIAL CHANGE**

In response to OCC’s February 5th Motion filed in this case,[[1]](#footnote-2) Verde filed a Notice of Material Change to its Renewal Application to reflect a new complaint filed by the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission against Verde’s affiliate, Verde Energy USA, Inc. The Pennsylvania complaint alleges thousands of consumer protection violations and seeks over $8.8 million in civil penalties and a revocation of Verde’s license to serve Pennsylvania consumers.

Although Verde filed with the PUCO notice of the Pennsylvania complaint, Verde asserts in its Memorandum Contra to OCC’s Motion that it was “not required to disclose investigations of affiliate companies in its Renewal Application.”[[2]](#footnote-3) Verde is wrong.

Verde cites Ohio Adm. Code 4901:1-27-05(B)(2)(f) as authority supporting its position that it was not required to notify the PUCO of the Pennsylvania complaint.[[3]](#footnote-4) That rule applies to retail natural gas *aggregators and brokers*. In this case, Verde is seeking renewal certification as a retail natural gas *marketer*[[4]](#footnote-5) and thus, Ohio Adm. Code 4901:1-27-05(B)(1) is the applicable rule. Under that rule, 4901:1-27-05(B)(1), applicants “*shall* file general, technical, managerial, and financial information as set forth in the application . . . [that] includes but *is not limited to*: . . .” the items specifically listed in the rule. Thus, Verde’s claim that the PUCO’s rules *limit* what information Verde must provide has no merit.

Verde has the burden in this case to demonstrate that it has the “managerial, technical, and financial capability” to continue to provide gas service to Ohio utility consumers and that it should be allowed to expand service to Dayton-area consumers.[[5]](#footnote-6) Consumer protection violations and financial penalties against Verde’s affiliates in other states are plainly relevant to whether Verde has the “managerial, technical, and financial capability” to provide service in Ohio. In fact, Verde initially identified 21 investigations against its affiliates in Exhibit B-4 of the Renewal Application and disclosed findings of consumer protection violations in Exhibit B-5 of the Renewal Application.

Moreover, Section B-4 of the PUCO’s renewal application form expressly requires Verde to:

provide a description of all existing, pending or past rulings, judgments, contingent liabilities, revocations of authority, regulatory investigations, or any other matter that *could adversely impact the applicant’s financial or operational status or ability to provide the services* for which it is seeking renewed certification since applicant last filed for certification. (emphasis added).

The Pennsylvania compliant, which seeks over $8.8 million in penalties from Verde’s affiliate (in addition to the millions of dollars sought from Verde’s affiliates in other jurisdictions), is a “regulatory investigation” that could “adversely impact” Verde’s financial or operational status or ability to provide service in Ohio.

Although Verde did disclose to the PUCO the Pennsylvania complaint as requested in OCC’s Motion, Verde’s opinion that it was not *required* to update the PUCO on this matter should not be the final word because the PUCO’s rules clearly require such disclosures.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply by the Office of The Ohio Consumers’ Counsel to Verde’s Memorandum Contra OCC’s Motion to Require Verde to Provide Notification of a Material Change was served on the persons stated below via electronic transmission, this 27th 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:

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1. *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*, Case No. 13-2164-GA-CRS (Feb. 5, 2020) (“OCC Motion”). [↑](#footnote-ref-2)
2. Verde Memo Contra, at 3. [↑](#footnote-ref-3)
3. *See* Verde Memo Contra, at 2, 3. [↑](#footnote-ref-4)
4. Verde Renewal Application, A-1. [↑](#footnote-ref-5)
5. R.C. 4929.20(A). [↑](#footnote-ref-6)