**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Verde Energy USA Ohio, LLC for Certification as a Competitive Retail Electric Supplier. | )  )  ) | Case No. 11-5886-EL-CRS |

**MOTION TO INTERVENE**

**BY**

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

The Office of the Ohio Consumers’ Counsel (“OCC”), the state voice of Ohio residential utility consumers, moves to intervene where Verde Energy USA Ohio, LLC should be denied a renewal of its certificate to market electricity to Ohioans.[[1]](#footnote-2) OCC earlier filed a motion to intervene to recommend denying the renewal of Verde Energy’s certificate to market natural gas to Ohioans.[[2]](#footnote-3) The PUCO should grant OCC’s motion to intervene to protect consumers in the natural gas case, and for the same reasons, it should grant OCC’s motion to intervene here.

The reasons the Public Utilities Commission of Ohio (“PUCO”) should grant OCC’s motion are further set forth in the attached memorandum in support.

Respectfully submitted,

Bruce Weston (#0016973)

Ohio Consumers’ Counsel

*/s/ Christopher Healey*

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

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## MEMORANDUM IN SUPPORT

Verde is a bad actor and should not be allowed to market and provide electric services to customers in Ohio. OCC is the state’s voice of residential utility consumers, including those impacted by Verde’s service. The PUCO should act to protect Ohio natural gas customers from Verde’s misleading, deceptive, and unconscionable practices by denying Verde’s Renewal Application.

In the Verde Investigation, the PUCO took an important step toward protecting Ohio consumers by directing the PUCO Staff to investigate Verde’s provision of natural gas and electric services to Ohio consumers.[[3]](#footnote-4) During October 1, 2018 to April 12, 2019, the PUCO Staff received 481 customer contacts regarding Verde.[[4]](#footnote-5) Of those 481 customer contacts, 231 (approximately 57%) involved customer complaints regarding “enrollment disputes, misleading information, and false representations wherein Verde purported to be another utility.”[[5]](#footnote-6) After the PUCO initiated the Verde Investigation on April 17, 2019, the PUCO Staff received an additional 36 customer contacts (for a total of 517) regarding Verde.[[6]](#footnote-7) Further, the PUCO Staff documented that Verde had spoofed its Caller ID information to deceive customers about its calls. Individual customers have also independently filed formal complaints against Verde with the PUCO.[[7]](#footnote-8) In the Verde Investigation case, the PUCO ruled that Verde violated the PUCO’s rules approximately 17 times in a seven-month period.[[8]](#footnote-9) Staff found that Verde had made “untruthful promises of lower rates.”[[9]](#footnote-10) And what OCC had to say about Verde’s consumer rip-offs was even stronger than the Staff’s well stated concerns.

OCC has authority under law to represent the interests of all residential utility customers in Ohio under R.C. Chapter 4911.

R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio’s residential customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding where Verde Energy wants to continue offering electric service to customers, despite its abuse of those very same customers. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO to consider the following criteria in ruling on motions to intervene:

(1) The nature and extent of the prospective intervenor’s interest;

(2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;

(3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings;

(4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

First, the nature and extent of OCC’s interest is representing residential customers in this case involving the audacious request, by one of the worst ever energy marketers in Ohio, for state permission to continue marketing to consumers. Verde’s application comes after it was found to have violated the PUCO’s rules for marketers 17 times in the course of just 7 months (with no fewer than 481 customer contacts and 231 complaints).[[10]](#footnote-11) OCC’s interest is different than that of any other party and obviously different than that of Verde whose advocacy includes a request for permission to continue marketing to Ohioans.

Second, OCC’s advocacy for residential customers will include, among other things, advancing the position that Verde should be denied the privilege of doing business in Ohio. OCC’s position is therefore directly related to the merits of this case, which is pending before the PUCO, the authority that controls whether a marketer like Verde deserves (which it doesn’t) the privilege of marketing to consumers.

Third, OCC’s intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC’s intervention will significantly contribute to full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a very real and substantial interest in this case where the applicant, Verde, has a history of abusing the consumers that OCC represents.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B), which OCC already has addressed, and which OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the PUCO shall consider “The extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio (“Court”) confirmed OCC’s right to intervene in PUCO proceedings, in deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.[[11]](#footnote-12)

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential customers, the PUCO should grant OCC’s Motion to Intervene.

Respectfully submitted,

Bruce Weston (#0016973)

Ohio Consumers’ Counsel

*/s/ Christopher Healey*

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

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below via electronic transmission, this 6th day of March 2020.

*/s/ Christopher Healey*

Christopher Healey

Assistant Consumers’ Counsel

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1. *See* R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. [↑](#footnote-ref-2)
2. Entry at¶ 10, PUCO Case No. 13-2164-GA-CRS (Mar. 3, 2020). The PUCO consolidated these two cases, so intervention in one should constitute intervention in both. OCC files this second motion to intervene in an abundance of caution, given that the Entry does not explicitly state that a party intervening in one case shall be deemed a party for both cases. [↑](#footnote-ref-3)
3. *See* Case No. 19-0958-GE-COI, PUCO Entry (April 17, 2019). [↑](#footnote-ref-4)
4. Case No. 19-0958-GE-COI, PUCO Entry (April 17, 2019) (“April 17 Entry”) at ¶¶ 7, 9. [↑](#footnote-ref-5)
5. PUCO Staff April 16, 2019 Letter filed in Case Nos. 11-5886-EL-CRS and 13-2164-GA-CRS (April 16 Letter). [↑](#footnote-ref-6)
6. Case No. 19-0958-GE-COI, PUCO Staff Report (May 29, 2019). [↑](#footnote-ref-7)
7. *See* *Darnell Leighty v. Verde Energy USA Ohio, LLC*, Case No. 19-1342-EL-CSS; and *Cheryl and Brad Naegel v. Verde Energy USA Ohio, LLC*, 19-1885-EL-CSS. [↑](#footnote-ref-8)
8. Case No. 19-958-GE-COI, Opinion & Order ¶ 60 (Feb. 26, 2020). [↑](#footnote-ref-9)
9. Case No. 19-958-GE-COI, Staff Report (May 29, 2019). [↑](#footnote-ref-10)
10. Case No. 19-958-GE-COI, Opinion & Order ¶¶ 7, 60 (Feb. 26, 2020). [↑](#footnote-ref-11)
11. *See Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20. [↑](#footnote-ref-12)