**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| --- | --- | --- |
| 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. 19-958-GE-COI |

**INITIAL POST-HEARING BRIEF**

**BY**

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**INITIAL POST-HEARING BRIEF**

**BY**

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

# I. INTRODUCTION

This case is about an energy marketer that has been ripping off Ohioans and that the PUCO Staff found to be “managerially unfit to provide competitive services in the state.”[[1]](#footnote-2) The “unfit” marketer, Verde, charged some customers up to *four times* more than the rates charged by the customers’ incumbent electric and natural gas utilities.[[2]](#footnote-3) Verde also engaged in hundreds of unfair, misleading, deceptive, and unconscionable acts and practices in its marketing and supplying of electricity and natural gas services to Ohioans during late 2018 and early 2019.[[3]](#footnote-4)

The Public Utilities Commission of Ohio (“PUCO”) received 481 customer contacts and complaints regarding Verde’s utility service or marketing practices between October 1, 2018 and April 12, 2019.[[4]](#footnote-5) Of those contacts, 231 (approximately 57%) were verified by the PUCO Staff as complaints related to enrollment disputes, Verde providing misleading information, and Verde misrepresenting itself to customers as another utility.[[5]](#footnote-6) This prompted the PUCO to open an investigation into Verde’s misleading and deceptive practices and failure to comply with Ohio law and PUCO rules. The PUCO Staff’s findings regarding Verde’s customer abuse were damning, and the PUCO should hold Verde accountable to protect consumers and competition in Ohio.

Verde is not an Ohio-based company and it has virtually no employees in Ohio.[[6]](#footnote-7) Verde is operated from the headquarters of its parent company, Spark Energy (“Spark”), located in Houston, Texas.[[7]](#footnote-8) The PUCO previously granted Verde the authority to market electric and natural gas service to Ohio consumers.[[8]](#footnote-9) Verde has since proven to be a rip-off artist that has abused that authority and the Ohio consumers it serves. Verde’s authority to market and provide energy services to Ohio consumers is a *privilege*,not a right. The PUCO can and should rescind that authority under R.C. § 4928.08(D) and R.C. § 4929.20(C)(1), given the evidence that Verde exploited Ohio consumers and failed to comply with the PUCO’s consumer protection and certification standards.[[9]](#footnote-10) Not rescinding Verde’s authority to continue serving customers would render the PUCO’s minimum service standards for energy marketers meaningless.

Rather than providing Ohio consumers with an honest choice for energy supply services (and competing with other energy suppliers in Ohio on a level playing field[[10]](#footnote-11)), Verde abused its PUCO-granted authority. Verde did this through misleading and deceptive marketing acts and practices, and by its refusal to comply with the PUCO’s rules. Verde’s sales representatives tricked customers into believing their representatives were associated with the customers’ local electric or natural gas distribution utilities.[[11]](#footnote-12) Verde lied to customers about the savings they would receive by enrolling in Verde’s products.[[12]](#footnote-13) Verde even tried to deceive the Chief of the PUCO’s Reliability and Service Analysis Division.[[13]](#footnote-14) Verde lured customers into low fixed-rate contracts, but then failed to notify those customers before their contracts expired that their service would automatically renew at monthly variable rates far exceeding the default rates charged by the utilities.[[14]](#footnote-15) Doing this violated the PUCO’s rules, and harmed customers who rely on lower and more stable utility bills.

When PUCO Staff caught Verde violating the law, Verde agreed in some cases to refund charges to the customers that it harmed.[[15]](#footnote-16) But paying refunds to customers did not stop Verde’s deceptive practices.[[16]](#footnote-17) Why would it? Providing refunds to customers – who were misled by Verde in the first place – is just a cost of doing business for Verde.[[17]](#footnote-18) The Staff Report in this case stated:

Staff’s investigation has shown that Verde has failed to meaningfully modify its business practices to bring itself into compliance with the Commission’s rules. Staff has referred hundreds of customer complaints to Verde since July 2018. Yet to Staff’s knowledge, Verde has failed to implement any meaningful corrective or remedial action.[[18]](#footnote-19)

In fact, Verde’s exploitation of Ohio consumers did not slow down until the PUCO opened this investigation, whereupon Verde agreed to temporarily stop marketing energy services and enrolling new customers in Ohio. But Verde continues to serve its existing electric and natural gas customers today. And these customers could be on the hook for electric and gas supply rates up to *four times* the utilities’ standard offer rates.[[19]](#footnote-20)

Verde and PUCO Staff have entered into a Joint Stipulation and Recommendation (“Settlement”), which purportedly resolves all the issues identified in the Staff Report.[[20]](#footnote-21) It does not. The Settlement falls far short of resolving all the issues and is a raw deal for Ohio consumers for numerous reasons. While the Staff Report in this case recommended refunds to both electric and natural gas customers, the Settlement does not require Verde to provide restitution to natural gas customers *at all*. The Settlement also allows Verde to continue serving (and potentially harming) its existing electric and natural gas customers, despite the PUCO Staff’s finding that Verde is “managerially unfit” and incapable of providing adequate service.[[21]](#footnote-22) The Settlement merely requires Verde to submit an “action plan for compliance” before it resumes marketing to and enrolling *new* customers in Ohio (in less than a year from now), but nothing in the Settlement specifies *how* Verde will correct its practices or protect its current customers from further abuse. In other words, the Settlement does not benefit customers and the public interest, thus failing the PUCO’s test for evaluating the reasonableness of a settlement.

The PUCO should reject the Settlement because it fails to meet the standard that the PUCO uses to evaluate settlements and put an end to Verde’s exploitation and abuse of Ohio electric and natural gas consumers.

# II. STANDARD OF REVIEW

In the April 17 Entry, the PUCO opened this investigation and found “that a hearing should be held at which Verde Energy *shall*, among other things, have the opportunity to respond to the findings contained in the Staff Report and *show cause* why its certification as a [marketer of electric service] and its certification as a [marketer of natural gas service] should not be suspended, rescinded, or conditionally rescinded.”[[22]](#footnote-23) As noted above, Verde and PUCO Staff entered into the Settlement, which purportedly resolves the issues set forth in the Staff Report.

When there is a settlement, the signatory parties “bear the burden to support the stipulation” and must “demonstrate that the stipulation is reasonable and satisfies the Commission's three-part test.”[[23]](#footnote-24) Verde did not present any testimony to demonstrate that the Settlement is reasonable or satisfies the PUCO’s three-part test. Nor did Verde present any testimony to show cause as to why its certificates to provide service should not be suspended or rescinded.

In PUCO proceedings, a settlement is a recommendation that is not legally binding on the PUCO,[[24]](#footnote-25) and the PUCO has the discretion to give each settlement the weight that the PUCO believes it deserves. The PUCO “may take the stipulation into consideration but must determine what is just and reasonable from the evidence presented at the hearing.”[[25]](#footnote-26)

In evaluating settlements, the ultimate issue for the PUCO’s consideration is whether the agreement is “reasonable and should be adopted.”[[26]](#footnote-27) In answering this question, the PUCO has adopted a three-part test:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit customers and the public interest?
3. Does the settlement violate any important regulatory principles or practices?[[27]](#footnote-28)

As further explained below, the proposed Settlement in this case does not meet these standards. It neither benefits customers nor the public interest, and it violates fundamental regulatory principles and practices codified in Ohio law.

# III. THE STAFF REPORT AND OTHER EVIDENCE OF VERDE’S CONSUMER ABUSE AND violations of OHIO LAW CREATE an IRRECONCILABLE DIFFERENCE BETWEEN the PUCO STAFF’s RECOMMENDATIONS IN THE STAFF REPORT AND THE SETTLEMENT.

### The Staff Report provides ample evidence of Verde’s violations of Ohio laws and rules that protect customers from false and misleading marketing.

The PUCO took an important step toward protecting Ohio consumers by opening this investigation and ordering Verde to “show cause why its certification as a [marketer of electric service] and its certification as a [marketer of natural gas service] should not be suspended, rescinded, or conditionally rescinded.”[[28]](#footnote-29) During the October 1, 2018 and April 12, 2019 timeframe, PUCO Staff received 481 customer contacts regarding Verde.[[29]](#footnote-30) 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.”[[30]](#footnote-31) Since the PUCO opened the investigation against Verde on April 17, 2019, PUCO Staff received an additional 36 customer contacts (for a total of 517) regarding Verde.[[31]](#footnote-32) Individual customers have filed separate formal complaints with the PUCO against Verde as well.[[32]](#footnote-33)

In accordance with the PUCO’s April 17 Entry in this case, the PUCO Staff conducted a thorough investigation and filed a comprehensive Staff Report of Investigation concluding that Verde:

* Engaged in misleading, deceptive and unconscionable marketing and solicitation practices by providing untruthful promises of lower rates, in violation of Ohio Admin. Code 4901:1-21-03(A), 4901:1-21-05(C), 4901:1-21-11(A), 4901:1-29-03(A), 4901:1-29-05(D), and 4901:1-29-10(A);[[33]](#footnote-34)
* Engaged in misleading “spoofing” by providing inaccurate caller identification information to make customers believe that Verde’s calls were originating from the customers’ utilities or the Internal Revenue Service in violation of Ohio Admin. Code 4901:1-21-03(A), 4901:1-21-05(C)(8)(h), 4901:1-21-05(C)(10), 4901:1-29-03(A), 4901:1-29-05(D), and 4901:1-29-10(A);[[34]](#footnote-35)
* Engaged in misleading and deceptive marketing practices through the use of “robo-calling” technology that used automated messages with unclear information designed to entice customers to speak to Verde sale representatives in violation of Ohio Admin. Code 4901:1-21-03(A), 4901:1-21-05(C), 4901:1-21-11(A), 4901:1-29-03(A), 4901:1-29-05, and 4901:1-29-10(A);[[35]](#footnote-36)
* Failed to inform customers that they have the right, within seven calendar or seven business days, to rescind an electric or natural gas service contract after it has been signed in violation of Ohio Admin. Code 4901:1-21-06(D), 4901:1-29-06(D)(5)(b), and 4901:1-29-06(E)(1)(h)(ii);[[36]](#footnote-37)
* Failed to maintain required records and evidence of customer consent to contract for service in violation of Ohio Admin. Code 4901:1-21-04, 4901:1-21-06(D), 4901:1-21-11(C), 4901:1-29-04, 4901:1-29-05(D), and 4901:1-29-10(B);[[37]](#footnote-38)
* Failed to include required elements in third party verification calls for customer enrollment in violation of Ohio Admin. Code 4901:1-21-06(D)(1)(h), 4901:1-21-06(D)(2), 4901:1-29-06(D), 4901:1-29-06(E);[[38]](#footnote-39) and
* Failed to provide customers with required contract and contract expiration notices in violation of Ohio Admin. Code 4901:1-21-11(G), 4901:1-21-06(D)(2)(b)(i), and 4901:1-29-06(E)(2)(a).[[39]](#footnote-40)

The Staff Report also found that regulatory actions against Spark companies (Verde’s affiliates) in other states for similar violations constituted “aggravating factors” regarding Verde’s managerial capabilities to provide service to Ohio consumers.[[40]](#footnote-41) The Staff Report concluded that the actions against Spark companies in other states demonstrated that:

Verde does not currently possess the fitness or managerial capability to provide competitive services in the state of Ohio. In addition to the current violations from Verde, the management and ownership of the company has degraded the company’s adherence to Ohio requirements since taking over control and has a history of similar actions in other states. Therefore, Staff finds Verde managerially unfit to provide competitive service in the state.[[41]](#footnote-42)

The Staff Report therefore recommended that the PUCO suspend or rescind Verde’s certifications. The Staff Report also recommended that the PUCO require Verde to refund both electric and natural gas customers the difference between what Verde charged and the utility’s default rate. Further, the Staff Report recommended that Verde pay a forfeiture of $1.5 million.[[42]](#footnote-43)

### Customer complaint records admitted into evidence establish that Verde has violated Ohio laws and PUCO rules that protect customers from false and misleading marketing.

In addition to the findings in the Staff Report, the undisputed[[43]](#footnote-44) evidence overwhelmingly proves Verde’s predatory and unlawful behavior. The evidentiary record in this case contains over 500 customer contacts and complaints to the PUCO (from October 1, 2018 to April 24, 2019) regarding Verde’s marketing and enrollment practices and provision of retail electric and natural gas service.[[44]](#footnote-45) These records are rife with Verde’s *own admissions*[[45]](#footnote-46) to the PUCO Staff that it violated the PUCO’s rules time and again in marketing and enrolling customers for retail electric and natural gas services.[[46]](#footnote-47) For example in PUCO Case No. 002560087, Verde representative Edwin Quinonez informs a member of PUCO Staff that the complaining customer “authorized electric enrollment to Verde without any objections” but that “due to the [third party verification] not being in compliance with the following rules (O.A.C. 4901:1-21-06(D)(2)(a)(vii), O.A.C 4901:1-21-06(D)(2)(a)(viii), O.A.C 4901:1-21-06(D)(2)(a)(viii) [sic]) Verde will perform a cost analysis to the utility rate.”[[47]](#footnote-48) The evidentiary record contains many more similar admissions by Verde.[[48]](#footnote-49)

The evidence shows that Verde’s marketing agents “spoofed” the telephone numbers of Ohio distribution utilities or other entities to mislead customers into believing they were communicating with entities other than Verde itself.[[49]](#footnote-50) According to the Federal Communications Commission (“FCC”), “Caller ID spoofing is when a caller deliberately falsifies the information transmitted to your Caller ID display to disguise their identity.”[[50]](#footnote-51) Spoofing is illegal when the misleading or inaccurate Caller ID information is sent with the intent to defraud or wrongly obtain something of value.[[51]](#footnote-52)

During the evidentiary hearing, PUCO Staff witness Ramsey testified that the PUCO Staff considers spoofing to be a misleading practice and that even a single customer complaint regarding spoofing is cause for concern.[[52]](#footnote-53) In December 2018, the PUCO Staff warned Verde about the “alarming number of complaints from consumers stating that Verde Energy’s telemarketers are ‘spoofing’ AEP Ohio’s customer service number when soliciting them.”[[53]](#footnote-54) But Verde’s spoofing continued. The Staff Report stated:

Staff first notified Verde of spoofing allegations on December 21, 2018. However, Staff continues to receive complaints of this nature. Therefore, Staff has determined that Verde had not ceased its spoofing activities and continues to allow the deceptive practice to continue.[[54]](#footnote-55)

In March 2019, an employee of Duke Energy complained to the PUCO Staff that he had received a call from Verde spoofing the number of the Internal Revenue Service,[[55]](#footnote-56) and that other employees of Duke had received calls from Verde that appeared on Caller ID to be calls from internal Duke telephone numbers.[[56]](#footnote-57) OCC witness Williams also testified that OCC was separately contacted by a consumer complaining about Verde’s spoofing activities.[[57]](#footnote-58)

The evidence shows that Verde misrepresented to consumers how much they would save off their monthly electric and gas bills if they switched to Verde’s service.[[58]](#footnote-59) This misrepresentation also violated Ohio law. Verde even used misleading and deceptive sales practices in soliciting one of the PUCO Staff members responsible for the Verde investigation. On March 26, 2019, Ms. Barbara Bossart, Chief of the PUCO’s Reliability and Service Analysis Division, e-mailed the following communication to PUCO Staff witness Nedra Ramsey:

I just got a call from Verde. The recording started by stating I was a valued customer and because I was a current AEP customer I’m eligible for up to 30% off my monthly bill. I pressed one to hear more. I needed to get my bills to verify my information and get my new low rates. I got my bills and gave him my account number so I could hear the sales pitch. The rep stated that on my next bill I will get a new low rate of 8.99 for electric and that I was paying 12 to 13 cents/kwh now. I would be on a 12 month fixed rate. He also stated no monthly service fee and now I pay $4 to $6 service fee. For gas I would get a new low rate of 69.9/cff [sic]. He stated I would be saving between $30-35 in electric and $20-$25 in gas every month. Verde Energy would supply my new low rate. They were going to send me through the verification process for my reduction. I was transferred to the supervisor who talk [sic] me what the verification question would be and to clearly say yes or no, but to say yes to get my new low rates. I hung up before I went through the verification process.

I will register misleading complaint to be added to the evidence.[[59]](#footnote-60)

During the evidentiary hearing, PUCO Staff witness Ramsey testified that it is a violation of the PUCO’s rules for a supplier such as Verde to promise a savings if one does not actually exist.[[60]](#footnote-61) Ms. Bossart testified that the rates she actually paid for electric and gas service (.054/kwh and .485/ccf respectively) were lower than what Verde offered her during the solicitation call.[[61]](#footnote-62) Thus, Ms. Bossart would not have saved money by accepting Verde’s offer. Not only did Verde violate the PUCO’s rules by promising a savings where one did not actually exist,[[62]](#footnote-63) Verde’s representative lied to Ms. Bossart when he told her she was paying “12 to 13 cents/kwh”. Ms. Bossart is an expert on the PUCO’s rules governing electric and natural gas suppliers,[[63]](#footnote-64) and so she knew not to accept Verde’s false offer. However, most consumers are not as knowledgeable, and Verde exploited them.

The evidence shows that Verde failed to notify customers regarding the expiration of their fixed rate contracts, and then automatically renewed those customers onto monthly variable rates that were *more than three times* the rates they initially paid.[[64]](#footnote-65) OCC presented evidence of a customer complaint where the customer initially enrolled with Verde on a plan that provided electric supply service for 12 months at a monthly fixed rate of $.0594/kwh, but when the 12 month fixed rate contract expired, Verde automatically renewed the customer’s service at an astronomical rate of $.19/kwh.[[65]](#footnote-66) Verde did not provide this customer with proper notice, as required by Ohio Admin. Code 4901:1-21-11(G), prior to the expiration of the fixed-rate contract that his rate would be automatically renewed to a higher monthly variable rate.[[66]](#footnote-67)

When questioned by the PUCO Staff as to why such expiration notice was not provided, Verde responded:

Per the attached Terms of Service under Section 1, it states that after the first 12 billing cycles, the customer’s account would auto renew to a Month to Month variable rate plan without notice. *Verde does have products that renew on a Month to Month basis; therefore, there would not be renewal notices to provide for [the customer’s] account.*[[67]](#footnote-68)

This demonstrates that Verde knowingly auto renews its customers onto high monthly variable rates after the fixed rate contracts expire without providing customers the notice required by Ohio law. In another example, a Verde customer was automatically renewed from a fixed rate of $.0599/kwh to a monthly variable rate of $.19/kwh, resulting in an alleged overcharge to the customer of $1,848.[[68]](#footnote-69) Verde’s representative confirmed to the PUCO Staff that Verde did not send a contract expiration notice to the customer before automatically renewing him onto the higher rate.[[69]](#footnote-70) As explained below in Section IV.B, the harm that customers experienced by not being lawfully noticed about automatic renewals is not remedied by the Settlement because these infractions likely occurred before October 2018.

There is also ample evidence that Verde’s third-party verification (“TPV”) calls (which serve to ensure that customers affirmatively consent to enrolling with Verde) did not contain the elements required by Ohio law.[[70]](#footnote-71) OCC Witness Williams testified that the PUCO’s TPV rules protect customers from “slamming” during telemarketing and door-to-door solicitations.[[71]](#footnote-72) Slamming occurs when a marketer changes a customer’s electric or natural gas supplier without the customer’s proper consent.[[72]](#footnote-73) Slamming is illegal.[[73]](#footnote-74) Verde was also unable to produce signed copies of customer contracts that were initiated through door-to-door solicitations,[[74]](#footnote-75) even though the PUCO’s rules clearly require written customer consent for door-to-door sales.[[75]](#footnote-76) The evidence also demonstrates that Verde misinformed customers about how long they had to rescind a contract with Verde.[[76]](#footnote-77)

These examples of Verde’s wrongdoing are the tip of the iceberg. The PUCO received hundreds of complaints regarding Verde,[[77]](#footnote-78) and customers complained to the OCC as well.[[78]](#footnote-79)

If a customer complains to Verde about their service, Verde’s practice in some cases is to offer the customer a lower fixed rate.[[79]](#footnote-80) If a customer takes the time to escalate a complaint to the PUCO, the customer may succeed in getting an actual refund from Verde.[[80]](#footnote-81) However, customers may not realize that Verde is taking advantage of or misleading them, particularly if a customer’s rate increases during the winter heating season when bills normally are higher. Providing refunds only to the customers who complain is not enough. *Customers should not be harmed by Verde in the first place.*

During the evidentiary hearing, a public witness – who was grossly overcharged by Verde after being automatically renewed onto a high monthly variable rate contract – was cross-examined by Verde’s counsel regarding the refund she received, as if Verde performed some act of altruism by paying her back the money Verde owed. In response to Verde’s questioning, the customer testified:

[Verde]: Why do you think you received that $1,800 check from Verde Energy?

[Witness]: Why do I think I received it? Because I felt like they charged us a whole lot more money than what they should have been charging us for quite a long time.

[Verde]: Do you feel that the Company Verde Energy tried to make things right by sending you that check?

[Witness]: I felt like they were paying us back what they – I didn’t – what they felt like they owed us.

[Verde]: After you received that check, did you complain that it wasn’t enough to PUCO Staff or Verde Energy?

[Witness]: No. I just figured that was all we was going to get, and I took that and figured that’s better than nothing because I didn’t figure we would get anything.[[81]](#footnote-82)

Customers should not have to expend time and resources to fight with Verde to recover money that Verde obtained by violating the law. Verde should be required to comply with the law as a condition of being allowed to provide service to Ohio customers. But that is not Verde’s business model. Verde’s practice is to exploit customers by violating Ohio law and the PUCO’s rules and grabbing what money it can. The PUCO must protect customers and put an end to Verde’s unlawful practices.

### Inexplicably, despite the Staff Report findings and the evidence admitted into the record of Verde’s bad acts at hearing, the Settlement does not require Verde to pack its bags and leave Ohio.

The Staff Report contains 28 pages of single-spaced text detailing the PUCO Staff’s investigation of Verde and describing how Verde violated Ohio law. There is no doubt that the PUCO Staff conducted a thorough investigation into Verde’s failure to comply with Ohio law as the PUCO directed in its April 17 Entry. While OCC believes the evidence in this case supports a PUCO finding that Verde should have its certificates of authority to provide retail electric and natural gas service to Ohio customers permanently rescinded, the recommendations in the Staff Report represent a reasonable resolution to the harm that Verde has caused Ohio customers.

By contrast, the Settlement between Verde and PUCO Staff is an enigma. The Settlement claims to resolve all of the issues in the Staff Report,[[82]](#footnote-83) yet the document itself consists of six (6) double-spaced pages of content, with only *one and a half pages* devoted to what Verde will do to reform its conduct and make whole the Ohio customers it harmed.[[83]](#footnote-84) And what Verde actually promises to customers in that one and a half double-spaced pages is vague and thin on substance. Verde’s promises are also grossly disproportionate to the harm that Verde has caused to customers and to competition in Ohio. The Settlement does not benefit customers or the public interest, and the PUCO should reject it entirely.

# IV. THE PUCO SHOULD REJECT THE SETTLEMENT BECAUSE IT DOES NOT BENEFIT CUSTOMERS OR THE PUBLIC INTEREST.

## A. The Settlement should be rejected because it harms customers by not requiring Verde to pay refunds to the natural gas customers it harmed.

The PUCO should reject the Settlement because it does not require Verde to pay a single penny in refunds to the natural gas customers that it harmed. The Staff Report recommended that the PUCO require Verde to refund both electric *and* natural gas customers “the difference between the electric distribution and/or natural gas utility’s default rate that the rate Verde actually charged them.”[[84]](#footnote-85)

The Settlement requires Verde to pay refunds to electric customers, but it ignores Verde’s natural gas customers who also were overcharged. The Settlement specifically states:

For all retail *electric* residential customers enrolled by Verde Energy in Ohio from October 1, 2018 through April 30, 2019, Verde Energy will re-rate those customers to the second lowest 12-month fixed 100% renewable price shown on the PUCO’s historic apples-to-apples chart for the week of December 17, 2018, adjusted for any rewards provided by Verde Energy to re-rated customers as part of Verde Energy’s shopping rewards program. This will result in refunds of approximately $1,068,000.[[85]](#footnote-86)

At the evidentiary hearing, PUCO Staff witness Ramsey confirmed that this refund provision applies only to electric customers, and that nothing in the Settlement requires refunds to Verde’s natural gas customers.[[86]](#footnote-87)

 OCC witness Williams testified that there is no basis for denying refunds to natural gas customers who were enrolled with Verde during the October 1, 2018 to April 30, 2019 timeframe.[[87]](#footnote-88) Mr. Williams testified that during that timeframe, there were 4,835 “active” Verde natural gas customers (who currently receive their natural gas supply from Verde) and 8,589 “inactive” natural gas customers (who were previously served by Verde).[[88]](#footnote-89) These customers will not receive a refund for gas services from Verde under the Settlement, even though they were subjected to the same misleading marketing practices that Verde imposed on electric customers.[[89]](#footnote-90) Mr. Williams testified that the magnitude of the harm to these customers is significant because Verde’s natural gas rates, both fixed and variable, are much higher than the utilities’ standard offer rates.[[90]](#footnote-91)

There is no reason to deny Verde’s natural gas customers refunds under the Settlement. Indeed, this case involves the PUCO-ordered investigation into Verde’s provision of electric *and* natural gas supply services in Ohio.[[91]](#footnote-92) And with respect to Verde’s provision of both:

Staff subsequently identified a pattern of misleading and deceptive practices used to enroll customers, a failure to maintain documents and other data as required, probable non-compliance with certain requirements of the third-party verification (TPV) rules, and violations of the noticing requirements. *These issues appear to be systemic and demonstrate that the*

*company cannot maintain the required management oversight of its marketing program to ensure that its agents are acting in a manner that is fair, honest, and in compliance with Ohio law and rules.*[[92]](#footnote-93)

As a result, the Staff Report recommended that the PUCO require Verde to pay restitution to both electric *and* natural gas customers “by refunding the difference between the electric distribution and/or natural gas utility’s default rate, as applicable, and the rate actually charged them.”[[93]](#footnote-94)

PUCO Staff’s agreement to exclude Verde’s natural gas customers from the Settlement’s refund provisions makes no sense, and directly contradicts Ms. Ramsey’s testimony that the Settlement “represents a just and reasonable resolution of all issues in the proceeding.”[[94]](#footnote-95)

## B. The Settlement harms customers and should be rejected because it does not require Verde to pay adequate refunds to the electric customers Verde harmed.

Although the Settlement requires Verde to pay refunds only to its electric supply customers, those refunds are unreasonably limited. The Staff Report recommended that customers be refunded the “difference between the electric distribution and/or natural gas utility’s default rate and the rate Verde actually charged them.”[[95]](#footnote-96) The Settlement requires Verde to pay much less and that is unreasonable and not in the public interest.

OCC witness Williams testified that “Verde is merely required to re-rate (refund) customers who were harmed between October 1, 2018 and April 30, 2019 to the second lowest 12-month fixed 100% renewable price shown on the PUCO’s historic apples-to-apples chart for the week of December 17, 2018.”[[96]](#footnote-97) Neither Verde nor PUCO Staff presented evidence to justify imposing these limitations on refunds to electric customers.

 To begin, limiting refunds only to those electric customers who *enrolled* with Verde between October 1, 2018 and April 30, 2019 is unreasonable. Mr. Williams explained that customers who enrolled with Verde before October 1, 2018 could also have been harmed by Verde’s misleading and deceptive sales practices.[[97]](#footnote-98) The Staff Report notes that customer contacts and complaints against Verde began to increase after it was purchased by Spark in July 2017, well over a year before October 2018.[[98]](#footnote-99) In addition, as discussed above, the evidence demonstrates that Verde, in violation of the PUCO’s rules, enrolled customers on fixed rate contracts and then failed to provide notification prior to contract expiration that the contracts would be automatically renewed at much higher rates.[[99]](#footnote-100) Customers harmed by Verde in this way likely would not have enrolled during the October 1, 2018 to April 30, 2019 timeframe. But under the Settlement, these customers would be unreasonably and arbitrarily excluded from obtaining a refund. All customers who were harmed by Verde’s deceptive and unlawful acts should be entitled to a refund under the Settlement, regardless of when they enrolled with Verde.

Refunding customers to the second lowest 12-month fixed 100% renewable price shown on the PUCO’s historic apples-to-apples chart for the week of December 17, 2018 also harms customers. OCC witness Williams testified that the appropriate benchmark for determining the refunds owed to customers is the difference between the rate that Verde over-charged customers and the utility’s price to compare (the standard offer rate).[[100]](#footnote-101) This is also consistent with the recommendation in the Staff Report that Verde pay restitution “by refunding the difference between the electric distribution and/or natural gas utility’s default rate, as applicable, and the rate actually charged them.”[[101]](#footnote-102) And the evidence demonstrates that Verde violated the PUCO’s rules by providing misleading information as to what customers could actually save by enrolling in Verde’s services.[[102]](#footnote-103) Therefore, the utility’s price to compare is the appropriate benchmark for re-rating Verde’s customers.

The electric rates to which Verde and PUCO Staff agreed to re-rate customers (*i.e.* the second lowest 12-month fixed 100% renewable price shown on the PUCO’s historic apples-to-apples chart for the week of December 17, 2018) are higher than the utilities’ price to compare.[[103]](#footnote-104) Thus, using those rates as the benchmark would deny customers significant refunds. Using the *second* lowest rate is also arbitrary. A reasonable consumer shopping for renewable offers would undoubtedly choose the lowest rate, not the second lowest rate.

Mr. Williams testified that using the price to compare as the benchmark would result in Verde’s electric customers receiving approximately $1.6 million more than the approximate $1,068,000 that Verde agreed to provide under the Settlement.[[104]](#footnote-105) Mr. Williams provided a comparison of the rates Verde used to calculate the refund to the current price to compare for each of the Ohio electric distribution utilities.[[105]](#footnote-106)

Table 2: Verde Re-rate Compared to the Current Price to Compare ($/ kWh)

|  |  |  |
| --- | --- | --- |
| EDU | Verde Re-Rate[[106]](#footnote-107) | Price to Compare[[107]](#footnote-108) |
| Cleveland Electric Illuminating | $0.0729 | $0.051087 |
| Ohio Edison | $0.0789 | $0.05124 |
| Toledo Edison | $0.0739 | $0.0505 |
| Ohio Power | $0.0679 | $0.0524 |
| Dayton Power and Light | $0.0679 | $0.0520 |
| Duke Energy Ohio | $0.0607 | $0.0568 |

Even more problematic is the fact that Verde’s own refund methodology produces a total value of customer refunds that exceeds the approximate $1,068,000 total referenced in the Settlement, *even when Verde’s and PUCO Staff’s proposed benchmark is used*. Based on the information that Verde provided to OCC in discovery demonstrating how refunds under the Settlement will be calculated, Mr. Williams testified that the total value of customer refunds should be approximately $1,283,396.[[108]](#footnote-109) But the Settlement states that the value of the refunds is approximately $1,068,000. Thus, even using Verde’s and PUCO Staff’s proposed rates and re-rating methodology, there is discrepancy of $215,396 to the detriment of Verde’s electric customers.[[109]](#footnote-110)

During the evidentiary hearing, PUCO Staff witness Ramsey testified that Verde provided the refund information supporting the $1,068,000 amount to the PUCO Staff, and that the PUCO Staff relied on that information and did not perform its own re-calculations.[[110]](#footnote-111) This is a major deficiency in the Settlement because the PUCO Staff did not verify the number of customers and the rates that those customers were charged to ensure that the refund was performed correctly.

Mr. Williams explained that if this discrepancy is not reconciled, the $1,068,000 amount referenced in the refund provision of the Settlement could be interpreted as a limitation on the amount of the refunds that Verde’s customers may receive.[[111]](#footnote-112) In effect, by limiting customer refunds, the Settlement is allowing Verde to further profit from customers it gained as a result of its deceptive sales practices.[[112]](#footnote-113) This yet another example of how the Settlement harms customers, is unreasonable and not in the public interest. It should be rejected.

## C. The Settlement should be rejected because it harms customers by further reducing refunds by deducting an additional amount for Verde’s administration of a “shopping rewards program” in which customers may not have even participated.

It is bad enough that the Settlement provides zero refunds to Verde’s natural gas customers and deprives Verde’s electric customers of full compensation by not refunding customers to the utility’s price to compare. But the Settlement cuts electric customer refunds further by deducting from the refund amount money that Verde paid to administer its “shopping rewards program.”[[113]](#footnote-114) Verde’s shopping rewards program is offered to customers for marketing purposes, but there is no evidence regarding how Verde’s customers use the program, or even if they use the program at all.[[114]](#footnote-115) Verde’s costs to run its marketing shopping rewards program – which have nothing to do with the costs Verde incurs to supply service to customers – should be borne by Verde, not the Ohio customers that it exploited and deceived.

OCC witness Williams explained that Verde’s rewards program is free to participating customers, and through the program, customers can redeem rewards “points” for things like shopping, travel, or dining.[[115]](#footnote-116) There is no cash equivalent value to the reward points.[[116]](#footnote-117) According to Verde, a total of 7,633,200 in reward points were provided to Ohio customers during the time frame of the Staff investigation.[[117]](#footnote-118) But because there is no cash value to these reward points (or evidence that customers even used or received anything of value for the points in the first place) it would be unjust and unreasonable to reduce customers’ refunds based on the shopping rewards. But that is what Staff and Verde agreed to do. Indeed, customers who paid high Verde rates in cash should be entitled to the restitution that is owed them *in cash*. The Settlement terms to the contrary are unreasonable and not in the public interest.

## D. The Settlement harms customers because it allows Verde to continue serving existing electric and natural gas customers despite the PUCO Staff’s determination in the Staff Report that Verde is unable to provide adequate service.

Under the Settlement, Verde agreed to suspend its marketing and enrollment of customers in Ohio until October 30, 2020.[[118]](#footnote-119) Verde also agreed to withdraw from and not enroll customers through Dominion East Ohio’s (“Dominion”) monthly variable rate (“MVR”) program for a one-year period.[[119]](#footnote-120) However, nothing in Settlement stops Verde from exploiting its *existing* electric and natural gas customers or protects those customers from further harm. Given Verde’s misleading and deceptive marketing practices, its admittedfailure to comply with the PUCO’s rules, and its demonstrated inability to provide adequate service to customers, the PUCO should not allow Verde to serve *any* electric or natural gas customers.

All of Verde’s existing customers should be returned to the applicable utility standard service offer or given the opportunity to choose a competitive retail supplier that is capable of providing service in accordance with Ohio law.

As explained above, there is ample evidence in this proceeding that Verde knowingly failed to comply with the PUCO’s rules with respect to enrolling customers, maintaining records, and providing customers with necessary information to make informed choices about their electric and natural gas services.[[120]](#footnote-121) The Staff Report states in no uncertain terms that:

Verde’s managerial capabilities are not sufficient to ensure it provides [electric and natural gas service] in compliance with the Ohio Administrative Code and also reveal its *inability to provide adequate service to customers*.[[121]](#footnote-122)

If Verde lacks the ability to provide adequate service, then the Settlement does not – and by definition cannot – benefit customers or the public interest if it allows Verde to continue serving customers in Ohio. Further, PUCO Staff itself found that despite being notified of “hundreds of customer complaints . . . Verde has failed to implement any meaningful corrective or remedial action.”[[122]](#footnote-123) Nothing in the Settlement specifies what remedial actions (if any) Verde will take to address the violations identified in the Staff Report or to protect the customers that Verde serves today.[[123]](#footnote-124)

For example, the evidence demonstrates that Verde does not provide customers with proper notice before switching them to high monthly variable rates when their fixed rate contracts expire.[[124]](#footnote-125) The Settlement does not require Verde to do anything to change its policies in this regard. The Settlement does require Verde to submit an “action plan for compliance at least ninety (90) days prior to resuming marketing or customer enrollment in Ohio,”[[125]](#footnote-126) but Verde’s *future* action plan does not help its *current* customers. Verde’s current customers should not be blindsided by an astronomical energy supply bill and then be forced to expend time and resources to fight Verde after the fact to obtain a refund.

 OCC witness Williams further testified that the customers that Verde continues to serve through the Dominion MVR program pay rates that are nearly *four times* Dominion’s standard offer rate.[[126]](#footnote-127) Mr. Williams provided the total number of Verde customers on the MVR for each month since July 2018 and the Verde rate compared to the standard offer.[[127]](#footnote-128) This evidence shows that the Verde MVR rate has consistently been far higher than the Dominion standard offer since at least July 2018.[[128]](#footnote-129) Mr. Williams explained that Verde customers on the MVR in September 2019 paid $6.78/MCF more than if they were served on the Dominion standard offer.[[129]](#footnote-130) Accordingly, Verde customers using 60 MCF to heat their homes this winter could be paying over $400 more in natural gas costs compared to the Dominion standard offer.[[130]](#footnote-131) That is a significant amount of money, particularly for customers on fixed incomes or with limited means. But the Settlement does nothing to protect Verde’s current customers from the unconscionable high prices that Verde charges. Thus, the settlement does not benefit customers and the public interest.

## E. The Settlement harms customers because it does not require Verde to reform its conduct to address the Staff Report’s finding that Verde is incapable of providing adequate service to customers.

The Staff Report details the systemic issues plaguing Verde’s provision of electric and natural gas services in Ohio, including “misleading and deceptive practices used to enroll customers, a failure to maintain documents and other data as required, probable non-compliance with certain requirements of the third-party verification (TPV) rules, and violations of the noticing requirements.[[131]](#footnote-132) Verde further admitted violations and non-compliance in numerous communications with PUCO Staff.[[132]](#footnote-133) The Staff Report concluded that “Verde’s managerial capabilities are not sufficient to ensure it conducts its Marketing practices for electric and natural gas services in compliance with the Ohio Administrative Code and also reveal its inability to provide adequate service to customers.”[[133]](#footnote-134)

Despite this, the Settlement is silent as to *how* Verde will reform its conduct to address the Staff Report’s findings – if at all. Verde’s obligations under the Settlement to reform its unlawful business practices are boiled down to a single sentence:

Verde Energy will submit an action plan for compliance at least ninety (90) days prior to resuming marketing and customer enrollment in Ohio.[[134]](#footnote-135)

This provision is vague and inadequate. It does not benefit customers or the public interest. It does nothing to protect the *existing customers* that Verde still gets to serve. Nor does it provide assurance that Verde will protect future customers when it resumes marketing and enrolling customers in Ohio in less than a year from now.

The Settlement’s “action plan” provision also pales in comparison to reforms other Spark companies (Verde’s affiliates) have agreed to undertake in other states. OCC witness Barbara Alexander testified that there have been numerous regulatory proceedings against Spark companies in other states involving the exact type of deceptive marketing practices and consumer protection violations identified in the Staff Report.[[135]](#footnote-136) Specifically, Ms. Alexander testified regarding proceedings against Spark companies in Massachusetts, Pennsylvania, Maryland, New York, Connecticut, Illinois, and Maine.[[136]](#footnote-137) Further, Verde’s recent Application to the PUCO to *renew* its certificate to provide natural gas services in Ohio identifies *twenty-one* investigations against Verde and its affiliates in other states, some of which are still pending.[[137]](#footnote-138) Ms. Alexander explained that, regardless of whether the cases were resolved through litigation or through settlement, they were resolved by requiring the Spark companies to adopt detailed business reforms, training programs, and restrictions on deceptive and misleading marketing conduct.[[138]](#footnote-139) These reforms are absent from the Settlement between PUCO Staff and Verde.[[139]](#footnote-140)

For example, in *People of the State of Illinois, ex rel. Kwame Raoul v. Major Energy Electric Services LLC*, Major Energy (another Spark company) entered into a consent decree with the Illinois Attorney General to resolve allegations of deceptive marketing practices and violations of Illinois consumer protection laws.[[140]](#footnote-141) The consent decree specifically enjoined Major Energy from engaging in deceptive marketing practices including, but not limited to:

* Representing that customers will save money, unless the customer will pay a lower rate as compared to Illinois utilities’ price to compare, and Major clearly and conspicuously discloses the time period during which customers will experience such savings;
* Representing that Major is affiliated with the customer’s public electric utility or a government-sanctioned program;
* Representing that customers are entitled to savings on their electric bill under a state or federal deregulation law or specific program;
* Asking a customer to provide their utility account number, or otherwise record a customer’s utility account number, before the customer affirmatively consents to enroll with Major; and
* Charging customers a fee or penalty to terminate a contract with Major.[[141]](#footnote-142)

The consent decree also required Major to undertake a number of specific marketing reforms, including disclosing to the customer immediately during telemarketing and in-person solicitations, the name of the sales agent and that the sales agent represents Major, and not the public utility.[[142]](#footnote-143) Major was also ordered to “inquire at the beginning of a call whether the Consumer consents to the solicitation.”[[143]](#footnote-144) The consent decree also described specific training policies and procedures that Major was required to implement prior to resuming marketing to Illinois customers.[[144]](#footnote-145)

If not required to leave the state (which should be required), then Verde can, and should, make similar commitments in this case as a condition of being allowed to continue serving its existing customers, and before it can resume marketing and enrolling new customers in Ohio. As it stands, the Settlement between the PUCO Staff and Verde requires *none* of these consumer protection reforms. It only requires Verde to submit an “action plan for compliance.” This provision is vague and insufficient to ensure the compliance plan will benefit customers and fix Verde’s “inability to provide adequate service to customers.”[[145]](#footnote-146) During cross-examination, OCC witness Ms. Alexander testified:

[Alexander]: The term “action plan” is not enforceable in my opinion.

[Verde]: Why not?

[Alexander]: Because it has no meaning. It is not defined, no details of what will be included. No corrective actions are specifically identified. That is vague and unenforceable. It’s – it could mean whatever Verde Energy decides it means.[[146]](#footnote-147)

In addition, according to PUCO Staff witness Ramsey, Verde will take primary responsibility for creating the action plan.[[147]](#footnote-148) However, there will be no opportunity for other interested parties (such as OCC or intervenor-supplier Interstate Gas Supply (“IGS”)) to review or comment on Verde’s action plan. The action plan also does not have to be approved by the PUCO. During the evidentiary hearing, PUCO Staff witness Ramsey testified during cross-examination from IGS:

[IGS]: Okay. Must that action plan be formally approved by the Commission before Verde can resume its sales and marketing activities in Ohio?

[Ramsey]: Verde has to submit an action plan for compliance to Staff.

[IGS]: Must that plan be formally approved by the Commission?

[Ramsey]: Not by the Commission.

[IGS]: Okay. And can you tell me if there is a venue or forum that IGS or any other interested party might have to provide input regarding the decision to allow Verde to reenter the Ohio competitive market?

[Ramsey]: I guess if you had joined the Stipulation maybe. I mean.

[IGS]: So just to be clear, do you anticipate requiring Verde to file the action plan in this proceeding or perhaps in a separate docket?

[Ramsey]: No.[[148]](#footnote-149)

The Staff Report found that Verde cannot manage to provide adequate service to customers or comply with the PUCO’s rules in the first place. Yet under the Settlement, Verde will be charged with creating its own compliance action plan, with no requirements whatsoever as to what must be included in that plan, and no requirement that Verde actually follow any of the steps that it might provide for itself in the action plan. That more than defies logic. Ohio consumers or other competitive suppliers that were harmed by Verde will have no opportunity to provide input on the action plan. The action plan does not require PUCO approval. Given the findings set forth in the Staff Report, Verde’s own admissions of non-compliance, and the overwhelming evidence in this case that Verde violated Ohio law, the Settlement is woefully inadequate to protect customers. The Settlement fails to benefit consumers and the public interest, and should therefore, be rejected.

## F. Ohio customers who enrolled in Verde’s services prior to June 1, 2018 should receive notice that they can cancel their service with Verde without penalty.

The Settlement allows Verde to continue serving its existing customers. Because Verde is unable to provide adequate service to customers, Verde should not be permitted to continue to serve any Ohio customers. Instead, Verde’s existing customers should be returned to the applicable utility standard offer rate plan or be permitted to choose another supplier capable of providing adequate service. If the PUCO allows Verde to continue to serve its existing customers (and it should not), it should modify the Settlement to require Verde to provide notice to all of its customers that they can cancel their service without penalty, regardless of when they enrolled.

The Settlement provides that:

Verde Energy will notify all customers enrolled in Ohio since June 1, 2018 that they may cancel contracts without penalty at the customer’s election. The notice shall indicate that PUCO Staff has alleged that Verde may have misled customers in Ohio during the marketing of its product. The notice shall be sent within 30-days of the Order approving the Stipulation.[[149]](#footnote-150)

There is no basis for limiting this notice only to customers who enrolled with Verde after June 1, 2018. As explained above, the Staff Report found that Verde’s noncompliance issues began after it was purchased by Spark in July 2017.[[150]](#footnote-151) Therefore, Verde likely harmed customers prior to the June 1, 2018 date referenced in the Settlement.[[151]](#footnote-152) If Verde is allowed to continue to serve these customers, the customers should also receive notice under the Settlement and be provided the opportunity to cancel their contracts with Verde without penalty. The terms of the Settlement to the contrary harm customers and are not in the public interest.

## G. The Settlement’s required forfeiture amount of $675,000 is inadequate and is not in the public interest given Verde’s knowing refusal to comply with Ohio law and the PUCO’s rules.

The evidence in this case demonstrates that Verde *knew* the PUCO’s minimum standards governing the provision of retail electric and natural gas service but flouted them to the detriment of Ohio consumers. The Staff Report stated that:

Staff has referred hundreds of customer complaints to Verde since July 2018. Yet to Staff’s knowledge, Verde has failed to implement any meaningful corrective or remedial action.[[152]](#footnote-153)

In addition, Verde’s spoofing activities continued despite warnings from the PUCO Staff. Verde repeatedly admitted to the PUCO Staff that its TPV enrollment calls did not comply with the PUCO’s rules. Verde repeatedly failed to provide customer enrollment information to the PUCO Staff. Verde has done nothing to change its practices.

Verde’s willful disregard of Ohio law and the PUCO’s rules warrants a significant forfeiture. Otherwise, Verde will have no reason to reform its conduct. The PUCO should therefore require Verde to pay a *minimum* forfeiture of $1.5 million, which is consistent with the recommendation in the Staff Report. The Settlement requires Verde to pay a forfeiture of $675,000 – less than half of the $1.5 million recommended in the Staff Report. That amount is insufficient given Verde’s blatant refusal to comply with Ohio law and the PUCO’s rules.

OCC witness Williams testified that Verde’s internal training materials further demonstrate that Verde knew how to comply with Ohio law.[[153]](#footnote-154) Specifically, Mr. Williams reviewed Verde’s sales scripts, the Code of Conduct for sales representatives, presentations regarding door-to-door marketing strategies, and a sales agent training agenda.[[154]](#footnote-155) Mr. Williams testified that these materials demonstrate Verde’s knowledge of the Ohio laws and the PUCO’s rules.[[155]](#footnote-156) Nevertheless, Verde persisted in violations. For example, the Staff Report summarized a review that it conducted of 150 Verde sales recordings to verify compliance with the PUCO’s rules.[[156]](#footnote-157) The sales representatives were not following, or were altering, the sales script provided by Verde.[[157]](#footnote-158) Astonishingly, the PUCO Staff identified at least one or more compliance issues with *every single one of the Verde marketing calls made to consumers*.[[158]](#footnote-159)

Moreover, Verde refuses to take responsibility for its noncompliance. When the PUCO Staff confronted Verde with not having sufficient records to support customer enrollments,[[159]](#footnote-160) Verde’s response was to blame its third party vendors.[[160]](#footnote-161) Specifically, the PUCO Staff requested copies of sales calls from Verde, but Verde could not produce them all (as required by the PUCO’s rules)[[161]](#footnote-162) claiming that:

Unfortunately, because we no longer have a working relationship with Dark Star, CJ Consulting, ETM and Vestra we were unsuccessful in obtaining the sales calls from them.[[162]](#footnote-163)

Discontinuing a working relationship with a third-party vendor is not an excuse for failing to comply with Ohio law.

The evidence in this case is clear that Verde willfully disregards Ohio law and refuses to modify its conduct even when faced with a PUCO investigation. The PUCO’s threats do not scare Verde and are not enough to deter Verde’s conduct. The public interest therefore *demands* that the PUCO order Verde to pay a forfeiture large enough to end Verde’s exploitation of Ohio customers and to send a message that Verde’s conduct absolutely will not be tolerated in Ohio. The PUCO should order Verde to pay a forfeiture of at least $1.5 million.

# V. THE SETTLEMENT SHOULD BE REJECTED BECAUSE IT VIOLATES IMPORTANT REGULATORY PRINCIPLES AND PRACTICES.

The PUCO should reject the Settlement and permanently rescind Verde’s certificates to serve Ohio customers. The Staff Report, testimony of OCC’s witnesses, the over 500 customer contacts and complaints (which contain Verde’s admissions of violations), and the other evidence presented in this case overwhelmingly demonstrate the numerous ways in which Verde has violated Ohio law and the PUCO’s rules in providing retail electric and natural gas service to Ohio customers.

Yet inexplicably, the Settlement allows Verde to continue serving existing customers without first requiring Verde to implement a single remedial measure to modify its business practices in order to comply with Ohio law and the PUCO’s rules.

As noted above, the Settlement requires Verde to submit a compliance action plan *in the future* before it resumes marketing and enrolling new customers (in less than one year), but that does not help Verde’s existing electric and natural gas customers. The Settlement also contains no mechanism for interested parties to make sure that Verde’s future plan for compliance is sufficient to protect customers and other competitive suppliers. These Settlement provisions fail to require Verde to bring its marketing acts and practices into compliance with Ohio law and PUCO rules and fails to adequately protect consumers who were harmed by Verde in the past or in the future. Therefore, the Settlement should be rejected.

And in any event, Verde’s ability and willingness to actually follow any compliance plan is doubtful. The evidence shows that Verde is a rip-off artist who has thumbed its nose at the PUCO even when confronted with hundreds of customer complaints and a PUCO Staff investigation. By not holding Verde accountable for its unlawful conduct, the Settlement on its face violates Ohio law and important regulatory principles.

Overarching all of the PUCO rules governing the specifics of providing retail electric and natural gas service is the paramount regulatory principle codified in Ohio law that energy suppliers *must* have the “managerial, technical, and financial capability” to provide service.[[163]](#footnote-164) To enforce this principle and protect consumers, the PUCO has authority deny or rescind an electric or natural gas supplier’s certificate for many reasons including, but not limited to:

* A finding by the PUCO that information provided subsequent to the granting of a certificate of authority adversely affects the electric or natural gas supplier’s fitness or capability to provide service;[[164]](#footnote-165)
* A finding by the PUCO that an electric or natural gas supplier has violated any applicable commission rule or order adopted pursuant to Chapters 4928 or 4929 of the Revised Code;[[165]](#footnote-166)
* A finding by the PUCO that an electric or natural gas supplier engaged in an anticompetitive act;[[166]](#footnote-167) and
* A finding by the PUCO that an electric or natural gas supplier has failed to comply with state laws or rules designed to protect consumers in this state, or has otherwise engaged in any fraudulent, misleading or unfair practices.[[167]](#footnote-168)

The Staff Report found (and the record evidence proves) that Verde had violated each of these provisions.[[168]](#footnote-169) The evidence overwhelmingly demonstrates that Verde does not have the managerial capability to serve Ohio consumers. The PUCO Staff found that Verde is incapable of providing adequate service to customers and is “managerially unfit to provide services in the state.”[[169]](#footnote-170) Allowing Verde to continue to serve its existing customers renders the regulatory principles codified in Ohio law and the PUCO’s rules meaningless.

It is Verde’s responsibility, as a condition for maintaining its certification in Ohio, to fully comply with Ohio law and to demonstrate how it will reform its practices to comply with Ohio law. Indeed, the PUCO’s April 17 Entry in this proceeding directed Verde to “show cause” why its certificates should not be rescinded. If Verde was truly concerned about providing adequate service to Ohio consumers and complying with Ohio law, it would have developed a comprehensive compliance plan to modify its practices to serve its *existing* customers and presented it as part of the Settlement. But it did not. Accordingly, the PUCO should reject the Settlement.

# VI. THE PUCO ERRED IN QUASHING OCC’S VALID SUBOPOENA FOR A VERDE WITNESS TO TESTIFY IN THIS CASE.

## A. It is neither unreasonable nor oppressive for Verde to be required to produce a witness to answer for the allegations of unfair, misleading, deceptive, unconscionable, and unlawful acts against Ohio consumers.

The standard for quashing a subpoena is that the subpoena is “unreasonable or oppressive.”[[170]](#footnote-171) The Staff Report identifies extensive allegations of unfair, misleading, deceptive, unconscionable, and unlawful acts and practices in Verde’s marketing of electricity and natural gas to Ohio consumers. There is nothing unreasonable or oppressive about requiring Verde to produce a single witness for a single day at a public hearing before the PUCO to answer for the allegations made in the Staff Report.

Accordingly, OCC filed a motion under Ohio Adm. Code 4901-1-25 asking the PUCO to issue a subpoena for (i) a corporate designee or designees with knowledge of the information regarding the Staff Report’s allegations and (ii) Verde employee Kira Jordan, whom Verde had previously identified as an individual with relevant knowledge.[[171]](#footnote-172) PUCO Attorney Examiner Price signed the subpoenas. OCC properly served the subpoenas and filed return of service forms with the PUCO, consistent with Ohio Adm. Code 4901-1-25(B).

At the hearing, the Attorney Examiner quashed OCC’s subpoenas.[[172]](#footnote-173) The Examiner quashed OCC’s corporate subpoena, ruling that “OCC has not demonstrated the Commission rules allow them to subpoena a corporate designee.”[[173]](#footnote-174) The Examiner also quashed OCC’s subpoena of Verde employee Kira Jordan, ruling that the PUCO lacks authority to subpoena out-of-state witnesses.[[174]](#footnote-175) The PUCO should overturn these rulings: the Ohio Revised Code and Administrative Code allow for subpoenas of corporate designees, and they allow for subpoenas of out-of-state witnesses.

## B. The plain language of Ohio Adm. Code 4901-1-25 allows parties to subpoena a corporation like Verde.

Under the PUCO’s rules, “person” is defined as “a person, firm, *corporation*, unincorporated association, government agency, the United States, the state of Ohio or one of its political subdivisions, or any other legally cognizable entity including any entity defined as a ‘person’ in division (A) of section 4906.01 of the Revised Code.”[[175]](#footnote-176)

Ohio Adm. Code 4901-1-25 states that the “commission, any commissioner, the legal director, the deputy legal director, or an attorney examiner may issue subpoenas.” Further, “[a] subpoena shall command the *person* to whom it is directed to attend and give testimony at the time and place specified therein.”[[176]](#footnote-177)

Verde is a corporation.

A corporation is a person.

A person can be subpoenaed.

Verde can be subpoenaed.

Thus, there is no basis for the Attorney Examiner’s conclusion that the PUCO’s rules do not allow a corporation to be subpoenaed.[[177]](#footnote-178)

## C. By doing business as a marketer in the State of Ohio, Verde consented to jurisdiction under R.C. 4928.09 and 4929.21, which includes consent to subpoenas.

Verde voluntarily chose to do business in the State of Ohio. Under both R.C. 4928.09(a)(1)(a) (which applies to electricity marketers) and 4929.21(A)(1)(a) (which applies to natural gas marketers), a marketer like Verde “[c]onsents irrevocably to the jurisdiction of the courts of this state and service of process in this state, including, without limitation, service of summonses and subpoenas....” This language necessarily is directed to out-of-state corporations like Verde because in-state marketers would already be subject to Ohio jurisdiction simply by virtue of being located in Ohio.[[178]](#footnote-179) Thus, Verde consented to being subpoenaed by the PUCO, and OCC’s subpoena should not have been quashed.

## D. R.C. 4928.09(B) and 4929.21(B) explicitly contemplate an out-of-state witness appearing in Ohio pursuant to a subpoena.

Under R.C. 4928.09(B) and 4929.21(B), which apply to Verde, “[a] person who enters this state pursuant to a ... subpoena ... authorized by this section is not subject to arrest or service of process, whether civil or criminal, in connection with other matters that arose before the person’s entrance into this state pursuant to such ... subpoena.” These statutes only make sense if the person subject to the subpoena is from out of state.

The statutes refer to a person who *enters* the State of Ohio. An individual who is already in the State of Ohio cannot enter the State of Ohio. Thus, the only way to give these sections of the Revised Code meaning is to interpret them to mean that the PUCO can subpoena a marketer’s out-of-state witness to appear at a PUCO hearing. If the PUCO could only subpoena in-state witnesses, then there would be no need for a statute that addresses individuals *entering* the State of Ohio pursuant to a subpoena. The PUCO may not interpret a statute in a way that renders it meaningless.[[179]](#footnote-180)

## E. Courts interpreting similar “consent to jurisdiction” statutes have found that such consent to jurisdiction includes being compelled to provide out-of-state witnesses for trial.

The statutory language for electric and natural gas marketers in R.C. 4928.09 and R.C. 4929.21 requires a marketer to designate a statutory agent to receive service of process in Ohio.[[180]](#footnote-181) In *Burgess v. Prudential Insurance Co. of America,*[[181]](#footnote-182) the insurance company in question was subject to Ohio Revised Code 3909.05. Under that law, an out of state insurance company is required to maintain a statutory agent in Ohio to receive service of process.[[182]](#footnote-183) The *Burgess* court found that R.C. 3909.05 “gives a party the ability to call individual employees of the out-of-state corporation into the state for depositions *or testimony at trial*” as long as the individual is personally served with the subpoena.[[183]](#footnote-184)

Thus, the PUCO should interpret R.C. 4928.09 and R.C. 4929.21 to mean that marketers like Verde have consented to providing out of state witnesses to appear at a hearing before the PUCO. Indeed, the statutory language that applies to Verde is even stronger than that found in the insurance statutes at issue in *Burgess*. The marketer statutes explicitly provide that marketers consent to being subpoenaed. There is no similar language in the insurance statute, R.C. 3909.05. If the *Burgess* court interpreted R.C. 3909.05 to require a company to produce an out-of-state witness for trial, then certainly the more explicit language found in R.C. 4928.09 and 4929.21 should do the same.

The Attorney Examiner’s ruling that out-of-state witness cannot be subpoenaed to appear before the PUCO is not supported by law.

## F. Ohio Adm. Code 4901-1-25(B) cannot limit service of subpoenas to in-state witnesses.

In its motion to quash OCC’s subpoenas, Verde argued that a subpoena must be served within the State of Ohio.[[184]](#footnote-185) Verde’s argument is based on Ohio Adm. Code 4901-1-25(B), which states, among other things, “A subpoena may be served at any place within this state.” This argument falls apart upon closer inspection.

First, this argument cannot apply to OCC’s corporate subpoenas because those were in fact served on Verde’s corporate agent within the State of Ohio.[[185]](#footnote-186)

Second, while Verde claims that this language means that service is *required* to be made within the State of Ohio, the rule says no such thing. The rule’s language is permissive, not mandatory. It simply says that subpoenas *may* be served at any place within Ohio. Chapter 4901-1 of the Ohio Administrative Code, where the subpoena rule is found, uses the word “must” 36 times and the word “shall” 212 times. Had the PUCO intended its rule to mean that a subpoena is *required* to be served within the State of Ohio, it would have used one of those words instead of the permissive “may.”

Third, if the PUCO’s rule is intended to limit subpoenas to within the State of Ohio, then the rule is contrary to law and must be revised. As explained above, R.C. 4928.09 and 4929.21 explicitly contemplate subpoenas of out-of-state witnesses for marketers who choose to do business in Ohio. As the Supreme Court of Ohio has ruled,

“A rule that is contrary to statute is invalid.”[[186]](#footnote-187) Thus, where a statute grants a party the right to subpoena out-of-state witnesses to appear at a hearing before the PUCO, as is true here for R.C. 4928.09 and 4929.21, the PUCO lacks authority to issue a rule that limits subpoenas to in-state witnesses. If the PUCO interprets this rule to mean that only in-state witnesses can be subpoenaed, then the PUCO must immediately amend the rule to eliminate that requirement, consistent with R.C. 4928.09 and 4929.21.

# VII. CONCLUSION

There are many reputable providers of retail electric and natural gas service that promote fair competition in Ohio and that have the managerial capability to adequately serve Ohio customers. Verde is not one of them. Verde is a rip-off artist that lies to enroll customers. Verde tricks customers into paying exorbitant rates. Verde harms competition and other energy suppliers in Ohio. The overwhelming evidence in this case demonstrates this. The PUCO should prohibit Verde from ever serving another Ohio customer.

This case does not involve an isolated occurrence of noncompliance with the PUCO’s rules. Verde’s failure to comply with Ohio law is pervasive, systemic, and intentional. Since the PUCO Staff began investigating Verde in 2018, Verde has done nothing to meaningfully reform its conduct to comply with Ohio law. Verde has flatly ignored hundreds of customer complaints and warnings from the PUCO Staff. Verde’s spoofing activities continued for *months* until Verde finally stopped marketing in Ohio.

When the PUCO initiated this investigation case, it directed Verde to “show cause” why its certificates to provide electric and natural gas service to Ohio customers should not be suspended or rescinded. Verde has done nothing. It has offered no evidence to show a commitment to Ohio consumers or to changing its business practices.

There is no reason to believe, and no evidence in this proceeding to demonstrate, that Verde will act any differently in the future if the PUCO approves the Settlement. The PUCO cannot simply trust that Verde will cooperate with the PUCO Staff and take action to change its ways.

The Settlement does not sufficiently compensate the customers that Verde harmed, and it allows Verde to continue serving customers despite the PUCO Staff’s unequivocal conclusion that Verde is incapable of providing adequate service. The Settlement does not benefit customers or the public interest, and it would violate the established regulatory principles codified in Ohio law. Therefore, the PUCO should reject the Settlement, permanently rescind Verde’s certificates, order Verde to pay a minimum $1.5 million forfeiture, and send Verde on its way back to Texas.

Consumers and competition in Ohio deserve – and Ohio law requires – nothing less.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Initial Post-Hearing Brief was served upon the persons stated below via electronic transmission this 2nd day of December 2019.

 */s/ Angela D. O’Brien*

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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. OCC Ex. 5, at 27 (Case Report 19-0958-GE-COI, Staff Report (May 29, 2019)) (referred to herein as “Staff Report”). [↑](#footnote-ref-2)
2. OCC Ex. 19B (Williams Direct) at 18, JDW-08. [↑](#footnote-ref-3)
3. *See e.g.* Staff Report, at 9; and OCC Ex. 7. [↑](#footnote-ref-4)
4. OCC Ex. 6 (April 16, 2019 PUCO Staff Letter filed in Case Nos. 11-5886-EL-CRS and 13-2164-GA-CRS). [↑](#footnote-ref-5)
5. *Id.* [↑](#footnote-ref-6)
6. OCC Ex. 20B (Deposition of Kira Jordan) at 28: 21-22, 33: 7-10. [↑](#footnote-ref-7)
7. *Id.* at 32-33. [↑](#footnote-ref-8)
8. *See In the Matter of the Application of Verde Energy USA Ohio, LLC for Certification as a Competitive Retail Electric Service Provider*, Case No. 11-5886-EL-CRS; *In the Matter of the Application of Verde Energy USA Ohio, LLC for Certification as a Competitive Retail Natural Gas Supplier*, Case No. 13-2164-GA-CRS. [↑](#footnote-ref-9)
9. *See* Ohio Admin. Code 4901:1-24-13(E) and 4901:1-27-13(E). [↑](#footnote-ref-10)
10. *See e.g.* OCC Ex. 7, PUCO Case Report 00258956 (customer complained that Verde representative told her that she had to switch to Verde because her supplier, IGS, was “going out of business.”). [↑](#footnote-ref-11)
11. *See e.g.* OCC Ex. 7, PUCO Case Report 00256177 (customer complained that Verde sales representative said they were from AEP); PUCO Case Report 00256376 (customer complained that Verde door-to-door sales representative displayed an Ohio Edison badge). *See also* OCC Ex. 8 (3/26/19 e-mail from Barbara Bossart to Nedra Ramsey). [↑](#footnote-ref-12)
12. Staff Report, at 26. [↑](#footnote-ref-13)
13. *See e.g.* OCC Ex. 8 (3/26/19 e-mail from Barbara Bossart to Nedra Ramsey). [↑](#footnote-ref-14)
14. *See e.g.* OCC Ex. 17 (PUCO Case Report 00244217); OCC Ex. 7 (PUCO Case Report 00257020). [↑](#footnote-ref-15)
15. *See e.g.* OCC Ex. 7, PUCO Case Report 00260545 (4/4/19 e-mail from Verde representative Louise Bourgeois to PUCO Staff agreeing to re-rate customer due to non-compliance with PUCO rules); PUCO Case Report 00260578 (4/4/19 e-mail from Verde representative Xiomara Mendoza to PUCO Staff agreeing to re-rate customer due to non-compliance with PUCO rules); PUCO Case Report 00261052 (4/8/19 e-mail from Verde representative Xiomara Mendoza to PUCO Staff agreeing to re-rate customer due to non-compliance with PUCO rules). [↑](#footnote-ref-16)
16. Staff Report, at 27. [↑](#footnote-ref-17)
17. OCC Ex. 1 (Alexander Direct) at 8. [↑](#footnote-ref-18)
18. Staff Report, at 27. [↑](#footnote-ref-19)
19. OCC Ex. 19B (Williams Direct) at 20. [↑](#footnote-ref-20)
20. Joint Ex. 1 at 2: “If approved by the Commission, the Stipulation resolves all of the issues raised in the Investigation and Staff Report.” [↑](#footnote-ref-21)
21. Staff Report, at 25, 27. [↑](#footnote-ref-22)
22. April 17 Entry, ¶ 9 (emphasis added). [↑](#footnote-ref-23)
23. *In re Application Seeking Approval of Ohio Power Co.’s Proposal to Enter into an Affiliate Power Purchase Agmt.*, Case No. 14-1693-EL-SSO, Opinion & Order at 18 (March 31, 2016). [↑](#footnote-ref-24)
24. *Duff v. PUCO,* 56 Ohio St.2d 367, 379 (1978); *see also* Ohio Adm. Code 4901-1-30(E). [↑](#footnote-ref-25)
25. *Duff*, 56 Ohio St.2d at 379. [↑](#footnote-ref-26)
26. *See, e.g., In re Application of Columbia Gas of Ohio, Inc. for an Adjustment to Rider IRP & Rider DSM Rates*, Case No. 18-1701-GA-RDR, Opinion & Order ¶ 31 (April 24, 2019). [↑](#footnote-ref-27)
27. *Consumers’ Counsel v. PUCO*, 64 Ohio St.3d 123, 126 (1992). [↑](#footnote-ref-28)
28. PUCO Entry (April 17, 2019) at ¶ 9. [↑](#footnote-ref-29)
29. PUCO Entry (April 17, 2019) (“April 17 Entry”) at ¶¶ 7, 9. [↑](#footnote-ref-30)
30. PUCO Staff April 16, 2019 Letter filed in Case Nos. 11-5886-EL-CRS and 13-2164-GA-CRS (“April 16 Letter). [↑](#footnote-ref-31)
31. Staff Report, at 9. [↑](#footnote-ref-32)
32. *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-33)
33. Staff Report, at 26. [↑](#footnote-ref-34)
34. *Id.* [↑](#footnote-ref-35)
35. *Id.* [↑](#footnote-ref-36)
36. *Id.* at 27. [↑](#footnote-ref-37)
37. *Id.* [↑](#footnote-ref-38)
38. *Id.* [↑](#footnote-ref-39)
39. *Id.* [↑](#footnote-ref-40)
40. *Id.* at 24-25. [↑](#footnote-ref-41)
41. *Id.* at 27. [↑](#footnote-ref-42)
42. *Id.* at pp. 25-26. [↑](#footnote-ref-43)
43. Verde did not present direct or rebuttal testimony in this case. [↑](#footnote-ref-44)
44. OCC Ex. 7. [↑](#footnote-ref-45)
45. Under Ohio Rule of Evidence 801(D)(2), admissions or statements against interest by a party-opponent (*i.e.* Verde) are not hearsay. [↑](#footnote-ref-46)
46. *See e.g.* OCC Ex. 7, PUCO Case Report 00255307 (3/11/19 e-mail from Verde representative Xiomara Mendoza to PUCO Staff admitting non-compliance with PUCO’s rules); PUCO Case Report 00256087 (3/5/19 e-mail from Verde representative Edwin Quinonez to PUCO Staff admitting non-compliance with PUCO’s rules); PUCO Case Report 00257677 (3/19/19 e-mail from Verde representative Xiomara Mendoza to PUCO Staff admitting non-compliance with PUCO’s rules); PUCO Case Report 00257713 (3/13/19 e-mail from Verde representative Xiomara Mendoza to PUCO Staff admitting non-compliance with PUCO’s rules); PUCO Case Report 00257980 (3/15/19 e-mail from Verde representative Edwin Quinonez to PUCO Staff admitting non-compliance with PUCO’s rules); PUCO Case Report 00258319 (3/26/19 e-mail from Verde representative Xiomara Mendoza to PUCO Staff admitting non-compliance with PUCO’s rules); PUCO Case Report 00258361 (3/26/19 e-mail from Verde representative Louise Bourgeois to PUCO Staff admitting non-compliance with PUCO’s rules); PUCO Case Report 00260254 (4/8/19 e-mail from Verde representative Xiomara Mendoza to PUCO Staff admitting non-compliance with PUCO’s rules); PUCO Case Report 00260273 (3/29/19 e-mail from Verde representative Louise Bourgeois to PUCO Staff admitting non-compliance with PUCO’s rules); PUCO Case Report 00260545 (4/4/19 e-mail from Verde representative Louise Bourgeois to PUCO Staff admitting non-compliance with PUCO’s rules); PUCO Case Report 00260578 (4/4/19 e-mail from Verde representative Xiomara Mendoza to PUCO Staff admitting non-compliance with PUCO’s rules); PUCO Case Report 00261052 (4/8/19 e-mail from Verde representative Xiomara Mendoza to PUCO Staff admitting non-compliance with PUCO’s rules); and PUCO Case Report 00261483 (4/11/19 e-mail from Verde representative Louise Bourgeois to PUCO Staff admitting non-compliance with PUCO’s rules). [↑](#footnote-ref-47)
47. PUCO Case Report 00256087 (3/5/19 e-mail from Verde representative Edwin Quinonez to PUCO Staff.). [↑](#footnote-ref-48)
48. *See e.g. supra* note 46. [↑](#footnote-ref-49)
49. Tr. Vol. I, at 209:3-6, 8-14. [↑](#footnote-ref-50)
50. OCC Ex. 19B (Williams Direct), JDW-10. [↑](#footnote-ref-51)
51. *Id.* [↑](#footnote-ref-52)
52. Tr. Vol. I at 207: 19-20, 208: 13-20. [↑](#footnote-ref-53)
53. OCC Ex. 9 (12/21/18 e-mail from Nedra Ramsey to Verde). [↑](#footnote-ref-54)
54. Staff Report, at 11. [↑](#footnote-ref-55)
55. OCC Ex. 11 (3/22/19 e-mail from Duke employee to Barbara Bossart). [↑](#footnote-ref-56)
56. OCC Ex. 12 (3/15/19 e-mail from Duke employee to Barbara Bossart). [↑](#footnote-ref-57)
57. OCC Ex. 19B (Williams Direct) at 26. [↑](#footnote-ref-58)
58. *See e.g.* OCC Ex. 8 (3/26/19 e-mail from Barbara Bossart to Nedra Ramsey). [↑](#footnote-ref-59)
59. OCC Ex. 8 (3/26/19 e-mail from Barbara Bossart to Nedra Ramsey). [↑](#footnote-ref-60)
60. Tr. Vol. I at 193: 22-24, 194: 2-7. [↑](#footnote-ref-61)
61. Tr. Vol. II at 323: 7-16. [↑](#footnote-ref-62)
62. *See* Ohio Admin. Code 4901:1-21-05(C)(8)(a) and 4901:1-29-05(D)(8)(a). [↑](#footnote-ref-63)
63. Tr. Vol. II at 308: 18-21. [↑](#footnote-ref-64)
64. *See e.g.* OCC Ex. 17 (PUCO Case Report 00244217); OCC Ex. 7 (PUCO Case Report 00257020); *See also* OCC Ex. 19B (Williams Direct) at 23-24. [↑](#footnote-ref-65)
65. OCC Ex. 17 (PUCO Case Report 00244217). [↑](#footnote-ref-66)
66. *Id.* [↑](#footnote-ref-67)
67. *Id.* at 54 (1/24/19 e-mail from Verde representative Louise Bourgeois to PUCO Staff) (emphasis added). [↑](#footnote-ref-68)
68. OCC Ex. 7 (PUCO Case Report 00257020). [↑](#footnote-ref-69)
69. *Id.* at 34 (3/20/19 e-mail from Verde representative Edwin Quinonez to PUCO Staff). [↑](#footnote-ref-70)
70. *See e.g.* *supra* note 46. [↑](#footnote-ref-71)
71. OCC Ex. 19B (Williams Direct) at 26. [↑](#footnote-ref-72)
72. *Id.* *See also* OCC Ex. 7, PUCO Case Report 00233259, (PUCO Staff found that Verde engaged in “slamming” by switching the customer’s electricity supply from Dynegy to Verde without the customer’s consent, resulting in Verde re-rating the customer). [↑](#footnote-ref-73)
73. Ohio Adm. Code 4901:1-10-01(A)(A). Ohio Adm. Code 4901:1-13-01(T). [↑](#footnote-ref-74)
74. Staff Report, at 16; *See also* OCC Ex. 7, PUCO Case Report 00239582 (12/6/18 e-mail from Verde representative Edwin Quinonez to PUCO Staff stating that “Verde is unable to locate the signature form that was completed for this enrollment.”). [↑](#footnote-ref-75)
75. Ohio Adm. Code 4901:1-21-06(D)(1)(a) and Ohio Adm. Code 4901:1-29-06(D)(1). [↑](#footnote-ref-76)
76. Staff Report, at 15. [↑](#footnote-ref-77)
77. OCC Ex. 7. [↑](#footnote-ref-78)
78. OCC Ex. 19B (Williams Direct) at JDW-09. [↑](#footnote-ref-79)
79. *Id.* [↑](#footnote-ref-80)
80. *Id.* [↑](#footnote-ref-81)
81. Tr. Vol. I at 30: 13-25, 31: 1-4. [↑](#footnote-ref-82)
82. Joint Ex. 1, at 3. [↑](#footnote-ref-83)
83. Joint Ex. 1, at 3-4. [↑](#footnote-ref-84)
84. Staff Report, at 26. [↑](#footnote-ref-85)
85. Joint Ex. 1, at p. 4 (emphasis added). [↑](#footnote-ref-86)
86. Tr. Vol. I, at 145: 11-12, 183: 13-15. [↑](#footnote-ref-87)
87. OCC Ex. 19B (Williams Direct) at 16-17. [↑](#footnote-ref-88)
88. OCC Ex. 19B (Williams Direct) at 16. [↑](#footnote-ref-89)
89. *Id.* at 17. [↑](#footnote-ref-90)
90. OCC Ex. 19C (Williams Direct) at 17, Table 3. [↑](#footnote-ref-91)
91. April 17 Entry, ¶¶ 1, 7. [↑](#footnote-ref-92)
92. Staff Report, at 5. [↑](#footnote-ref-93)
93. Staff Report, at 25. [↑](#footnote-ref-94)
94. Staff Ex. 1 (Ramsey Direct) at 4. [↑](#footnote-ref-95)
95. Staff Report, at 26. [↑](#footnote-ref-96)
96. OCC Ex. 19B (Williams Direct) at 11. [↑](#footnote-ref-97)
97. OCC Ex. 19B (Williams Direct) at 14. [↑](#footnote-ref-98)
98. Staff Report, at 24. [↑](#footnote-ref-99)
99. *See e.g.* OCC Ex. 7, PUCO Case Report 00256012 and PUCO Case Report 00232541. [↑](#footnote-ref-100)
100. *Id.* at 11. [↑](#footnote-ref-101)
101. Staff Report, at 25. [↑](#footnote-ref-102)
102. *See e.g.* OCC Ex. 8 (3/26/19 e-mail from Barbara Bossart to Nedra Ramsey); Tr. Vol. I, at 193: 4-25, 194: 1-15; Tr. Vol. II, at 323: 7-16. [↑](#footnote-ref-103)
103. OCC Ex. 19B (Williams Direct) at 16-17. [↑](#footnote-ref-104)
104. OCC Ex. 19B (Williams Direct) at 12. [↑](#footnote-ref-105)
105. *Id.* at 13. [↑](#footnote-ref-106)
106. *Id.* [↑](#footnote-ref-107)
107. [http://energychoice.ohio.gov/ApplesToApplesCategory.aspx?Category=Electric#](http://energychoice.ohio.gov/ApplesToApplesCategory.aspx?Category=Electric) . [↑](#footnote-ref-108)
108. OCC Ex. 19B (Williams Direct), at 13. [↑](#footnote-ref-109)
109. *Id.* [↑](#footnote-ref-110)
110. Tr. Vol. I, at 261: 8-23. [↑](#footnote-ref-111)
111. OCC Ex. 19B (Williams Direct) at 13. [↑](#footnote-ref-112)
112. *Id.* [↑](#footnote-ref-113)
113. Joint Ex. 1, at 4. [↑](#footnote-ref-114)
114. OCC Ex. 1 (Alexander Direct) at 10; OCC Ex. 19B (Williams Direct) at 15;Tr. Vol. I, at 120: 4-9. [↑](#footnote-ref-115)
115. OCC Ex. 19B (Williams Direct) at 15. [↑](#footnote-ref-116)
116. *Id*. [↑](#footnote-ref-117)
117. *Id.* [↑](#footnote-ref-118)
118. Joint Ex. 1, at 3. [↑](#footnote-ref-119)
119. *Id.* [↑](#footnote-ref-120)
120. *See e.g. supra* note 46. [↑](#footnote-ref-121)
121. Staff Report at 25 (emphasis added). [↑](#footnote-ref-122)
122. *Id.* at 27. [↑](#footnote-ref-123)
123. OCC Ex. 1 (Alexander Direct) at 10. [↑](#footnote-ref-124)
124. *See e.g.* OCC Ex. 7, PUCO Case Report 00256012 and PUCO Case Report 00232541. [↑](#footnote-ref-125)
125. Joint Ex. 1 at 4. [↑](#footnote-ref-126)
126. OCC Ex. 19B (Williams Direct) at 18, JDW-08. [↑](#footnote-ref-127)
127. OCC Ex. 19C (Williams Direct) at 19. [↑](#footnote-ref-128)
128. *Id.* at 19-20. [↑](#footnote-ref-129)
129. *Id.* [↑](#footnote-ref-130)
130. *Id.* [↑](#footnote-ref-131)
131. Staff Report at 5. [↑](#footnote-ref-132)
132. *See e.g. supra* note 46. [↑](#footnote-ref-133)
133. Staff Report at 25. [↑](#footnote-ref-134)
134. Joint Ex. 1 at 4. [↑](#footnote-ref-135)
135. OCC Ex. 1 (Alexander Direct) at 13. [↑](#footnote-ref-136)
136. *See e.g. id.* at 17-33. [↑](#footnote-ref-137)
137. Case No. 13-2164-GA-CRS, *In the Matter of the Application of Verde Energy USA Ohio, LLC for Certification as a Competitive Retail Natural Gas Supplier*, Verde Renewal Application (November 7, 2019). [↑](#footnote-ref-138)
138. *Id.* at 17. [↑](#footnote-ref-139)
139. *Id.* [↑](#footnote-ref-140)
140. *Id*. at 30, BRA-12. [↑](#footnote-ref-141)
141. *Id.* at 30-32, BRA-12. [↑](#footnote-ref-142)
142. *Id.* at BRA-12. [↑](#footnote-ref-143)
143. *Id.* at BRA-12. [↑](#footnote-ref-144)
144. *Id.* at BRA-12. [↑](#footnote-ref-145)
145. Staff Report at 25. [↑](#footnote-ref-146)
146. Tr. Vol. I at 85: 6-13. [↑](#footnote-ref-147)
147. Tr. Vol. 1 at 159: 8-18. [↑](#footnote-ref-148)
148. Tr. Vol. I 160: 18-25, 161: 1-10. [↑](#footnote-ref-149)
149. Joint Ex. 1, at 4. [↑](#footnote-ref-150)
150. Staff Report, at 24. [↑](#footnote-ref-151)
151. *See* OCC Ex. 19B (Williams Direct) at 14. [↑](#footnote-ref-152)
152. *Id.* [↑](#footnote-ref-153)
153. OCC Ex. 19B (Williams Direct) at 30. [↑](#footnote-ref-154)
154. *Id.* [↑](#footnote-ref-155)
155. *Id.* [↑](#footnote-ref-156)
156. Staff Report, at 12. [↑](#footnote-ref-157)
157. *Id*. [↑](#footnote-ref-158)
158. *Id*. [↑](#footnote-ref-159)
159. Staff Report, at 14. [↑](#footnote-ref-160)
160. *Id.* at 11. [↑](#footnote-ref-161)
161. Tr. Vol. I at 221: 18-21. [↑](#footnote-ref-162)
162. OCC Ex. 13 (3/8/19 e-mail from Verde representative April Lusk to Nedra Ramsey). [↑](#footnote-ref-163)
163. R.C. § 4928.08(B) and R.C. § 4929.20(A). *See also* Ohio Admin. Code 4901:1-24-05(A), 4901:1-24-10(C)(1), 4901:1-27-05(A), and 4901:1-27-10(C)(1). [↑](#footnote-ref-164)
164. Ohio Admin Code §§ 4901:1-24-13(E)(4) and 4901:1-27-13(E)(4). [↑](#footnote-ref-165)
165. Ohio Admin Code §§ 4901:1-24-13(E)(7) and 4901:1-27-13(E)(7). [↑](#footnote-ref-166)
166. Ohio Admin Code §§ 4901:1-24-13(E)(9) and 4901:1-27-13(E)(9). [↑](#footnote-ref-167)
167. Ohio Admin Code §§ 4901:1-24-13(E)(11) and 4901:1-27-13(E)(11). [↑](#footnote-ref-168)
168. Staff Report, at 28. [↑](#footnote-ref-169)
169. Staff Report, at 27. [↑](#footnote-ref-170)
170. Ohio Adm. Code 4901-1-25(C). [↑](#footnote-ref-171)
171. Motion for Subpoena Duces Tecum by the Office of the Ohio Consumers’ Counsel (October 4, 2019). [↑](#footnote-ref-172)
172. Tr. Vol. I at 58-59. [↑](#footnote-ref-173)
173. Tr. Vol. I at 58-59. [↑](#footnote-ref-174)
174. Tr. Vol. I at 58-59. [↑](#footnote-ref-175)
175. Ohio Adm. Code 4901-1-01(N) (emphasis added). [↑](#footnote-ref-176)
176. Ohio Adm. Code 4901-1-25(A) (emphasis added). [↑](#footnote-ref-177)
177. *See also Hoerig v. Tiffin Scenic Studios, Inc.*, 2011-Ohio-6103 (Ohio Ct. App. 2011), ¶¶ 21-22 (“Courts have long considered a corporation a person for the purposes of the law,” including the Ohio Civil Rules regarding subpoenas); *McGirr v. Rehme*, 2018 U.S. Dist. LEXIS 130673, at \*22-23 (August 3, 2018) (under Federal Rule of Civil Procedure 45, which allows subpoenas for purposes of trials, when a corporation is subpoenaed, the corporation must identify the relevant person within its organization to respond to the subpoena); *A.O. Smith Corp. v. Perfection Corp.*, 2004-Ohio-4041 (Ohio Ct. App. 2004), ¶¶ 22-4 (service of a subpoena under Ohio Rule of Civil Procedure 45 on a corporation is valid). [↑](#footnote-ref-178)
178. *Prouse, Dash & Crouch L.L.P. v. Dimarco*, 116 Ohio St.3d 167, 168 (2007) (“It is axiomatic that Ohio courts can exercise jurisdiction over a person who is a resident of Ohio.”). [↑](#footnote-ref-179)
179. *Rhodes v. City of New Philadelphia*, 129 Ohio St.3d 304, 309 (2011) (“We must give effect to every term in a statute and avoid a construction that would render any provision meaningless, inoperative, or superfluous.”). [↑](#footnote-ref-180)
180. R.C. 4928.09(A)(1)(b); R.C. 4929.21(A)(1)(b). [↑](#footnote-ref-181)
181. 1988 Ohio App. LEXIS 2867 (June 29, 1988). [↑](#footnote-ref-182)
182. R.C. 3909.05(A). [↑](#footnote-ref-183)
183. *Burgess*, 1988 Ohio App. LEXIS 2867, at \*14 (emphasis added). [↑](#footnote-ref-184)
184. Verde Energy USA Ohio, LLC’s Motion to Quash Subpoenas from the Office of the Ohio Consumers’ Counsel (October 10, 2019). [↑](#footnote-ref-185)
185. *See* <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=bce3ce2b-7ed7-426e-b47a-7e91bf3e936a> and <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=df4ef87b-3be1-4156-8393-6d53c8ef6a9c>. [↑](#footnote-ref-186)
186. *Hoover Universal v. Limbach*, 61 Ohio St.3d 563, 569 (1991). *See also State ex rel. Celebrezze v. Nat’l Lime & Stone Co.*, 68 Ohio St.3d 377, 382 (1994) (a provision in the Ohio Administrative Code “has the force of law unlessit is unreasonable *or conflicts with a statute covering the same subject matter*”) (emphasis added); *State ex rel. Foster v. Evatt*, 144 Ohio St. 65, 102 (1944) (“Administrative rules may facilitate the operation of what has been enacted by the General Assembly but may not add to or subtract from the legislative enactment.”); *Columbus S. Power Co. v. PUCO*, 67 Ohio St.3d 535, 537 (1993) (the PUCO is a “creature of statute” that “may exercise only that jurisdiction conferred upon it by the General Assembly”). [↑](#footnote-ref-187)