

**BEFORE**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's	)	
Investigation into Verde Energy USA Ohio,	)	Case No. 19-958-GE-COI
LLC's Compliance with the Ohio	)	
Administrative Code and Potential Remedial	)	
Actions for Non-Compliance.	)	

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**JOINT STIPULATION AND RECOMMENDATION**

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**I. Introduction.**

On April 17, 2019, the Public Utilities Commission of Ohio (the "Commission") issued an Entry opening this matter to investigate alleged unfair, deceptive, or unconscionable acts or practices in this state by Verde Energy USA Ohio, LLC d/b/a Verde Energy ("Verde Energy" or the "Company") (the "Investigation"). In the Entry, the Commission stated that Commission Staff ("Staff") had reviewed customer contacts by Verde Energy from October 1, 2018, to April 12, 2019, as well as Verde Energy's responses, and believed that Verde Energy engaged in misleading and deceptive practices to market and enroll customers, as well as violated several requirements of Ohio Adm.Code Chapter 4901:1-21 and 4901:1-29. Based on Staff's findings, the Commission ordered the filing of a Staff Report and scheduled a hearing in this matter for Verde Energy to, among other things, respond to the findings contained in the Staff Report and show cause why its certification as a competitive retail electric service provider and its certification as a competitive retail natural gas service supplier should not be suspended, rescinded, or conditionally rescinded. Staff filed a Staff Report on May 3, 2019, with a corrected version filed May 29, 2019. Staff, Verde Energy, and the intervening parties have engaged in settlement discussions in an effort to reach a mutually acceptable resolution that would address the concerns raised in the Investigation and the Staff Report. As a result of these negotiations, Staff and Verde Energy hereby enter into this Joint

Stipulation and Recommendation (“Stipulation”). This Stipulation sets forth the agreement reached between Verde Energy and the Staff, each of whom is a “Signatory Party” and together constitute the “Signatory Parties,” regarding compliance with the Ohio Administrative Code and potential remedial actions for alleged non-compliance as outlined in the Staff Report filed in this matter. The Stipulation is not an admission or finding of liability, and is entered into without prejudice to the positions the Signatory Parties may have taken in the absence of the Stipulation, or may take in the event the Commission does not approve this Stipulation. If approved by the Commission, the Stipulation resolves all of the issues raised in the Investigation and Staff Report.

Although the Signatory Parties recognize that this Stipulation is not binding upon the Commission, the Signatory Parties respectfully submit that the Stipulation is supported by the record, and that it represents a just and reasonable resolution of all the issues involved in the Investigation, violates no regulatory principle or precedent, and is in the public interest. The Signatory Parties represent that the Stipulation is the product of serious and lengthy negotiations among knowledgeable parties, and that the Stipulation represents a compromise involving a balancing of those interests, and does not necessarily reflect the position that any one of the Signatory Parties would have adopted if this matter had been fully litigated. The primary objective of this Stipulation is to avoid, to the extent reasonably possible, the potential for future customer complaints resulting from marketing, solicitation, and customer enrollment practices by Verde Energy to consumers of power and gas in Ohio.

The Signatory Parties fully support this Stipulation and urge the Commission to accept and approve the terms found below.

## **II. Recitals.**

WHEREAS, Verde Energy is an electric services company as defined in R.C. 4928.01 and a retail natural gas supplier as defined in R.C. 4929.01; is certified to provide competitive retail

electric service under R.C. 4928.08 and to supply competitive retail natural gas service under R.C. 4929.20; and is subject to the jurisdiction of the Commission pursuant to R.C. 4928.16 and R.C. 4929.24;

WHEREAS, on April 16, 2019, Staff initiated the Investigation;

WHEREAS, on May 3, 2019, Staff filed a Staff Report regarding Staff's investigation of the acts and practices of Verde Energy identified therein, with a corrected Staff Report filed on May 29, 2019; and

WHEREAS, Verde Energy and Staff engaged in serious and lengthy settlement negotiations on numerous occasions to address the issues raised in the Investigation and Staff Report and have reached a resolution of all issues.

NOW, THEREFORE, in consideration of the terms and mutual promises set forth herein, the Signatory Parties hereby agree, as follows:

### **III. Joint Recommendation of Signatory Parties.**

The Signatory Parties agree that, for purposes of settlement, the Commission should approve this Stipulation without modification as set forth herein:

1. Verde Energy has voluntarily ceased all marketing and customer enrollment activities in Ohio, as represented to the Commission in the Motion filed in this matter on May 3, 2019. Staff and Verde Energy agree that this suspension by Verde Energy of all marketing activities and customer enrollment in Ohio will continue until October 30, 2020, for a total of eighteen (18) months.
2. Verde Energy will withdraw from Dominion's MVR program for a period of one year, commencing as of the date Verde Energy notified Dominion of its withdrawal from the MVR program. Verde Energy may enroll retail customers through Dominion's MVR program at the conclusion of this one-year period.

3. 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.
4. Verde Energy will not transfer or sell customer contracts to another entity during the stay-out period without the prior consent of PUCO Staff, except as necessary in connection with any settlement with intervenor, Interstate Gas Supply, Inc.
5. Verde Energy will submit an action plan for compliance at least ninety (90) days prior to resuming marketing and customer enrollment in Ohio.
6. 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 Energy may have misled customers in Ohio during marketing of its product. The notice shall be sent within 30-days of the Order approving the Stipulation.
7. Verde Energy agrees to pay a forfeiture of \$675,000.00. Upon approval of this Stipulation by the Commission, Verde Energy agrees to submit payment, by certified check, money order or wired funds made payable to "Treasurer, State of Ohio," to:

Public Utilities Commission of Ohio  
Attn: Fiscal Division  
180 E. Broad Street  
Columbus, Ohio 43215-3793

Payment shall be paid within thirty (30) days of the entry approving this Stipulation and shall note the docket number assigned to the matter.

#### **IV. Procedural Matters.**

1. The Signatory Parties urge the Commission to render a decision adopting the Stipulation as soon as possible, in order to expedite the benefits to consumers relating to the Stipulation.
2. Except as may be necessary to enforce the terms of this Stipulation, to establish that the terms of the Stipulation are lawful, or as part of the company's history of violations in determining the appropriate forfeiture or corrective action for any future violations, neither this Stipulation nor the information and data contained herein or attached hereto shall be cited as precedent in any future proceeding or before the General Assembly for or against any Signatory Party, if the Commission approves the Stipulation. Nor shall the acceptance of any provision within this Stipulation be cited by any party in any forum, including the General Assembly, so as to imply or state that any Signatory Party agrees with any specific provision of the Stipulation. The Signatory Parties request that the Commission not cite this Settlement as precedent in any future case. More specifically, no specific element or item contained in or supporting this Stipulation shall be construed or applied to attribute the results set forth in this Stipulation as the results that any Signatory Party might support or seek, but for this Stipulation in these proceedings or in any other proceeding.
3. The Signatory Parties will support the Stipulation if the Stipulation is contested, and no Signatory Party will oppose an application for rehearing designed to defend the terms of this Stipulation. If the Stipulation is adopted by the Commission, the Signatory Parties will support the Stipulation in any appeal of the decision. Each Signatory Party agrees to and will support the reasonableness of this Stipulation before the Commission, and to cause its counsel to do the same, and in any appeal it participates in from the Commission's

adoption and/or enforcement of this Stipulation. The Signatory Parties also agree to urge the Commission to accept and approve the terms hereof as promptly as possible.

4. The Stipulation is expressly conditioned upon adoption in its entirety by the Commission without material modification by the Commission. Should the Commission reject or materially modify all or any part of this Stipulation, each Signatory Party shall have the right, within thirty (30) days of the Commission's order, to file an application for rehearing. Upon the Commission's issuance of an entry on rehearing that does not adopt the Stipulation in its entirety, without material modification, any Signatory Party may terminate and withdraw from the Stipulation by filing a notice with the Commission within thirty (30) days of the Commission's entry on rehearing withdrawing from the Stipulation (the "Notice of Withdrawal"). No Party shall oppose the termination and withdrawal from the Stipulation by the other Signatory Party,<sup>1</sup> however no Signatory Party shall file a Notice of Withdrawal without first negotiating in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation. If a new agreement achieves such an outcome, the Signatory Parties will file the new agreement for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful, upon Notice of Withdrawal by any Signatory Party pursuant to the above provisions, this matter shall proceed to hearing, and the Signatory Parties shall be afforded the full opportunity to file and present testimony and evidence through witnesses, to cross-examine all witnesses, to

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<sup>1</sup> The Signatory Parties recognize and agree that the determination of what constitutes a "material modification" is within the sole discretion of the Signatory Party exercising its right to file an application for rehearing and/or its right to terminate and withdraw from the Stipulation pursuant to this paragraph.

present rebuttal testimony, and to brief all issues, which shall be decided based upon the record and briefs.

**[SIGNATURE PAGE FOLLOWS]**

WHEREFORE, the Signatory Parties agree and recommend this 6<sup>th</sup> day of September, 2019 that the Commission find that the Stipulation represents a reasonable resolution of this matter, that the Stipulation should be adopted and approved.

Respectfully submitted,

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Attorney General

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Section Chief

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Summary: Stipulation and Recommendation Entered Into and Submitted By PUCO Staff and Verde Energy USA Ohio, LLC electronically filed by Mr. David F. Proano on behalf of Verde Energy USA Ohio, LLC