

## THE PUBLIC UTILITIES COMMISSION OF OHIO

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

### ENTRY

Entered in the Journal on October 4, 2019

{¶ 1} Verde Energy USA Ohio, LLC d/b/a Verde Energy (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 (CRES) under R.C. 4928.08 and to supply competitive retail natural gas service (CRNGS) under R.C. 4929.20; and is subject to the jurisdiction of this Commission pursuant to R.C. 4928.16 and R.C. 4929.24. Accordingly, Verde Energy is required to comply with the Commission's minimum CRES standards set forth in Ohio Adm.Code Chapter 4901:1-21, as well as the minimum CRNGS standards set forth in Ohio Adm.Code Chapter 4901:1-29.

{¶ 2} R.C. 4928.08 and 4929.20 allow the Commission to suspend, rescind, or conditionally rescind the certification of any electric services company or retail natural gas supplier issued under these sections if the Commission determines, after reasonable notice and opportunity for hearing, that the electric services company or retail natural gas supplier has failed to comply with any applicable certification standards or has engaged in anticompetitive or unfair, deceptive, or unconscionable acts or practices in this state. Additionally, R.C. 4928.16 and 4929.24 grant the Commission the authority to order any remedy or forfeiture provided under R.C. 4905.54 to 4905.60 and 4905.64, and to order restitution to customers and rescission of customer contracts.

{¶ 3} On April 17, 2019, the Commission issued an Entry in this matter. In the Entry, the Commission stated that Staff of the Commission's Service Monitoring and Enforcement Department had reviewed customer contacts 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 violating several requirements of Ohio Adm.Code Chapter 4901:1-21 and 4901:1-29. Based on Staff's findings, the Commission scheduled a hearing in this matter for Verde Energy to show cause why its certification as a CRES provider and its certification as a CRNGS supplier should not be suspended, rescinded, or conditionally rescinded. The Commission also set a procedural schedule for this matter.

{¶ 4} Due to the parties' motions, the attorney examiner modified the procedural schedule several times. Ultimately, based on a joint motion from Verde Energy and Staff, the attorney examiner suspended the procedural schedule on August 5, 2019, to allow the parties to continue negotiations and work towards a settlement.

{¶ 5} By Entry dated August 30, 2019, the attorney examiner granted Verde Energy's May 14, 2019 motion for waiver of Ohio Adm.Code 4901:1-21-10 and 4901:1-29-09(A)(1) for the limited purpose of allowing discovery and settlement discussions in this matter.

{¶ 6} On September 6, 2019, Verde Energy and Staff jointly filed a stipulation and recommendation (Stipulation). The parties indicate that the Stipulation is intended to resolve all outstanding issues in this matter.

{¶ 7} By Entry dated September 10, 2019, the attorney examiner scheduled a hearing in this matter for October 16, 2019 and directed the parties to file testimony in support or in opposition of the Stipulation filed by Verde Energy and Staff on or before October 2, 2019.

{¶ 8} On September 19, 2019, Verde Energy filed a motion for protective order and a memorandum in support. In the motion, Verde Energy requests the Commission to limit the scope of discovery in this matter to the three-part test utilized by the Commission to approve or deny stipulated resolutions.

{¶ 9} On September 25, 2019, the Office of the Ohio Consumers' Counsel (OCC) filed a memorandum contra to Verde Energy's motion. In its motion, OCC argues that it should be allowed to obtain discovery related to the staff report (Staff Report) filed in this matter. OCC further argues that all discovery sought, including that related to the Staff Report, is directly relevant to prongs two and three of the three-part test, which the Commission will utilize to determine whether to approve the Stipulation.

{¶ 10} On September 27, 2019, OCC filed a motion for protective order. In its motion, OCC requests the Commission to issue a motion for protective order to protect certain attachments to its motion to compel that are asserted to be confidential by Verde.

{¶ 11} Also, on September 27, 2019, OCC filed a motion to compel with regard to the following discovery requests: RFA-3-001 through RFA-3-018; INT-3-023 through INT-3-026; INT-4-039; INT-4-048; INT-4-049; RPD-4-022 through RPD-4-025; RPD-4-0426; RPD-5-027 through RPD-5-030. In the motion, OCC argues that since the Staff Report filed in this case is plainly admissible, any evidence regarding the Report is also discoverable. OCC also argues that Verde has failed to demonstrate how the requests for admissions, interrogatories, and requests for production it specifically seeks through this motion to compel are unduly burdensome. Finally, OCC requests a discovery conference to expedite a ruling on this motion to compel.

{¶ 12} As a result of these filings, the attorney examiners assigned to this case scheduled an informal, telephonic status conference on September 30, 2019. During this conference, the attorney examiners instructed the parties to file memorandum contra to the pending motions by noon on October 3, 2019. The parties also represented to the attorney examiners that they were available for a prehearing conference at the Commission offices on October 7, 2019.

{¶ 13} On September 30, 2019, Verde filed a second motion for protective order. In the motion, Verde addresses issues related to two sets of written discovery requests

containing interrogatories with 27 subparts, and additional requests for the production of documents attached to two deposition notices, which OCC has served on it since Verde Energy's September 19, 2019 motion for protective order. Verde Energy argues that OCC failed to timely conduct discovery for three months, only to restart discovery merely weeks from the hearing date. As such, Verde Energy posits that such a tactic discourages parties from negotiating with Commission Staff and arriving at a settlement.

{¶ 14} On October 2, 2019, OCC filed another motion for protective order. In the motion, OCC requests the Commission to, in accordance with Ohio Adm.Code 4901-1-02(E), protect the redacted portions of the direct testimony of James D. Williams that are asserted to be confidential by Verde Energy.

{¶ 15} On October 3, 2019, OCC filed a memorandum contra to Verde Energy's second motion for protective order. In it, OCC argues that Verde Energy has failed to demonstrate how each of the discovery requests it now challenges are specifically burdensome. OCC next argues that the amount of discovery it has served on Verde is directly proportional to the number of customer contacts the Commission received relating to Verde Energy's practices. OCC also notes that it is common in Commission proceedings for parties to engage in discovery after a settlement has been filed and for discovery to ramp up after a settlement is filed. OCC challenges Verde Energy's contention that allowing OCC to now receive discovery related to the Staff Report would have a chilling effect on settlement negotiations. Instead, OCC posits that allowing OCC ample discovery rights is in accordance with Ohio law and protects consumers from settlements that do little to protect consumers from future harm. Finally, OCC notes that Verde Energy cannot cite to any legal authority for the position that OCC should have conducted discovery earlier in the proceeding before Commission Staff and Verde Energy filed the Stipulation.

{¶ 16} On October 3, 2019, Verde Energy filed a memorandum contra in opposition to OCC's motion to compel and a motion to quash deposition notice. Verde Energy states that this memorandum contra is intended to supplement its previous two motions for

protective order filed on September 19 and September 30, 2019. Verde Energy states that it is seeking relief from the Commission on three grounds. First, it states that the Supreme Court of Ohio's guidance in proceedings with pending stipulations is to allow discovery which is reasonably calculated to lead to the discovery of admissible evidence relevant to the three-part Commission test used to evaluate stipulations. As such, Verde Energy believes that most of OCC's discovery requests are not relevant to the three-part test for approving stipulations. In fact, Verde Energy argues, the only relevancy argument made by OCC is that since the Staff Report is deemed admitted as a matter of rule, discovery related to the Staff Report must be relevant. While Verde Energy admits that discovery related to the underlying allegations in the Staff Report would be relevant if there was no stipulation in this matter, that is not the procedural posture of this case. Verde Energy further explains that the very purpose of a stipulation is to move beyond the disputes regarding the underlying merits of any allegations raised by Commission Staff and to a phase of the case where the only issue is whether the stipulation meets the three-part test. Verde Energy once again reiterates that OCC's cumulative discovery requests are unduly burdensome and oppressive, especially because it waited months before it engaged in serious discovery practice with Verde Energy. Verde Energy also discusses each of the outstanding discovery requests to demonstrate the oppressive nature of each item. Finally, Verde Energy requests that the Commission limit the OCC to deposition topics in the OCC's first notice, which was issued on September 23, 2019.

{¶ 17} Upon review of the various motions and memorandum contra filed by the parties since September 19, 2019, and based on the parties' availability discussed during the telephonic conference on September 30, 2019, the attorney examiner now schedules a prehearing conference for this matter on October 7, 2019 at 10:00 a.m. at the Commission offices, Hearing Room 11-C, 11th floor, 180 East Broad Street, Columbus, Ohio 43215-3793. The parties should register at the lobby desk and then proceed to the 11th floor in order to participate in the hearing. Furthermore, the parties should be prepared to present arguments in support of their respective motions during this hearing.

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That a prehearing conference be scheduled in accordance to Paragraph 17. It is, further,

{¶ 20} ORDERED, That the parties be prepared to present arguments in support of their respective motions in accordance to Paragraph 17. It is, further,

{¶ 21} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Anna Sanyal

By: Anna Sanyal  
Attorney Examiner

GAP/hac

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 19-0958-GE-COI**

Summary: Attorney Examiner Entry scheduling prehearing conference and ordering parties to be prepared to present arguments in support of their respective motions electronically filed by Heather A Chilcote on behalf of Anna Sanyal, Attorney Examiner, Public Utilities Commission