

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MOTION TO SUSPEND THE AUTOMATIC APPROVAL OF VERDE
ENERGY'S RENEWAL APPLICATION
AND
MOTION TO DENY VERDE ENERGY'S APPLICATION TO RENEW ITS
CERTIFICATE TO SERVE OHIO CONSUMERS
AND
MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Bruce Weston (0016973)
Ohio Consumers' Counsel

Angela D. O'Brien (0097579), Counsel of Record
Bryce McKenney (0088203)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
Telephone [O'Brien]: (614) 466-9531
Telephone [McKenney]: (614) 466-9585
angela.obrien@occ.ohio.gov
bryce.mckenney@occ.ohio.gov
(willing to accept service by e-mail)

Kimberly W. Bojko (0069402)
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
bojko@carpenterlipps.com
(willing to accept service by e-mail)

November 22, 2019

*Special Counsel for
The Office of the Ohio Consumers' Counsel*

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. GOOD CAUSE EXISTS TO SUSPEND AUTOMATIC APPROVAL AND CONSIDERATION OF VERDE’S RENEWAL APPLICATION.	2
III. THE PUCO SHOULD DENY VERDE’S APPLICATION TO RENEW ITS AUTHORITY TO PROVIDE GAS MARKETING SERVICES TO OHIO CONSUMERS.	4
IV. TO PROTECT CONSUMERS, OCC SHOULD BE GRANTED INTERVENTION IN THIS PROCEEDING.....	7

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MOTION TO SUSPEND THE AUTOMATIC APPROVAL OF VERDE
ENERGY’S RENEWAL APPLICATION
AND
MOTION TO DENY VERDE ENERGY’S APPLICATION TO RENEW ITS
CERTIFICATE TO SERVE OHIO CONSUMERS
AND
MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

Verde Energy USA Ohio, LLC (“Verde”) is a rip-off artist that profits from exploiting Ohio natural gas customers through its misleading and deceptive marketing practices. According to the PUCO Staff, Verde’s bad acts include the “spoofing” of its information that consumers would see on their Caller ID displays. Because of the hundreds of consumer complaints received by the Public Utilities Commission of Ohio (“PUCO”), the PUCO ordered an investigation (“Verde Investigation”) into Verde’s compliance (or lack of compliance) with Ohio law. The PUCO Staff found that Verde:

(1) Is in probable non-compliance with multiple provisions of the Ohio Administrative Code; (2) has not demonstrated its ability to comply with Commission rules; and (3) does not have the managerial capability to be certified as a CRES or CRNGS provider in the state of Ohio.¹

¹ Case No. 19-0958-GE-COI, *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*, PUCO Staff Report (May 29, 2019) (“Staff Report”), at 25. The Staff Report is attached hereto as Exhibit A.

Despite its bad acts – and despite numerous regulatory proceedings against Verde and its affiliates in other states – Verde now asks the PUCO for the privilege to continue providing competitive retail natural gas supply service (“gas marketing”) to Ohio customers. To protect Ohioans from Verde’s misleading and deceptive marketing practices, the Ohio Consumers’ Counsel (“OCC”) moves for the PUCO to: suspend an automatic approval of Verde’s application to renew its certificate; deny Verde a renewal of its certificate to operate in Ohio; and grant OCC’s motion to intervene. It is time for Verde to pack up its bags and leave the state of Ohio.

The reasons the PUCO should grant OCC’s Motions are further set forth in the attached Memorandum in Support.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers’ Counsel

/s/ Angela D. O’Brien
Angela D. O’Brien (0097579), Counsel of Record
Bryce McKenney (0088203)
Assistant Consumers’ Counsel
Office of the Ohio Consumers’ Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
Telephone [O’Brien]: (614) 466-9531
Telephone [McKenney]: (614) 466-9585
angela.obrien@occ.ohio.gov
bryce.mckenney@occ.ohio.gov
(willing to accept service by e-mail)

Kimberly W. Bojko (0069402)
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
bojko@carpenterlipps.com
(willing to accept service by e-mail)

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

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

MEMORANDUM IN SUPPORT

I. INTRODUCTION

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

In the Verde Investigation, the PUCO took an important step toward protecting Ohio consumers by directing the PUCO Staff to investigate Verde’s provision of natural gas and electric services to Ohio consumers.² During October 1, 2018 to April 12, 2019, the PUCO Staff received 481 customer contacts regarding Verde.³ 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.”⁴ Since the PUCO initiated the Verde Investigation on April 17, 2019, the PUCO Staff received an additional 36 customer contacts (for a total of 517) regarding

² See Case No. 19-0958-GE-COI, PUCO Entry (April 17, 2019).

³ Case No. 19-0958-GE-COI, PUCO Entry (April 17, 2019) (“April 17 Entry”) at ¶¶ 7, 9.

⁴ PUCO Staff April 16, 2019 Letter filed in Case Nos. 11-5886-EL-CRS and 13-2164-GA-CRS (“April 16 Letter”).

Verde.⁵ Further, the PUCO Staff documented that Verde had spoofed its Caller ID information to deceive customers about its calls. Individual customers have also independently filed formal complaints against Verde with the PUCO.⁶

Accordingly, the PUCO should protect Ohio consumers by suspending an automatic approval of Verde's application to renew its operating certificate, denying Verde's application to renew its operating certificate and granting OCC's motion to intervene.

II. GOOD CAUSE EXISTS TO SUSPEND AUTOMATIC APPROVAL AND CONSIDERATION OF VERDE'S RENEWAL APPLICATION.

To protect Ohio consumers, the PUCO should suspend the automatic approval process of Verde's Renewal Application. Under Ohio Admin. Code § 4901:1-27-10(A), if the PUCO does not act on a renewal application within 30 days, it will be deemed automatically approved on the 31st day after filing. However, "[u]pon good cause shown, the commission, or an attorney examiner appointed by the commission, may suspend its consideration of an application."⁷ There is no question that good cause exists in this case for suspending the PUCO's automatic approval process and consideration of Verde's Renewal Application.

The Renewal Application states that Verde (through its parent company, Spark Energy, Inc. ("Spark")) "has the necessary operational and managerial capabilities to serve all customer classes."⁸ That statement directly contradicts the PUCO Staff's finding

⁵ Case No. 19-0958-GE-COI, PUCO Staff Report (May 29, 2019).

⁶ 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.

⁷ Ohio Admin. Code § 4901:1-27-10(A)(1).

⁸ Verde Renewal Application, Exhibit B-2.

in the Verde Investigation that Verde lacks the managerial capabilities to provide gas marketing service in Ohio.⁹ It also directly contradicts information about the numerous investigations in other states against Verde’s affiliates (other companies owned by Verde’s parent company, Spark) in the last two years. Verde identified those other investigations in Exhibit B-4 of the Renewal Application.

The PUCO Staff and Verde entered into a Joint Stipulation and Recommendation (“Settlement”) that purportedly resolves Verde’s noncompliance issues identified in the Staff Report. But OCC and intervenor Interstate Gas Supply (“IGS”) oppose the Settlement. The Settlement has not yet been acted upon by the PUCO. Regardless, Verde fails the standard for certification to operate in Ohio.

Further, note that the PUCO Staff/Verde Settlement contains no specific compliance plan for Verde to reform its practices pertaining to its marketing and providing natural gas service to customers in Ohio. To the contrary, the Settlement merely requires Verde “to submit an action plan for compliance at least ninety (90) days prior to resuming marketing and customer enrollment in Ohio.”¹⁰ Verde has made no specific commitments whatsoever to reform its conduct in Ohio with respect to serving its existing natural gas customers. There is no way to know what (if any) actions Verde has taken to address the numerous compliance issues identified by the PUCO Staff or the other liability issues disclosed in the Renewal Application.

⁹ Case No. 19-0958-GE-COI, Staff Report, at 25.

¹⁰ Case No. 19-0958-GE-COI, Joint Stipulation and Recommendation, at 4.

Indeed, in the Verde Investigation, the PUCO Staff found that:

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.¹¹

Thus, the PUCO should suspend automatic approval of Verde's Renewal Application and should then deny Verde's Application. Verde won't be missed in Ohio.

III. THE PUCO SHOULD DENY VERDE'S APPLICATION TO RENEW ITS AUTHORITY TO PROVIDE GAS MARKETING SERVICES TO OHIO CONSUMERS.

R.C. § 4929.20(A) requires that gas marketers (such as Verde) have the "managerial, technical, and financial capability" to provide service to Ohio consumers. In addition, Ohio Admin. Code 4901:1-27-09(D) permits the PUCO to deny an application for certification renewal. The PUCO may deny a gas marketer the authority to serve Ohio consumers for a number of reasons including, but not limited to:

(4) A finding by the commission that any information reported to the commission subsequent to granting a certificate adversely affects a retail natural gas supplier's or governmental aggregator's fitness or capability to provide any service covered by its certificate.

* * *

(7) A finding by the commission that a retail natural gas supplier or governmental aggregator has violated any applicable commission rule or order adopted pursuant to Chapter 4929 of the Revised Code.

* * *

(9) A finding by the commission that a retail natural gas supplier or governmental aggregator has engaged in an anticompetitive act.

* * *

¹¹ Staff Report, at 27.

(11) A finding by the commission that a retail natural gas supplier or governmental aggregator 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.¹²

The record in the Verde Investigation case is rife with evidence of this marketer's bad acts, including the findings in the PUCO Staff Report that Verde has repeatedly and knowingly violated the PUCO's minimum standards governing gas marketing to consumers. Verde engaged in anticompetitive acts, and deceived customers through misleading marketing and enrollment practices, including Caller ID spoofing.

The Staff Report found that Verde's violations "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 laws and rules."¹³ In this regard, the PUCO Staff documented Verde's practice of deceiving consumers through Caller ID spoofing. The PUCO Staff 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.¹⁴

The PUCO Staff filed a comprehensive Staff Report in the Verde Investigation finding that Verde violated Ohio law and the PUCO's rules by:

- Engaging in unfair, misleading, deceptive, or unconscionable activities, including the "spoofing" of phone numbers for marketing calls to consumers;¹⁵

¹² Ohio Admin. Code § 4901:1-27-13(E)(4), (7), (9) & (11).

¹³ Case No. 19-0958-GE-COI, Staff Report (May 29, 2019) ("Staff Report") at 5.

¹⁴ Staff Report at 11.

¹⁵ *Id.* at pp. 5-13.

- Failing to inform customers that they have the right, within seven calendar or seven business days, to rescind a CRES or CRNGS contract after it has been signed;¹⁶
- Failing to maintain required records and evidence of customer consent to contract for service;¹⁷
- Failing to include required elements in third party verification (“TPV”) calls for customer enrollment;¹⁸ and
- Failing to provide customers with required contract and contract expiration notices.¹⁹

The Staff Report also found that regulatory actions against Verde’s affiliates in other states for similar violations constituted “aggravating factors” that further demonstrated Verde’s lack of managerial capabilities to provide service to Ohio consumers.²⁰ The Staff Report concluded that “Verde’s managerial capabilities are not sufficient to ensure it provides CRES and CRNGS in compliance with the Ohio Administrative Code and also reveal its inability to provide adequate services to customers.”²¹ Based on its investigation, the PUCO Staff recommended that the PUCO suspend or rescind Verde’s authority to provide service. The PUCO Staff also recommended that Verde be required to refunds to customers and to pay a separate forfeiture of \$1.5 million.²²

¹⁶ *Id.* at pp. 13-15.

¹⁷ *Id.* at pp. 15-17.

¹⁸ *Id.* at pp. 17-21.

¹⁹ *Id.* at pp. 22-24.

²⁰ *Id.* at pp. 24-25.

²¹ *Id.* at p. 25.

²² *Id.* at pp. 25-26.

Verde's Renewal Application in this case itself further demonstrates the "systemic" issues plaguing Verde's customers. Verde's Exhibit B-4 to the Renewal Application, which contains Verde's "Disclosure of Liabilities and Investigations," identifies *twenty-one* investigations against Verde and its affiliates owned by Spark in Ohio and other states in just 2018 and 2019. These investigations include the Verde Investigation currently pending before the PUCO, and another investigation by the Ohio Attorney General (Investigation Docket No. 577403) concerning Verde's alleged violations of the Ohio Consumer Sales Practices Act (R.C. § 1345.01).²³ Moreover, Exhibit B-5 to Verde's Renewal Application indicates that the Texas Public Utilities Commission affirmatively determined that Spark violated consumer protection laws in Texas.

Given the numerous investigations against Verde and its affiliates in other states, the evidence in the Verde Investigation currently pending before the PUCO, and other independent customer complaints against Verde, Verde's request to continue serving Ohio customers should be summarily denied. The PUCO must protect Ohio consumers from Verde's abuses.

IV. TO PROTECT CONSUMERS, OCC SHOULD BE GRANTED INTERVENTION IN THIS PROCEEDING.

OCC has authority under the law to represent the interests of residential utility customers, per R.C. Chapter 4911. R.C. 4903.221 provides, in part, that any person "who may be adversely affected" by a PUCO proceeding is entitled to seek intervention in that proceeding. It is understatement to say that the interests of residential customers in Ohio

²³ Verde Renewal Application, Exhibit B-4.

may be “adversely affected” by this case. That is especially so if those customers were unrepresented in this proceeding where the PUCO will be determining whether Verde has the managerial, technical, and financial capability to provide gas service to customers throughout Ohio. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

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

- (1) The nature and extent of the prospective intervenor’s interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

First, the nature and extent of OCC’s interest is representing (and protecting) residential utility customers regarding Verde’s Renewal Application to provide gas services to Ohioans. This interest is different from that of any other party, and especially different from that of Verde, whose advocacy includes the financial interest of its shareholders.

Second, OCC’s advocacy for residential customers will include, among other things, advancing positions that Verde lacks the managerial, technical and financial capabilities to provide natural gas services to Ohio consumers. OCC’s position is therefore directly related to the merits of this case pending before the PUCO, the authority with regulatory control of natural gas marketing in Ohio.

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

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

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a very real and substantial interest in this case that involves Verde's marketing and providing natural gas services to Ohio customers.

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

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

Moreover, the Supreme Court of Ohio (“Court”) confirmed OCC’s right to intervene in PUCO proceedings, in deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC’s interventions and that OCC should have been granted intervention in both proceedings.²⁴

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

V. CONCLUSION

At the outset, the PUCO should suspend the automatic approval process. That suspension should allow participation by parties for consumer protection and for PUCO consideration of why Verde’s days of marketing its gas service to Ohioans should come to a swift end.

Verde has abused its PUCO-granted authority to provide gas services to Ohio consumers. Verde’s disclosures in the Renewal Application and the evidence in the Verde Investigation show this. Verde’s authority to provide gas marketing services to Ohio consumers is a privilege, and the PUCO should deny Verde that privilege that it seeks in its Renewal Application.

OCC is the state voice of residential utility consumers. OCC’s voice is authorized by law and needed by consumers in this case. OCC’s intervention should be granted.

²⁴ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Angela D. O'Brien

Angela D. O'Brien (0097579)
Counsel of Record
Bryce McKenney (0088203)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
Telephone [O'Brien]: (614) 466-9531
Telephone [McKenney]: (614) 466-9585
angela.obrien@occ.ohio.gov
bryce.mckenney@occ.ohio.gov
(willing to accept service by e-mail)

Kimberly W. Bojko (0069402)
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
bojko@carpenterlipps.com
(willing to accept service by e-mail)

*Special Counsel for
The Office of the Ohio Consumers' Counsel*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Suspend the Automatic Approval of Verde Energy's Renewal Application and Motion to Deny Verde Energy's Application to Renew its Certificate to Serve Ohio Consumers and Motion to Intervene by the Office of the Ohio Consumers' Counsel* was served on the persons stated below via electronic transmission, this 22nd day of November 2019.

/s/ Angela D. O'Brien
Angela D. O'Brien
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

SERVICE LIST

John.jones@ohioattorneygeneral.gov

Attorney Examiner:

Daniel.fullin@puco.ohio.gov

smhoward@vorys.com

kwhite@sparkenergy.com

mleclerc@sparkenergy.com

akeene@sparkenergy.com



Public Utilities Commission

Mike DeWine, Governor
Sam Randazzo, Chairman

M. Beth Trombold
Lawrence K. Friedeman
Dennis P. Deters
Daniel R. Conway

FILE

May 29, 2019

Attorney Examiner's Office
Public Utilities Commission of Ohio
180 E Broad St
Columbus, OH 43215

Dear Sir/Madam:

This letter is submitted on behalf of the Staff of the Public Utilities Commission ("Staff") regarding the Staff Report filed in Case No. 19-0958-GE-COI. Staff has identified a few errors in its Staff Report filed on May 3, 2019. The errors contained in the Staff Report were corrected as follows:

- Pg. 8, in the first bullet point the decimal point of the rate per Ccf was moved one decimal place to the right to indicate the following rates: \$0.699, \$0.80 and \$0.85. Also, the rate the customer was paying for natural gas was corrected to reflect \$.4085.
- Pg. 11, the number of sales calls provide by Verde has been changed from 449 to 503.
- Pg. 11, first paragraph the following sentence has been removed: "For instance, Staff reviewed a Verde sales call wherein the Verde sales representative asked for a "reference number" and asked the consumer to confirm that they authorized the transfer of the call to speak to the sales representative."
- Pg. 20, the following item has been removed from the list: "a unique enrollment confirmation number" and the numbers have been updates.
- The page numbers were corrected

Attach please find the corrected Staff Report.

Sincerely

Robert Fadley
Director, Service Monitoring and Enforcement Department

PUCO

2019 MAY 29 PM 4:41

RECEIVED-DOCKETING DIV

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician AN Date Processed MAY 29 2019

**A Report by the Staff of 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 Number 19-0958-GE-COI

May 29, 2019

**BEFORE
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) Case No. 19-0958-GE-COI
Administrative Code and Potential Remedial)
Actions for Non-Compliance)

Sam Randazzo, Chairman
M. Beth Trombold, Commissioner
Lawrence K. Friedeman, Commissioner
Daniel R. Conway, Commissioner
Dennis P. Deters, Commissioner

To the Honorable Commission:

Staff has conducted an investigation in the above matter and hereby submits its findings and recommendations to the Commissioners of the Public Utilities Commission of Ohio (PUCO or Commission) in this Staff Report.

The findings and recommendations reached in this Staff Report are presented for the Commission's consideration and do not purport to reflect the views of the Commission, nor should any party consider the Commission as bound in any manner by the findings and recommendation set forth herein.

Respectfully submitted,



Robert P. Fadley
Director
Service Monitoring and Enforcement Department

Table of Contents

I. Introduction.....	4
II. Overview of the Company.....	5
III. Discussion of Violations.....	5
A. Unfair, Misleading, Deceptive, or Unconscionable Activities	5
1. <i>Untruthful Promises of Lower Rates</i>	9
2. <i>Caller Identification Spoofing and Misrepresentation as a Local Utility</i>	10
3. <i>Misleading Offers for Sale</i>	11
B. Assertion of Inaccurate Time Limit to Rescind Contract.....	13
C. Failure to Maintain Required Records and Evidence Customer Consent.....	15
D. Third-Party Verifications.....	17
E. Failure to Provide Required Contract and Contract Expiration Notifications	22
IV. Aggravating Factors Regarding Managerial Capability	24
V. Recommendations	25
VI. Conclusion.....	26

I. Introduction

The Public Utilities Commission of Ohio (PUCO or Commission) was created to assure Ohioans adequate, safe, and reliable public utility services at a fair price.¹ More recently, the Commission gained responsibility for facilitating competitive utility choices for Ohio consumers.²

The Commission's Service Monitoring and Enforcement Department contains the Consumer Service Division, which operates the Commission's Call Center, and the Reliability and Service Analysis Division, which monitors service quality and compliance with Commission rules. In the Commission's Call Center, Commission staff (Staff) takes incoming calls and emails from consumers and initiates investigations into individual customer complaints to help resolve customer disputes with companies, including competitive providers.³

In general, during an investigation into a customer's complaint, Staff contacts the company's designated complaint representative as identified in the company's application for competitive retail electric service (CRES) and/or competitive retail natural gas service (CRNGS) certification. Staff provides details of the customer's complaint in an email to the company and requests a response along with any additional information needed to verify that the company has complied with all applicable Commission rules.

The company is required to respond to the customer complaint inquiries pursuant to Ohio Adm.Code 4901:1-21-08 and 4901:1-29-08. The company is also required to establish and maintain records and data sufficient to: (1) verify its compliance with the requirements of any applicable commission rules; and (2) support an investigation of customer complaints, pursuant to Ohio Adm.Code 4901:1-21-04 and 4901:1-29-04.

Both R.C. 4928.08 and 4929.20 allow the Commission to suspend, rescind, or conditionally rescind the certification of a CRES or CRNGS provider if the Commission determines, after reasonable notice and opportunity for hearing, that the CRES or CRNGS provider 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. Ohio

¹ See, e.g., R.C. 4905.06, 4928.02, and 4929.02; see also, *In the Matter of the Commission's Promulgation of Rules for Minimum Competitive Retail Electric Service Standards Pursuant to Chapter 4928, Revised Code*, Case No. 99-1611-EL-ORD, Finding and Order at 7 (April 6, 2000); see also The Public Utilities Commission of Ohio, <https://www.puco.ohio.gov/how-the-puco-works-for-you/> (last visited May 3, 2019).

² See R.C. 4928 et seq. and 4929 et seq.; see also, *In the Matter of the Commission's Promulgation of Rules for Minimum Competitive Retail Electric Service Standards Pursuant to Chapter 4928, Revised Code*, Case No. 99-1611-EL-ORD, Finding and Order at 7 (April 6, 2000); see also, *In the Matter of the Commission's Promulgation of Rules for Competitive Retail Natural Gas Service and its Providers Pursuant to Chapter 4929, Revised Code*, Case No. 01-1371-GA-ORD, Finding and Order (Nov. 20, 2001); see also The Public Utilities Commission of Ohio, <https://www.puco.ohio.gov/how-the-puco-works-for-you/> (last visited May 3, 2019).

³ See R.C. 4905.261.

Adm.Code 4901:1-24-13(E) and 4901:1-27-13(E) provide examples of the reasons that the Commission may suspend, rescind, or conditionally rescind a CRES or CRNGS provider's certificate. Additionally and among other things, 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.

II. Overview of the Company

Verde Energy USA Ohio, LLC d/b/a Verde Energy (Verde) 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 CRES under R.C. 4928.08 and to supply 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 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.

III. Discussion of Violations

On April 17, 2019, Staff requested a Commission Ordered Investigation (COI) after the Commission's Call Center received numerous customer contacts regarding Verde that Staff identified as evidence of probable non-compliance with certain provisions of Ohio Adm.Code Chapters 4901:1-21 Competitive Retail Electric Service Providers and 4901:1-29 Minimum Standards for Competitive Retail Natural Gas Service. As a result of the customer contacts, 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 laws and rules.

Specifically, after reviewing customer contacts, Staff concludes that the following violations of the Ohio Administrative Code occurred.

A. Unfair, Misleading, Deceptive, or Unconscionable Activities

Ohio Adm.Code 4901:1-21-03(A), 4901:1-21-05(C), 4901:1-21-06, 4901:1-21-11(A), 4901:1-29-03(A), 4901:1-29-05(D), 4901:1-29-06, and 4901:1-29-10(A) ensure that CRES and CRNGS providers do not engage in unfair, misleading, deceptive, or unconscionable tactics in relation to the marketing, solicitation, sale of, administration of, contracts for, or provision of CRES or CRNGS.

These sections of the Ohio Administrative Code state in pertinent part as follows.

Ohio Adm.Code 4901:1-21-03(A):

Competitive retail electric service (CRES) providers shall not engage in unfair, misleading, deceptive, or unconscionable acts or practices related to, without limitation, the following activities:

- (1) Marketing, solicitation, or sale of a CRES.*
- (2) Administration of contracts for CRES.*
- (3) Provision of CRES, including interactions with consumers.*

Ohio Adm.Code 4901:1-21-05(C):

No CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:

** * **

(8) Advertising or marketing offers that:

(a) Claim that a specific price advantage, savings, or guarantee exists if it does not.

** * **

(h) Lead the customer to believe that the CRES provider is soliciting on behalf of or is an agent of an Ohio electric utility when no such relationship exists.

** * **

(10) Engaging in any solicitation that will lead the customer to believe that the CRES provider is soliciting on behalf of or is an agent of any entity other than the CRES provider.

Ohio Adm.Code 4901:1-21-06:

(D) Residential and small commercial enrollment.

(1) Mailings, facsimiles, and direct solicitation.

** * **

(e) Where enrollment occurs by direct solicitation, customers shall be advised both verbally and in the contract that: (i) the electric utility will be sending a confirmation notice of the transfer of service; (ii) they are allowed seven calendar days to rescind the contract; and, (iii) the customer must contact the electric utility to rescind the contract.

** * **

(2) Telephonic enrollment

(a) To enroll a residential or small commercial customer telephonically, a CRES provider shall make a date and time stamped audio recording verifying before the completion of the telephone call, at a minimum, all of the following:

* * *

(vii) *A verbal statement and the customer's acknowledgement that the provider will, within one business day, send the customer a written contract that details the terms and conditions that were summarized in the telephone call.*

(viii) *A verbal statement and the customer's acknowledgement that the customer has seven calendar days from the postmark date of the electric utility's confirmation notice to cancel the contract without penalty and a reminder that the electric utility will give the customer a cancellation number to confirm any cancellation of the contract during the cancellation period.*

* * *

(b) *Following telephonic enrollment, the CRES provider shall comply with all of the following:*

(i) *Within one business day, send the customer a written contract that details the terms and conditions summarized in the telephone call*

(E) *Telephonic enrollment*

* * *

(2) *Following telephonic enrollment, the retail natural gas supplier or governmental aggregator shall:*

(a) *Within one business day, send the customer a written contract that details the terms and conditions summarized in the telephone call pursuant to rule 4901:1-29-11 of the Administrative Code. Such contract shall in no way alter the terms and conditions to which the customer agreed in the telephone call.*

Ohio Adm.Code 4901:1-21-11(A):

Competitive retail electric service (CRES) providers ... shall arrange for the provision of competitive retail electric service by contracting with their customers. In their administration of such contracts, CRES providers are prohibited from engaging in unfair, deceptive, misleading, and unconscionable acts and practices.

Ohio Adm.Code 4901:1-29-03(A):

A retail natural gas supplier or governmental aggregator shall not engage in unfair, misleading, deceptive, or unconscionable acts or practices related to, without limitation, the following activities:

- (1) Marketing, solicitation, or sale of a competitive retail natural gas service.*
- (2) Administration of contracts for such service.*
- (3) Provision of such service, including interactions with consumers.*

Ohio Adm.Code 4901:1-29-05(D):

No retail natural gas supplier or governmental aggregator may engage in marketing, solicitation, sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a competitive retail natural gas service. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:

** * **

(5) Engaging in any solicitation that leads the customer to believe that the retail natural gas supplier or governmental aggregator or its agent is soliciting on behalf of or is an agent of any entity other than the competitive retail natural gas supplier or governmental aggregator.

** * **

(8) Advertising or marketing offers that:

(a) Claim that a specific price advantage, savings, or guarantee exists if it does not.

Ohio Adm.Code 4901:1-29-06:

(D) Mailings, facsimiles, and direct enrollment

** * **

(5) Where enrollment occurs by direct solicitation, customers shall be advised both verbally and in the contract that:

** * **

(b) The customer is allowed a seven-business-day period from the confirmation notice postmark date to rescind the enrollment.

** * **

(E) Telephonic enrollment

(1) To enroll a customer telephonically, a retail natural gas supplier or governmental aggregator, shall make a date- and time-stamped audio recording of the sales portion of the call, if the customer is enrolled, and before the completion of the enrollment process, a date- and time- stamped audio recording by an independent third-party verifier that verifies, at a minimum, the following:

** * **

(h) Customers are advised both verbally and in the contract of all of the following:

** * **

(ii) The customer is allowed a seven-business-day period from the confirmation notice postmark date to rescind the enrollment.

Ohio Adm.Code 4901:1-29-10(A):

A retail natural gas supplier or opt-in governmental aggregator shall arrange for the provision of competitive retail natural gas service by contracting with its customers. In

its administration of such contracts, a retail natural gas supplier or opt-in governmental aggregator is prohibited from engaging in unfair, deceptive, misleading, and unconscionable acts and practices.

Staff began its investigation of consumer complaints against Verde by generating a report of all customer contacts to the Commission's Call Center. Between October 1, 2018 and April 12, 2019, the Call Center received 481 customer contacts regarding Verde. Of these 481 customer contacts, 57% were allegations of unfair, deceptive, misleading, or unconscionable acts or practices by Verde's sales representatives. Additionally, since the opening of the COI, the Commission's Call Center has received an additional 36 consumer contacts regarding Verde. Upon review of the customer contacts, Staff identified several recurring unfair, deceptive, misleading, or unconscionable practices by Verde, which Staff categorized as: (1) untruthful promises of lower rates, (2) caller identification spoofing and misrepresentation as a local utility, and (3) misleading offers for sale.

1. *Untruthful Promises of Lower Rates*

In reference to untruthful promises of lower rates, Staff provides the following specific examples, as provided to Staff from consumers:

- A consumer provided Staff with a recording of an automated message from Verde which stated:

Hello, thank you for being a valued customer of AEP also known as America Electric Power. The following is an important update regarding your account. Starting this month, all current customers who have not missed any payments in the past 6 months will now be eligible for a discount for up to 30% off of their monthly bill. If you would like to check your eligibility, please press one now.⁴

The consumer's email states that after pressing one, a live Verde representative informed the consumer that the Verde representative needed information from the consumer's bill in order for the consumer to obtain the new low rate. The Verde representative stated that on the consumer's next bill, the consumer will receive a new low rate of 8.99 cents per kilowatt-hour (cents/kWh) and that she was currently paying 12 to 13 cents/kWh. She was also offered to enroll her gas account at a rate of \$0.699 per one hundred cubic feet (Ccf) of natural gas and was advised she was currently paying around \$0.8/Ccf to \$0.85/Ccf. In reality, the customer was only paying \$0.054 /kWh for electric and \$0.485/Ccf for natural gas services.⁵

⁴ Audiotape file: PUCO Audiotape Recording of Pre-recorded message from Verde to Barb Bossart, attached to email from Barb Bossart to Nedra Ramsey (March 26, 2019) (on file with PUCO Staff).

⁵ Email from Barb Bossart to Nedra Ramsey (March 26, 2019).

- A consumer reported to Staff that the consumer received a door-to-door solicitation from a Verde representative stating the consumer would save money. The consumer states he was lead to believe Verde's rate was lower than the Toledo Edison Company rate. Upon investigation, Verde provided an audio file of a sales call that demonstrated the interaction occurred telephonically, rather than in person. The audio file demonstrates that the Verde representative stated "thank you for staying on the line" to start the sales call. The representative stated, "you qualify to get these reductions on your bill" and "Please write down your new low rates." Upon review of this consumer contact with Verde, Verde stated to Staff that it would not provide a credit to the customer, as its sales agent provided the details and did not mislead the customer. The Staff investigator had to identify the misleading statements before Verde would remediate the matter.⁶
- A consumer reported that he received a call stating that he would save 20% on his AEP bill and 40% on his Dominion East Ohio bill if he switched to Verde.⁷
- In another call, the Verde sales representative informed the customer that enrolling with Verde would help her save on her bill, that enrollment would keep bill cost down, and that the customer had three business days to rescind, if necessary.⁸

During the investigation, Staff found that Verde sales representatives repeatedly and consistently promised potential customers a discount and/or savings off their current utility bills and then charged rates that did not produce any actual discount and/or savings. Staff discovered that Verde's telephone sales representatives engaged in a consistent pattern of providing unfair, misleading, or deceptive information to potential customers both through live sales solicitations as well as in information provided to customers via automated phone messages (i.e. robo-calls).

2. *Caller Identification Spoofing and Misrepresentation as a Local Utility*

Staff also found that many of the consumer contacts reported receipt of calls that, due to the information displayed on the customer's caller ID display, they thought were from someone local, from their utility company, or from the Internal Revenue Service. These calls then turned out to be sales calls from representatives of Verde. This type of practice is known as "Caller ID spoofing" according to the Federal Communications Commission.⁹ In addition, Verde

⁶ PUCO Call Center Case ID# 00254021.

⁷ PUCO Call Center Case ID# 00245747.

⁸ PUCO Call Center Case ID# 00240898.

⁹ Federal Communications Commission, Consumer Guide, "Caller ID Spoofing" (2019), https://www.fcc.gov/sites/default/files/caller_id_spoofing.pdf (last visited May 3, 2019).

representatives made statements to consumers that they represented or had an affiliation with local utilities, rather than Verde.

Staff first notified Verde of spoofing allegations on December 21, 2018.¹⁰ 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.

Below is a summary of some of the specific spoofing complaints and instances in which Verde represented it had an affiliation with local utilities where no such relationship existed that Staff received and investigated:

- One consumer reported that on March 18, 2019, he received a call on his work phone and the caller ID displayed "US GOVT IRS 513-263-578."¹¹
- Several consumers reported that they received a call from Verde in which the caller ID displayed numbers that began with 513-287 and 513-263. These are the area code and prefixes in use by Duke Energy Ohio employees in Cincinnati, Ohio.¹²
- Another customer reported that he received a call from "Jack Jordan" (Verde ID# 121125). The customer's caller ID indicated that he was getting a call from The Illuminating Company; however, Jack turned out to be a representative of Verde.¹³
- Multiple consumers reported to Staff that a Verde sales representative spoofed the number of the local utility toll-free customer service number (800-672-2231).¹⁴
- Another customer was told that "Ohio Edison works along with several licensed suppliers in your area" and that Verde is a licensed supplier that provides all qualified customers in your area with a special price protection plan of 9.29 cents/kWh. This information was clearly provided to make the consumer believe that Verde had some form of partnership with their utility company.

3. *Misleading Offers for Sale*

On January 23, 2019, Staff requested all telemarketing sales calls involving Verde sales representatives during the week of December 17, 2018 and a copy of the Verde's sales script. In the data request, Staff also requested Verde's TPV script and enrollment information regarding 22 customers who previously contacted the Commission's Call Center. Verde provided the

¹⁰ Email from PUCO Staff Nedra Ramsey to Spark dated December 21, 2018.

¹¹ Email from Scott Nicholson, Duke Energy Ohio to Barbara Bossart, PUCO (March 22, 2019).

¹² Email from Scott Nicholson, Duke Energy Ohio to Barbara Bossart, PUCO (March 15, 2019).

¹³ PUCO Call Center Case ID# 265297.

¹⁴ See, e.g., PUCO Call Center Case ID# 245747 and 248892.

scripts, available enrollment documentation, and a total of 503 telemarketing sales call recordings. The company informed Staff that it would not be able to provide all of the requested records because it “no longer has a working relationship with Dark Star, CJ Consulting, ETM and Vestra.”¹⁵ Of the sales calls received, Staff selected a sample of over 150 calls to review for compliance and identified one or more instances of non-compliance with Commission rules in 100 percent of the reviewed calls.

Of the calls reviewed, it was clear to Staff that information was being provided to the customer prior to the recording of the live sales agent getting on the line based on the start of the conversation with the representative. Staff believes that many of these sales calls began after the pre-recorded robo-call message that was reported by several consumers who contacted the Commission’s Call Center.¹⁶ Additionally, the sales representatives were consistently unclear in the terms and conditions applicable to their offers for sale.

In approximately half of the calls reviewed by Staff, the sales representatives were not using the sales script Verde had provided to Staff. However, all of the sales representatives answered the call in the same manner and provided customers with similar information, indicating that this was not a situation where a few agents were deviating from the script. The manner and consistency with which the agents relayed information indicated to Staff that there was likely an additional script, not provided to Staff, that agents were using. In another group of calls reviewed by Staff, Verde representatives appear to be following a script very similar to the one Verde provided to Staff; however, portions of the information were left out or altered.

Specifically, some of the issues Staff found in reviewing the sales calls are as follows:

- A theme noted in many of the calls was immediately upon answering the call, the sales agent asked the consumer for their zip code. After getting the zip code, the sales representative asked a few questions about who pays the bills and whether or not the customer is receiving economic assistance, then asked customers to get a copy of their bill and provide their account number, address, and name on the bill. This occurred without the representative making any type of offer for sale or informing a customer that they would be enrolling with Verde.¹⁷
- In several calls, when the rate was mentioned, Verde representatives made statements such as: “Verde will be a lower rate,” the offer will “keep your electric and gas bill

¹⁵ Email from Verde to PUCO Staff Nedra Ramsey, dated March 8, 2019.

¹⁶ PUCO Call Center Case ID# 00249190.

¹⁷ Audiotape file: Verde Sales Call Recording 20181217-214452_#####9499, 20181217-182307_#####2527, 20181219-021043_#####5928; Audiotape file ###-###-7572 contained in Verde Data Request Response from Feb. 5, 2019. (on file with PUCO Staff).

down," "same service at a more affordable rate," and "your price will be dropped down to 9.29 cents/kWh."¹⁸

- Many customers were instructed by the sales representative to answer all TPV questions with a clear "yes" with the exception of the email address question, when the purpose of the TPV is to ensure that the customer understands the terms of the agreement clearly.¹⁹
- Many of the sales calls and TPV recordings were not consistent when discussing the rewards program. For instance, TPV recordings mentioned a rewards program; however, there was no mention of a rewards program during the sales call.²⁰
- Several times customers were informed that they had three business or three calendar days to rescind when the Ohio Administrative Code clearly requires companies to allow for rescission for seven calendar days for electric and seven business days for natural gas service.²¹

Staff believes that the facts of the preceding three subsections demonstrate that Verde has engaged in acts or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of, administration of, contracts for, or provision of CRES and CRNGS, in violation of Commission rules.

B. Assertion of Inaccurate Time Limit to Rescind Contract

Ohio Adm.Code 4901:1-21-06(D), 4901:1-29-06(D)(5)(b), 4901:1-29-06(E)(1)(h)(ii) ensure that potential customers are given seven calendar or seven business days, respectively, to rescind a CRES or CRNGS contract after it has been signed.

These sections of the Ohio Administrative Code state in pertinent part as follows.

Ohio Adm.Code 4901:1-21-06(D):

(D) Residential and small commercial enrollment.

(1) Mailings, facsimiles, and direct solicitation.

* * *

¹⁸ Audiotape file: Verde Sales Call Recording Recordings from data request XXXXXX2772, XXXXXXXX-XXXXXX9082, XXXXXXXX-XXXXXXX_XXXXXX7985-all contained in Verde Data Request Response from Feb. 5, 2019 (on file with PUCO Staff).

¹⁹ Audiotape file: Verde Sales Call Recording 20181217-021043_#####5928 (on file with PUCO Staff).

²⁰ Audiotape file: Verde Sales Call Recording 20181217-021043_#####5928, and 20181217-182307_#####2527 (on file with PUCO Staff).

²¹ Audiotape file ###-###-7572 contained in Verde Data Request Response from Feb. 5, 2019 (on file with PUCO Staff).

(e) Where enrollment occurs by direct solicitation, customers shall be advised both verbally and in the contract that: (i) the electric utility will be sending a confirmation notice of the transfer of service; (ii) they are allowed seven calendar days to rescind the contract; and, (iii) the customer must contact the electric utility to rescind the contract.

** * **

(2) Telephonic enrollment

(a) To enroll a residential or small commercial customer telephonically, a CRES provider shall make a date and time stamped audio recording verifying before the completion of the telephone call, at a minimum, all of the following:

** * **

(viii) A verbal statement and the customer's acknowledgment that the customer has seven calendar days from the postmark date of the electric utility's confirmation notice to cancel the contract without penalty and a reminder that the electric utility will give the customer a cancellation number to confirm any cancellation of the contract during the cancellation period.

Ohio Adm.Code 4901:1-29-06:

(D) Mailings, facsimiles, and direct enrollment

** * **

(5) Where enrollment occurs by direct solicitation, customers shall be advised both verbally and in the contract that:

** * **

(b) The customer is allowed a seven-business-day period from the confirmation notice postmark date to rescind the enrollment.

** * **

(E) Telephonic enrollment

(1) To enroll a customer telephonically, a retail natural gas supplier or governmental aggregator, shall make a date- and time-stamped audio recording of the sales portion of the call, if the customer is enrolled, and before the completion of the enrollment process, a date- and time- stamped audio recording by an independent third-party verifier that verifies, at a minimum, the following:

** * **

(h) Customers are advised both verbally and in the contract of all of the following:

** * **

(ii) The customer is allowed a seven-business-day period from the confirmation notice postmark date to rescind the enrollment.

As a result of Staff's review, Staff discovered several instances in which Verde informed customers that they had less than seven calendar days in which to rescind a CRES contract or less than seven business days in which to rescind a CRNGS contract. Below is a summary of some of the specific complaints:

- Several times customers were informed that they had three business or three calendar days to rescind when the Ohio Administrative Code clearly requires companies to allow for seven calendar days for electric and seven business days for natural gas.²²
- In another call, the Verde sales representative informed the customer that she had three business days to rescind.²³

All CRES providers are required to give customers seven calendar days to rescind a contract and seven business days for CRNGS providers. By not informing customers of the correct rescission period, Verde is in non-compliance with Commission rules.

C. Failure to Maintain Required Records and Evidence Customer Consent

Ohio Adm.Code 4901:1-21-04(A), 4901:1-21-06(D), 4901:1-21-11(C), 4901:1-29-04(A), 4901:1-29-06(D), and 4901:1-29-10(B) each ensure that CRES and CRNGS providers keep records and data that are sufficient to comply with Commission rules and support any investigation of customer complaints. Furthermore, Ohio Adm.Code 4901:1-21-06(D)(1)(a) and 4901:1-29-06(D)(1) also ensure that a potential customer must sign a CRES or CRNGS contract to demonstrate customer consent and contract validity. In relation to requiring appropriate CRES and CRNGS record maintenance, the Ohio Administrative Code states in pertinent part as follows.

Ohio Adm.Code 4901:1-21-04(A):

Each competitive retail electric service provider shall establish and maintain records and data sufficient to:

- (1) Verify its compliance with the requirements of any applicable commission rules.*
- (2) Support any investigation of customer complaints.*

Ohio Adm.Code 4901:1-21-06(D)(1)(a):

Residential and small commercial enrollment.

- (1) Mailings, facsimiles, and direct solicitation.*

²² See, e.g., Audiotape file ###-###-7572 contained in Verde Data Request Response from Feb. 5, 2019 (on file with PUCO Staff).

²³ Audiotape file ###-###-2110 contained in Verde Data Request Response from Feb. 5, 2019 (on file with PUCO Staff).

(a) Where enrollment occurs by mail, facsimile, or direct solicitation, the customer's signature on a contract shall constitute consent.

Ohio Adm.Code 4901:1-21-11(C):

CRES providers shall maintain copies of individual customer contracts for no less than two years after each such contract terminates. Copies may be saved in electronic formats if such preserves the image of the original signatures on signed documents.

Ohio Adm.Code 4901:1-29-04(A):

Each natural gas company (for records retention related to competitive retail natural gas services), each retail natural gas supplier and each governmental aggregator shall establish and maintain records and data sufficient to:

- (1) Verify its compliance with the requirements of any applicable commission rules.*
- (2) Support any investigation of customer complaints.*

Ohio Adm.Code 4901:1-29-06(D)(1):

Mailings, facsimiles, and direct enrollment

- (1) Where enrollment occurs by mail, facsimile, or direct solicitation, the customer's signature on a contract shall constitute consent.*

Ohio Adm.Code 4901:1-29-10(B):

A retail natural gas supplier or opt-in governmental aggregator shall maintain copies of individual customer contracts for no less than two years after such contracts terminate. Copies may be saved in electronic formats if such preserves the image of the original signatures on signed documents.

In the Staff data request sent to Verde on January 23, 2019, Staff requested that Verde produce recordings of all of its sales calls. As noted above, Verde was unable to produce all of the Staff-requested recordings. The company claimed that it could not produce the recordings because it had severed ties with several of its contracted agents and, thus, could not obtain the recordings from those vendors. All CRES and CRNGS providers are required by the Ohio Administrative Code to retain those records. By not securing them, Verde is in non-compliance with Commission rules.

Additionally, Staff investigated at least 22 complaints where customers were enrolled via door-to-door solicitation. Through the course of the investigations, Verde was unable to produce a signed contract for the customer in question on multiple occasions, as required by Commission rules.²⁴ Verde representatives told Staff investigators on several occasions that the

²⁴ See, e.g., PUCO Call Center Case ID# 233343.

company is not required to obtain a signed contract when enrollment is through door-to-door solicitation and stated that they do not have the signed contracts for the door-to-door enrollments that Staff requested.²⁵

All CRES and CRNGS providers are required by the Ohio Administrative Code to establish and maintain records and data to verify compliance with Commission rules or to support an investigation. Here, Verde did not maintain audio recordings or customer contracts. By not maintaining these records, Verde is in non-compliance with Commission rules.

D. Third-Party Verifications

Ohio Adm.Code 4901:1-21-06(D)(1)(h), 4901:1-21-06(D)(2)(a), 4901:1-29-06(D)(6)(b), and 4901:1-29-06(E)(1) ensure that when a CRES or CRNGS provider is enrolling a customer it must provide for an independent TPV to ensure the validity of enrollment. The Commission rules provide for specific steps that must be followed when enrolling a customer for CRES or CRNGS. In relation to requiring TPV for CRES and CRNGS enrollment of customers, the Ohio Administrative Code states in pertinent part as follows.

Ohio Adm.Code 4901:1-21-06(D):

Residential and small commercial enrollment.

(1) Mailings, facsimiles, and direct solicitation.

** * **

(h) CRES providers conducting contract sales to residential customers through door-to-door solicitation shall provide for independent third-party verification (TPV) to ensure the validity of the enrollment prior to submission to the electric utility. The TPV shall be conducted in accordance with paragraph (D)(2)(a) of rule 4901:1-21-06 of the Administrative Code, excluding paragraph (D)(2)(a)(vi) of rule 4901:1-21-06 of the Administrative Code and the process shall include the following:

(i) The sales agent shall contact the party responsible for the TPV at the conclusion of the sales transaction and provide the necessary contract tracking information to initiate the TPV process.

(ii) The independent third-party verifier must confirm with the customer that the sales agent has left the property of the customer. The sales agent is not to return before, during, or after the TPV process.

(iii) The independent third-party verifier shall structure the TPV interview to give the customer adequate time to respond to questions and shall not lead the customer in their response.

(iv) The CRES provider must retain the audio recording of the customer's enrollment for one year after the contract with the customer is terminated.

²⁵ Verde March 5, 2019 Response to Data Request 2, Email RE: Verde OH Investigation to Nedra Ramsey; Verde March 8, 2019 Response to Data Request 2, Email RE: Verde OH Investigation to Nedra Ramsey.

(v) The CRES provider must provide a copy of the independent TPV to staff within three business days of any such request.

(2) Telephonic enrollment

(a) To enroll a residential or small commercial customer telephonically, a CRES provider shall make a date and time stamped audio recording verifying before the completion of the telephone call, at a minimum, all of the following:

(i) The CRES provider's or independent third-party verifier's identity and the exact purpose of the call

(ii) A verbal statement and the customer's acknowledgement that the call is being recorded.

(iii) A verbal statement and the customer's acknowledgement that the CRES provider is not the customer's current electric utility company and that the customer may choose to remain with the electric utility company or enroll with another CRES provider.

(iv) A verbal question and the customer's acknowledgement that the customer wishes to enroll with the provider.

(v) A verbal question and the customer's acknowledgement that the customer is the customer of record at the customer's electric utility or is authorized to switch providers by the customer of record.

(vi) In accordance with rule 4901:1-21-12 of the Administrative Code, a verbal statement and the customer's acceptance of each of the principal terms and conditions for the service that will be provided, including, but not limited to, all of the following:

(a) The service(s) that will be provided.

(b) The price.

(c) The length of the contract term.

(d) An approximate service commencement date.

(e) The contract termination date, and any fees for customer cancellation prior to such date.

(f) Any material limitations, exclusions, contract contingencies, or conditions precedent.

(g) Any fees or costs to the customer.

(h) Whether or not the CRES provider offers budget billing for the generation portion of the bill.

(i) If applicable, whether the provider will perform a credit check and require a deposit, including the amount.

(j) Who will bill for the provider's service(s).

(vii) A verbal statement and the customer's acknowledgement that the provider will, within one business day, send the customer a written contract that details the terms and conditions that were summarized in the telephone call.

(viii) A verbal statement and the customer's acknowledgement that the customer has seven calendar days from the postmark date of the electric

utility's confirmation notice to cancel the contract without penalty and a reminder that the electric utility will give the customer a cancellation number to confirm any cancellation of the contract during the cancellation period.

(ix) A toll-free telephone number the customer can call to cancel the contract.

(x) If applicable, a verbal request for and the customer's provision of the customer's electric utility account number.

(xi) A verbal request for and the customer's provision of the customer's mailing address.

(xii) A unique enrollment confirmation number.

Ohio Adm.Code 4901:1-29-06:

(D) Mailings, facsimiles, and direct enrollment

(6) Direct enrollment of a residential or small commercial customer door-to-door by a retail natural gas supplier or governmental aggregator must comply with the following minimum requirements:

** * **

(b) Third-party verification

A retail natural gas supplier or governmental aggregator enrolling customers through door-to-door solicitation shall provide for an independent third-party verification to ensure the validity of enrollment prior to submission to the incumbent natural gas company and shall not initiate enrollment with the incumbent natural gas company without a valid independent third-party verification. The independent third-party verification shall be conducted in accordance with paragraph (E)(1) of rule 4901:1-29-06 of the Administrative Code and the process shall include the following:

(i) The representative of the retail natural gas supplier or governmental aggregator shall contact the independent third-party verifier at the conclusion of customer enrollment to initiate the independent third-party verification process.

(ii) The independent third-party verifier must confirm with the customer that the representative of the retail natural gas supplier or governmental aggregator has left the property of the customer. The representative of the retail natural gas supplier or governmental aggregator is not to return before, during, or after the independent third-party verification process.

(iii) The independent third-party verifier shall structure the independent third-party verification interview to give the customer adequate time to respond to questions and shall not prompt answers from the customer in their response.

(iv) *The retail natural gas supplier or governmental aggregator must retain the audio recording of the customer's enrollment for one year after the contract with the customer is terminated.*

(v) *The retail natural gas supplier or governmental aggregator must provide a copy of the independent third-party verification to the incumbent natural gas company or the staff within three business days of any such request.*

* * *

(E) *Telephonic enrollment*

(1) *To enroll a customer telephonically, a retail natural gas supplier or governmental aggregator, shall make a date- and time-stamped audio recording of the sales portion of the call, if the customer is enrolled, and before the completion of the enrollment process, a date- and time- stamped audio recording by an independent third-party verifier that verifies, at a minimum, the following:*

(a) *The retail natural gas supplier, governmental aggregator, or the independent third-party verifier identity and the exact purpose of the call.*

(b) *A verbal statement and the customer's acknowledgement that the call is being recorded.*

(c) *A verbal statement and customer's acknowledgement that the retail natural gas supplier or governmental aggregator is not the customer's natural gas company and that the customer may choose to remain with the natural gas company's applicable tariff or default service.*

(d) *A verbal question and the customer's acknowledgement that the customer has given consent to enroll with the retail natural gas supplier or governmental aggregator.*

(e) *A verbal question and the customer's acknowledgement that the customer is the customer of record or is authorized to switch the retail natural gas supplier or governmental aggregator for the customer of record.*

(f) *In accordance with rule 4901:1-29-11 of the Administrative Code, a verbal statement and the customer's acceptance of each of the principal terms and conditions for the service that will be provided, including, but not limited to:*

(i) *The service(s) that will be provided.*

(ii) *The price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format if the product is based on a per-unit price, or for flat-monthly rate offers, a specific listing of the rate to be charged per month for the duration of the contract.*

(iii) *The length of the contract term.*

(iv) *An approximate service commencement date.*

(v) *The contract termination date, and any fees for customer cancellation prior to such date.*

- (vi) Any material limitations, conditions, or exclusions.*
- (vii) Any fees or costs to the customer.*
- (viii) If applicable, whether the retail natural gas supplier or governmental aggregator will perform a credit check and require a deposit, including the amount.*
- (ix) Who will bill for the retail natural gas supplier's and governmental aggregator's service(s).*
- (x) The enrollment confirmation number.*
- (g) A verbal statement and the customer's acknowledgement that the retail natural gas supplier or governmental aggregator will, within one business day, send the customer a written contract that details the terms and conditions that were summarized in the telephone call.*
- (h) Customers are advised both verbally and in the contract of all of the following:*
 - (i) The incumbent natural gas company will be sending a confirmation notice of the transfer of service.*
 - (ii) The customer is allowed a seven-business-day period from the confirmation notice postmark date to rescind the enrollment.*
 - (iii) The customer should contact the incumbent natural gas company to rescind the enrollment.*
- (i) The incumbent natural gas company's toll-free or local telephone number that the customer can call to rescind the enrollment.*
- (j) A verbal request for and the customer's provision of the customer's natural gas company's account number.*
- (k) A verbal request for and the customer's provision of the customer's mailing address.*

During the investigations, Staff found many instances where the company's TPV recording did not contain all of the elements required by the Ohio Administrative Code, including: (1) a verbal statement and the customer's acknowledgement that the provider will, within one business day, send the customer a written contract that details the terms and conditions that were summarized in the telephone call; (2) a verbal request for and the customer's provision of the customer's mailing address; (3) the price per Ccf; (4) the incumbent natural gas company's toll-free or local telephone number that the customer can call to rescind the enrollment; and (5) a verbal request for and the customer's provision of the customer's natural gas company's account number.²⁶

²⁶ Audiotape file ###-###-2110 contained in Verde Data Request Response from Feb. 5, 2019 (on file with PUCO Staff).

E. Failure to Provide Required Contract and Contract Expiration Notifications

Ohio Adm.Code 4901:1-21-06(D)(2)(b)(i) and 4901:1-29-06(E)(2)(a) ensure that customers are sent a written contract within one business day following telephonic enrollment. Ohio Adm. Code 4901:1-21-11(G) ensures that a customer receives notice from a CRES provider that the customer's contract is due to expire in the next 45 to 90 days. This notice also ensure notifies the customer that, unless the contract has an automatic renewal clause, the customer will be automatically placed on the customer's respective electric utility's standard service offer rate.

The sections of the Ohio Administrative Code that require CRES and CRNGS providers to send contracts and contract expiration notices to customers are as follows.

Ohio Adm.Code 4901:1-21-06(D)(2)(b)(i):

Residential and small commercial enrollment.

* * *

(2) Telephonic enrollment

* * *

(b) Following telephonic enrollment, the CRES provider shall comply with all of the following:

(i) Within one business day, send the customer a written contract that details the terms and conditions summarized in the telephone call and the generation resource mix and environmental characteristics information pursuant to rule 4901:1-21-09 of the Administrative Code. Such contract shall in no way alter the terms and conditions to which the customer agreed in the telephone call.

Ohio Adm.Code 4901:1-29-06(E)(2)(a):

Telephonic enrollment

* * *

(2) Following telephonic enrollment, the retail natural gas supplier or governmental aggregator shall:

(a) Within one business day, send the customer a written contract that details the terms and conditions summarized in the telephone call pursuant to rule 4901:1-29-11 of the Administrative Code. Such contract shall in no way alter the terms and conditions to which the customer agreed in the telephone call.

Ohio Adm.Code 4901:1-21-11(G):

The CRES provider shall furnish written notice to residential and small commercial customers of pending contract expiration between forty-five and ninety calendar days before the contract expires. Such notice shall be made by separate mailing (envelope or postcard), or by conspicuously placed bill message or bill insert. The front cover of such mailing shall contain the following statement: "Important notice regarding your electric service contract's expiration." This notice may be combined with a renewal notice specified in paragraph (F) of this rule. This paragraph does not apply to the expiration of contract periods of one month or less.

If the contract does not contain an automatic renewal clause, the notice shall include a statement that the customer will automatically default to the electric utility's standard offer service if the customer does not re-enroll with the current CRES provider or enroll with another CRES provider.

Through Staff's review, Staff discovered instances in which Verde failed to provide contracts in the timeframe required by Commission rules. For example:

- A customer asked Verde when she will get the paperwork and was advised by Verde that she would receive it within three to five days. However, Verde failed to send the terms and conditions until nine days after enrollment.²⁷ In fact, Staff did not find any evidence during its review that Verde had sent the terms and conditions within the one day required timeframe.

Additionally, Staff received and subsequently investigated complaints from Verde customers alleging their contracts had expired without receiving any prior notice from Verde. The complainants also state that after their contracts expired, they were placed on a month-to-month variable rate, without the customer's consent. Customers were very concerned with the variable rate they had been charged.²⁸

On January 23, 2019, Staff requested that Verde provide the expiration notice for each listed customer that had been placed on a month-to-month variable rate after their fixed-term contract had expired. The company responded that contract expiration notices are not required per the terms of service.²⁹

²⁷ PUCO Call Center Case ID# 00255307.

²⁸ PUCO Call Center Case ID# 00256012.

²⁹ See, e.g., PUCO Call Center Case ID# 00232541.

Staff maintains that a company's terms of service do not supersede the Ohio Administrative Code. Accordingly, the company's actions and terms of service are in non-compliance with the Ohio Administrative Code.

IV. Aggravating Factors Regarding Managerial Capability

During its review of an application for certification or recertification, the Commission assesses an applicant's managerial, financial, and technical capability to provide the service it intends to offer, and its ability to comply with commission rules or orders.³⁰ In addition, under Ohio Adm.Code 4901:1-24-13(E)(4) and 4901:1-27-13(E)(4), the Commission may suspend, conditionally rescind, or rescind a CRES or CRNGS provider's certificate if the Commission finds that the company is not fit or capable of providing service. Therefore, in addition to notifying the Commission of Verde's inability to comply with commission rules, Staff also notes that Verde's management also reveals its inability to provide adequate service to customers.

The Commission originally certificated Verde as a CRES provider on March 28, 2012 and a CRNGS provider on December 9, 2013 and issued renewal CRES certificates on April 4, 2014, April 4, 2016, and March 29, 2018 and renewal CRNGS certificates on December 7, 2015 and December 11, 2017.³¹ Pursuant to Commission rules, CRES and CRNGS providers must inform the Commission of any material change to the information supplied in a certification or certification renewal application.³² Following these rule requirements, Verde provided the Commission with updates to its ownership and management structures, beginning on July 28, 2017. Specifically, Verde notified the Commission that that Spark Energy Holdco, LLC (Spark) had acquired Verde with ultimate ownership residing in Spark, effective July 1, 2017 and ultimate transition and integration to have been implemented in April 2018. Staff notes that prior to July 2018, Verde's customer contacts were relatively low. As the contacts steadily increased, numerous serious violations of the Ohio Administrative Code became apparent to Staff. Therefore, Staff reviewed both Verde and Spark's compliance history when evaluating its managerial capabilities.

On April 11, 2019, the state of Connecticut Public Utilities Regulatory Authority (PURA) issued a proposed final decision regarding Spark Energy, L.P.³³ The allegations and proposed determinations in that case are similar to the allegations in this case. Customer allegations and

³⁰ Ohio Adm.Code 4901:1-24-05, 4901:1-24-10, 4901:1-27-05, and 4901:1-27-10.

³¹ 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. See also, *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.

³² Ohio Adm.Code 4901:1-24-11 and 4901:1-27-11.

³³ See *Application of Spark Energy, L.P. for an Electric Supplier License- Investigation into Marketing*, State of Connecticut PURA Docket 10-06-18RE02, Proposed Final Decision (April 11, 2019), available at <http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/7c139882af9bc4b9852583d9006571a5?OpenDocument>.

PURA's proposed determinations included complaints and findings that the company: (1) never identifies Spark as the entity conducting the telemarketing, (2) represents to customers that the solicitation call is from an electric distribution company, (3) never explains the purpose of the sales call, which was to have customers enroll in a supply contract with Spark, and (4) misstates the electric distribution company's current charges.

Additionally, on January 24, 2017, the State of New York Public Service Commission issued an order instituting a proceeding and to show cause against Spark Energy, LLC and Spark Energy Gas, LLC (the Spark Entities) following complaints that they moved customers from their service providers without customer authorization and had used deceptive marketing practices when signing up new customers.³⁴ The New York Public Service Commission ordered the Spark Entities to show cause why their eligibility to enroll new customers should not be suspended and why the Commission should not revoke their eligibility to provide competitive services in the state of New York. Ultimately, the New York Public Service Commission determined the Spark Entities had violated state requirements related to customer enrollments, TPVs, and the provision of contracts to customers. Staff notes that the New York Public Service Commission findings in that case are similar to the allegations in this case.

As a result, Staff believes that Verde's managerial capabilities are not sufficient to ensure it provides CRES and CRNGS in compliance with the Ohio Administrative Code and also reveal its inability to provide adequate service to customers.

V. Recommendations

Based on Staff's investigation, Staff finds that Verde: (1) is in probable non-compliance with multiple provisions of the Ohio Administrative Code, (2) has not demonstrated its ability to comply with Commission rules; and (3) does not have the managerial capability to be certified as a CRES or CRNGS provider in the state of Ohio.

Therefore, Staff recommends that the Commission:

- Suspend, conditionally rescind, or rescind Verde's certification;
- Order Verde to pay a forfeiture of \$1,500,000.00;
- Provide restitution to customers enrolled during the above noted timeframes by refunding the difference between the electric distribution and/or natural gas utility's default rate, as applicable, and the rate Verde actually charged them; and

³⁴ *In re Proceeding on Motion of the Commission to Seek Consequences against Spark Energy, LLC and Spark Energy Gas, LLC for Violations of the Uniform Business Practices*, New York Public Service Commission Case No. 16-M-0468, Order Instituting Proceeding and to Show Cause (Jan. 24, 2017) available at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=16-M-0468&submit=Search>.

- Verde shall be prohibited from transferring any customer contracts to another entity.

If the Commission decides not to suspend, conditionally rescind, or rescind Verde's certification, Staff recommends that the Commission order the following:

- Verde shall notify all current customers that were enrolled since June 1, 2018 that they may cancel their current contracts without penalty due to possible misleading marketing practices during that time.
- Verde shall provide restitution to customers enrolled during the above noted timeframes by refunding the difference between the electric distribution and/or natural gas utility's default rate and the rate Verde actually charged them.
- Verde shall be prohibited from transferring any customer contracts to another entity until all affected customers have been provided notification and restitution.
- Verde shall pay a forfeiture of \$1,500,000.00.

Staff believes that the above recommendations will help protect the consumers of Ohio against unfair, misleading, deceptive, and unconscionable acts and practices in relation to the marketing, solicitation, sale of, administration of, contracts for, and provision of CRES or CRNGS.

VI. Conclusion

Staff's investigation demonstrated that Verde has consistently and continuously violated requirements of the Ohio Administrative Code. Specifically, Staff determined the following:

- Verde provided untruthful promises of lower rates, which is unfair, misleading, deceptive, and unconscionable in relation to the marketing, solicitation, sale of, administration of, contracts for, or provision of CRES or CRNGS, in violation of Ohio Adm.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);
- Verde used inaccurate caller identification information indicating to customers that Verde's outgoing calls are instead originating from Duke Energy Ohio, AEP Ohio, and/or the Internal Revenue Service, a practice also known as spoofing, and misrepresented its relation to other utility companies, in violation of Ohio Adm.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);
- Verde used a technology known as robo-calling with automated messages which included misleading and deceptive information to entice a customer to speak to a sales representative and was unclear in the terms and conditions applicable to its offer for sale when marketing to a customer, in violation of Ohio Adm.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);

- Verde informed customers that they had less than seven calendar days in which to rescind a CRES contract or less than seven business days in which to rescind a CRNGS contract, in violation of Ohio Adm.Code 4901:1-21-06(D), 4901:1-29-06(D)(5)(b), 4901:1-29-06(E)(1)(h)(ii).
- Verde could not provide signed contracts for customers who were enrolled via door to door enrollment, and failed to keep records and data that are sufficient to comply with Commission rules and support any investigation of customer complaints in violation of Ohio Adm.Code 4901:1-21-04, 4901:1-21-06(D), 4901:1-21-11(C), 4901:1-29-04, 4901:1-29-06(D), and 4901:1-29-10(B);
- Verde's completed third-party verifications did not contain all of the elements required by Ohio Adm.Code 4901:1-21-06(D)(1)(h), 4901:1-21-06(D)(2), 4901:1-29-06(D), and 4901:1-29-06(E); and
- Verde failed to send expiration notices to customers as required by Ohio Adm.Code 4901:1-21-11(G) and failed to send customers a written contracts within one business day following telephonic enrollment as required by Ohio Adm.Code 4901:1-21-06(D)(2)(b)(i) and 4901:1-29-06(E)(2)(a).

Furthermore, 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.

In addition, Staff's investigation has shown 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 services in the state.

Ohio Adm.Code 4901:1-24-13(E) and 4901:1-27-13 (E) provide examples of the reasons that the Commission may suspend, rescind, or conditionally rescind a CRES or CRNGS certificate, respectively. These sections of the Ohio Administrative Code state in pertinent part as follows:

Ohio Adm.Code 4901:1-24-13(E):

(E) Reasons that the commission may suspend, rescind, or conditionally rescind a CRES provider's certificate include, but are not limited to:

(4) A finding by the commission that any information reported to the commission subsequent to granting a certificate adversely affects a CRES provider's fitness or capability to provide any service covered by its certificate.

(7) A finding by the commission that a CRES provider has violated any applicable commission rule or order adopted pursuant to Chapter 4928. of the Revised Code.

(9) A finding by the commission that a CRES provider has engaged in an anticompetitive act.

(11) A finding by the commission that a CRES provider 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 practice.

Ohio Adm.Code 4901:1-27-13(E):

(E) Reasons that the commission may suspend, rescind, or conditionally rescind a retail natural gas supplier's or governmental aggregator's certificate include, but are not limited to:

(4) A finding by the commission that any information reported to the commission subsequent to granting a certificate adversely affects a retail natural gas supplier's or governmental aggregator's fitness or capability to provide any service covered by its certificate.

(7) A finding by the commission that a retail natural gas supplier or governmental aggregator has violated any applicable commission rule or order adopted pursuant to Chapter 4929. of the Revised Code.

(9) A finding by the commission that a retail natural gas supplier or governmental aggregator has engaged in an anticompetitive act.

(11) A finding by the commission that a retail natural gas supplier or governmental aggregator 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 practice.

Based on the Staff's investigation and findings, Staff believes that the evidence shows that Verde is in violation of each of the above cited provisions of Ohio Adm.Code 4901:1-24-13(E) and 4901:1-27-13(E). Staff believes that, since its last certification renewal, Verde has: failed to demonstrate the fitness or capability to provide any competitive service covered by its certification(s); violated applicable Commission rules adopted pursuant to Chapter 4928 and/or 4929 of the Ohio Revised Code; engaged in anticompetitive acts by misleading customer into switching away from another CRES/CRNGS provider; failed to comply with state laws or rules designed to protect consumers in this state; and/or has otherwise engaged in fraudulent, misleading, or unfair acts or practices.

The Public Utilities Commission of Ohio
Mike DeWine, Governor
Sam Randazzo, Chairman

180 E. Broad Street, Columbus, Ohio 43215-3793
(800) 686-PUCO (7826)

An Equal Opportunity Employer and Service Provider

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/22/2019 5:22:48 PM

in

Case No(s). 13-2164-GA-CRS

Summary: Motion Motion to Suspend the Automatic Approval of Verde Energy's Renewal Application and Motion to Deny Verde Energy's Application to Renew Its Certificate to Serve Ohio Consumers and Motion to Intervene by the Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of O'Brien, Angela D