

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of
Verde Energy USA Ohio, LLC as a
Competitive Retail Natural Gas
Supplier

CASE NO.: 13-2164-GA-CRS

**VERDE ENERGY’S MEMORANDUM CONTRA OCC’S MOTION TO INTERVENE
AND MOTION TO DENY VERDE ENERGY’S RENEWAL APPLICATION**

No court in the United States would entertain two cases at the same time involving the same parties, the same issues, and the same decisionmakers. To do so would be a waste of time and effort for everyone involved, not to mention a waste of taxpayer dollars. Yet that is precisely what the Ohio Consumers’ Counsel (“OCC”) urges on the Public Utilities Commission of Ohio (the “Commission”) with its recent motions in this case, filed on November 22, 2019.

OCC seeks to intervene so it can continue to accuse Verde Energy USA Ohio, LLC (“Verde Energy”) of being a “rip-off artist” and a “bad actor,” and continue to urge the Commission to revoke Verde Energy’s certificates. (Motion at 1.) If that seems familiar, it is because OCC presented the exact same points to the exact same decisionmaker in a *48-page brief* filed in case number 19-0958-GE-COI, following a two-day hearing with live testimony on the subject.

OCC has already been heard on the issues it seeks to raise here, and allowing it to intervene would impose significant burdens on the parties and accomplish nothing. The Commission should deny OCC’s motion to intervene and likewise deny its motion to deny renewal of Verde Energy’s CRNGS certification.

Procedural History

On April 16, 2019, the Commission opened case number 19-0958-GE-COI, concerning alleged violations by Verde Energy of the Commission's rules. The Staff of the Commission's Service Monitoring and Enforcement Division ("Staff") later filed a report concerning the customer complaints it had received and its recommendations for the Commission (the "Staff Report"). OCC intervened in that case to urge the Commission to permanently rescind Verde Energy's certificates based on the allegations in the Staff Report.

In the spirit of cooperation with Staff in its investigation and as part of an effort to work toward a resolution of that investigation, Verde Energy voluntarily suspended marketing and enrollment while negotiating a settlement agreement with Staff. Those negotiations lasted more than three months, during which time OCC sat on the sidelines and did substantially nothing, even though it was repeatedly invited to participate. (*See Verde Energy's Post-Hearing Brief, Case No. 19-0958-GE-COI, Dec. 3, 2019.*)

Ultimately, Staff and Verde Energy agreed to the Joint Stipulation and Recommendation (the "Joint Stipulation"), filed on September 6, 2019. At that point, OCC began filing serial discovery requests, culminating in a motion for a protective order granted in part and denied in part by the Commission. The Commission held a hearing to determine whether it should approve the Joint Stipulation October 16 and 17, 2019.

On December 3, 2019, all parties submitted their initial post-hearing briefs. In its 48-page brief, OCC argued extensively that Verde Energy is a "rip-off artist"

that should not be allowed to do business in Ohio, based on the consumer complaints submitted to the Commission and the allegations in the Staff Report. (*See generally* OCC’s Post-Hearing Brief, Case No. 19-0958-GE-COI, Dec. 3, 2019.)

Meanwhile, in this case, Verde Energy submitted an application to renew its certificate¹ as a competitive retail natural gas supplier, as required by Ohio Adm.Code 4901:1-27-09. OCC moved to intervene and to deny Verde Energy’s application, regurgitating its argument that Verde Energy is a “rip-off artist” that should not be allowed to do business in Ohio based on the consumer complaints to the Commission and the allegations in the Staff Report. (OCC Motion, at 1.)

Standard of Review

In deciding whether to grant a motion to intervene, the Commission considers the following factors: (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; and (4) whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues. R.C. 4903.221(B). Every one of these factors weighs against granting OCC’s motion here.

¹ No. 13-334G(3)

Argument

I. The Commission should deny OCC's motion to intervene because OCC seeks to raise issues that were already presented to the Commission in case no. 19-0958-GE-COI and extensively litigated.

The Commission should deny OCC's motion to intervene because OCC already had, and continues to have, an opportunity to litigate the same issues against the same party before the same decisionmaker in another case. OCC comes to this proceeding with no new or different facts; it merely regurgitates arguments and information already before the Commission in case number 19-0958-GE-COI.

The fact that the issues presented here are already being litigated by the same parties bears on every factor of the test for intervention. On prong one, the nature of OCC's interest is clear, but the extent of the interest is nil because OCC gains nothing by re-litigating the same issues already before the Commission (except, perhaps, an impermissible second bite at the apple). On prong two, OCC already made its position on Verde Energy's participation in the Ohio market abundantly clear during a two-day hearing and via a 48-page post-hearing brief. What more could it possibly have to say? On prong three, OCC's intervention will unduly delay or prolong the proceedings because *any* delay is "undue" when its purpose is to rehash tired arguments. And on prong four, OCC will contribute nothing to the full development and equitable resolution of the factual issues presented here that it has not already contributed in case number 19-0958-GE-COI.

In short, the Commission should deny OCC's motion to intervene because OCC has no interest in this case not adequately protected by the other case. *See O'Shea v. Cleary & Assocs.*, 8th Dist. Cuyahoga Co. No. 75693, 2000 WL 574370, at *3 (May 11,

2000) (a party with “no interest in the underlying litigation” has “no basis for intervention”). The Commission will either approve the Joint Stipulation in case number 19-0958-GE-COI, or it will not. Verde Energy will either be permitted to continue selling electricity and natural gas in Ohio, or it will not. OCC has made its position on these issues clear, and the Commission will consider them in due course. Continued squabbling in the interim benefits no one, and wastes the resources of Verde Energy, the OCC, and the Commission.

The Commission should therefore deny OCC’s motion to intervene.

II. The Commission should deny OCC’s motion to deny Verde Energy’s renewal application.

If OCC is permitted to intervene, the Commission should reject OCC’s argument for denial of Verde Energy’s renewal application. The parties in case number 19-0958-GE-COI are in the process of extensive post-hearing briefing on whether the Commission should accept the settlement between Verde Energy and Staff that would permit Verde Energy to continue participating in Ohio’s retail energy markets after a prolonged marketing stay, substantial forfeiture and customer restitution, submission of a compliance plan, and numerous other severe conditions. A substantive response to OCC’s brief here would duplicate that effort.

For the same reasons identified in Verde Energy’s Post-Hearing Brief submitted on December 3, 2019 in case number 19-0958-GE-COI, incorporated herein, and the reasons that will be identified in Verde Energy’s response to OCC’s Post-Hearing Brief, the Commission should approve Verde Energy’s renewal

application following the approval of the Joint Stipulation between Staff and Verde Energy.

CONCLUSION

For the foregoing reasons, the Commission should deny OCC's motion to intervene. If OCC is permitted to intervene, the Commission should reject OCC's position and approve Verde Energy's renewal application following approval of the Joint Stipulation. Pending the Commission's approval of the Joint Stipulation, Verde Energy has contemporaneous with this memorandum filed a motion to extend Verde Energy's current CRNGS certification so that it can continue to serve its existing retail natural gas customers in Ohio.

Dated: December 6, 2019

Respectfully submitted,

/s/ David F. Proaño

David F. Proaño (0078838), Counsel of Record

dproano@bakerlaw.com

Kendall Kash (0093717)

kkash@bakerlaw.com

Daniel Lemon (0097113)

dlemon@bakerlaw.com

Taylor Thompson (0098113)

tathompson@bakerlaw.com

BAKER & HOSTETLER LLP

127 Public Square, Suite 2000

Cleveland, Ohio 44114

Phone: 216-861-7834

Fax: 216-696-0740

Counsel for Verde Energy USA Ohio, LLC

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing document was served by e-mail upon the persons listed below this 6th day of December, 2019.

SERVICE LIST

Thomas Lindgren

Thomas.Lindgren@ohioattorneygeneral.gov

Angela O'Brien

angela.obrien@occ.ohio.gov

Bryce McKenney

bryce.mckenney@occ.ohio.gov

Kimberly Bojko

bojko@carpenterlipps.com

Dated: December 6, 2019

/s David F. Proaño

David F. Proaño (0078838)

Counsel for Verde Energy USA Ohio, LLC

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Summary: Memorandum Contra OCC's Motion to Intervene and Contra OCC's Motion to Deny Verde Energy's Renewal Application electronically filed by Mr. David F. Proano on behalf of Verde Energy USA Ohio, LLC