

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MEMORANDUM CONTRA VERDE ENERGY’S MOTION TO EXTEND ITS
EXPIRED CERTIFICATE TO MARKET NATURAL GAS TO OHIOANS
BY THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

Verde Energy USA Ohio, LLC’s (“Verde”) authority to serve Ohio natural gas customers expired on December 6, 2019, yet Verde continues to serve those customers.¹ Verde has misused its authority to market natural gas and abused Ohio consumers through its misleading and deceptive marketing practices and failure to comply with Ohio law.² Shockingly, Verde now asks the PUCO in this case to *renew* its certificate of authority to serve Ohio natural gas customers and to *expand* its service to customers in the territory of Vectren Energy Delivery of Ohio.³ This is any easy one for the PUCO – deny Verde’s motion and immediately return Verde’s existing gas customers to the applicable utility standard offer.

¹ Ohio Competitive Retail Natural Gas Marketer Certificate No. 13-334G(3) (issued on Dec. 11, 2017).

² See *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, PUCO Staff Letter (Apr. 16, 2019). See also e.g. *In the Matter of the Commission’s Investigation into Verde Energy USA Ohio, LLC’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-0958-GE-COI, OCC Ex. 1, OCC Ex. 5, OCC Ex. 7, OCC Ex. 8, OCC Ex. 9, OCC Ex. 10, OCC Ex. 11, OCC 13, OCC Ex. 14, OCC Ex. 15, OCC Ex. 17, and OCC Ex. 19B.

³ Case No. 13-2164, Renewal Certification Application (Nov. 7, 2019) (“Renewal Application”).

On the day its certificate to serve Ohio natural gas customers expired (December 6, 2019), Verde filed a Motion to Extend (“Motion”) its certificate asking the PUCO to allow Verde to continue serving its existing customers pending resolution of this case and the PUCO’s investigation into Verde’s noncompliance with Ohio law in Case No. 19-0958-GE-COI (“Verde Investigation”). To protect Ohio natural gas consumers, the PUCO should deny Verde’s Motion, and immediately return Verde’s existing natural gas customers to the applicable utility standard offer (or allow customers to choose a different natural gas supplier that has the ability to comply with Ohio law).

II. RECOMMENDATIONS

- A. To protect consumers, Verde’s Motion and Renewal Application should be denied based upon information in the Renewal Application itself and the evidence in the Verde Investigation Case, which demonstrated that Verde does not have the capability to continue providing adequate service to its existing natural gas customers. These customers would be much better off on their utility’s standard offer.**

In order to lawfully provide natural gas service to Ohio consumers, Verde must have the “managerial, technical, and financial capability” to do so.⁴ In addition, a fundamental regulatory policy set forth in Ohio law is to “[p]romote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods.”⁵ Further “[n]o [Marketer] [] may engage in marketing, solicitation, sales acts, or practices which are unfair, misleading, deceptive, or unconscionable . . .”⁶

Verde’s Renewal Application on its face demonstrates that Verde cannot meet these standards. Therefore, the PUCO should not allow Verde to continue serving its

⁴ R.C. 4929.20(A).

⁵ R.C. 4929.02(A)(1).

⁶ Ohio Adm. Code 4901:1-29-05(D).

existing natural gas customers while the PUCO determines the outcome of this case and the Verde Investigation.

Verde's Renewal Application identifies 21 investigations against Verde and its affiliate companies in the State of Ohio and other states in just 2018 and 2019 alone.⁷ These other investigations include regulatory proceedings in Texas, Connecticut, Illinois, Maine, and New York and involve consumer complaints and allegations of consumer protection violations and non-compliance with the law.⁸ In addition to the Verde Investigation pending before the PUCO, Verde's Renewal Application identifies another Ohio Attorney General investigation (Docket No. 577403) concerning Verde's alleged violations of the Ohio Consumer Sales Practices Act.⁹ Verde's Renewal Application further discloses that the Texas Public Utilities Commission affirmatively determined that Verde's parent company, Spark Energy, violated consumer protection laws in Texas.¹⁰

As noted in the PUCO Staff's letter filed in this case on April 16, 2019, the PUCO has received *hundreds* of complaints from customers regarding Verde's misleading and deceptive practices. In the Verde Investigation case, over 500 customer contacts and complaints regarding Verde's service were admitted into evidence.¹¹ Many of these records contained Verde's *own admissions* to the PUCO Staff that Verde failed to comply with the PUCO's rules.¹² There was also ample evidence in the Verde Investigation case that Verde regularly deceived customers by "spoofing" its Caller ID information, in

⁷ Verde Renewal Application, Exhibit B-4.

⁸ *Id.*

⁹ *Id.*

¹⁰ Verde Renewal Application, Exhibit B-5.

¹¹ *See* Verde Investigation Case, OCC Ex. 7.

¹² *See e.g.* Verde Investigation Case, OCC Initial Brief (Dec. 2, 2019), at note 46.

violation of state and federal law, to make customers believe that they were speaking to the utilities or even the Internal Revenue Service.¹³ The Attorney Examiner in the Verde Investigation case noted that “the record is clear there was spoofing” of customers by Verde.¹⁴ The evidence in the Verde Investigation case also demonstrated that Verde’s practice is to automatically renew customers onto unconscionably high monthly variable rate contracts when their fixed rate contracts expire, without providing them with proper notice as required by Ohio law.¹⁵

Given the numerous state regulatory proceedings against Verde and its affiliates regarding consumer protection violations and non-compliance with the law, and the mountain of evidence presented in the Verde Investigation case demonstrating Verde’s customer abuse, it would be unreasonable and unlawful for the PUCO to extend to Verde the *privilege* of continuing to serve existing natural gas customers while the PUCO considers the Renewal Application. This is particularly true in this case because Verde has presented no specific plans to the PUCO (in the Renewal Application or otherwise) to demonstrate how it will modify its business practices to comply with Ohio law to provide adequate service to customers. Accordingly, Verde should be kicked out of Ohio and its Motion should be denied. Consumers would be better protected if served on the applicable utility’s standard offer.

¹³ See e.g. Verde Investigation Case, OCC Initial Brief (Dec. 2, 2019), at 11-12; OCC Reply Brief (Dec. 17, 2019) at 9-10.

¹⁴ Verde Investigation Case, Oct. 16, 2019 Hearing Transcript, Vol. I at 219: 16-17.

¹⁵ Verde Investigation Case, OCC Initial Brief (Dec. 2, 2019), at 13-15, and OCC Ex. 17.

B. Verde did not timely file its Renewal Application and given the evidence of Verde's customer abuse and failure to comply with the law, Verde should not be allowed to continue serving its existing customers pending resolution of this case or the Verde Investigation case. Instead, those customers should be returned to the applicable utility's standard service offer.

The PUCO's rules governing certification renewals for natural gas marketers like Verde provide that: "*No less than thirty* and no more than sixty days prior to the expiration date indicated on the [Marketer's] or governmental aggregator's certificate, the [Marketer] or governmental aggregator shall file an application with the commission for certification renewal on forms provided by the commission."¹⁶

Verde's certificate to serve natural gas customers in Ohio expired on December 6, 2019. Verde filed its Renewal Application in this case on November 7, 2019, less than 30 days prior to the expiration date of Verde's certificate. The PUCO's rules provide that: "Any renewal application filed fewer than thirty calendar days prior to the expiration date indicated on the certificate, but no later than the expiration date on the certificate, shall be filed with a motion requesting an extension of the certificate."¹⁷ Verde did not file the Motion with its Renewal Application on November 7, 2019. Instead, Verde waited until December 6, 2019 (the day its certificate expired) to file the Motion.

On the recommendation of the PUCO Staff,¹⁸ the Attorney Examiner in this case suspended the automatic approval of Verde's Renewal Application on December 4, 2019,

¹⁶ Ohio Adm. Code 4901:1-27-09(A) (emphasis added).

¹⁷ Ohio Adm. Code 4901:1-27-09(B).

¹⁸ OCC also recommended suspending the automatic approval process for Verde's Renewal Application. See OCC Motion to Suspend (Nov. 22, 2019).

before Verde filed its Motion.¹⁹ Notably, the Entry does not state that Verde may continue to serve its existing customers pending the PUCO's review of this case.

The grace period in Ohio Adm. Code 4901:1-27-09(B) exists to accommodate law-abiding Marketers that are committed to providing honest service to Ohio consumers at reasonable prices. Because Verde has routinely violated Ohio law, the PUCO should not permit Verde to use Ohio Adm. Code 4901:1-27-09(B) to cure its untimely Renewal Application filing in this case and to continue providing inadequate service to its existing Ohio consumers. Instead, the PUCO should deny Verde's Motion and return all customers currently served by Verde to the applicable utility's standard service offer.

Verde, and its parent company Spark Energy, have demonstrated they are unable (or unwilling) to comply with consumer protection laws. And Verde has presented no plan to the PUCO showing how it will change its business practices to adequately serve its existing Ohio customers. The PUCO should protect those natural gas customers potentially being misled, deceived, and inadequately served by Verde by denying Verde's Motion.

III. CONCLUSION

Verde's PUCO-granted authority to serve Ohio natural gas customers has expired, and Verde's natural gas customers should be returned to the applicable utility standard offer. Verde's Renewal Application, as well as the evidence in the Verde Investigation case, demonstrate that Verde should not be allowed to serve *any* natural gas customers unless and until the PUCO affirmatively determines that Verde has the managerial,

¹⁹ Attorney Examiner Entry (Dec. 4, 2019), at ¶¶ 3-4.

technical and financial capability to provide adequate service. Verde also should not be allowed to serve any natural gas customers until it demonstrates to the PUCO how it will modify its business practices to protect Ohio consumers. For these reasons, and the reasons explained above, the PUCO should deny Verde's Motion.

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 Memorandum Contra Verde Energy's Motion to Extend its Expired Certificate to Market Natural Gas to Ohioans by The Office of The Ohio Consumers' Counsel was served on the persons stated below via electronic transmission, this 23rd day of December 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

kwhite@sparkenergy.com

mleclerc@sparkenergy.com

akeene@sparkenergy.com

dproano@bakerlaw.com

kkash@bakerlaw.com

dlemon@bakerlaw.com

tathompson@bakerlaw.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/23/2019 3:08:11 PM

in

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

Summary: Memorandum Memorandum Contra Verde Energy's Motion to Extend its Expired Certificate to Market Natural Gas to Ohioans by the Office of the Ohio Consumer's Counsel electronically filed by Ms. Deb J. Bingham on behalf of O'Brien, Angela D.