

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
VERDE ENERGY USA OHIO, LLC FOR
CERTIFICATION AS A COMPETITIVE
RETAIL ELECTRIC SERVICE SUPPLIER.

CASE NO. 11-5886-EL-CRS

IN THE MATTER OF THE APPLICATION OF
VERDE ENERGY USA OHIO, LLC FOR
CERTIFICATION AS A COMPETITIVE
RETAIL NATURAL GAS SERVICE
SUPPLIER.

CASE NO. 13-2164-GA-CRS

ENTRY

Entered in the Journal on March 3, 2020

{¶ 1} Verde Energy USA Ohio, LLC d/b/a Verde Energy (Verde or Company) is an electric services company as defined in R.C. 4928.01 and a retail natural gas supplier as defined in R.C. 4929.01, is certified to provide competitive retail electric service (CRES) under R.C. 4928.08 and to supply competitive retail natural gas service (CRNGS) under R.C. 4929.20, and is subject to the jurisdiction of this Commission pursuant to R.C. 4928.16 and R.C. 4929.24. Accordingly, Verde is required to comply with the Commission's minimum CRES standards set forth in Ohio Adm.Code Chapter 4901:1-21, as well as the minimum CRNGS standards set forth in Ohio Adm.Code Chapter 4901:1-29.

{¶ 2} R.C. 4928.08 states that no electric services company shall provide a CRES to a consumer in this state without first being certified by the Commission regarding its managerial, technical, and financial capability to provide such service and providing a financial guarantee sufficient to protect customers and electric distribution utilities from default. Similarly, R.C. 4929.20 states that no retail natural gas supplier shall provide a CRNGS to a consumer without first being certified by the Commission regarding its managerial, technical, and financial capability to provide such service and providing reasonable financial assurances sufficient to protect customers and natural gas companies from default.

{¶ 3} On March 28, 2012, the Commission granted Verde's application for certification as a CRES provider in this state. *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. Verde timely filed renewal applications for certification as a CRES provider every two years pursuant to Ohio Adm.Code 4901:1-24-09, and each renewal application was automatically approved by the Commission pursuant to R.C. 4928.08. Verde's most recent renewal application as a CRES supplier in this state was filed on February 27, 2020.

{¶ 4} Additionally, on December 9, 2013, the Commission granted Verde's application for certification as a CRNGS supplier in this state. *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. Verde timely filed renewal applications for certification as a CRNGS provider every two years pursuant to Ohio Adm.Code 4901:1-27-09, and each renewal application was automatically approved by the Commission pursuant to R.C. 4929.20. Verde's most recent renewal application as a CRNGS supplier in this state was filed on November 7, 2019, and was suspended on December 4, 2019, in order to permit the Commission to review the matter further.

{¶ 5} On April 16, 2019, Staff of the Commission's Service Monitoring and Enforcement Department (Staff) filed a letter in Verde's certification dockets, stating that, after reviewing customer contacts from October 1, 2018, to April 12, 2019, as well as Verde's responses, Staff believed that Verde had engaged in misleading and deceptive practices to market and enroll customers, as well as violating several requirements of Ohio Adm.Code Chapter 4901:1-21 and 4901:1-29. Staff stated that it had received 481 customer contacts regarding Verde's provision of CRES and CRNGS. Of the 481 customer contacts, 231 customer contacts (approximately 57 percent) were related to enrollment disputes, misleading information, and false representations wherein Verde allegedly purported to be another utility. Further, as reported by Staff, 18 percent of supplier-related investigations open for review and resolution with Staff were in reference to Verde as of April 15, 2019.

{¶ 6} By Entry dated April 17, 2019, the Commission opened an investigation into alleged unfair, deceptive, or unconscionable acts or practices in this state by Verde and issued a procedural schedule which set the matter for hearing. Subsequently, on February 26, 2020, the Commission approved a joint stipulation and recommendation entered into by Staff and Verde (Stipulation). *In the Matter of the Commission's Investigation into Verde Energy USA Ohio, LLC's Compliance with the OAC and Potential Remedial Actions for Non-Compliance*, Case No. 19-958-GE-COI, Opinion and Order (Feb. 26, 2020). The Stipulation purported to resolve all outstanding issues presented in Case No. 19-958-GE-COI. According to the Stipulation, Verde voluntarily ceased all marketing and customer enrollment activities in Ohio, and Staff and Verde agreed that this suspension by Verde of all marketing activities and customer enrollment in Ohio will continue until October 30, 2020, for a total of 18 months. *Id.* at ¶¶ 17-18.

{¶ 7} Both R.C. 4928.08 and 4929.20 allow the Commission to suspend, rescind, or conditionally rescind the certification of any electric services company or retail natural gas supplier issued under these sections if the Commission determines, after reasonable notice and opportunity for hearing, that the electric services company or retail natural gas supplier has failed to comply with any applicable certification standards or has engaged in anticompetitive or unfair, deceptive, or unconscionable acts or practices in this state.

{¶ 8} Pursuant to Ohio Adm.Code 4901:1-24-10(A), Verde's February 27, 2020 renewal certification application filed in Case No. 11-5886-EL-CRS is subject to a 30-day automatic approval process. Additionally, Ohio Adm.Code 4901:1-24-10(A)(1) provides that, upon good cause shown, the Commission or an attorney examiner may suspend consideration of a certification application.

{¶ 9} Accordingly, the attorney examiner suspends Verde's February 27, 2020 renewal certification application in order to allow the Commission and Staff additional time to review the application. Additionally, Verde's CRES and CRNGS certifications, issued on March 28, 2018, and December 6, 2017, respectively, shall be extended until November 1,

2020, solely in order to serve current customers.

{¶ 10} Moreover, for purposes of judicial efficiency, the attorney examiner consolidates Case Nos. 11-5886-EL-CRS and 13-2164-GA-CRS.

{¶ 11} Additionally, the attorney examiner finds it appropriate to set a procedural schedule in the above matters and invites comments regarding Verde's pending CRES and CRNGS renewal certification applications. Accordingly, the following procedural schedule shall be established:

- (a) Motions to intervene shall be filed by April 2, 2020.
- (b) Comments from the Company and intervenors regarding Verde's renewal applications shall be filed by April 2, 2020.
- (c) Reply comments from the Company and intervenors shall be filed by April 17, 2020.
- (d) Staff's review and recommendation regarding Verde's renewal certification applications shall be filed by May 15, 2020.
- (e) Discovery requests shall be served by May 22, 2020, with the exception of notices of deposition.

{¶ 12} If, upon review of the comments and Staff's recommendation, the attorney examiner finds that this matter should be set for hearing, such hearing will commence at 10:00 a.m. on June 23, 2020, at the offices of the Commission, 11th Floor, Hearing Room 11-A, 180 East Broad Street, Columbus, Ohio 43215. All parties or interested persons should register at the lobby desk and then proceed to the 11th floor in order to participate in the hearing. If the examiner determines that this matter should be set for hearing, the schedule for pre-filing testimony will be set by subsequent entry.

{¶ 13} As a final matter, the attorney examiner notes that, under Ohio Adm.Code 4901-1-16(H), the term "party" includes any person who has filed a motion to intervene, which is pending at the time a discovery request or motion is to be served or filed. Therefore, unless and until the attorney examiner rules on any pending motion to intervene, all parties, including the Company, are subject to discovery for the purposes of these proceedings, and should timely respond to all discovery requests. The examiner will not shorten the timeframes for discovery set by rule for discovery served after the issuance of this Entry, but any discovery served prior to the issuance of this Entry should be responded to within ten days after the issuance of this Entry.

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That Verde's renewal certification application filed on February 27, 2020, in Case No. 11-5886-EL-CRS be suspended. It is, further,

{¶ 16} ORDERED, That Verde's CRES and CRNGS certificates issued on March 28, 2018, and December 6, 2017, respectively, be extended through November 1, 2020, pursuant to the Stipulation. It is, further,

{¶ 17} ORDERED, That Case Nos. 11-5886-EL-CRS and 13-2164-GA-CRS be consolidated. It is, further,

{¶ 18} ORDERED, That the procedural schedule outlined in Paragraph 11 be adopted. It is, further,

{¶ 19} ORDERED, That any discovery served prior to the issuance of this Entry be responded to within ten days after the issuance of this Entry. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Lauren L. Augostini

By: Lauren L. Augostini
Attorney Examiner

SJP/hac

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Case No(s). 11-5886-EL-CRS, 13-2164-GA-CRS

Summary: Attorney Examiner Entry suspending renewal certification application, extending CRES and CRNGS certificates, consolidating cases, setting forth new procedural schedule and ordering discovery served prior to this Entry be responded to within ten days electronically filed by Heather A Chilcote on behalf of Lauren L. Augostini, Attorney Examiner, Public Utilities Commission of Ohio