

BEFORE 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 and
Competitive Retail Natural Gas
Supplier

CASE NO.: 11-5886-EL-CRS

CASE NO: 13-2164-GA-CRS

(CONSOLIDATED)

**VERDE ENERGY USA OHIO, LLC'S
MOTION FOR GUIDANCE FROM THE COMMISSION REGARDING H.B.
197, OR TO EXTEND THE TIME PERIOD TO RESPOND TO OCC'S THIRD
SET OF DISCOVERY REQUESTS**

On March 27, 2020, Governor Mike DeWine signed Am.Sub. H.B. 197, which tolls deadlines set to expire after March 9, 2020, including the “time within which discovery or any aspect of discovery must be completed,” until July 31, 2020. H.B. 197, Section 22(A)(7). Under the plain language of H.B. 197—which tolls “any aspect of discovery”—Verde Energy USA Ohio, LLC’s responses to OCC’s third set of discovery requests are not due until July 31, 2020, long after OCC’s deadline to submit comments to the Commission in this case. Verde Energy therefore requests guidance from the Commission regarding the effect of H.B. 197 on the schedule in this case.

If the Commission finds that H.B. 197 does not toll the deadline for Verde Energy to respond to OCC’s third set of discovery requests, Verde Energy hereby moves under Ohio Adm. Code 4901-1-19(A) and Ohio Adm. Code 4901-1-20(C) for a three-week extension of time to respond to those requests. Currently, under an agreement between OCC and Verde Energy, responses to those requests are due

April 1, 2020. If this motion is granted, Verde Energy's responses would be due on April 22, 2020. Though Verde Energy continues to work diligently to respond, additional time is needed both because the requests are voluminous and because of the substantial disruptions to business operations across the country caused by the COVID-19 pandemic. The reasons for this motion are more fully laid out in the accompanying memorandum in support.

Dated: April 1, 2020

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

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CASE NO.: 11-5886-EL-CRS

CASE NO: 13-2164-GA-CRS

(CONSOLIDATED)

**VERDE ENERGY USA OHIO, LLC’S MEMORANDUM IN SUPPORT OF ITS
MOTION FOR GUIDANCE FROM THE COMMISSION REGARDING H.B.
197, OR TO EXTEND THE TIME PERIOD TO RESPOND TO OCC’S THIRD
SET OF DISCOVERY REQUESTS**

Verde Energy USA Ohio, LLC (“Verde Energy”) respectfully requests guidance from the Commission regarding the effect of Am. Sub. H.B. 197 (“H.B. 197”), signed into law on March 27, 2020, on the procedural schedule in this case. By its explicit terms, H.B. 197 tolls the deadline to complete “discovery or any aspect of discovery” until July 31, 2020, and applies retroactively to all deadlines expiring after Governor Mike DeWine’s March 9, 2020 declaration of a state of emergency. H.B. 197, Section 22(A)(7).

In particular, Verde Energy seeks guidance concerning responses to OCC’s third set of discovery requests, propounded on March 6, 2020. Those requests are voluminous—39 pages and nearly 100 individual requests—and seek extensive information from Verde Energy. They are attached hereto as **Exhibit A**. Under normal circumstances, Verde Energy’s responses to those requests would have been due on March 26, 2020.

Unfortunately, present circumstances are not normal. As the Commission is well aware, the COVID-19 pandemic poses tremendous risks to public health and safety. Just yesterday, the federal government released models predicting that over 100,000 Americans will die from the virus, and millions will become infected.¹ As of this writing, the Ohio Department of Health's website reports 2,199 confirmed cases of COVID-19 in Ohio, with 585 hospitalizations and 55 deaths.²

Governments and private entities have taken drastic measures to slow the virus's spread, including Ohio's stay-at-home order, which requires Ohioans to "stay at home or at their place of residence," subject to exceptions for essential workers. *Director's Stay-at-Home Order*, Ohio Dep't of Health, Mar. 22, 2020. A similar order is in place for Harris County, Texas, where Verde Energy is headquartered. *Order of County Judge Lina Hidalgo*, March 24, 2020.³ In light of these restrictions, and to prevent the spread of COVID-19 through workplaces and tribunals, Governor DeWine signed H.B. 197 to toll statutes of limitation and case deadlines, including the deadline to complete "any aspect of discovery." Verde Energy understands H.B. 197 to extend the deadline for its responses to OCC's third set of discovery requests until July 31, 2020.

H.B. 197 may require amendments to the case schedule. OCC has represented that, if it is permitted to intervene in this case, it needs responses to

¹ *Grim Models Project High U.S. Toll in Months-Long Crisis*, New York Times, March 31, 2020.

² These figures are updated in real time.

<https://odh.ohio.gov/wps/portal/gov/odh/know-our-programs/Novel-Coronavirus>

³ Available at: <https://www.readyharris.org/Stay-Home>.

the third set of discovery requests to draft comments on Verde Energy’s renewal applications. This creates a conflict in the current case schedule, as Verde Energy’s responses are not due under H.B. 197 until long after the deadline for OCC to submit its comments. Guidance from the Commission is needed to address the effect of H.B. 197 and Verde Energy’s discovery obligations going forward.

I. Relevant Timeline

Date	Event
March 3, 2020	Attorney Examiner Augostini files a journal entry consolidating dockets 11-5886-EL-CRS and 13-2164-GA-CRS and setting forth a procedural schedule.
March 6, 2020	OCC serves Verde Energy with its third set of discovery requests. Those requests are attached hereto as Exhibit A . Under Ohio Adm. Code 4901-1-19 and 4901-1-20, responses to these requests are due 20 days later, on March 26, 2020.
March 9, 2020	Ohio Governor Mike DeWine declares a state of emergency in response to the COVID-19 pandemic.
March 23, 2020	The parties jointly move for a 30-day extension of all case deadlines.
March 24, 2020	Attorney Examiner Augostini files a journal entry granting the joint motion for an extension of time in part, extending all case deadlines by 30 days.
March 24, 2020	OCC agrees to extend the deadline to respond to the third set of discovery requests by six days, making them due April 1, 2020.
March 27, 2020	Governor DeWine signs H.B. 197, tolling the deadline for “any aspect of discovery” until July 31, 2020. This order is retroactive to March 9, 2020.
March 27, 2020	The Ohio Supreme Court issues an administrative order tolling all Ohio court deadlines until July 31, 2020. 2020-Ohio-1166.

II. The COVID-19 Pandemic Has Caused Severe Disruptions to the Operations of Governments and Private Entities

The Secretary-General of the United Nations has called the COVID-19 pandemic the greatest test the world has faced since World War II.⁴ Confirmed cases worldwide are rapidly climbing toward one million, and over 42,000 people have already died from the disease.⁵ Just in the United States, 864 people died from COVID-19 in the 24-hour period preceding the filing of this motion.⁶ And by all accounts, the outbreak will get worse before it gets better, with President Trump recently telling the nation to brace for a “very, very painful two weeks.”⁷

Trying to prevent the virus’s spread, governments and private entities have restricted the movements of their citizens and employees. *See, e.g., Director’s Stay-at-Home Order*, Ohio Dep’t of Health, Mar. 22, 2020. Many businesses have closed their doors altogether. These measures have caused disruptions and changes for every business in the country, including Verde Energy. The OCC and the PUCO itself have likewise been affected. *See Motion to Modify the Procedural Schedule*, PUCO Case No. 19-2141-EL-EDI, March 27, 2020 (“This public health crisis has resulted in severe disruptions to the ordinary course of government business, including at the PUCO and the OCC.”). Though remote work technology makes continuing operations possible, businesspeople and attorneys alike have been forced

⁴ *Coronavirus: Greatest Test Since World War II, Says U.N. Chief*, BBC News, April 1, 2020, available at <https://www.bbc.com/news/world-52114829>.

⁵ *Id.*

⁶ *Id.*

⁷ *Americans are told to brace for “very, very painful” period, and U.N. says virus threatens global stability*, New York Times, April 1, 2020.

to continually adapt and overcome challenges associated with administrative burdens, child and elder care, loss of revenue, technological issues, and more.

III. H.B. 197 Tolls the Deadline to Complete “Any Aspect of Discovery” in This Case, which Includes Verde Energy’s Response to OCC’s Third Set of Discovery Requests

As part of the Ohio government’s efforts to prevent the spread of COVID-19, Governor DeWine signed H.B. 197 on March 27, 2020. That law broadly tolls the time periods for trials, administrative procedures, statutes of limitations, and discovery deadlines. As relevant here, the statute tolls the deadline to complete “any aspect of discovery” otherwise set to expire between March 9, 2020 and July 30, 2020. H.B. 197, Section 22(A)(7). When construing a statute, Ohio courts “first examine its plain language and apply the statute as written,” and give the words “their usual, normal, and/or customary meanings.” *Medcorp, Inc. v. Ohio Dept. of Job & Family Servs.*, 121 Ohio St.3d 622, 2009-Ohio-2058, ¶ 9. Under that standard, OCC’s third set of discovery requests is an “aspect of discovery.” See *Cambridge Dictionary*, Aspect (defining “aspect” to mean “one part of a situation, problem, subject, etc.”).⁸

Tolling the deadline to respond to discovery requests makes imminent sense. Businesses, including Verde Energy, are operating with minimal staffing in their offices to comply with state orders. Even those employees capable of working remotely are often focused on solving operational problems created by COVID-19 (when they’re not busy taking care of their children or elderly parents). Businesses

⁸ <https://dictionary.cambridge.org/us/dictionary/english/aspect>.

simply do not have the operational bandwidth to respond to discovery requests—particularly extensive discovery requests like those at issue here—within the usual time frame. Moreover, neither Ohio nor Texas want employees reporting to work to respond to discovery requests that could wait until after the emergency.

IV. Guidance is Needed from the Commission Regarding the Impact of H.B. 197 on the Procedural Schedule

Verde Energy is not trying to evade its discovery obligations through this motion. On the contrary, Verde Energy has been working diligently to draft responses to the interrogatories and identify documents responsive to the requests for production in OCC's third set of discovery requests. If OCC is permitted to intervene in this case, Verde Energy recognizes the need for OCC to conduct reasonable discovery prior to submitting comments to the Commission. Notwithstanding H.B. 197's tolling provisions, Verde Energy plans to produce responses to interrogatories and responsive documents on a rolling basis, as soon as practicable after responses and documents are verified.

However, because H.B. 197 tolls all discovery deadlines in this case, the current procedural schedule requires OCC to submit comments long before discovery responses are due. Therefore, H.B. 197 may require a new procedural schedule or other adjustments to the Commission's procedures going forward. Verde Energy believes that clarity on this issue would benefit all parties and their counsel.

V. If the Commission Finds for Any Reason that H.B. 197 Does Not Extend Verde Energy's Deadline to Respond to OCC's Third Set of Discovery Requests, the Commission Should Grant Verde Energy's Motion for an Extension of Time

If the Commission disagrees with Verde Energy's interpretation of H.B. 197 and finds that the law does not modify Verde Energy's deadline to respond to OCC's third set of discovery requests, the Commission should extend Verde Energy's deadline to respond to OCC's third set of discovery requests to April 22, 2020. As noted above, like nearly all businesses nationwide, Verde Energy is operating in an extremely challenging environment. Harris County, Texas, where Verde Energy's headquarters is located, is under a stay-at-home order similar to Ohio's. *Order of County Judge Lina Hidalgo*, March 24, 2020.⁹ While Verde Energy is committed to providing timely responses to OCC's discovery requests, the COVID-19 pandemic has disrupted operations to such an extent that meeting the April 1 deadline has become impossible.

Additionally, the sheer amount of information requested in OCC's third set of discovery requests weighs in favor of an extension. The requests are attached hereto as **Exhibit A**. They are 39 pages long, and contain nearly 100 individual discovery requests, including subparts (the precise number depends on how you count). As Verde Energy has previously pointed out, this set of discovery requests alone contains nearly double the number of interrogatories allowed in an Ohio court of common pleas case. Civ. R. 33(a). While Verde Energy is working diligently to

⁹ Available at: <https://www.readyharris.org/Stay-Home>.

provide timely responses, it takes time to draft answers to interrogatories and locate and produce responsive documents.

Under these circumstances, a three-week extension of time to respond to OCC's discovery requests is more than reasonable. This would provide OCC with ten days between the response deadline and the deadline to submit comments to the Commission under the current procedural schedule.¹⁰

For the foregoing reasons, if the Commission finds that H.B. 197 does not toll Verde Energy's deadline to respond to OCC's third set of discovery requests, the Commission should grant Verde Energy's motion for an extension of time to respond to OCC's third set of discovery requests until April 22, 2020.

Dated: April 1, 2020

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

¹⁰ Under the Attorney Examiner's entry on March 24, 2020, comments from intervenors are due Saturday, May 2, 2020.

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing document was served by email upon the persons listed below this 1st Day of April, 2020.

SERVICE LIST

Barbara Clay
bclay@sparkenergy.com
Marty Lundstrom
mlundstrom@sparkenergy.com
John Jones
John.Jones@ohioattorneygeneral.gov
Thomas Lindgren
Thomas.Lindgren@OhioAttorneyGeneral.gov
Angela O'Brien
angela.obrien@occ.ohio.gov
Christopher Healey
Christopher.healey@occ.ohio.gov
Kimberly Bojko
bojko@carpenterlipps.com

Dated: April 1, 2020

/s David F. Proaño
David F. Proaño (0078838)
Counsel for Verde Energy USA Ohio, LLC

EXHIBIT A

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Verde Energy USA, LLC for)	Case No. 11-5886-EL-CRS
Certification as a Competitive Retail)	
Electric Supplier)	

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

**INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
PROPOUNDED UPON VERDE ENERGY USA OHIO, LLC
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

**THIRD SET
(March 6, 2020)**

The Office of the Ohio Consumers' Counsel in the above-captioned proceeding before the Public Utilities Commission of Ohio submits the following Interrogatories pursuant to Sections 4901-1-19 and 4901-1-20 of the Ohio Administrative Code for response from Verde Energy USA Ohio, LLC ("Verde") within 20 days. An electronic, non-pdf (e.g., Excel) response should be provided to the Office of the Ohio Consumers' Counsel at the following address:

Christopher Healey (0086027)
Counsel of Record
Angela D. O'Brien (0097579)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, 7th Floor
Columbus, Ohio 43215
Telephone [O'Brien]: (614) 466-9531
Telephone [Healey]: (614) 466-9571
angela.obrien@occ.ohio.gov
christopher.healey@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*

Additionally, Verde must follow the instructions provided herein in responding to the inquiries. Definitions are provided that are used in the Office of the Ohio Consumers' Counsel's discovery.

DEFINITIONS

As used herein the following definitions apply:

1. "Document" or "Documentation" when used herein, is used in its customary broad sense, and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located; including any kind of printed, recorded, written, graphic, or photographic

matter and things similar to any of the foregoing, regardless of their author or origin.

The term specifically includes, without limiting the generality of the following:

punchcards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, checks and drafts, acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, and orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, diaries, workpapers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets, articles, advertisements, circulars, press releases, graphic records or representations or publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic (including e-mail), mechanical and electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings

and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring to, or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately identified or produced; however, drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamps, and the like shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.

2. “Communication” shall mean any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, telephone conversations, letters, telegrams, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.
3. The “substance” of a communication or act includes the essence, purport or meaning of the same, as well as the exact words or actions involved.
4. “And” or “Or” shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
5. “You,” and “Your,” or “Yourself” refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venture of such party.

6. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.
7. Words expressing the masculine gender shall be deemed to express the feminine and neuter genders; those expressing the past tense shall be deemed to express the present tense; and vice versa.
8. “Person” includes any firm, corporation, joint venture, association, entity, or group of natural individuals, unless the context clearly indicates that only a natural individual is referred to in the discovery request.
9. “Identify,” or “the identity of,” or “identified” means as follows:
 - A. When used in reference to an individual, to state his full name and present or last known position and business affiliation, and his position and business affiliation at the time in question;
 - B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (e.g., corporation, partnership, single proprietorship), and its present or last known address;
 - C. When used in reference to a document, to state the date, author, title, type of document (e.g., letter, memorandum, photograph, tape recording, etc.), general subject matter of the document, and its present or last known location and custodian;
 - D. When used in reference to a communication, to state the type of communication (i.e., letter, personal conversation, etc.), the date thereof, and the parties thereto and the parties thereto and, in the case of a conversation,

to state the substance, place, and approximate time thereof, and identity of other persons in the presence of each party thereto;

- E. When used in reference to an act, to state the substance of the act, the date, time, and place of performance, and the identity of the actor and all other persons present.
 - F. When used in reference to a place, to state the name of the location and provide the name of a contact person at the location (including that person's telephone number), state the address, and state a defining physical location (e.g., a room number, file cabinet, and/or file designation).
- 10. The terms "PUCO" and "Commission" refer to the Public Utilities Commission of Ohio, including its Commissioners, personnel (including Persons working for the PUCO Staff as well as in the Public Utilities Section of the Ohio Attorney General's Office), and offices.
 - 11. The term "e.g." connotes illustration by example, not limitation.
 - 12. "OCC" means the Office of the Ohio Consumers' Counsel.
 - 13. "Verde" or "Company" means Verde Energy USA Ohio, LLC. For purposes of these discovery requests, where appropriate, "Verde" or "Company" shall include any agents of Verde or independent contractors of Verde. For example, if a question asks whether "Verde" has received any calls from customers, it shall not be appropriate for Verde to respond "no" if Verde's independent contractor received calls from customers in its capacity as an independent contractor for Verde. Similarly, for example, if an individual is an employee of a Verde affiliate and

- performs actions on behalf of Verde, then that individual shall be considered an agent of Verde.
14. “CRES” means Competitive Retail Electric Service.
 15. “CRNGS” means Competitive Retail Natural Gas Service.
 16. “Proceeding” and “Proceedings” mean Case Nos. 11-5886-EL-CRS and 13-2164-GA-CRS.
 17. “Gas Application” means the CRNGS Renewal Certification Application that Verde filed with the PUCO in Case No. 13-2164-GA-CRS on November 7, 2019.
 18. “Electric Application” means the Renewal Application for Certification as a Competitive Retail Electric Service Provider that Verde filed with the PUCO in Case No. 11-5886-EL-CRS on February 27, 2020.
 18. “Spark” means “Spark Energy, Inc.” and “Spark Holdco, LLC” (collectively or independently) as referenced in Exhibit A-15 to the Gas Application.
 19. “COH” means Columbia Gas of Ohio.
 20. “DEO” means Dominion East Ohio Gas.
 21. “Duke” means Duke Energy Ohio.
 22. “Vectren” means Vectren Energy Delivery of Ohio.
 23. “COI” and “Investigation Case” mean PUCO Case No. 19-958-GE-COI.
 24. “COI Order” means the February 26, 2020 Opinion and Order in the Investigation Case.

INSTRUCTIONS FOR ANSWERING

1. All information is to be divulged which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.
2. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.
3. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.
4. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.
5. Your organization(s) is requested to produce responsive materials and information within its physical control or custody, as well as that physically controlled or possessed by any other person acting or purporting to act on your behalf, whether as an officer, director, employee, agent, independent contractor, attorney, consultant, witness, or otherwise.
6. Where these requests seek quantitative or computational information (e.g., models, analyses, databases, and formulas) stored by your organization(s) or its consultants in computer-readable form, in addition to providing hard copy (if an electronic response is not otherwise provided as requested), you are requested to produce such computer-readable information, in order of preference:
 - A. Microsoft Excel worksheet files on compact disk;

- B. other Microsoft Windows or Excel compatible worksheet or database diskette files;
 - C. ASCII text diskette files; and
 - D. such other magnetic media files as your organization(s) may use.
7. Conversion from the units of measurement used by your organization(s) in the ordinary course of business need not be made in your response; e.g., data requested in kWh may be provided in mWh or gWh as long as the unit measure is made clear.
8. Unless otherwise indicated, the following requests shall require you to furnish information and tangible materials pertaining to, in existence, or in effect for the whole or any part of the period from January 1, 2000 through and including the date of your response.
9. Responses must be complete when made and must be supplemented with subsequently acquired information at the time such information is available.
10. In the event that a claim of privilege is invoked as the reason for not responding to discovery, the nature of the information with respect to which privilege is claimed shall be set forth in responses together with the type of privilege claimed and a statement of all circumstances upon which the respondent to discovery will rely to support such a claim of privilege (i.e., provide a privilege log). Respondent to the discovery must a) identify (see definition) the individual, entity, act, communication, and/or document that is the subject of the withheld information based upon the privilege claim, b) identify all persons to whom the information has already been revealed, and c) provide the basis upon which the information is being withheld and the reason that the information is not provided in discovery.

INTERROGATORIES

* In accordance with Ohio Administrative Code 4901-1-16(D)(5), OCC requests that all responses be supplemented with subsequently-acquired information at the time such information is available.

INT-3-001. Paragraph 7 of the COI Order states: “Staff stated that it had received 481 customer contacts regarding Verde’s provision of CRES and CRNGS” from October 1, 2018 to April 12, 2019.

- a) How many electric customer contacts has Verde been made aware of from April 13, 2019 through February 29, 2020?
- b) How many natural gas customer contacts has Verde been made aware of from April 13, 2019 through February 29, 2020?
- c) For each such customer contact, identify the name of the individual or individuals at Verde (including any Verde agent, affiliate, or independent contractor) who communicated with the PUCO Staff regarding the contact.

RESPONSE:

INT-3-002. Paragraph 7 of the COI Order states: “Of the 481 customer contacts, 231 customer contacts (approximately 57%) were related to enrollment disputes, misleading information, and false representations wherein Verde allegedly purported to be another utility.”

- a) How many electric customer contacts that Verde has been made aware of from April 13, 2019 through February 29, 2020 were related to enrollment disputes, misleading information, or false representations wherein Verde allegedly purported to be another utility?
- b) How many natural gas customer contacts that Verde has been made aware of from April 13, 2019 through February 29, 2020 were related to enrollment disputes, misleading information, or false representations wherein Verde allegedly purported to be another utility?
- c) For each such customer contact, identify the name of the individual or individuals at Verde who communicated with the PUCO Staff regarding the contact.

RESPONSE:

INT-3-003. Since April 13, 2019, how many contacts (calls, emails, or any other form of communication) has Verde received from customers where such customer complained or otherwise expressed concerns about their CRES service from Verde? A complaint or concern includes, but is not limited to, concerns about high bills, concerns about high prices, enrollment disputes, claims of misleading information, claims of false representations, and claims of spoofing. For each such contact, identify the individual or individuals at Verde who communicated with the customer regarding the contact.

RESPONSE:

INT-3-004. Since April 13, 2019, how many contacts (calls, emails, or any other form of communication) has Verde received from customers where such customer complained or otherwise expressed concerns about their CRNGS service from Verde? A complaint or concern includes, but is not limited to, concerns about high bills, concerns about high prices, enrollment disputes, claims of misleading information, claims of false representations, and claims of spoofing. For each such contact, identify the individual or individuals at Verde who communicated with the customer regarding the contact.

RESPONSE:

INT-3-005. As of February 29, 2020, how many residential electric customers does Verde have in Ohio?

RESPONSE:

INT-3-006. As of February 29, 2020, how many residential natural gas customers does Verde have in Ohio?

RESPONSE:

INT-3-007. Has Verde enrolled any new Ohio customers on or after May 4, 2019? If so, how many electric customers and how many natural gas customers?

RESPONSE:

INT-3-008. The approved stipulation in the Investigation Case requires Verde to “submit an action plan for compliance at least ninety (90) days prior to resuming marketing and customer enrollment in Ohio.”

- a) Has Verde submitted such an action plan?
- b) If not, has Verde prepared any outlines, drafts, or notes of such action plan?
- c) Has Verde had any communications with the PUCO Staff regarding the action plan since September 6, 2019? If so, identify the date of each such communication and the nature of the communication (email, phone call, in person meeting, etc.).

RESPONSE:

INT-3-009. Under the approved stipulation in the Investigation Case, “Verde Energy will notify all customers enrolled in Ohio since June 1, 2018 that they may cancel contracts without penalty at the customer’s election.”

- a) On what date did Verde send such notification to customers?
- b) How many customers have contacted Verde (by phone, email, or otherwise) regarding the notice?
- c) How many electric customers have cancelled their contracts following receipt of such notice?
- d) How many natural gas customers have cancelled their contracts following receipt of such notice?

RESPONSE:

INT-3-010. Since April 16, 2019, what training has Verde provided to its employees, agents, affiliates, or independent contractors regarding any of the conduct alleged by the PUCO Staff in the COI? Please describe the nature of all such training, the date the training occurred, and who attended such training.

RESPONSE:

INT-3-011. Has Verde terminated any employees or independent contractors on or after October 1, 2018? If so, how many? And if so, please identify the name of all such employees and independent contractors, their position, the date of termination, and the reason for the termination.

RESPONSE:

INT-3-012. Have Verde or any of its parent entities (i.e., entities for which Verde is a direct or indirect subsidiary, whether wholly or partially owned) filed any lawsuits against any employees, agents, or subcontractors of Verde for any reason since December 11, 2017? If so, please identify all such lawsuits, including the name of the court and relevant docket or case number.

RESPONSE:

INT-3-013. Since December 11, 2017, has Verde instructed its employees, agents, affiliates, or independent contractors not to engage in “spoofing” (as that term is used in paragraph 8 of the COI Order)? If so, provide the date or dates on which such instructions were given, who gave the instruction, and to whom it was given.

RESPONSE:

INT-3-014. Since December 11, 2017, has Verde instructed its employees, agents, affiliates, or independent contractors not to use misleading and deceptive information to entice a prospective customer to speak to a sale representative? If so, provide the date or dates on which such instructions were given, who gave the instruction, and to whom it was given.

RESPONSE:

INT-3-015. Since December 11, 2017, has Verde instructed its employees, agents, affiliates, or independent contractors not to provide misleading information to prospective customers during telemarketing efforts? If so, provide the date or dates on which such instructions were given, who gave the instruction, and to whom it was given.

RESPONSE:

INT-3-016. Since December 11, 2017, has Verde informed its employees, agents, affiliates, or independent contractors that they are required to provide signed contracts to customers who were enrolled through door-to-door enrollment? If so, provide the date or dates on which such instructions were given, who gave the instruction, and to whom it was given.

RESPONSE:

INT-3-017. Since March 29, 2018, has Verde ever failed to send an electric customer an expiration notice as required by Ohio Adm. Code 4901:1-21-11? If so, how many times?

RESPONSE:

INT-3-018. Since December 11, 2017, has Verde ever failed to send a natural gas customer an expiration notice as required by Ohio Adm. Code 4901:1-29-10? If so, how many times?

RESPONSE:

INT-03-019. What is the total amount of refunds paid to date by Verde under paragraph 3 of the approved stipulation in the Investigation Case? Provide a summary of all payments made to customers, including the amount paid to each customer that received a refund.

RESPONSE:

INT-03-020. At any point on or after December 11, 2017 has Verde informed a customer that the customer might have their natural gas distribution service disconnected following termination of a contract with Verde or as a result of nonpayment or late payment? If so, how many times?

RESPONSE:

INT-03-021. At any point on or after March 29, 2018 has Verde informed a customer that the customer might have their electric distribution service disconnected following termination of a contract with Verde or as a result of nonpayment or late payment? If so, how many times?

RESPONSE:

INT-03-022. From December 11, 2017 through February 29, 2020, did Verde at any point make a telephone solicitation to an individual that was on the federal trade commission's "do not call" registry? If so, how many times did Verde make such a solicitation for electric service, and how many times did Verde make such a solicitation for natural gas service?

RESPONSE:

INT-03-023. From December 11, 2017 through February 29, 2020, did Verde at any point make a telephone solicitation to a customer before 9:00 AM or after 9:00 PM eastern time? If so, how many times did Verde make such a solicitation for electric service, and how many times did Verde make such a solicitation for natural gas service?

RESPONSE:

INT-03-024. Provide the name of each Verde employee or agent that engaged in door-to-door marketing for Verde for natural gas service in Ohio between December 11, 2017 and February 29, 2020. For each such individual:

- a) State the individuals' employer and job position.
- b) Provide the date, if any, on which Verde performed a criminal background check for such individual.

RESPONSE:

INT-03-025. Provide the name of each Verde employee or agent that engaged in door-to-door marketing for Verde for electric service in Ohio between March 29, 2018 and February 29, 2020. For each such individual:

- a) State the individuals' employer and job position.
- b) Provide the date, if any, on which Verde performed a criminal background check for such individual.

RESPONSE:

INT-03-026. At any point between December 11, 2017 and February 29, 2020, did Verde conduct door-to-door marketing of natural gas service in Ohio before 9:00 am or after 7:00 pm eastern time? If so, how many houses were visited before 9:00 am or after 7:00 pm eastern time?

RESPONSE:

INT-03-027. At any point between December 11, 2017 and February 29, 2020, did Verde conduct door-to-door marketing of electric service in Ohio before 9:00 am or after 7:00 pm eastern time? If so, how many houses were visited before 9:00 am or after 7:00 pm eastern time?

RESPONSE:

INT-03-028. Regarding telephone enrollments:

- a) Between March 29, 2018 and February 29, 2020, how many Ohio electric customers did Verde enroll by telephone?
- b) Does Verde have a copy of the written contract sent to each electric customer? If not, for how many such customers does Verde not have such a copy?
- c) Between December 11, 2017 and February 29, 2020, how many Ohio natural gas customers did Verde enroll by telephone?
- d) Does Verde have a copy of the written contract sent to each natural gas customer? If not, for how many such customers does Verde not have such a copy?
- e) Does Verde have a copy of the audio recording of the telephonic enrollment for each such customer? If not, for how many such electric customers does Verde not have such an audio recording? And if not, for how many such electric customers does Verde not have such an audio recording? For each customer for whom Verde does not have such an audio recording, state the date that the customer's contract terminated.

RESPONSE:

INT-03-029. Regarding internet enrollments:

- a) Between December 11, 2017 and February 29, 2020, how many Ohio natural gas customers did Verde enroll by internet?
- b) Between March 28, 2018 and February 29, 2020, how many Ohio electric customers did Verde enroll by internet?
- c) Does Verde have a copy of the customer consent form for each such customer? If not, for how many such electric customers does Verde not have such a copy? For how many such natural gas customers does Verde not have such a copy?

RESPONSE:

- INT-03-030. Ohio Adm. Code 4901:1-21-08(B) requires CRES to “investigate customer complaints (including customer complaints referred by the electric utility) and provide a status report within three business days following receipt of the complaint to: (a) The customer, when the complaint is made directly to the CRES provider. (b) The customer and staff, when a complaint is referred to the CRES provider by the staff.”
- a) How many such customer complaints were made directly to Verde between March 29, 2018 and February 29, 2020?
 - b) How many such customer complaints were referred to Verde by the PUCO Staff between March 29, 2018 and February 29, 2020.
 - c) Did Verde provide a status report within three business days for each such complaint? If not, identify the total number of complaints for which Verde did not provide a status report within three business days.

RESPONSE:

INT-03-031. Ohio Adm. Code 4901:1-29-08(B) requires CRNGS to “investigate customer complaints (including customer complaints referred by the natural gas company) and provide a status report within three business days following receipt of the complaint to: (a) The customer, when the complaint is made directly to the retail natural gas supplier or governmental aggregator. (b) The customer and staff, when a complaint is referred to the retail natural gas supplier or governmental aggregator by the staff.”

- a) How many such customer complaints were made directly to Verde between December 11, 2017 and February 29, 2020?
- b) How many such customer complaints were referred to Verde by the PUCO Staff between December 11, 2017 and February 29, 2020.
- c) Did Verde provide a status report within three business days for each such complaint? If not, identify the total number of complaints for which Verde did not provide a status report within three business days.

RESPONSE:

INT-03-032. Regarding slamming, as that term is used in Ohio Adm. Code 4901:1-21-08(C):

- a) Between March 29, 2018 and February 29, 2020, how many electric slamming complaints did Verde receive? Include any complaints directly to Verde or referred to Verde by the PUCO Staff.
- b) For any such complaints, did the PUCO Staff determine that the customer was switched without authorization, as provided in Ohio Adm. Code 4901:1-21-08(C)(5)? If so, how many such customers did the PUCO Staff determine were switched without authorization?

RESPONSE:

INT-03-033. Regarding slamming, as that term is used in Ohio Adm. Code 4901:1-29-08(D): Between December 11, 2017 and February 29, 2020, how many natural gas slamming complaints did Verde receive? Include any complaints directly to Verde or referred to Verde by the PUCO Staff.

RESPONSE:

INT-03-034. Ohio Adm. Code 4901:1-21-11(C) states: “CRES providers shall maintain copies of individual customer contracts for no less than two years after each such contract terminates.”

- a) Are there any former Verde electric customers in Ohio whose contract expired less than two years ago but for whom Verde does not currently have a copy of the individual customer contract? If so, state the total number of electric customers whose contracts have expired in the last two years and the total number for whom Verde does currently have a copy of the contract.
- b) Are there any current Verde electric customers in Ohio for whom Verde does not currently have a copy of the individual customer contract? If so, state the total number of current Ohio customers and the total number for whom Verde does currently have a copy of the contract.

RESPONSE:

INT-03-035. Ohio Adm. Code 4901:1-29-10(B) states: “A retail natural gas supplier ... shall maintain copies of individual customer contracts for no less than two years after each such contracts terminate.”

- a) Are there any former Verde natural gas customers in Ohio whose contract expired less than two years ago but for whom Verde does not currently have a copy of the individual customer contract? If so, state the total number of natural gas customers whose contracts have expired in the last two years and the total number for whom Verde does currently have a copy of the contract.
- b) Are there any current Verde natural gas customers in Ohio for whom Verde does not currently have a copy of the individual customer contract? If so, state the total number of current Ohio customers and the total number for whom Verde does currently have a copy of the contract.

RESPONSE:

INT-03-036. Page 2 of the Gas Application and page 2 of the Electric Application identify April Lusk as the contact person for Commission Staff use in investigating customer complaints.

- a) On what date did April Lusk become the contact person for Commission Staff use in investigating customer complaints?
- b) Identify all other individuals who served as the contact person for Commission Staff use in investigating customer complaints on or after March 29, 2018. Include the relevant dates for which each such person served as such contact person. If at any point there were different individuals for natural gas and electric, state whether the individual was the contact person for natural gas or electric.
- c) For each such individual, state the individual's current employer, if known, and whether that employer is a Verde affiliate or independent contractor.

RESPONSE:

INT-03-037. Page 10 of the Electric Application identifies Nathan Kroeker as President and Chief Executive Officer, James Jones II as Chief Financial Officer, and Mike Kuznar as Head of Retail Markets.

- a) How long has Nathan Kroeker been an employee of Verde or one of its affiliates? Please state any positions held by Nathan Kroeker from December 11, 2017 through February 29, 2020.
- b) How long has James Jones II been an employee of Verde or one of its affiliates? Please state any positions held by James Jones II from December 11, 2017 through February 29, 2020.
- c) How long has Mike Kuznar been an employee of Verde or one of its affiliates? Please state any positions held by Mike Kuznar from December 11, 2017 through February 29, 2020.

RESPONSE:

INT-03-038. Since December 11, 2017, have there been any complaints filed against Verde or any of its agents or independent contractors regarding Federal Trade Commission marketing standards (*e.g.*, do-not-call violations, the FTC's cooling-off rule, etc.)? If so, how many?

RESPONSE:

INT-03-039. Since December 11, 2017, have there been any complaints filed against Verde or any of its agents or independent contractors under the FCC Telephone Protection Act of 1991? If so, how many?

RESPONSE:

INT-03-040. Since December 11, 2017, have there been any lawsuits filed against any third-party vendor that Verde uses for marketing and/or soliciting customers? If so, identify all such lawsuits, including the jurisdiction and case or docket number.

RESPONSE:

INT-03-041. Please identify all pending class action lawsuits in which Verde or any Verde affiliate has been named as a defendant. Include the case number, jurisdiction, and date that the lawsuit was filed.

RESPONSE:

INT-03-042. Since December 11, 2017, what steps has Verde taken to ensure that its independent contractors or third-party vendors comply with Ohio laws and rules when soliciting customers on behalf of Verde?

RESPONSE:

INT-03-043. Identify the name of all third-party vendors that Verde has used to solicit customers in Ohio since December 11, 2017 for natural gas solicitations and March 29, 2018 for electric solicitations. Include the dates during which each such vendor was used by Verde in such capacity. For each such vendor, state whether any of the following entities are currently using such vendor for its marketing to customers: CenStar Energy Corp.; HIKO Energy, LLC; Major Energy Electric Services, LLC; and Spark Energy Gas, LLC.

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

RPD-3-001. Paragraph 7 of the COI Order states: “Staff stated that it had received 481 customer contacts regarding Verde’s provision of CRES and CRNGS” from October 1, 2018 to April 12, 2019. For any customer contacts that Verde has been made aware of from April 13, 2019 through February 29, 2020, please provide the following:

- a) A copy of all written communications between Verde and the PUCO Staff regarding such contacts.
- b) A copy of all written communications between Verde and customers regarding such contacts.
- c) A copy of all available audio recordings related to such contacts.
- d) A copy of all internal Verde communications regarding such contacts. “Internal Verde communications” includes communications between Verde and any independent contractors, agents, or affiliates.

RPD-03-002. The approved stipulation in the Investigation Case requires Verde to “submit an action plan for compliance at least ninety (90) days prior to resuming marketing and customer enrollment in Ohio.” Please provide the following documents:

- a) Any written communications between Verde and the PUCO Staff regarding the action plan on or after September 6, 2019.
- b) A copy of any drafts or outlines of the action plan prepared by Verde or the PUCO Staff (including the final draft if the action plan has been finalized).

RPD-03-003. Under the approved stipulation in the Investigation Case, “Verde Energy will notify all customers enrolled in Ohio since June 1, 2018 that they may cancel contracts without penalty at the customer’s election. The notice shall indicate that PUCO Staff has alleged that Verde Energy may have misled customers in Ohio during marketing of its product.” Please provide a copy of such notice.

RPD-03-004. Provide a copy of any training materials that Verde has provided to its employees, agents, affiliates, or independent contractors regarding the allegations that the PUCO Staff made in the COI.

- RPD-03-005. Provide a copy of any documents that Verde has provided to its employees, agents, affiliates, or independent contractors wherein Verde instructs them not to engage in “spoofing” (as that term is used in paragraph 8 of the COI Order).
- RPD-03-006. Provide a copy of any complaints filed, as identified in your response to INT-03-012, INT-03-040, and INT-03-041.
- RPD-03-007. Provide a copy of all lists in Verde’s possession of Ohio individuals who have requested to be placed on the federal trade commission’s “do not call” registry.
- RPD-03-008. Provide a copy of the results of all criminal background checks that Verde performed for any employees or agents engaged in door-to-door marketing and enrollment between December 11, 2017 and February 29, 2020.
- RPD-03-009. Provide all audio recordings of telephonic customer enrollments for electric customers from March 29, 2018 through February 29, 2020 and for natural gas customers from December 11, 2017 through February 29, 2020.

RPD-03-010. Ohio Adm. Code 4901:1-21-08(B) requires CRES to “investigate customer complaints (including customer complaints referred by the electric utility) and provide a status report within three business days following receipt of the complaint to: (a) The customer, when the complaint is made directly to the CRES provider. (b) The customer and staff, when a complaint is referred to the CRES provider by the staff.”

Ohio Adm. Code 4901:1-29-08(B) requires CRNGS to “investigate customer complaints (including customer complaints referred by the natural gas company) and provide a status report within three business days following receipt of the complaint to: (a) The customer, when the complaint is made directly to the retail natural gas supplier or governmental aggregator. (b) The customer and staff, when a complaint is referred to the retail natural gas supplier or governmental aggregator by the staff.” Provide a copy of all such status reports from December 11, 2017 through February 29, 2020 for natural gas. Provide a copy of all such status reports from March 29, 2018 through February 29, 2020 for electric.

RPD-03-011. For each complaint identified in your responses to INT-03-030 and INT-03-031, please provide a copy of “valid documents confirming that the customer authorized the switch” as that term is used in Ohio Adm. Code 4901:1-21-08 and Ohio Adm. Code 4901:1-29-08.

RPD-03-012. Provide a copy of all documents and audio recordings, on or after December 11, 2017, in which Verde instructed its employees, agents, affiliates, or independent contractors not to use misleading and deceptive information to entice a prospective customer to speak to a sale representative.

RPD-03-013. Provide a copy of all documents and audio recordings, on or after December 11, 2017, in which Verde instructed its employees, agents, affiliates, or independent contractors not to provide misleading information to prospective customers during telemarketing efforts.

RPD-03-014. Provide a copy of all documents and audio recordings, on or after December 11, 2017, in which Verde informed its employees, agents, affiliates, or independent contractors that they are required to provide signed contracts to customers who were enrolled through door-to-door enrollment.

RPD-3-015. Page 17 of the Electric Application identifies an investigation by the Ohio Attorney General (“Investigation No. 577403 (2019)”) and a “[s]ubpoena for records by Ohio AG under Act Ohio Rev. Code 1345.01.”

- a) Provide a copy of the subpoena.
- b) Provide a copy of all documents provided to the Ohio Attorney General’s office in response to the subpoena.
- c) Provide a copy of all communications between Verde and the Ohio Attorney General’s office regarding Investigation No. 577403 and/or subpoena.
- d) Provide a copy of all materials used by Verde to contest the alleged violation in this investigation.
- e) Provide all consumer complaints that underlie the alleged violation of the consumer sales practice act, including Verde’s records pertaining to the consumer complaints.

RPD-3-016. Provide a copy of all instructions and training materials that Verde provides to its independent contractors, employees, and third-party vendors regarding compliance with Ohio’s rules for soliciting electric and natural gas customers.

RPD-3-017. Provide all documents you relied upon in providing your response to INT-03-019.

RPD-3-018. Provide a copy of any complaints filed against Verde or any of its agents or independent contractors under the FCC Telephone Protection Act of 1991 since December 11, 2017.

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Interrogatories Propounded Upon Verde Energy USA Ohio, LLC by the Office of the Ohio Consumers' Counsel, Third Set, was served upon the persons listed below this 6th day of March 2020.

/s/ Christopher Healey
Christopher Healey
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

kwhite@sparkenergy.com

mleclerc@sparkenergy.com

dproano@bakerlaw.com

kkash@bakerlaw.com

dlemon@bakerlaw.com

tathompson@bakerlaw.com

bclay@sparkenergy.com

mlundstrom@sparkenergy.com

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

Summary: Motion for guidance from the Commission regarding H.B. 197, or to extend the time period to respond to OCC's third set of discovery requests electronically filed by Mr. David F. Proano on behalf of Verde Energy USA Ohio, LLC