

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 April 23, 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} By Entry issued March 3, 2020, the attorney examiner, among other things, set a procedural schedule in the above matters and suspended Verde's February 27, 2020 renewal certification application filed in Case No. 11-5886-EL-CRS.

{¶ 9} On March 9, 2020, the Governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19.

Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety.

{¶ 10} As a result of the Executive Order, beginning March 13, 2020, the Commission reduced on-site staffing, and most employees began working from home to reduce exposure to COVID-19.

{¶ 11} On March 24, 2020, the attorney examiner granted a joint motion for extension of time for all case deadlines filed by Verde, the Ohio Consumers' Counsel (OCC), and Staff, and set a new procedural schedule.

{¶ 12} On March 27, 2020, the Governor signed Am.Sub H.B. 197, which provides several measures of emergency relief for Ohio's families, schools, businesses, and communities, and ensures the essential operations of state government during the COVID-19 pandemic.

{¶ 13} Subsequently, on April 1, 2020, Verde filed a motion for guidance relating to the newly enacted Am.Sub H.B. 197 or to extend the time period to respond to OCC's third set of discovery requests. Verde represents that, under a current agreement with OCC, the Company's responses to OCC's third set of discovery were due by April 1, 2020. However, Verde states that Am.Sub H.B. 197 tolls discovery deadlines set to expire after March 9, 2020, until July 31, 2020. Accordingly, Verde argues that its responses to OCC's third set of discovery requests are tolled and not due until July 31, 2020. Therefore, Verde requests that the Commission extend Verde's response deadline to OCC's third set of discovery to July 31, 2020. In the alternative, if the Commission does not find that Am.Sub H.B. 197 tolls discovery deadlines, Verde requests a three-week extension to respond to OCC's request pursuant to Ohio Adm.Code 4901-1-19(A) and 4901-1-20(C). In support of its request, Verde cites the COVID-19 pandemic, stating that it has caused severe disruptions to the operations of governments and private entities alike and that Verde does not have the operational bandwidth to respond to discovery requests within the usual timeframe. Verde represents

that the Company is working diligently to provide timely responses to OCC on a rolling basis, and its request is not one to evade discovery obligations.

{¶ 14} On April 7, 2020, OCC filed a memorandum contra Verde's request, stating that Am.Sub H.B. 197 does not toll the deadline for Verde to respond to OCC's third set of discovery requests because Am.Sub H.B. 197 does not apply to the Commission's discovery deadlines, which are set by rule and not statute. OCC avers that the attorney examiner's March 24, 2020 Entry in these cases supersedes any tolling under Am.Sub H.B. 197 because the March 24, 2020 Entry was issued after March 9, 2020, and because the March 24, 2020 Entry sets May and June deadlines for comments, a staff report, and discovery. Furthermore, OCC contends that Verde waived its right to any Am.Sub H.B. 197 tolling by agreeing to respond to OCC's third set of discovery by April 1, 2020. OCC avers that the Commission should reject Verde's request for an additional three weeks to respond to OCC's third set of discovery because Verde already agreed to provide its responses to OCC by April 1 and has not established that it requires 47 days to respond to OCC's third set of discovery. As a final matter, OCC argues that, if Verde's motion is not denied, the Commission should establish a new procedural schedule to avoid prejudicing OCC's right to develop a record in support of its comments. OCC represents that, as of the date of its filing (April 7, 2020), Verde has not provided a document or response to an interrogatory, which has already impacted OCC's ability to conduct any follow-up discovery in advance of the May 2, 2020 deadline for comments.

{¶ 15} On April 14, 2020, Verde filed a reply in support of its motion. Verde asserts that the Company served OCC with its responses to OCC's third set of discovery and produced to OCC and Staff responsive documents on April 10, 2020. The Company states that it plans on continuing to respond to OCC's discovery requests as promptly as practicable under the current circumstances, and it will continue to supplement responses and productions. Notwithstanding, Verde reiterates its request for guidance on Am.Sub H.B. 197 and restates the arguments made in its motion. Verde opines that the tolling

legislation was designed to provide deadline relief in the midst of COVID-19. Additionally, Verde argues that it did not waive its rights under the tolling legislation as OCC contends, stating that the Company did not demonstrate a clear and unequivocal intent to waive its rights under the tolling legislation and that it had no choice but to seek the relief sought through the pending motion by April 1, 2020. Verde remarks that it does not object to the tolling of other deadlines in this case consistent with the tolling legislation.

{¶ 16} After review, the attorney examiner finds that Verde's request for a three-week extension of its responses to OCC's third set of discovery is moot and shall be denied. Based on Verde's representations, the Company provided OCC with responses and documents to OCC's third set of discovery on April 10, 2020. The attorney examiner would like to remind Verde and OCC to collaborate with one another to exchange discovery pursuant to Ohio Adm.Code 4901-1-16 to 4901-1-24, given that the rules are intended to minimize the Commission's role in the discovery process. Even under the current circumstances, attorney examiner intervention should be a last resort. The attorney examiner also notes that, if OCC seeks to modify the deadline for comments, OCC should file a motion for extension or request a status conference with the attorney examiner to discuss any potential modifications to the current procedural schedule.

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That Verde's motion for extension of time be denied as moot. It is, further,

{¶ 19} 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 denying motion for extension of time as moot electronically filed by Heather A Chilcote on behalf of Lauren L. Augostini, Attorney Examiner, Public Utilities Commission of Ohio