

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	§	Case No. 11-5886-EL-CRS
Verde Energy USA Ohio, LLC for	§	
Certification as a Competitive Retail	§	
Electric Service Supplier	§	
	§	
In the Matter of the Application of	§	Case No. 13-2164-GA-CRS
Verde Energy USA Ohio, LLC for	§	
Certification as a Competitive Retail	§	
Natural Gas Service Supplier	§	

VERDE ENERGY USA OHIO, LLC'S
MOTION FOR PROTECTIVE ORDER

Verde Energy USA Ohio, LLC (“Verde Energy”), by and through its attorneys, and pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, hereby moves the Public Utilities Commission of Ohio (the “Commission”) for a protective order to keep confidential certain information produced to the Ohio Consumers’ Counsel (“OCC”) as part of Verde Energy’s responses to OCC’s discovery requests that OCC now seeks to file publicly, specifically the Compliance Plan that was submitted to the Commission Staff (the “Staff”) in accordance with a Joint Stipulation in Case Number 19-0958-GE-COI (the “Joint Stipulation”) and produced to OCC in the two certification dockets, Case Numbers 11-5886-EL-CRS and 13-2164-GA-CRS (the “Certification Cases”), as Verde-OCC-Cert-016120- through Verde-OCC-Cert-016172 (the “Compliance Plan”). Verde Energy marked the Compliance Plan as confidential since it largely constitutes Verde Energy’s trade secrets shared with the Staff for the sole purpose of complying with the Joint Stipulation.

Verde Energy seeks to maintain confidentiality over the Compliance Plan because it contains Verde Energy's trade secrets – confidential, commercially sensitive, and/or proprietary information that will harm Verde Energy and give its competitors insight into Verde Energy's management, operations, and business if filed on the public docket. Accordingly, as set forth in the attached Memorandum in Support, Verde Energy seeks a protective order preventing public disclosure of the Compliance Plan.

July 6, 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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Verde Energy USA Ohio, LLC for	§	
Certification as a Competitive Retail	§	
Natural Gas Service Supplier	§	

VERDE ENERGY USA OHIO, LLC'S MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER

As required under the Protective Agreement¹, Verde Energy USA Energy Ohio, LLC (“Verde Energy”) files this Motion for Protective Order and Memorandum in Support to protect Verde Energy’s confidential, commercially sensitive, and/or proprietary information contained in Verde Energy’s compliance plan that was submitted to the Public Utilities Commission of Ohio (the “Commission”) Staff (the “Staff”) in accordance with a Joint Stipulation in Case Number 19-0958-GE-COI (the “Joint Stipulation”) and produced to the Ohio Consumers’ Counsel (“OCC”) in the two certification dockets, Case Numbers 11-5886-EL-CRS and 13-2164-GA-CRS (the “Certification Cases”), as Verde-OCC-Cert-016120- through Verde-OCC-Cert-016172 (the “Compliance Plan”).² Verde Energy marked the Compliance Plan as confidential since it

¹ A Protective Agreement was executed between Verde Energy and OCC, which is attached hereto and incorporated herein as Exhibit A (the “Protective Agreement”).

² The unredacted version of the Compliance Plan (Verde-OCC-Cert-016120 through Verde-OCC-Cert-016172) will be produced under seal in the above-styled cause. The

largely constitutes Verde Energy's trade secrets shared with the Staff for the sole purpose of complying with the Joint Stipulation.

Nonetheless, OCC demanded that Verde Energy de-designate the Compliance Plan. In a spirit of cooperation, Verde Energy produced a redacted version of the Compliance Plan to OCC for public consumption. This redacted version protected Verde Energy's work product and trade secrets, but left unredacted for public consumption information within the Compliance Plan that was not commercially sensitive and not trade secret. Still, OCC challenged the remaining confidentiality designations in the Compliance Plan and triggered paragraph nine of the Protective Agreement forcing Verde Energy to seek a protective order to guard its trade secrets.

There is no legitimate reason for OCC to seek to de-designate the remaining confidential designations within the redacted version of Verde Energy's Compliance Plan. OCC's continued tactics and failure to recognize clear, self-evident trade secrets can only be viewed as a punitive measure against Verde Energy.

To be clear, right now, OCC is in possession of the unredacted, confidential Compliance Plan and a redacted Compliance Plan that is not designated as confidential. Instead of seeking to de-designate certain portions of the Compliance Plan, OCC seeks to de-designate the entire Compliance

redacted version of the Compliance Plan (Verde-OCC-Cert-016120 through Verde-OCC-Cert-016172) is attached hereto and incorporated herein as Exhibit B.

Plan, which would permit the publication of Verde Energy's trade secrets, including information concerning Verde Energy's operational and managerial decision making, marketing methods, audit policies and procedures, and compliance protocols to its competitors.

Today, Verde Energy asks the Commission to issue an order protecting the confidentiality of the Compliance Plan. The sanctioning of OCC's tactics would chill written cooperation with the Commission and its Staff and fail to protect Verde Energy's valued trade secrets. Allowing Verde Energy's corporate plans, policies, and procedures to lay bare before the public serves no legitimate purpose and causes irreparable harm to Verde Energy in the midst of the implementation of a plan of cooperation with the Staff.

I. PROCEDURAL HISTORY

On April 17, 2019, the Commission opened an investigation into the practices of Verde Energy in Case Number 19-0958-GE-COI. Following months of serious negotiations, on September 6, 2019, Staff and Verde Energy agreed to and filed the Joint Stipulation. On February 26, 2020, the Commission approved the Joint Stipulation. The Joint Stipulation includes a mandatory provision for Verde Energy to submit "an action plan for compliance at least ninety (90) days prior to resuming marketing and customer enrollment in Ohio." (Joint Stipulation at 4, ¶ 5).

Verde Energy filed renewal applications for its competitive retail natural gas service (CRNGS) and competitive retail electric service (CRES)

certificates on November 7, 2019 and February 27, 2020, respectively. Verde Energy filed amended renewal applications for both its CRNGS and CRES certificates on April 24, 2020. The renewal applications were both suspended by the Commission in order to allow the Commission and Staff additional time to review the applications.

On March 3, 2020, the Commission issued an Entry to, among other things, extend both the CRNGS and CRES certificates to November 1, 2020, and to consolidate the two Certification Cases. On March 6, 2020, OCC filed a motion to intervene in the Certification Cases. On June 15, 2020, the Staff filed their Review and Recommendation stating that the “Staff believes that appropriate steps have been taken to help prevent future issues of non-compliance with Commission rules,” and recommending renewal of both Verde Energy’s CRNGS and CRES certificates.

In the Certification Cases, OCC has propounded 108 interrogatories with subparts and 30 requests for production. Verde Energy produced the Compliance Plan with a confidential designation in response to OCC’s requests for production. OCC challenged this confidential designation. Verde Energy spent time analyzing the plan, making sure to only redact and claim confidentiality over information that was trade secret, commercially sensitive, and actually discussed Verde Energy’s actual processes, policies, and procedures. Verde Energy served OCC with a redacted plan that was not marked confidential. In the midst of this barrage of discovery requests and

without any explanation, on June 26, counsel for OCC challenged the confidential designations and triggered paragraph nine of the Protective Agreement, which requires Verde Energy to file this motion in order to protect the Compliance Plan that is chock full of plain trade secrets.

II. OCC SHOULD NOT BE PERMITTED TO USE THE DISCOVERY PROCESS AS A PUNITIVE MEASURE AGAINST VERDE ENERGY

Rule 4901-1-24(D) provides that the Commission may issue any order necessary to protect the confidentiality of the information contained in a document filed with the Commission's docketing division when disclosure of the information is prohibited by state or federal law, and where nondisclosure is not inconsistent with the purposes of Title 49 of the Ohio Revised Code. Rule 4901-1-24(D) specifically notes that trade secrets under Ohio law are a type of confidential information intended to be protected by the Rule, and the Commission and Ohio law have long protected trade secret information.

Similarly, Section 4905.07 of the Revised Code, which provides that facts and information in the possession of the Commission shall be made public, includes an exception for "[r]ecords the release of which is prohibited by state or federal law." R.C. 4905.07; R.C. 149.43(v). The Ohio Supreme Court has confirmed that trade secrets fall within this exception. *State ex rel. Besser v. Ohio State*, 89 Ohio St. 3d 396, 399 (2000) ("Trade secrets are exempt from disclosure under the 'state or federal law' exemption of R.C. 149.43.").

Section 1333.61(D) of the Revised Code defines "trade secret" as:

[I]nformation, including the whole or any portion or phrase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

- (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

R.C. 1333.61(D). The Ohio Supreme Court has also identified six factors to consider when determining if information constitutes trade secrets:

1. The extent to which the information is known outside the business;
2. The extent to which it is known to those inside the business, i.e., by the employees;
3. The precautions taken by the holder of the trade secret to guard the secrecy of the information;
4. The savings effected and the value to the holder in having the information as against competitors;
5. The amount of effort or money expended in obtaining and developing the information; and
6. The amount of time and expense it would take for others to acquire and duplicate the information.

State ex rel. The Plain Dealer v. Ohio Dept. of Ins., 80 Ohio St. 513, 524-525 (Ohio 1997).

The Compliance Plan includes nonpublic and proprietary information about Verde Energy's: (i) operational and managerial capacity, including internal training, auditing, management, and reporting procedures; (ii) marketing, solicitation, and customer information, including marketing programs and procedures, internal compliance policies and procedures, selection, contracting, auditing, and training of vendors, and proprietary

technology; (iii) records and retention, including internal policies and procedures related to records; (iv) customer enrollment and consent, including compliance programs and vendor protocol; (v) customer access and complaint handling, including internal complaint procedures; and (vi) contract administration and renewals, including internal customer relationship policies and procedures (the “Confidential Information”). The Commission should protect the Confidential Information because it contains competitively sensitive, confidential, and highly proprietary business information. (*See Kira Jordan Affidavit*).

Applying the first *Plain Dealer* factor, the Confidential Information is not known outside the business with two exceptions. First, Verde Energy shared the Confidential Information with the Staff in accordance with the Joint Stipulation. Second, Verde Energy produced the Confidential Information to OCC for the limited purpose of this litigation. In this production, Verde Energy retained the confidential status of the Confidential Information by continuing to designate the words as confidential, which is signified by the confidential designation of the original production and the redactions made in the subsequent production.

Only employees with a business purpose for knowing the Confidential Information and with appropriate system credentials have access to such information. (*See Kira Jordan Affidavit*). Applying the second and third *Plain Dealer* factors, the Confidential Information is treated as proprietary and

confidential in the ordinary course of Verde Energy's business. (*Id.*) As such, it is not known outside Verde Energy's business, and is only known inside the business by employees that need to know the Confidential Information to perform their jobs. (*Id.*)

Applying the fourth *Plain Dealer* factor, the Confidential Information derives independent economic value, actual or potential, from not being generally known to Verde Energy's competitors and from not being reasonably ascertainable by its competitors, who could obtain economic value from its disclosure or use. (*Id.*) Disclosure of the sensitive information summarized in the Confidential Information would provide Verde Energy's competitors with valuable insight into Verde Energy's business activities, which competitors, otherwise, do not have access to. (*Id.*) Specifically, the Confidential Information articulates the principles, policies, procedures, and technical capabilities used to manage and operate Verde Energy. Release of the Confidential Information would give competitors a complete roadmap to the operations and function of Verde Energy, including but not limited to vendor training programs, audit and compliance practices, and marketing programs. These are basic building blocks and proprietary information for any company – how the company operates and manages its business – and must be protected.

Verde Energy has expended an incredible amount of time and money to develop the Confidential Information. Verde Energy spent months drafting the Compliance Plan. (*Id.*). Additionally, Verde Energy spent extensive resources

researching, vetting, and developing the policies, processes, and procedures that are ultimately set forth in the Compliance Plan. (*Id.*). Verde Energy spent significant time and resources preparing a comprehensive compliance plan to restart marketing in Ohio, and Verde Energy should not be forced to give other suppliers a competitive advantage by giving them access to Verde Energy's confidential and propriety compliance and marketing programs. With one dedesignation and one public filing, OCC seeks to pierce months of hard work by Verde Energy and allow competitors to access the inner workings of this company.

Finally, the Confidential Information is simply not accessible to others, so there is no amount of time or expense that would allow others to acquire and duplicate the Confidential Information. At the time that the Commission approved the Joint Stipulation, including the requirement that Verde Energy develop the Compliance Plan, the Commission, Staff, Verde Energy, and OCC all knew that the Compliance Plan would not be accessible to the public. In briefing on the Joint Stipulation, both OCC and IGS argued that the plan should be made public so that OCC and IGS could weigh in and provide comments on the Compliance Plan. (Feb. 26, 2020 Commission Order Approving Joint Stipulation, PUCO Case No. 19-0958-GE-COI at 13-15). But in approving the Joint Stipulation, the Commission did not agree with OCC and IGS on this point, instead finding that Staff was competent to ensure the Compliance Plan was sufficient to address issues identified in the

investigation. Thus, everyone, including OCC, has always known that the Compliance Plan would not be presented to the public. And, in fact, the Confidential Information is simply not accessible to the public.

Ohio precedent also supports this motion for protective order and the protection of information that has independent economic value. In 2000, the Ohio Power Sitting Board ordered the protection of a site selection study that was provided to intervenors in the matter. (*In the Matter of the Application of DPL Energy, Inc. for a Certificate of Environmental Compatibility and Public Need for an Electric Generating Plant in Fairfield County, Ohio*, PUCO Case No. 00-0100-EL-BGN (September 19, 2000)). DPL Energy, Inc. filed the protective order because the “site selection study constitutes confidential business information and trade secrets under Ohio law.” (*Id.*) The protective order was granted due to “the competitive nature of the electric generation business, it is only reasonable to conclude that information pertaining to site selection strategies, costs, and the like is confidential and should remain so.” (*Id.*)

In 2015, First Energy sought to protect procurement data that could lead suppliers to engage in collusive behavior and harm customers. (*In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company*, PUCO Case No. 11-5201-EL-RDR (February 13, 2015)). The Commission granted the protective order for procurement data,

which included bidding strategies. (*Id.*) (“confidential supplier pricing and supplier-identifying information contains trade secret information”).

The Commission has also protected financial information in an application for renewal. (*In the Matter of the Application of SouthStar, Energy Services LLC d/b/a Ohio Natural Gas for Certification as a Retail Natural Gas Supplier*, PUCO Case No. 07-378-GA-CRS, (May 8, 2013)) The Commission has protected evolving technology. (*In the Matter of the Application of Columbia Southern Power Company and Ohio Power Company for Authority to Recover Costs Associated with the Ultimate Construction and Operation of an Integrated Gasification Combined Cycle Electric Generation Facility*, PUCO Case No. 05-376-EL-UNC (October 11, 2007)). The Commission has also protected draft documents related to a management and performance audit as they contained renewable energy credit and supplier pricing. (*In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company*, PUCO Case No. 1105201-EL-RDR (February 14, 2013))

For illustrative purposes, Verde Energy provides some examples of competitively sensitive information, confidential business information, and trade secrets contained in the Compliance Plan that require protection. Please note that the intent in providing this list is to outline the type of protected information that is included in the Compliance Plan. Here, Verde Energy is

careful to limit its description as not to pierce the confidentiality protection sought.

Discussion of audit and reporting procedures to be shared with Staff only	II(A)
Discussion of vendor selection, operations, and procedures	II(B)(1)
Discussion of vendor selection and contracts	II(B)(2)
Information concerning training protocol for vendors	II(B)(3)
Discussion of dialing technology implemented by Verde Energy	II(B)(4)
Discussion of Agent tracking program and marketing campaigns	II(B)(5)
Information concerning the audit and compliance program, including audit procedures	II(B)(6)
Internal marketing and compliance strategy and customer communication procedures	II(B)(7)
Discussion of internal marketing policies and procedures	II(B)(8)
Information concerning vendor auditing and compliance policies and procedures	II(B)(9)
Internal records and retention policies, procedures, and strategy	II(C)
Internal auditing and quality control programs	II(D)
Internal marketing technology and procedures	II(E)
Training policies and procedures	III(B)
Internal audit process	III(C)
Internal reporting requirements and procedures	III(D)
Internal management strategies	III(E)
Marketing programs and strategy	IV(B)
Internal audit practices	IV(B)(1)(a)
Vendor analysis procedures and strategy	IV(B)(1)(b)
Vendor contracting strategy and contents of contracts	IV(B)(2)
Audit and compliance programs and procedures	IV(B)(3)
Vendor compliance strategies	IV(C)(1)
Vendor training, policies, and procedures	IV(C)(2)
Details about dialing technology on marketing campaigns	IV(D)(1)
Policies and procedures related to vendor compliance	IV(D)(2)
Auditing policies, procedures, and strategy concerning telemarketing vendors	IV(D)(3)

Policies and procedures related to vendor compliance in door-to-door marketing	IV(D)(4)
Internal marketing and compliance strategy and customer communication procedures	IV(D)(5)
Discussion of internal marketing policies and procedures	IV(D)(6)
Information concerning vendor auditing and compliance policies and procedures	IV(D)(7)
Information concerning vendor auditing and compliance policies and procedures	IV(D)(8)
Internal records and retention policies, procedures, and strategy	V
Internal records related to auditing and quality control programs	V(A)
Auditing policies and procedures in telephonic enrollment	VI(A)
Auditing policies and procedures in door-to-door sales	VI(B)
Internal marketing and compliance strategy and customer communication procedures	VI(E)(1)
Contract requirements between vendors and Verde Energy	VI(F)
Internal policies, procedures, and strategy regarding customer complaints and handling of said complaints	VII(B)
Content and strategy of customer communications	VII(B)
Marketing technology, policies, procedures, and strategy	VIII(A)

After applying the *Plain Dealer* analysis, the definition of “trade secrets” contained in Section 1333.61(D), and applicable Ohio precedent, it is clear that the information contained within the Confidential Information constitutes trade secrets, the value of which can only be protected if guarded from public disclosure and maintained under seal.

III. CONCLUSION

For the foregoing reasons, Verde Energy requests that the Confidential Information be placed under a protective order to prevent it from being

disclosed publicly, that the Commission prohibit OCC from filing the Confidential Information publicly, and that the Commission maintain such information under seal.

July 6, 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*

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing document was served by electronic mail upon the persons listed below this 6th day of July, 2020.

SERVICE LIST

Barbara Clay

bclay@sparkenergy.com

Marty Lundstrom

mlundstrom@sparkenergy.com

Thomas Lindgren

Thomas.Lindgren@ohioattorneygeneral.gov

John Jones

John.Jones@ohioattorneygeneral.gov

Angela O'Brien

angela.obrien@occ.ohio.gov

Christopher Healey

christopher.healey@occ.ohio.gov

Kimberly Bojko

bojko@carpenterlipps.com

July 6, 2020

/s/ David F. Proaño

David F. Proaño (0078838)

AFFIDAVIT OF KIRA JORDAN

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)	Case No. 11-5886-EL-CRS
Verde Energy USA Ohio, LLC for)	
Certification as a Competitive Retail)	
Electric Service Supplier)	
)	
In the Matter of the Application of)	Case No. 13-2164-GA-CRS
Verde Energy USA Ohio, LLC for)	
Certification as a Competitive Retail)	
Natural Gas Service Supplier)	

AFFIDAVIT OF KIRA JORDAN

I, Kira Jordan, being first duly cautioned and sworn, deposes and states as follows:

1. My name is Kira Jordan. I am above the age of eighteen (18) years old, and competent to make this affidavit.

2. This affidavit is provided in support of Verde Energy's Motion for Protective Order filed on July 6, 2020 in Case Numbers 11-5886-EL-CRS and 13-2164-GA-CRS.

3. I am the Vice President of Portfolio Management & Business Insights, Verde Energy USA Ohio, LLC. I have personal knowledge of the facts stated herein.

4. The Confidential Information, as defined in the Motion for Protective Order, is competitively sensitive, highly confidential, and proprietary business information.

5. Specifically, the Compliance Plan includes nonpublic and proprietary information about Verde Energy's: (i) operational and managerial capacity, including internal training, auditing, management, and reporting procedures; (ii) marketing, solicitation, and customer information, including marketing programs and procedures,

internal compliance policies and procedures, selection, contracting, auditing, and training of vendors, and proprietary technology; (iii) records and retention, including internal policies and procedures related to records; (iv) customer enrollment and consent, including compliance programs and vendor protocol; (v) customer access and complaint handling, including internal complaint procedures; and (vi) contract administration and renewals, including internal customer relationship policies and procedures (the “Confidential Information”).

6. The Confidential Information is highly proprietary and not known outside the business with two exceptions: (a) the Compliance Plan submitted to the Staff of the Public Utilities Commission of Ohio in accordance with the Joint Stipulation, and (b) Office of Ohio Consumers’ Counsel in the course of this litigation provided in accordance with a Stipulated Protective Agreement.

7. In the ordinary course of Verde Energy’s business, the Confidential Information is treated as confidential and proprietary. Only employees with a business purpose for knowing the Confidential Information and with appropriate system credentials have access to such information.

8. Verde Energy does not disseminate the Confidential Information publicly, and it is not known outside Verde Energy’s company.

9. Verde Energy would be competitively harmed if the Confidential Information was publicly and made available to Verde Energy’s competitors.

10. Verde Energy spent months working with its outside counsel at BakerHostetler drafting the Compliance Plan in cooperation with the Public Utilities Commission of Ohio Staff.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of July, 2020.

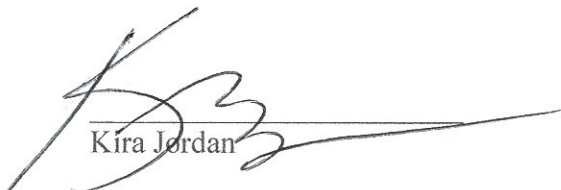

Kira Jordan

EXHIBIT A

Protective Agreement Between Verde Energy and OCC

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

PROTECTIVE AGREEMENT

This Protective Agreement (“Agreement”) is entered into by and between Verde Energy USA Ohio, LLC (“Verde” or “Company”) and the Office of the Ohio Consumers’ Counsel (“OCC”) (collectively, “the Parties”). This Agreement is designed to facilitate and expedite the exchange with OCC of all information in the discovery process in this proceeding, as this “Proceeding” is defined herein. It reflects agreement between the Company and OCC as to the manner in which “Protected Materials,” as defined herein, are to be treated. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials.

1. The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled manner that will allow their use for the purposes of this Proceeding while protecting such data from disclosure to non-participants, without a prior ruling by an administrative agency of competent jurisdiction or court of competent jurisdiction regarding whether the information deserves protection.

2. “Proceeding” as used throughout this document means the above-captioned case(s), including any appeals, remands and other cases related thereto.

3. “Protected Materials” means documents and information furnished subject to the terms of this Agreement and so designated by the Company by conspicuously marking each

document or written response as confidential. Protected Materials do not include any information or documents contained in the public files of any state or federal administrative agency or court and do not include documents or information which at, or prior to, commencement of this Proceeding, is or was otherwise in the public domain, or which enters into the public domain.

4. Protected Materials provided in the context of this Proceeding will be provided to OCC for use by OCC in conjunction with this Proceeding. Nothing in this Agreement precludes the use of any portion of the Protected Materials that becomes part of the public record or enters into the public domain. Nothing in this Agreement precludes OCC from filing Protected Materials under seal or otherwise using Protected Material in ways, such as *in camera* proceedings, that do not disclose Protected Materials.

5. As used in this Agreement, the term “Authorized Representative” includes OCC’s counsel of record in this Proceeding and other attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by OCC and engaged in this Proceeding.

6. Access to Protected Materials is permitted to OCC’s Authorized Representatives who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access. OCC must treat all Protected Materials, copies thereof, information contained therein, and writings made therefrom as proprietary and confidential, and will safeguard such Protected Materials, copies thereof, information contained therein, and writings made therefrom so as to prevent voluntary disclosure to any persons other than OCC’s Authorized Representatives.

7. If any OCC Authorized Representative ceases to be engaged in this Proceeding, access to any Protected Materials by such person will be terminated immediately and such person must promptly return Protected Materials in his or her possession to another Authorized

Representative of OCC and if there is no such Authorized Representative, such person must treat such Protected Materials in the manner set forth in Paragraph 16 hereof as if this Proceeding herein had been concluded. Any person who has signed the foregoing Non-Disclosure Certificate will continue to be bound by the provisions of this Agreement even if no longer so engaged.

8. In this proceeding, OCC may disclose Protected Materials or writings regarding their contents to any individual or entity that is in possession of said Protected Materials or to any individual or entity that is bound by a Protective Agreement or Order with respect to the Protected Materials. OCC may also disclose Protected Materials to employees or persons working for or representing the Public Utilities Commission of Ohio in connection with this Proceeding.

9. OCC may file Protected Materials under seal in this Proceeding whether or not OCC seeks a ruling that the Protected Materials should be in the public domain. If OCC desires to include, utilize, refer, or copy any Protected Materials in such a manner, other than in a manner provided for herein, that might require disclosure of such material, then OCC must first give notice (as provided in Paragraph 15) to the Company, specifically identifying each of the Protected Materials that could be disclosed in the public domain. The Company will have five (5) business days after service of OCC's notice to file, with an administrative agency of competent jurisdiction or court of competent jurisdiction, a motion and affidavits with respect to each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials. The affidavits for the motion must set forth facts delineating that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification for the injury that would result from the disclosure of such information. If the Company does not file such a

motion within five (5) business days of OCC's service of the notice, then the Protected Materials will be deemed non-confidential and not subject to this Agreement.

10. The Parties agree to seek *in camera* proceedings by the administrative agency of competent jurisdiction or court of competent jurisdiction for arguments or for the examination of a witness that would disclose Protected Materials. Such *in camera* proceedings will be open only to the Parties, their counsel, other OCC Authorized Representatives, and others authorized by the administrative agency or court to be present; however, characterizations of the Protected Materials that do not disclose the Protected Materials may be used in public.

11. Any portion of the Protected Materials that the administrative agency of competent jurisdiction or court of competent jurisdiction has deemed to be protected and that is filed in this Proceeding will be filed in sealed confidential envelopes or other appropriate containers sealed from the public record.

12. It is expressly understood that upon a filing made in accordance with Paragraph 9 or Paragraph 13 of this Agreement, the burden will be upon the Company to show that any materials labeled as Protected Materials pursuant to this Agreement are confidential and deserving of protection from disclosure.

13. OCC will give the Company notice (as provided in Paragraph 15) if OCC receives a public records request for Protected Materials. The Company will have five (5) business days after service of OCC's notice to file a pleading before a court of competent jurisdiction to prevent disclosure of the Protected Materials in question. If the Company files such a pleading, OCC will continue to protect the Protected Materials as required by this Agreement pending an order of the court. If the Company does not file at a court of competent jurisdiction within five (5) business days of service of OCC's notice, then such Protected Materials can be deemed by OCC to be non-confidential, not a trade secret and not subject to this Agreement. Alternatively,

the Company may provide notice to OCC that the Protected Materials may be disclosed in response to a public records request.

14. If, under Ohio's public records law, a court awards a relator or person or party attorney's fees or statutory damages or court costs in connection with OCC's non-disclosure or delayed disclosure of Protected Materials, then the Company will pay such awarded fees, statutory damages, and/or court costs to the relator or person or party so that the State of Ohio, OCC and OCC's employees and officials are held harmless.

15. All notices referenced in Paragraphs 9 and 13 must be served by the Parties on each other by one of the following methods: (1) sending the notice to such counsel of record herein via e-mail; (2) hand-delivering the notice to such counsel in person at any location; or (3) sending the notice by an overnight delivery service to such counsel.

16. Once OCC has complied with its records retention schedule(s) pertaining to the retention of the Protected Materials and OCC determines that it has no further legal obligation to retain the Protected Materials and this Proceeding (including all appeals and remands) is concluded, OCC must return or dispose of all copies of the Protected Materials unless the Protected Materials have been released to the public domain or filed with a state or federal administrative agency or court under seal. OCC may keep one copy of each document designated as Protected Material that was filed under seal and one copy of all testimony, cross-examination, transcripts, briefs and work product pertaining to such information and will maintain that copy as provided in this Agreement.

17. By entering into this Protective Agreement, OCC does not waive any right that it may have to dispute the Company's determination regarding any material identified as confidential by the Company and to pursue those remedies that may be available to OCC before an administrative agency or court of competent jurisdiction. Nothing in this Agreement

precludes OCC from filing a motion to compel.

18. By entering into this Protective Agreement, the Company does not waive any right it may have to object to the discovery of confidential material on grounds other than confidentiality and to pursue those remedies that may be available to the Company before the administrative agency of competent jurisdiction or court of competent jurisdiction.

19. This Agreement represents the entire understanding of the Parties with respect to Protected Materials and supersedes all other understandings, written or oral, with respect to the Protected Materials. No amendment, modification, or waiver of any provision of this Agreement is valid, unless in writing signed by both Parties. Nothing in this Agreement should be construed as a waiver of sovereign immunity by OCC.

20. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

Verde Energy USA Ohio, LLC
BY:


Counsel

March 11, 2020
Date

Office of the Ohio Consumers' Counsel
BY:


Counsel

12-12-19
Date

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

NON-DISCLOSURE CERTIFICATE

I certify my understanding that Protected Materials may be provided to me pursuant to the terms and restrictions of the Protective Agreement, last executed 12-12 2019, and certify that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Materials, and any writings, memoranda, or any other form of information regarding or derived from protected materials will not be voluntarily disclosed to anyone other than in accordance with the Protective Agreement and will be used only for the purposes of this Proceeding as defined in paragraph two of the Protective Agreement.

Name: Angela O'Brien
Company: OCC
Address: _____
Telephone: _____
Date: _____

EXHIBIT B

Verde Energy Compliance Plan
(Redacted Version for Public Filing)

OHIO COMPLIANCE PLAN FOR VERDE ENERGY USA OHIO, LLC

Respectfully submitted by,

David F. Proaño, Esq.
Kendall Kash, Esq.
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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I. BACKGROUND AND PURPOSE OF THIS COMPLIANCE PLAN.

On April 16, 2019, the Public Utilities Commission of Ohio (the “Commission”) opened an investigation of Verde Energy USA Ohio, LLC’s (“Verde Energy”) compliance with the Ohio Administrative Code in PUCO case number 19-0958-GE-COI (the “Investigation”). Within that investigation, Public Utilities Commission of Ohio Staff (“Staff”) prepared and filed a Staff Report on May 3, 2019, and a corrected Staff Report on May 29, 2019, that sought to address customer complaints regarding Verde Energy and alleged violations of the Commission’s rules.¹

During the Investigation, Verde Energy cooperated and entered into a settlement agreement with Staff to resolve the Investigation. Verde Energy and Staff submitted the Joint Stipulation to the Commission on September 6, 2019, and the Commission adopted the Joint Stipulation and Recommendation on February 26, 2020. Among other requirements, the Joint Stipulation requires that Verde Energy submit an action plan for compliance (“Compliance Plan”) at least ninety (90) days prior to resuming marketing and customer enrollment in Ohio. (Joint Stipulation and Recommendation 4.) Verde Energy may not begin marketing in Ohio until November 1, 2020 under the terms of the Joint Stipulation, which makes the Compliance Plan due on or before Monday, August 3, 2020.

In accordance with the Joint Stipulation, Verde Energy submits this draft Compliance Plan for Staff’s review and approval, which addresses the subject-matter areas contained in the Staff Report. The Compliance Plan is organized into 7 specific compliance areas that were the focus of the Staff Report:

1. Operational and Managerial Capacity (Ohio Adm. Code 4901:1-24-05, 4901:1-27-05, 4901:1-24-10, and 4901:1-27-10);
2. Marketing, Solicitation, and Customer Information (Ohio Adm. Code 4901:1-21-05 and 4901:1-29-05);
3. Records and Retention (Ohio Adm. Code 4901:1-29-04 and 4901:1-21-04);
4. Customer Enrollment and Consent (Ohio Adm. Code 4901:1-29-06 and 4901:1-21-06);
5. Customer Complaint Handling Process (Ohio Adm. Code 4901:1-29-08 and 4901:1-21-08);
6. Contract Administration and Renewals (Ohio Adm. Code 4901:1-29-10 and O.A.C. 4901:1-21-11); and
7. Contract Disclosure (Ohio Adm. Code 490:1-29-11 and 4901:1-21-12).

¹ May 29, 2019 Corrected Staff Report, 19-0958-GE-COI.

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In further support of this Compliance Plan, at least 90 days before Verde Energy recommences marketing and enrollment in Ohio, Verde Energy will submit the following materials to Staff for its review and approval:

- Electric and Natural Gas Terms of Service
- Vendor Onboarding Materials
- Ohio Training Materials
- Welcome Call Scripts
- Vendor Red-Flag Behaviors List
- Ohio Sales Scripts and Company Code of Conduct
- Ohio Door-To-Door Compliance Do's and Don'ts
- Ohio Door-To-Door Enrollment Acknowledgment Form
- Ohio Contract and Renewal Expiration Notices

II. EXECUTIVE SUMMARY

This Compliance Plan describes how Verde Energy will meet the minimum standards for competitive retail electric service (“CRES”) and competitive retail natural gas service (“CRNGS”) suppliers in Ohio and addresses the specific alleged compliance issues identified in the Staff Report. Below is a high-level summary of the Compliance Plan.

A. Managerial and Operational Capacity

The Compliance Plan demonstrates that Verde Energy has the managerial, technical, and operational capacity and experience necessary continue marketing, enrolling, and operating in Ohio. First, Spark Energy, Verde Energy’s parent company, has recently added key management and high-level personnel to Spark Energy’s team, including Kevin McMinn (Chief Operating Officer), Barbara Clay (Interim General Counsel), and Marty Lundstrom (Deputy General Counsel). These personnel have extensive experience in retail energy markets and highly regulated markets and were brought in because of their focus and expertise in compliance.

In addition to these key personnel, Verde Energy will also hire a full-time employee that will be responsible for serving as the Ohio Compliance Representative, for a term of at least two years. The Ohio Compliance Representative will be an individual with experience in the Ohio retail market and who is knowledgeable about Ohio regulations and requirements. This individual, working with other Verde Energy personnel, will oversee Verde Energy’s Ohio compliance and regulatory matters as well as assist in oversight of vendors and agents operating in Ohio.

Verde Energy has also instituted new practices that will ensure Verde Energy’s Ohio operations are being routinely monitored by Verde Energy and potential issues are being addressed promptly.

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B. Marketing and Solicitation

The largest focus of the Compliance Plan is on Verde Energy’s marketing and solicitation programs. Verde Energy has reviewed and revamped its marketing program, specifically focusing on how to monitor and control the compliance aspects of third-party vendors marketing on Verde Energy’s behalf.

1. Limiting Number of Vendors Operating in Ohio

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2. Updated Vetting and Contracting Processes for Third-Party Vendors

Verde Energy has also modified its third-party vendor program to set and formalize explicit requirements for vetting prospective third-party vendors.

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3. Training of Agents

As explained below, Verde Energy has modified its training protocols to expand Verde Energy's role and ensure that third-party agents understand the rules and requirements for interacting with Ohio consumers before going live.

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4. New Dialing Technology

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This dialing technology will address a number of issues identified by Staff in the Investigation and prevent vendors from spoofing as well as placing calls to anyone on a do-not-call list.

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Verde Energy can ensure that sales calls are being made in compliance with the Ohio Administrative Code.

5. Agent Tracking Program

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6. Audits of Third-Party Vendor Interactions

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7. Welcome Calls

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8. Resting Policy

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9. Accountability for Noncompliance

Verde Energy recognizes that an important role in any vendor oversight program is holding a third-party vendor, and its agents, accountable when agents or a vendor fail to comply

with Ohio laws and regulations or Verde Energy's policies. Thus, Verde Energy has formalized an accountability process if/when a potential issue of noncompliance is identified.

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C. Records and Retention

To make sure that records and data are being retained in compliance with the Ohio Administrative Code, Verde Energy will institute a new records retention policy going forward:

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For door-to-door records, customers will have the options of:

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D. Misstatements/Missing Elements in Calls, TPVs, and Documents

All scripts, template contracts, training documents, and other documentation used with consumers or vendors have been/are being reviewed to ensure that the documents are compliant with Ohio laws and regulations and specifically address the issues identified by the Staff in the Staff Report. Verde Energy is attaching those documents to this Plan and/or will be forwarding them to Staff before recommencing marketing and enrollment to allow Staff to review and comment on these documents.

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E. Contract Expiration Notices

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² To the extent necessary, Verde Energy will seek Commission approval prior to using any tablet/smart phone process that would require a waiver of the Commission's enrollment rules.

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III. OPERATIONAL AND MANAGERIAL CAPACITY

As part of its certification application review, the Commission assesses an applicant's managerial, financial, and technical experiences and capabilities.³ As a result, a company must demonstrate to the Commission that it has sufficient operational and managerial capacity to operate as a CRES and/or CRNGS supplier in Ohio.⁴

Verde Energy is focused on ensuring compliance in all of its operations. Verde Energy will implement the following measures and programs to ensure sufficient managerial and operational capacity over its Ohio operations so that Verde Energy can provide satisfactory services to its Ohioan customers.

A. New Management Personnel

Since the Joint Stipulation and hearing in the Investigation, Verde Energy has added management personnel with significant experience in the retail energy industry and Ohio experience. These new personnel bring decades of experience in the retail energy market and are laser-focused on reviewing and revitalizing Verde Energy's policies and practices to ensure compliance with Ohio laws and regulations.

1. Kevin McMinn, Chief Operating Officer

In March 2020, Spark Energy appointed its first Chief Operating Officer ("COO"), Kevin McMinn. Mr. McMinn has decades of experience in wholesale and retail energy markets as well as operations expertise. Prior to Spark Energy, Mr. McMinn served as Chief Sales Officer of Crius Energy, a retail natural gas and electricity company, and before that, was Chief Operating Officer of U.S. Gas & Electric, a retail natural gas and electricity company. Earlier in his career, Mr. McMinn advised leading energy companies based in North America and Europe as an industry consultant including, but not limited to, Entergy, Shell Energy North America, and Reliant/NRG. Mr. McMinn's insights and thoughtful approaches to the evolving retail energy markets have established him as a sought-after leader among peers. As COO, Mr. McMinn will oversee the retail sales channels for Verde Energy, providing direct oversight at the officer level of the telemarketing and door-to-door services that Staff identified as problematic during the investigation and in the Corrected Staff Report.

2. Barbara Clay, Interim General Counsel

Barbara Clay began serving as Interim General Counsel of Spark Energy in January of 2020. Ms. Clay brings to Spark Energy over two decades of energy and compliance experience for highly regulated industries. Most recently, Ms. Clay was Chief Legal Officer of Crius Energy, responsible for managing all legal matters, including litigation, compliance, and regulatory. Prior to joining Crius Energy, Ms. Clay was Vice President, Senior Counsel for MasterCard Worldwide supporting Finance and Treasury; International and Domestic Mergers &

³ Ohio Adm. Code 4901:1-24-05 and 4901:1-27-05.

⁴ *Id.*; Ohio Adm. Code 4901:1-24-10 and 4901:1-27-10.

Acquisitions; SEC Matters and Board Advisory Matters. During her tenure at MasterCard, Ms. Clay received the MasterCard 2011 CFO Award and a 2010 MasterCard General Counsel's Award. Before joining MasterCard in 2007, Ms. Clay was Counsel for Boies, Schiller & Flexner. At the firm, she represented energy, communication, and financial industry clients in connection with private and public mergers and acquisitions, joint ventures, and complex contract matters.

3. Marty Lundstrom, Deputy General Counsel

Marty Lundstrom has served both as in-house and outside counsel, handling compliance, litigation, contracts, insurance, M&A, and other matters. She has significant experience with retail energy compliance issues, and previously served as Assistant General Counsel at Spark Energy. Before joining Spark Energy, Ms. Lundstrom practiced at Haynes and Boone, LLP in their litigation and environmental practices groups from 2002-2011 and then at Hess Corporation on litigation, compliance and regulatory matters from 2011-2015. Ms. Lundstrom has worked as in-house counsel for consumer-focused businesses from 2011 to present, including at Spark Energy from February 2017 to the present.

B. Ohio Compliance Representative

Before recommencing marketing and sales activities in Ohio on November 1, 2020, Verde Energy will hire a full-time employee who has responsibility as the Ohio Compliance Representative for a term of at least two years. The Ohio Compliance Representative's duties will be to oversee all aspects of Verde Energy's Ohio compliance and regulatory matters, including, but not limited to, vetting, hiring, training, and overseeing third-party vendors that operate in Ohio; training and overseeing a small team of Ohio-certified regulatory specialists to address customer complaints and concerns in Ohio; overseeing, interacting with, and assisting third-party auditors in auditing vendor interactions with Ohio consumers; regular auditing third-party telemarketing and door-to-door vendor interactions with Ohio consumers; and working with Verde Energy employees in the Marketing, Sales, Compliance, Regulatory, and Legal Departments to oversee the Ohio operations, address and amend practices and procedures that are not working, and ensure compliance in Ohio.

The Ohio Compliance Representative will be an individual with experience and expertise in Ohio's retail market and will have specific experience with CRES and CRNGS operations and requirements. The Ohio Compliance Representative will be knowledgeable with all Ohio regulations that involve or impact CRES and CRNGS providers, and will have a working understanding of Staff's oversight of and interactions with CRES and CRNGS providers. The Ohio Compliance Representative will be either an internal designation with sufficient Ohio compliance experience or an external hire.

The Ohio Compliance Representative will work with personnel in other departments, including, but not limited to, personnel in compliance, sales quality, and operations, to carry out her duties and responsibilities. Additionally, the Ohio Compliance Representative will work with two to three full-time regulatory specialists from the Regulatory Response team, as needed, to address Ohio compliance complaints and Staff inquiries (with the Ohio Compliance

Representative, known as the “Ohio Compliance Team”). The Ohio Compliance Representative will report directly to the Legal Department and will work with the Chief Operations Officer and the sales quality and operations teams on an ongoing basis to carry out her duties.

The Ohio Compliance Representative will provide Ohio-specific training to the Ohio Compliance Team. [REDACTED]

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As discussed below, the Ohio Compliance Representative will also collaborate with Verde Energy’s third-party auditor for outbound telemarketing sales calls and Verde Energy’s third-party auditor for third-party verifications (“TPVs”) to ensure that interactions with Ohio customers are being audited and that any issues with those calls are escalated to the Ohio Compliance Team to investigate, assess, and remedy, if necessary.

C. Semi-Annual and Annual Self-Audits of Ohio Operations and Compliance

Upon recommencement of marketing and sales activities in Ohio (in November 2020), Verde [REDACTED]

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D. Quarterly Reporting

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E. Ongoing Monthly Management Meetings Regarding Compliance

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IV. MARKETING, SOLICITATION, AND CUSTOMER INFORMATION⁵

A. Marketing Requirements in Ohio

Under Ohio laws and regulations, a CRES or CRNGS provider may not engage in “unfair, misleading, deceptive, or unconscionable acts or practices” in the marketing, solicitation, sale, and administration of their services.⁶ In order to ensure that customers are not being deceived into signing up for a service that they may not want and to ensure that customers understand the terms of any service that they select, the regulations require that CRES or CRNGS providers receive prior customer consent before changing a customer’s service.⁷ These regulations ensure that CRES and CRNGS providers ethically solicit customers and do not change or modify their electricity or natural gas services without consent. Verde Energy is committed to enhancing its marketing and enrollment practices in Ohio to ensure that its customers are receiving honest and accurate communications on behalf of Verde Energy; that the terms of service with Verde Energy are accurately explained to potential customers before enrollment; and that Verde Energy has records or documentation to support each customer enrollment.

B. Verde Energy’s Updated Marketing Programs

Verde Energy has overhauled its marketing programs and is dedicated to strict adherence to Ohio rules and laws. Through rigorous due diligence and investigation, a contract structuring and review program, and a rigorous oversight program, Verde Energy will ensure its marketing compliance structure meets all applicable laws. **CONFIDENTIAL - SUBJECT TO PROTECTIVE AGREEMENT**

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⁵ Ohio Adm. Code 4901:1-29-05 and 4901:1-21-05.

⁶ Ohio Adm. Code 4901:1-21-03(A) and 4901:1-29-03(A).

⁷ Ohio Adm. Code 4901:1-21-03(C) and 4901:1-29-03(D).

1. Vendor Selection Investigation and Compliance Health Check

Before contracting with a third-party vendor, Verde Energy will engage in a bolstered vendor selection investigation program. The new due diligence program builds upon Verde Energy's past practices that were working, expands those aspects of vetting to ensure that only the most capable third-party vendors are engaged to represent Verde Energy, and institutionalizes those practices into a two-part process. This program is aimed at assessing whether a third party's practices align with Verde Energy's strategic goals and business values and is committed to legal compliance. Furthermore, the vendor selection investigation program is designed to assess whether a third party's business practices are predatory, abusive, discriminatory, or unfair, and to engage only companies able to demonstrate their ability to comply with Ohio laws and regulations, especially when interacting with customers. This vendor selection investigation program will be led by Verde Energy's legal, vendor relations, and operations teams, and the Ohio Compliance Representative will work closely with these teams to vet, select, and contract with third-party vendors that will operate in Ohio. Verde Energy's audit program will compliment this due diligence program once a third-party vendor is selected.

a. Compliance Health Check Investigation

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b. Vendor Selection Investigation – Interview and Analysis

The three steps of the interview and analysis process are: (1) a formal meeting between the

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2. Vendor Contract Structuring and Review Program

Verde Energy will structure all future third-party contracts for outbound telemarketing services and door-to-door services to ensure that the vendor's consumer protection policies and practices are in line with Verde Energy's Code of Conduct and applicable Ohio laws and regulations.

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In addition, all future third-party contracts for outbound telemarketing services and door-to-door services must include the following information:

- Outline of the fees to be paid, including fixed compensation, variable charges, and

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- Specify that all services must be conducted in accordance with applicable federal, state, and local laws and regulations;

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All third-party vendor contracts will be reviewed by Verde Energy's legal team prior to finalization to ensure that these terms are within the final contract. If a third-party vendor refuses to include any of the provisions identified above (or any other provision that Verde Energy determines is necessary to protect Ohioans against risks associated with using the third-party vendor), then Verde Energy will not sign a contract with that vendor.

3. Vendor Audit and Oversight Program

Verde Energy will be tough and firm regarding vendor supervision. Verde Energy will implement a bolstered third-party oversight program, including the auditing program outlined below in subsection D to this Section.

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In addition to these self-audits, Verde Energy's Ohio Compliance Representative working in coordination with the sales quality, operations, and compliance teams will monitor third-party door-to-door and outbound telemarketing vendors and agents on a daily and weekly basis to verify that those third-party vendors' actions, along with their agents' actions, are consistent with the terms of Verde Energy's contract and that compliance risks are being monitored, addressed, and controlled on a timely basis.

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C. Vendor Onboarding and Training

Verde Energy's modified onboarding and training program will focus on making sure that Verde Energy's oversight of a third-party vendor does not cease after contracting with that new vendor. To meet that goal, Verde Energy's modified onboarding and training program is designed to accompany and complement Verde Energy's new auditing program and will focus on three parts:

1. Initial onboarding program for new third-party vendors;
2. Training for new agents; and
3. Supplemental training and tests for sales agents.

1. Vendor Onboarding

Verde Energy's onboarding program will focus on making sure that vendors understand the requirements for marketing and enrolling new customers in Ohio.

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Verde Energy will submit its vendor onboarding materials to Staff at least 90 days before Verde Energy recommences marketing and enrollment in Ohio for Staff's review and approval.

2. Training of Third-Party Door-to-Door and Telemarketing Vendors and Agents

In addition to onboarding third-party vendors, Verde Energy will also provide training to the agents of third-party outbound telemarketing vendors and door-to-door vendors.

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Verde Energy will submit its Ohio training materials to Staff at least 90 days before Verde Energy recommences marketing and enrollment in Ohio for Staff's review and approval.

D. Auditing of Vendors

As Verde Energy prepares to begin marketing again in Ohio, it will use a revitalized auditing program to oversee its marketing, solicitation, and enrollment of new customers. The new auditing program will focus on closely monitoring third-party agents' interactions with Ohio consumers to ensure compliance with all Ohio laws and regulations in customer interactions. The Ohio Compliance Representative working with personnel from Verde Energy's sales quality, operations, and compliance teams will oversee this auditing program for Ohio.

1. New Dialing Technology

Verde Energy will be modifying its technology services and the way that dialing is done on Verde Energy campaigns. Though Verde Energy will continue to work with third-party telemarketing companies,

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a. Spoofing

As explained above, with Verde Energy's new dialing technology,

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This change will address the spoofing issues raised by Staff in the Corrected Staff Report and ensure there are no spoofing issues going forward.

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b. Do Not Call Numbers

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These measures ensure that no calls made on Verde Energy's behalf will be made to individuals on the do-not-call lists.

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2. Agent Tracking Program

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3. Audits of Telemarketing Sales Calls and TPV Calls

Verde Energy will be implementing a new quality control program to audit both outbound telemarketing calls and TPV calls. The process for auditing sales calls will be as follows:

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4. Door-to-Door Audits

Verde Energy will expand its prior door-to-door auditing procedures to ensure that door-to-door agents' interactions with Ohioans are honest, accurate, and compliant with Ohio laws and regulations. Auditing of door-to-door agents will take place on two fronts.

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5. Welcome Calls

Verde Energy will also bolster its welcome call program. Welcome calls are short calls to recently enrolled customers.

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Verde Energy will submit its welcome call script to Staff at least 90 days before Verde Energy recommences marketing and enrollment in Ohio for Staff's review and approval.

6. Resting policy

Verde Energy will institute a new policy to rest telephone numbers on Verde Energy's dialer.

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This resting policy ensures that interactions with potential customers are not harassing or otherwise bothersome and restricts a sales agent from being able to contact customers endlessly to attempt to make a sale.

7. Accountability for Noncompliance

If a potential instance of noncompliance is identified by an auditor within a call/customer interaction.

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These will be the same steps and repercussions for potential issues of noncompliance identified by Staff and reported to Verde Energy's Regulatory Department and for potential issues of noncompliance identified by the Ohio Compliance Representative in its audits of sales calls, door-to-door interactions, and third-party verifications.

8. Specific Issues of Unfair, Misleading, Deceptive, or Unconscionable Acts

In its Staff Report, Staff noted that Verde Energy was alleged to have violated the Ohio Administrative Code provisions related to untruthful promises of lower rates, caller identification spoofing, misrepresentations of a local utility, and misleading offers of sale. As noted above, Verde Energy is committed to ensuring full compliance with Ohio laws and regulations from its employees and its third-party vendors.

On a macro-level, Verde Energy believes that its new vendor selection and auditing programs will give it the ability to ensure that its third-party vendors are both capable of strict compliance with Ohio regulations, and also accountable for any future failings. At the highest level, Verde Energy is committed to promptly ending any third-party relationship that is unable to meet its compliance goals. Below Verde Energy highlights some of the steps it is taking to specifically address the issues outlined in the Staff Report. In each of the problem areas outlined by Staff, Verde Energy's approach to changing its marketing program involve the same three principles of training, auditing, and accountability.

As noted above, Verde Energy will be expanding its training and auditing programs.

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The key to the auditing program, however, will be holding non-compliant agents accountable. Below are the specific actions that Verde Energy will take to address the issues Staff identified as problematic within the “Unfair, Misleading, Deceptive, or Unconscionable Activities” section of the Staff Report.⁸

a. Untruthful Promises of Lower Rates

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b. Caller ID Spoofing

See subsection (D)(1) to this section above on spoofing issues and dialing technologies.

c. Misrepresentation as a Utility

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⁸ May 29, 2019 Corrected Staff Report 5-13.

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d. Misleading Offers of Sale

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V. RECORDS AND RETENTION⁹

Every CRES and CRNGS provider must keep records and data in compliance with the Ohio laws and Commission rules.¹⁰ Specifically, CRES and CRNGS providers are required to “maintain records and data sufficient to: (1) verify its compliance with the requirements of any applicable Commission rules and, (2) support any investigation of customer complaints.”¹¹

The alleged issues with Verde Energy’s calls and document retention may have been due to Verde Energy’s use of third-party vendors to retain the company’s documents rather than Verde Energy itself.

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The new measures are set forth below.

A. Records Retention Program

Verde Energy will be revamping its records retention program. This new program will assist with better recordkeeping, ensuring that all required documentation is preserved as required and is easily accessible to assist Staff in answering questions and investigating complaints. As part of its updated record retention program, Verde Energy has instituted a new records retention policy.

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In addition to retaining records, the CRES and CRNGS minimum standards also require that Verde Energy provide documentation to Staff within three business days of Staff’s request.¹² With the new streamlined record retention processes, Verde Energy will have prompt access to any records that Staff requests and will be able to forward those records to Staff within the requisite time period. The following procedures will be used to ensure that records related to Verde Energy’s customers are being properly retained and accessible to Verde Energy:

1. Phone Solicitations/Enrollments

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⁹ Ohio Adm. Code 4901:1-29-04 and 4901:1-21-04.

¹⁰ Ohio Adm. Code 4901:21-04(A), 4901:1-21-11(C), 4901:1-29-04(A), 4901:1-29-06(D), and 4901:1-29-10(B).

¹¹ Ohio Adm. Code 4901:1-21-04 and 4901:1-29-04.

¹² Ohio Adm. Code 4901:1-21-06.

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2. Third-Party Verifications

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3. Door-to-Door Solicitations

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4. Auditing of Records

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VI. CUSTOMER ENROLLMENT AND CONSENT¹³

As explained within this Compliance Plan, Verde Energy will put in place procedures to ensure that its agents are providing accurate information to customers and potential customers, as well as obtaining their consent (and proof of that consent) before enrolling them in Verde Energy's services. It is Verde Energy's policy that customers may not be enrolled in its services without their consent. To ensure that Verde Energy has received a customer's consent, Verde Energy will be implementing the following procedures, in addition to its TPV process.

A. Telephonic Enrollment

It is Verde Energy's policy that all sales conducted on its behalf must be honest, clear, and accurate. When conducting a sale on Verde Energy's behalf, third-party agents must provide understandable information about Verde Energy's services, and be knowledgeable about its advantages and disadvantages for a consumer. Agents marketing on Verde Energy's behalf must abide by the company's Code of Conduct and policies. In line with Verde Energy's policies and principles, agents must demonstrate the following principles during interactions with consumers:

- *Honesty and clarity:* All offers to enroll with Verde Energy's services must be clear, honest, and complete so that customers know the exact nature of Verde Energy's services, the price, the terms of payment (including extra fees), and how their electric or gas service will be affected by a switch to Verde Energy's supply.
- *Accuracy and consistency:* Agents must give accurate and consistent statements about Verde Energy's services. Statements about Verde Energy's services must match the terms and conditions of a potential customer's contract and should be given in a simple and understandable manner.

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1. Telemarketing Procedure for CRES Services

All agents soliciting and enrolling customers in electricity services on Verde Energy's behalf must be trained on Verde Energy's sales scripts and Code of Conduct. Verde Energy will submit its sales scripts and Code of Conduct to Staff at least 90 days before Verde Energy recommences marketing and enrollment in Ohio for Staff's review and approval. In accordance with Verde Energy's policies and Ohio laws, at the start of every call, all agents must do the following:

¹³ Ohio Adm. Code 4901:1-29-06 and 4901:1-21-06.

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- Identify that they are calling on behalf of Verde Energy to discuss enrolling in Verde Energy's electric energy supply service;
- State that the call is being recorded and receive the customer's acknowledgment;
- State that Verde Energy is not the customer's current electricity utility and that the customer may choose to remain with their electricity utility, and receive the customer's acknowledgment; and
- Ask the customer whether they are the customer of record with the customer's electric utility or whether they are authorized to switch providers by the customer of record.

Before completing a sale, an agent working on Verde Energy's behalf must state and receive a verbal acceptance from the customer of the following:

- A description of the service that Verde Energy will provide;
- The price of the service;
- The length of the contract term;
- An approximate time that Verde Energy's service will begin for the customer;
- The contract's termination date and the fee for early cancellation, if any;
- Any material limitations, exclusions, contingencies, and conditions precedent in the contract;
- All fees to the customer;
- Verde Energy's credit check policy;
- A statement on Verde Energy's budget billing policy for the generation portion of the customer's bill; and
- An explanation on how the customer's bill will look and who will bill for Verde Energy's services.

After verifying the customer's acceptance to the previous terms and conditions of service, the agent must state and receive the customer's acknowledgement to the following:

- Verde Energy will send them a written contract with the terms and conditions discussed in the call within one business day;
- The customer has the right to cancel Verde Energy's service from seven calendar days from the postmark date of Verde Energy's confirmation notice, cancellation

can occur without penalty, and that their electric utility will give them a cancellation number to confirm cancellation of the contract;

- A toll-free telephone number that the customer can call to cancel the contract;
- A verbal request for and the customer's provision of their electric utility account number;
- A verbal request and the customer's provision of their mailing address; and
- A unique enrollment confirmation number.

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2. Telemarketing for CRNGS Service

All agents conducting natural gas sales on Verde Energy's behalf must be trained on Verde Energy's sales scripts and Code of Conduct as well as Ohio laws and regulations. Verde Energy will submit its sales scripts and Code of Conduct to Staff at least 90 days before Verde Energy recommences marketing and enrollment in Ohio for Staff's review and approval. In accordance with Verde Energy's policies and the Ohio Administrative Code, at the start of every call, all agents must do the following:

- Identify that they are calling on behalf of Verde Energy to discuss enrolling in Verde Energy's natural gas supply service;
- State that the call is being recorded and receive the customer's acknowledgment;
- State that Verde Energy is not the customer's current natural gas company and that the customer may choose to remain with their natural gas company and its applicable tariff or default service, and receive the customer's acknowledgment; and
- Ask the customer whether they are the customer of record with the customer's natural gas company or whether they are authorized to switch providers by the customer of record.

Before completing a sale, all agents working on Verde Energy's behalf must state and receive a verbal acceptance from the customer of the following:

- A description of the natural gas service that Verde Energy will provide;
- The price Ccf or Mcf of the service;

- The length of the contract term;
- An approximate date that Verde Energy's service will begin for the customer;
- The contract's termination date and the fee for early cancellation;
- Any material limitations, exclusions, contingencies, and conditions precedent in the contract;
- All fees to the customer;
- Verde Energy's credit check policy and whether Verde Energy will conduct a credit check or require a deposit from the customer; and
- An explanation on how the customer's bill will look and who will bill for Verde Energy's services.

If the customer agrees to enroll with Verde Energy, the agent must ask and receive the customer's acknowledgment that the customer has given consent to enroll with Verde Energy. After verifying the customer's acceptance to the previous terms and conditions of service, the agent must state and receive the customer's acknowledgement to the following:

- The customer's natural gas company will be sending a confirmation notice of the transfer of service;
- The customer has the right to cancel Verde Energy's service from seven business days from the postmark date of natural gas company's confirmation notice and that the customer should contact their natural gas company to rescind the contract;
- A toll-free telephone number for the customer's natural gas company that the customer can call to cancel the contract;
- A verbal request for and the customer's provision of their natural gas account number;
- A verbal request and the customer's provision of their mailing address; and
- A unique enrollment confirmation number.

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B. Direct Door-to-Door Sales

Historically, Verde Energy has also enrolled potential customers through direct door-to-door solicitation. To assist with the enrollment of customers door-to-door,

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Like its telephone enrollment program, it is Verde Energy's policy, that all door-to-door sales abide by the following principles:

- *Honesty and clarity:* All offers to use Verde Energy's services must be clear, honest, and complete so that customers know the exact nature of Verde Energy's services, the price, the terms of payment (including extra fees), and how their electric or gas service will be affected by a switch to Verde Energy's supply.
- *Accuracy and consistency:* Agents must give accurate and consistent statements about Verde Energy's services. Statements about Verde Energy's services must match the terms and conditions of a potential customer's contract and should be given in a simple and understandable manner.

In addition to the previous principles, Verde Energy has developed a list of Do's and Dont's for door to door sales agents. Verde Energy will submit its door-to-door compliance do's and don'ts, which is part of Verde Energy's door-to-door training, to Staff with its other training materials at least 90 days before Verde Energy recommences marketing and enrollment in Ohio for Staff's review and approval.

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As part of its compliance program, Verde Energy will require all door-to-door agents to be trained and tested on compliance with Ohio regulations regarding door-to-door sales.

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1. Door-to-Door Procedure for CRES Agents

As explained above,

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the following process for direct enrollment:

1. At the beginning of the interaction, agents will clearly state that they are working on behalf of Verde Energy and will ask to speak to the electric utility account holder.
2. After explaining Verde Energy's services, agents will hand consumers paper copies of enrollment documents that will set forth pricing, terms and conditions, recurring and nonrecurring charges, and duration of contract.
3. Before obtaining a potential customer's signature, agents will give consumers sufficient time to read through the documents and ask questions. Agents will answer any questions that a consumer may have.
4. If a potential customer decides to enroll, the customer will sign the contract through the door-to-door application on the agent's tablet, which will automatically send the signed contract to the door-to-door vendor to retain the record.
5. If the customer agrees and provides her/his email address, a copy of that signed contract will be emailed directly to the customer. The customer, however, must still be offered an unsigned paper copy of the contract, with a version number that matches the signed electronic copy.
6. The agent must verbally advise the customer that (a) the electric utility will be sending the customer a confirmation notice of the transfer of service, (b) they are allowed seven calendar days to rescind the contract, and (c) if the customer would like to rescind the contract, they must contact their electric utility company.
7. After concluding the sales transaction, the agent must contact the TPV agent and provide the customer's contract tracking information. The sales agent must leave the property and may not return before, during, or after the TPV process.

2. Door-to-Door Procedure for CRNGS Agents

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the following process for direct enrollment:

1. At the beginning of the interaction, agents will clearly state that they are working on behalf of Verde Energy and will ask to speak to the natural gas utility account holder.
2. After explaining Verde Energy's services, agents will hand consumers paper copies of enrollment documents that will set forth pricing, terms and conditions, recurring and nonrecurring charges, and duration of contract.
3. Before obtaining potential customer's signature, agents will give the consumer sufficient time to read through the documents and ask questions. Agents will answer any questions.
4. If a potential customer decides to enroll, the customer will sign the contract through the door-to-door application on the agent's tablet, which will automatically send the signed contract to the door-to-door vendor to retain the record.
5. If the customer agrees and provides her/his email address, a copy of that signed contract will be emailed directly to the customer. The customer, however, must still be offered an unsigned paper copy of the contract, with a version number that matches the signed electronic copy.
6. The agent must verbally advise the customer that (a) the natural gas company will be sending the customer a confirmation notice of the transfer of service, (b) they are allowed seven business days from the confirmation notice's postmark date to rescind the contract, and (c) if the customer would like to rescind the contract, they must contact their natural gas utility company.
7. The agent must request that the customer execute an acknowledgment form as part of the door-to-door enrollment process. Verde Energy will submit its acknowledgment form to Staff at least 90 days before Verde Energy recommences marketing and enrollment in Ohio for Staff's review and approval.
8. After concluding the sales transaction, the agent must contact the TPV agent and provide the customer's contract tracking information. The sales agent must leave the property and may not return before, during, or after the TPV process.

As outlined in the Auditing section, to ensure compliance with this policy,

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C. Internet Enrollment

Customers interested in enrolling directly with Verde Energy will also be able to choose to sign up directly on Verde Energy's website. This process occurs on Verde Energy's encrypted website according to the following procedures:

1. CRES Enrollment

1. At the beginning of the enrollment process, the consumer is provided with a screen that explains Verde Energy's electricity services and gives an overview of the process for switching to Verde Energy electricity supply;
2. If the consumer is interested, the initial page also provides a link to Verde Energy's environmental disclosure information and its generation resource mix;
3. If the consumer agrees to proceed, the consumer then is provided a copy of the contract and its terms and conditions, which will include a prompt to save or print the contract;
4. The consumer receives the following statements, which are also included in the contract:
 - a. A statement that advises the customer that their electric utility will be sending a confirmation notice of the transfer of service, and that they should contact their utility if they wish to rescind the contract;
 - b. A statement that the customer is allowed seven business days from the postmark date of the notice to rescind their enrollment;
 - c. A statement that reminds the customer that if they rescind their enrollment within the seven-calendar day window, their electric utility will give them a cancellation number to confirm their cancellation/
5. Before a potential customer can complete enrollment, the consumer is provided with the following
 - a. A prompt for the customer to print or save a copy of the contract
 - b. An electronic consent form that includes the following:
 - i. Verde Energy's name and contact information;
 - ii. An electronic agreement version number;
 - iii. The date of the customer's electronic enrollment;
 - iv. The name of the account holder and her/his address;

- v. The electric utility's account number or other customer identification number;
- vi. The customer's agreement to the terms and conditions;
- vii. An electronic agreement version number.

Upon electronically signing the agreement, the customer will be directed to a confirmation page, which will provide another opportunity for the customer to print a copy of the contract, as well record the time and date of the customer's submission.

2. CRNGS Enrollment

1. At the beginning of the enrollment process, the customer is provided with a screen that explains Verde Energy's natural gas supply services and gives an overview of the process for switching to Verde Energy's supply;
2. If the consumer agrees to proceed, the consumer then is provided a copy of the contract and its terms and conditions, which will include a prompt to save or print the contract;
3. The consumer receives the following statements:
 - a. A statement that advises the customer that the natural gas company will be sending a confirmation notice of the transfer of service;
 - b. A statement that the customer is allowed seven business days from the postmark date of the notice to rescind their enrollment;
 - c. A statement that the customer should contact their natural gas company to rescind their enrollment.
4. Before a potential customer can complete enrollment, the consumer is provided with the following
 - a. A prompt for the customer to print or save a copy of the contract
 - b. An electronic consent form that includes the following:
 - i. Verde Energy's name and contact information;
 - ii. An electronic agreement version number;
 - iii. The date of the customer's electronic enrollment;
 - iv. The name of the account holder and her/his address;
 - v. The natural gas company's account number;

- vi. The customer's agreement to the terms and conditions;
- vii. An electronic agreement version number.

Upon electronically signing the agreement, the customer will be directed to a confirmation page, which will provide another opportunity for the customer to print a copy of the contract, as well record the time and date of the customer's submission.

D. Mailings and Facsimiles.

While the majority of Verde Energy's customers have historically enrolled for its services via telemarketing and door-to-door solicitation, and internet enrollment, customers do have the option of signing up with Verde Energy directly via mail or fax. When the customer chooses to do so, Verde Energy will directly mail or fax them a brochure that explains Verde Energy's services, as well as a copy of the contract for the customer to sign and return to Verde Energy. The brochure will explain the price of the services (in Ccf or Mcf for natural gas services), the amount of any recurring and nonrecurring fees, and the duration of the contract. In the case of electric service, the company will also send a copy of its environmental disclosure information, as well as its generation resource mix. The brochure will also advise the customer on how they may rescind the contract after receiving a confirmation notice from either their electric utility or natural gas company, and the period of time that they will have contact their utility to rescind the contract.

E. Customer Consent

It is Verde Energy's policy that customers may not be enrolled in its services without their consent. To ensure that Verde Energy has received a customer's consent, Verde Energy will be implementing the following procedures.

1. Consent in Telemarketing Sales

All telephone marketing calls will be recorded with their date and time to allow verification of a customer's consent to enroll in Verde Energy's services. Telemarketing agents must ensure that they are speaking to the account holder for that service address. Furthermore, during the call, the sales agent must verify, and the customer must acknowledge, that the customer is giving their consent to sign up for Verde Energy's services. It is Verde Energy's policy that this verification shall constitute consent to enroll in Verde Energy's services.

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Upon completion of the call, Verde Energy will mail the customer a copy of the written contract that is discussed on the call within one business day of enrollment. In the case of electric sales, Verde Energy will include a copy of its environmental disclosure information with its generation resource mix with the welcome letter. For electric sales, Verde Energy will only initiate electronic enrollment with the electric utility three business days after sending the customer their written contract. For natural gas sales, Verde Energy will only initiate electronic

enrollment with the customer's natural gas company two business days after sending the customer their written contract.

2. Consent in Mailings, Facsimiles, and Door-to-Door Sales

It is Verde Energy's policy that when enrolling customers via mailings, facsimiles, and door-to-door sales, the customer's signature on a contract constitutes consent. Prior to enrolling any customers via one of these methods, Verde Energy will provide the customer with enrollment documents that clearly explain the terms and conditions of the contract, the price for Verde Energy's services, the dollar amount for any recurring and nonrecurring fees, the duration of the contract, and in the case of electric supply, the generation mix and environmental characteristics of the supply. Before enrolling customers, Verde Energy will provide a reasonable amount of time to answer any of the potential customer's questions. For solicitation that occurs via mail or fax, Verde Energy's enrollment documents will provide a number for the customer to call so that Verde Energy can answer their questions.

In the case of door-to-door sales, after obtaining a customer's signature, sales agents will provide the customer with a paper or electronic version of the contract (via email), as described above. In the case of natural gas sales, customers will also fill out a separate acknowledgment form to show their consent to enrolling for Verde Energy's services.

3. Consent in Internet Sales

It is Verde's policy that when a sale occurs online through its website, consent will be obtained via the electronic consent form that is outlined above.

F. Specific Instances of Noncompliance Related to Customer Enrollment and Consent.

As part of the investigation, the Staff identified specific instances of non-compliance in its Corrected Staff Report related to Ohio Adm. Code 4901:1-21-06 and 4901:1-29-06. Specifically, Staff identified the following issues: (1) failure to provide required contracts within the deadline set forth in the Code;¹⁴ (2) elements required by the Ohio Administrative Code were missing from TPV recordings;¹⁵ and (3) assertions of the incorrect number of days to rescind contract/enrollment.¹⁶ Verde Energy addresses these specific issues in further detail below to demonstrate how Verde Energy will address these issues and operate in compliance.

1. Providing Contracts After Enrollment

Verde Energy is required to provide customers a copy of the contract within one business day after a telephonic solicitation.¹⁷ Customers solicited via door-to-door sales shall be given a

¹⁴ May 29, 2019 Corrected Staff Report 22-23.

¹⁵ *Id.* 17-21.

¹⁶ *Id.* 15-17.

¹⁷ Ohio Adm. Code 4901:1-21-06(D)(2)(b)(i) and 4901:1-29-06(E)(2)(a).

copy of the contract during the solicitation. Customers solicited via third-party vendors over the phone must be provided a copy of the contract after the customer has agreed to terms and conditions named during the sales call and affirmed by third-party verifiers.

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2. Third-Party Verifications

The Ohio Administrative Code requires a CRES or CRNGS provider, as part of its enrollment processes, to provide an independent TPV to ensure the validity of the enrollment.¹⁸ In the Corrected Staff Report, Staff identified instances where the TPV recording provided to Staff were missing elements required by Ohio law to be part of the TPV, including a verbal statement and customer's acknowledgement that Verde Energy will, within one business day, send written contract that details the terms and conditions summarized during calls; a verbal request for and customer's provision of customer's mailing address; the price per Ccf; the incumbent natural gas company's toll-free or local telephone number to call to rescind contract/enrollment; and a verbal request for and customer's provision of natural gas company's account.¹⁹ Verde Energy's investigation of these issues revealed that a number of them were the result of the TPV script used by TPV agents including incorrect information while others resulted from TPV agents' failure to use the provided script.

As described within this Plan, Verde Energy has reviewed and updated all scripts to be compliant with Ohio laws and regulations. These modifications address the majority of TPV issues identified in the Investigation. Additionally, as outlined in the Auditing section above, Verde Energy has instituted new programs to oversee third-party vendors and agents.

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3. Number of Days to Rescind Contracts

After enrollment with a CRES or CRNGS provider, the Ohio Administrative Code has a mechanism permitting customers to rescind their contract after an enrollment has been initiated. The regulations specifically require that a CRES or CRNGS provider notify consumers that they have seven calendar days for electricity services and seven business days for gas services to

¹⁸ Ohio Adm. Code 4901:1-21-06(D)(1)(h), 4901:1-21-06(D)(2)(a), 4901:1-29-06(D)(6)(b), and 4901:1-29-06(E)(1).

¹⁹ May 29, 2019 Corrected Staff Report 17-21.

rescind their enrollment.²⁰ In the Investigation, Staff identified instances in which Verde Energy agents misstated the correct number of days to rescind a CRES contract (7 calendar days) and the correct number of days to rescind a CRNGS enrollment (7 business days).²¹

To address this issue, Verde Energy is updating its sales scripts and terms of service to ensure that agents are providing consumers with the right number of days to rescind a contract (7 calendar days for electricity and 7 days for gas) when enrolling a customer in Verde Energy's services. Verde Energy will submit its sales scripts and terms of service to Staff at least 90 days before Verde Energy recommences marketing and enrollment in Ohio for Staff's review and approval. Additionally, Verde Energy will be following the below procedures during enrollment to ensure that customers are providing accurate information and getting proof of consent.

- Telemarketing: All agents will be required to state and receive a customer's acknowledgment to the correct time to cancel and rescind a contract.

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- Door-to-door sales: All agents will be required to state and receive a customer's acknowledgement to the correct time to cancel and rescind a contract. Furthermore, on the door-to-door app, the customer's acknowledgment to this provision will be required before a sale can be completed. All audits of door-to-door agents will include verification of correctly stating the time to rescind a contract.
- Mailings and Facsimiles: All brochures and enrollment documents sent directly to a customer will state the correct time to cancel and rescind a contract.
- Internet enrollment: Before completing enrollment online, all customers must complete a customer consent form, which will include the time to cancel and rescind a contract, along with the terms and conditions.

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²⁰ Ohio Adm. Code 4901:1-21-06(D), 4901:1-29-06(D)(5)(b) and 4901:1-29-06(E)(1)(h)(ii).

²¹ May 29, 2019 Corrected Staff Report 13-15.

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VII. CUSTOMER ACCESS AND COMPLAINT HANDLING.²²

A. Customer Access

CRES and CRNGS providers are required to provide Ohio customers with reasonable access to customer service representatives to make inquiries and complaints, discuss bills, terminated services, or transact other business.²³ Verde Energy is committed to providing customers access to its customer services agents to discuss a customer's questions, concerns, services, and account. Verde Energy has a toll-free phone number (1-800-388-3862) through which customers can make inquiries to Verde Energy. Customer service agents are available from 8 a.m. to 6 p.m. EST Monday through Friday on that toll-free number to take calls from customers. After hours, customers may still call that toll-free number for emergencies, and a pre-recorded message will provide them with the emergency numbers for contacting their utility. Additionally, customers may reach out to Verde Energy's customer service department any time via email by emailing customercare@verdeenergy.com.

B. Customer Complaints Handling Process

1. Customer Complaints Team

Verde Energy has a Regulatory Department that includes a team of regulatory specialists led by Martha Franco, Regulatory Manager. The Regulatory Department's job is to handle customer complaints, which process includes analyzing complaints, investigating allegations, and preparing responses to the all complaints Verde Energy receives.

As explained above, the Ohio Compliance Representative will train and use two to three of the Regulatory Department's regulatory specialists to address complaints and client contacts in the Ohio market. Only regulatory specialists trained on Ohio law by the Ohio Compliance Representative will work on complaints from Ohio consumers or Staff. [REDACTED]

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2. Overview and Receipt of Complaints

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²² Ohio Adm. Code 4901:1-29-08 and 4901:1-21-08.

²³ *Id.*

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3. Complaints Handling Process

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4. Verde Energy's Re-Rate Process

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VIII. CONTRACT ADMINISTRATION AND RENEWALS.²⁴

Ohio Adm. Code 4901:1-21-11 and 4901:1-29-10 provide the rules and requirements for administering customer contracts in Ohio. Among other requirements, these sections set forth that CRES and CRNGS providers are prohibited from engaging in unfair, deceptive, misleading, and unconscionable acts and practices;²⁵ must retain customers contracts for not less than two years after a customer contract terminates;²⁶ and are required to provide written notice of pending contract expiration between forty-five and ninety calendar days before the customer contract expires.²⁷

In the Corrected Staff Report, Staff found various instances of noncompliance in Verde Energy's contract administration. Specifically, Staff stated that it had received numerous complaints that Verde Energy contracts had expired without prior written notice, as required by Ohio Adm. Code 4901:1-21-11(G). Staff further identified that Verde Energy had failed to maintain customer contracts as required by the Commission's rules. Staff also stated that Verde Energy had engaged in unfair, misleading, deceptive, and unconscionable practices in its administration of contracts.²⁸

A. Contract Expiration Notifications

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Verde Energy is required to provide Ohio customers notice of contract expiration between forty-five and ninety days before expiration of the contract.²⁹ Additionally, Verde Energy recognizes that Verde Energy must provide contract expiration notices to all electric customers between forty-five and ninety days before expiration of the contract, regardless of whether the contract contains a renewal clause, per Ohio Adm. Code. 4901:1-21-11(G) and Staff's guidance. As permitted in the rules, Verde Energy will combine the expiration notice with the renewal notice, when applicable.

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²⁴ Ohio Adm. Code 4901:1-29-10 and O.A.C. 4901:1-21-11.

²⁵ Ohio Adm. Code 4901:1-21-11(A) and 4901:1-29-10(A).

²⁶ Ohio Adm. Code 4901:1-21-11(C) and 4901:1-29-10(B).

²⁷ Ohio Adm. Code 4901:1-21-11(G) and 4901:1-29-10(F).

²⁸ May 29, 2019 Corrected Staff Report 15-17 and 22-24.

²⁹ Ohio Adm. Code 4901:1-21-11 and 4901:1-29-10.

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The renewal/expiration notice shall be sent to the address listed on the contract. The front cover of the mailed notice shall contain the following statements, as required by Ohio Adm. Code 4901:1-21-11(F), (G): “Important notice regarding your electric service contract” and “Important notice regarding your electric service/natural gas service contract’s expiration.” The relevant code sections also require that the notice state that the contract will renew at the specified rate unless the customer cancels the contract and require that the notice state how the customer may terminate, renew, or extend the contract. Verde Energy’s expiration notices will clearly and accurately state these and all other notice requirements as set forth in Ohio Adm. Code 4901:1-21-11 and 4901:1-21-10. Verde Energy will submit its standard expiration notice to Staff at least 90 days before Verde Energy recommences marketing and enrollment in Ohio for Staff’s review and approval.

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In addition to using the automated Customer Relationship Management application to fulfill expiration notice requirements,

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B. Retention of Customer Records

As explained in Section V above, Verde Energy has instituted a new records retention policy as well as new record retention processes to address prior record retention issues, including signed customer contracts.

IX. CONTRACT DISCLOSURE³⁰

Ohio Adm. Code 4901:1-21-12 and 4901:1-29-11 set forth the types of information and specific terms that are required in all customer contracts, as well as those that are required for residential and small commercial customer contracts in the electricity context. Verde Energy is reviewing its contracts to confirm that they contain the necessary terms and information in clear and understandable language.

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³⁰ Ohio Adm. Code 4901:1-29-11 and 4901:1-21-12.

X. CONCLUSION.

Verde Energy will implement this Compliance Plan in close coordination with Staff.
Specifically, [REDACTED]

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[REDACTED]

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Summary: Motion for Protective Order electronically filed by Mr. David F. Proano on behalf of Verde Energy USA Ohio, LLC