



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

June 30, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Verde Energy USA, Inc.
Docket No. C-2020-3017229

Joint Petition for Approval of Settlement and Statements in Support

Dear Secretary Chiavetta:

Enclosed for electronic filing is the **Joint Petition for Approval of Settlement and Statements in Support** in the above-referenced matter.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please do not hesitate to contact me.

Sincerely,

Kayla L. Rost
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 322768
(717) 787-1888
karost@pa.gov

KLR/ac
Enclosures

cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2020-3017229
	:	
Verde Energy USA, Inc.	:	
Respondent	:	

JOINT PETITION FOR APPROVAL OF SETTLEMENT

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and Verde Energy USA, Inc. (“Verde” or “Company”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to the Complaint filed by I&E at Docket No. C-2020-3017229 (“Complaint”).

As part of this Settlement Agreement, I&E and Verde (hereinafter referred to collectively as the “Parties”) respectfully request that the Commission enter a Final Opinion and Order approving the Settlement, without modification. Statements in Support of the Settlement expressing the individual views of I&E and Verde are attached hereto as Appendix A and Appendix B, respectfully.

I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, by it prosecuting

attorneys, 400 North Street, Commonwealth Keystone Building, Harrisburg, PA 17120, and Verde Energy USA, Inc., with a principal place of business of 12140 Wickchester Lane, Suite 100, Houston, TX 77079.

2. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth, as well as other entities subject to its jurisdiction, pursuant to the Public Utility Code (“Code”), 66 Pa. C.S. §§ 101, *et seq.*

3. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission’s jurisdiction pursuant to 66 Pa .C.S. § 308.2(a)(11); *see also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011)(delegating authority to initiate proceedings that are prosecutor in nature to I&E).

4. Section 501(a) of the Code, 66 Pa. C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

5. Section 701 of the Code, 66 Pa. C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints alleging a violation of any law, regulation, or order that the Commission has jurisdiction to administer.

6. Section 3301 of the Code, 66 Pa. C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission’s authority for violations of the Code, the Commission’s regulations and orders. Section 3301 allows for the imposition of a fine for each violation and each day’s continuance of such violation(s).

7. Verde is a jurisdictional electric generation supplier (“EGS”) licensed by the Commission at Docket No. A-2010-2151038 to operate in the Pennsylvania electric distribution company (“EDC”) service territories of Allegheny Power (“West Penn Power Company”), Duquesne Light Company (“Duquesne Light”), Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, PECO Energy Company (“PECO”), PPL Electric Utilities, Inc. (“PPL”), and UGI Utilities, Inc.

8. Verde, as an EGS in Pennsylvania, is a public utility as defined by Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, only for the limited purposes as described in Sections 2809 and 2810 of the Competition Act, 66 Pa.C.S. §§ 2809-2810.

9. Verde, as a provider of electric generation service for compensation, is subject to the power and authority of the Commission and must observe, obey, and comply with the Commission’s regulations and orders pursuant to Section 501(c) of the Public Utility Code, 66 Pa.C.S. § 501(c).

10. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of Verde in its capacity as an EGS serving consumers in Pennsylvania.

11. This matter involves allegations related to deceptive and misleading sales tactics, enrolling customers without authorization (i.e., slamming) and accessing customer accounts without authorization in the PPL service territory.

12. As a result of successful negotiations between I&E and Verde, the parties have reached an agreement on an appropriate outcome to the Complaint as encouraged by the Commission’s policy to promote settlements. *See* 52 Pa. Code § 5.231. The duly

authorized parties executing this Settlement Agreement agree to the settlement terms set forth herein and urge the Commission to approve the Settlement as submitted as being in the public interest.

13. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. §§ 102, 501.

14. “It is the policy of the Commission to encourage settlements.” 52 Pa. Code § 5.231(a).

15. I&E initiated an informal investigation of Verde on September 9, 2019, as a result of information provided by the Office of Competitive Market Oversight (“OCMO”) relating to allegations of deceptive and misleading telemarketing practices, deceptive and misleading door-to-door sales, unauthorized account access, and unauthorized enrollment.

16. As part of the investigation, I&E served two (2) sets of I&E data requests to Verde on September 9, 2019 and December 4, 2019, respectively.

17. Additionally, I&E served a data request letter to PPL on September 18, 2019.

18. On January 30, 2020, I&E filed the Complaint in this matter.

19. On June 5, 2020, the Parties agreed upon a settlement in principle. The Parties provided the settlement term sheet to the Office of Consumer Advocate (“OCA”) and offered OCA the opportunity to be included in the Joint Petition.

II. The Formal Complaint's Allegations

20. The Complaint alleged various conduct by agents of Verde that violated the Commission's regulations in connection with, *inter alia*, 339 PPL customer interactions.

The Complaint included allegations of:

- Unauthorized enrollment or “slamming” in violation of 52 Pa. Code § 54.42(a)(9), 52 Pa. Code §§ 57.171 - 57.180, and 52 Pa. Code § 111.7.
- Improper release of customer information, in violation of 52 Pa. Code § 54.8(a) and 52 Pa. Code § 54.43(1)(d).
- Failure to provide notice of door to door activity in violation of 52 Pa. Code § 111.14(b).
- Failure to prominently display badges in violation of 52 Pa. Code § 111.9(c) and 52 Pa. Code § 111.8(a)(4).
- Agents displaying branding or logo of the utility in violation of 52 Pa. Code § 111.8(c).
- Failure by door to door agents to identify themselves, the reason for visit, and explain that he/she does not work for the utility in violation of 52 Pa. Code § 111.9(d).
- Failure by an agent to terminate sales contact for language barrier or failure to understand in violation of 52 Pa. Code § 111.9(e).
- Failure by an agent to terminate contact after the customer stated no interest in violation of 52 Pa. Code § 111.9(g).
- Failure by an agent to comply with the regulations governing marketing, consumer protections, and door-to-door sales in violation of 52 Pa. Code § 111.9(b).
- Failure by agent to identify the supplier he/she represents and/or failed to state that he/she is not working for and is independent of the local distribution company or other supplier in violation of 52 Pa. Code § 111.8(b).
- Suggesting that a customer is required to choose a supplier in violation of 52 Pa. Code § 111.8(f).
- Failure by telemarketing agents to comply with the regulations governing marketing, consumer protection, and telemarketing sales in violation of 52 Pa. Code § 111.10(a).

- Misleading and deceptive conduct in violation of Pa. Code § 111.12(d)(1).
- False or misleading representations in violation of 52 Pa. Code § 111.12(d).
- False or deceptive advertising to customers in violation of 52 Pa. Code § 54.122(3).
- Failure to maintain sales verifications in violation of Pa. Code § 111.7(b)(4) and 52 Pa. Code § 111.13(b).

III. ALLEGED VIOLATIONS

21. Had this matter been fully litigated, I&E would have proffered evidence and legal arguments to support its allegations that Verde committed the following violations:

a. The alleged actions of Verde and/or its agents resulted in the unauthorized switch, or slamming, of customers to Verde. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 54.42(a)(9), 52 Pa Code §§ 57.171-57.180, and 52 Pa. Code § 111.7.

b. The alleged actions of Verde and/or its agents resulted in deceptive and misleading conduct related to telemarketing. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 111.8(b), 52 Pa. Code § 111.8(f), 52 Pa. Code § 111.10(a), and 52 Pa. Code § 111.10(b).

c. The alleged actions of Verde and/or its agents resulted in deceptive and misleading conduct during door-to-door or in person marketing activities. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 111.8(a)(4), 52 Pa. Code § 111.8(b), 52 Pa. Code § 111.8(c), 52 Pa. Code § 111.8(f), 52 Pa. Code §

111.9(b), 52 Pa. Code § 111.9(c), 52 Pa. Code § 111.9(d), 52 Pa. Code § 111.9(e), and 52 Pa. Code § 111.9(g).

d. The alleged actions of Verde resulted in the local EDCs not receiving notice of door-to-door sales and marketing activity. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 111.14(b).

e. The alleged actions of Verde and/or its agents resulted in the deceptive and misleading conduct in violation of state or federal law, including but not limited to spoofing. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 111.12(d)(1).

f. The alleged actions of Verde and/or its agents resulted in false or deceptive advertising and false and misleading representations, including rates and savings. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 54.122(3) and 52 Pa. Code § 111.12(d)(2).

g. The alleged actions of Verde and/or its agents resulted in the unauthorized account access or breach of confidentiality of customer personal information. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 54.8(a) and 52 Pa. Code § 54.43(1)(d).

h. Verde failed to maintain a record of verification for five (5) enrollments. If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 111.7(b)(4) and 52 Pa. Code § 111.13(b).

22. Had this matter been fully litigated, Verde would have denied each of the alleged violations of the Commission's regulations, the Code, or Commission's Orders, raised defenses to each of these allegations, and defended against the same at hearing.

IV. SETTLEMENT TERMS

23. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of discussions that culminated in this Settlement. I&E and Verde desire to (1) resolve I&E's formal Complaint; and (2) settle this matter completely without litigation. The Parties recognize that this is a disputed claim, and given the inherent unpredictability of the outcome of a contested proceeding, the Parties further recognize the benefits of amicably resolving the disputed issues. The terms and conditions of the Settlement, for which the Parties seek Commission approval, are set forth below.

A. Penalty and Contribution to EDC Hardship Fund

24. Verde shall pay a civil penalty in the amount of \$1,000,000.00. Verde shall not claim a tax deduction for the \$1,000,000.00 civil penalty and no amount of the civil penalty shall be passed through as an additional charge to Verde's customers in Pennsylvania.

25. Verde shall make a contribution of \$75,000.00 to PPL's hardship fund.

B. Refunds

26. For each customer identified in the Complaint that actually enrolled with Verde, Verde will provide a refund equal to their first two months of electricity supply

charges, less any amounts previously refunded to that customer.

27. For customers who allege unauthorized enrollment by Verde, and who were actually charged and paid early termination fees (“ETF”) to their prior supplier, Verde would refund those ETFs, upon receipt of proof of payment by customer.

28. No customer shall be paid any refunds without executing a “Release of Claims” pursuant to which the customer agrees, in exchange for payment of the funds, to release, acquit, and forever discharge the Company and all of its current and former officers, shareholders, and employees from any and all claims related to the conduct alleged in the Complaint over which the Commission has jurisdiction.

29. That the refunds described in this section shall be provided within sixty (60) days of the date of entry of the Final Order in this proceeding.

C. Voluntary Modification to Business Practices

30. Modifications to Business Practices:

In addition to complying with all Commission regulations, Orders and policies, Verde shall implement the following modifications to its business practices in Pennsylvania and with respect to Pennsylvania customers:

31. Marketing Moratorium:

a. Verde voluntarily ceased in-person marketing and telemarketing in Pennsylvania on or about February 6, 2020. Verde agrees to continue its moratorium on in-person marketing and telemarketing in Pennsylvania for an additional six (6) months after Commission approval of this Settlement Agreement

or until May 31, 2021,¹ whichever is earlier. In addition, even after the expiration of the moratorium, Verde will not conduct any telemarketing or in-person marketing until the quality assurances measures discussed below have been fully implemented and Verde provides confirmation of such information to I&E in writing. The moratorium described herein will not prevent Verde from enrolling new customers online or via the internet, and will not prevent Verde from contacting existing customers to renew their enrollment, or contacting customers by telephone based on inbound requests for information from prospective customers.

32. Limitations on Sales Activities

a. When Verde resumes telemarketing in Pennsylvania, it will restrict the number of telemarketing contacts to prospective customers, such that no prospective customer shall receive a contact from Verde more than three (3) times over any ninety (90) day period. This limitation can be modified by agreement of I&E upon request by Verde, if Verde demonstrates substantial compliance with the provisions of this Settlement.

b. When Verde resumes in-person marketing in Pennsylvania, it will utilize no more than one (1) in-person marketing vendor in any utility territory at a

¹ It should be noted that the Pennsylvania Public Utility Commission issued an Emergency Order on March 16, 2020 placing a moratorium on supplier door-to-door and in-person marketing in Pennsylvania. *See generally* M-2020-3019254. Thus, all electric generation suppliers have been prohibited from door-to-door and public, in-person marketing since March 16, 2020 and for the remainder of the pendency of the Proclamation of Disaster Emergency issued by Governor Tom Wolf. In the event that the voluntary marketing moratorium would cease during the pendency of the Proclamation of Disaster Emergency, the March 16, 2020 Emergency Order and marketing moratorium will remain in effect and take precedent.

time. This limitation can be modified by agreement of I&E upon request by Verde, if Verde demonstrates substantial compliance with the provisions of this Settlement.

33. General Marketing Commitments:

a. Verde shall comply with all Pennsylvania laws, including the Public Utility Code, 66 Pa. C.S. § 101 *et seq.*, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (hereinafter “Consumer Protection Law”), and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* (hereinafter “TRA”), and other applicable laws, as well as Commission regulations, Orders and policies.

b. Verde commits that the Company, its agents, employees and representatives shall not make misrepresentations to residential or small business consumers.

c. Verde will provide timely notice of door-to-door marketing activity to the Commission’s Bureau of Consumer Services and the EDCs as required by the Commission’s regulations.

d. Verde will complete an internal review of all its third-party vendors to ensure compliance with the Public Utility Code, 66 Pa. C.S. § 101 *et seq.*, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (hereinafter “Consumer Protection Law”), and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* (hereinafter “TRA”), and other applicable laws, as well as Commission regulations, Orders and policies.

- e. Verde will implement a new Third-Party Verification (“TPV”)

platform which will include the following:

- i. Ensure compliance with the applicable law by creating an internal audit system based on analytics; and
- ii. Ensure that the TPV call center contains bilingual individuals who can accurately confirm the sale in the potential customer’s native or preferred language.

34. Compliance Plan:

- a. At a minimum, the compliance plan shall include the following:
 - i. Training- In General: Verde shall ensure that its training program for internal and external sales representatives meets the requirements of this section.
 - (1) Prior to the resumption of marketing in Pennsylvania, Verde shall provide to I&E a detailed description of the sales training and sales quality assurance program that Verde intends to implement prior to the resumption of marketing in Pennsylvania.
 - (2) After a 30-day review period, the Verde will meet with I&E and designated Commission staff to review and discuss the training and quality assurance program.
 - ii. Verde’s training materials for its sales representatives and customer service representatives will accurately and comprehensively cover the following:
 - (1) The applicable requirements of the Public Utility Code and the Commission’s regulations, Orders and policies regarding marketing and billing practices for EGSs;
 - (2) The applicable requirements of the Consumer Protection Law and TRA, including both prohibited practices and affirmative requirements;

- (3) The applicable requirements of the Commission's regulations regarding door-to-door sales and other applicable state and federal law;
 - (4) Training to marketing and customer service representatives on the proper use of the Eligible Customer List and releasing private customer information.
 - (5) Training to all customer service representatives and marketing persons to identify themselves, identify his/her representation of Verde, and provide the reasoning for the phone call or in-person meeting upon first contact.
 - (6) Training to all marketing persons on the different charges on the electric bill and which charge relates to the generation of electricity.
 - (7) Training to all marketing persons on conducting a no-pressure sales call or in-person meeting, and enforcing the concept that a customer is not required to choose a supplier or switch suppliers. Verde will enforce that threatening a customer to switch will not be tolerated.
 - (8) An express warning that deceptive sales practices will not be tolerated by Verde's management;
 - (9) An express warning and material description of the remedial steps that will be taken against any sales representatives and customer service representatives that violate any term of this Settlement or otherwise engage in improper sales practices; and
 - (10) A description of the quality assurance, monitoring, auditing and reporting practices Verde maintains to identify and prevent improper sales practices.
- iii. Verde shall implement and conduct the training and ensure that its internal sales representatives and third-party sales agents comply with the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.

- iv. Individual marketers retained by Verde shall be required to successfully complete Verde's training program. Each trainee shall be required to sign a form acknowledging that he or she has received and understands the information provided in Verde's training materials before marketing to and enrolling customers on behalf of Verde.
- v. Verde will review all paper and physical marketing tools provided to in-person sales to ensure that the documentation does not include any misleading information concerning a relationship with the local EDC, incorrect information on the EDC's rates, or the EDC's logo. This review will also include any sales script provided to telemarketers.
- vi. Verde will review all paper and physical marketing tools provided to in-person sales to ensure that the documentation does not include any misleading information concerning a relationship with other electric generations suppliers (EGS), incorrect information on the EGS's rates, or the EGS's logo. This review will also include any sales script provided to telemarketers.
- vii. Verde will ensure that all door-to-door sales persons and other in-person marketers will be issued a uniform which clearly displays Verde's logo and/or name. Verde maintains its discretion of what will constitute as the "uniform."
- viii. Verde will ensure that all door-to-door sales persons and other in-person marketers are issued a badge with the person's name and Verde's logo and/or name, and that training will be provided on the proper display of such badge during in-person marketing activities.
- ix. Verde will create and implement a compliance program to ensure that all in-person marketing follows the prior two directives, (vii) and (viii).
- x. Verde will implement an internal call system to ensure that all customer service calls, solicitations, and telemarketing are transmitted through a telephone number bearing Verde's name on the caller-ID. Verde will ensure that all business transactions and calls to potential or existing customers will be through its internal call system.

- xi. Verde will confirm that at least 25% of its call center representatives are bilingual and are fluent in the potential and existing customer's native or preferred language.

35. Compliance Monitoring- Sales Calls:

a. Verde shall increase internal quality control efforts to include at least the following:

- i. Verde shall record all telephonic communications between Pennsylvania customers and Verde's customer service representative and maintain such call recordings for a period of at least ninety (90) days.
- ii. Verde shall require its telemarketers to record all communications with residential and small business consumers in Pennsylvania that result in a sale. The Verde representative will record every call placed to potential customers (with proper notice of the call being recorded provided to the potential customer), but will maintain a record all of calls that result in a sale. Verde has the discretion to not keep and maintain those calls which do not result in a sale, unless if Verde decides to use such calls for quality and compliance assurance.
- iii. Verde shall maintain such recordings in accordance with the Commission's requirements.
- iv. Verde shall, on a monthly basis, review a random sample of calls recorded from each of Verde's agents and third-party contractors in order to evaluate the sales practices employed and ensure that the sales practices comply with this Settlement Agreement, the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.
 - (1) The sample shall include no fewer than three (3) sales for each sales representative conducting sales solicitations for Verde to Pennsylvania customers.

- (2) Whenever such sample reveals one or more non-compliant sales calls by an agent, third-party contractor or sales representative, Verde shall investigate whether other Pennsylvania consumers enrolled by the agent, third-party contractor or sales representative were subjected to sales practices that violated this Settlement Agreement, the Public Utility Code, the Consumer Protection Law, the TRA, or Commission regulations, Orders and policies. Such investigation, at a minimum, shall include a review of the sales calls and call notes for the ten (10) Pennsylvania consumers enrolled before the call in question and the ten (10) Pennsylvania consumers enrolled after the call in question.
- (3) If Verde identifies additional non-compliant sales calls, Verde shall implement remedial steps as described below.
 - (a) If the consumer did not file a complaint or allege slamming on the part of the Verde representative but the call was otherwise not in accordance with the Commission's regulations and the Public Utility Code, Verde shall offer to any residential or small business consumer subjected to the non-compliant sales practices a refund equal to the difference between the price charged by Verde and the consumer's applicable Price to Compare for the period in which the consumer was a customer as a result of the non-compliant sales practice. Such refund shall be paid to the consumer within thirty (30) business days.
 - (b) If the consumer did file a complaint or allege slamming on the part of the Verde representative, Verde will follow the customer dispute process provided in 52 Pa. Code § 57.177.
 - (c) In the event Verde determines that a sales representative has violated any terms of this Settlement Agreement, the Public Utility Code,

the Consumer Protection Law, the TRA, or Commission regulations, Orders and policies or otherwise engaged in improper sales practices, Verde shall take prompt remedial actions against such representative.

36. Reporting: Within ninety (90) days of implementation of the resumption of in-person marketing or telemarketing in Pennsylvania and quarterly thereafter for a period of two (2) years, Verde shall provide to I&E:

a. An explanation of all internal audits and investigations performed during the reporting period, including a detailed description of the amount of calls reviewed pursuant to this Settlement and including a description of the audit(s) or investigation(s) performed as well as the results thereof and

b. A summary of the number and type of customer complaints and disputes received by Verde during the reporting period.

37. Policy Changes: Verde agrees to provide I&E with written notice of any changes to its practices and procedures related to marketing to Pennsylvania consumers for EGS products and services. This provision will remain in effect for two (2) years following the entry of the Commission's Final Order and may be extended at the discretion of I&E.

V. CONDITIONS OF SETTLEMENT

38. The benefits and obligations of this Joint Petition for Approval of Settlement shall be binding upon the successors and assigns of the parties to the Settlement.

39. This Joint Petition may be signed in counterparts and all signatures attached hereto will be considered as originals.

40. In order to effectuate the parties' Joint Petition for Approval of Settlement, the undersigned parties request that the Commission issue a Secretarial Letter or Order approving the Petition without modification.

41. The parties agree that any party may petition the Commission for rehearing or take other recourse allowed under the Commission's rules if the Commission Secretarial Letter or Order substantively modifies the terms of this Joint Petition for Approval of Settlement. In that event, any party may give notice to the other parties that it is withdrawing from this Joint Petition for Approval of Settlement. Such notice must be in writing and must be given within twenty (20) business days of the issuance of any Initial or Recommended Decision or any Commission Order or Secretarial Letter which adopts this Joint Petition for Approval of Settlement with substantive modifications of its terms. The consequence of any party withdrawing from this Joint Petition for Approval of Settlement as set forth above is that all issues associated with the requested relief presented in the proceeding will be fully litigated unless otherwise stipulated between the parties and all obligations of the parties to each other are terminated and of no force and effect. In the event that a party withdraws from this Joint Petition for Approval of Settlement as set forth in this paragraph, I&E and Verde jointly agree that nothing in this Joint Petition shall be construed as an admission against or as prejudice to any position which any party might adopt during litigation of this case.

42. I&E and Verde jointly acknowledge that approval of this Settlement Agreement is in the public interest and is fully consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission regulations, 52 Pa. Code § 69.1201. The Commission will serve the public interest by adopting this Joint Petition for Approval of Settlement.

43. The Joint Petition for Approval of Settlement avoids the time and expense of litigation in this matter before the Commission, which likely would entail preparation for and attendance at hearings and the preparation and filing of testimony, briefs, reply briefs, exceptions, and reply exceptions. The parties further recognize that their positions and claims are disputed and, given the inherent unpredictability of the outcome of a contested proceeding, the parties recognize the benefits of amicably resolving the disputed issues through settlement. Attached as Appendices A and B are Statements in Support submitted by I&E and Verde, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

44. Since the parties agree to the terms of the Joint Petition for Approval of Settlement, adopting it will eliminate the possibility of any appeal from the Commission Secretarial Letter or Order, thus avoiding the additional time and expense that they might incur in such an appeal.

45. This Settlement consists of the entire agreement between I&E and Verde regarding the matters addressed herein. Moreover, this Settlement represents a complete settlement of I&E's complaint against Verde's alleged violations of the Public Utility Code and the Commission's regulations as discussed in more detail in Section II. The

parties expressly acknowledge that this Settlement Agreement represents a compromise of positions and does not in any way constitute as a finding or as an admission concerning the alleged violations of the Public Utility Code and the Commission's regulations.

46. The Settlement contains a summary of alleged violations of the Public Utility Code and the Commission's regulations. See, Section III, Alleged Violations. In addition, the Settlement Terms contains Proposed Settlement Terms. See, Section IV, Settlement Terms. None of the provisions in this Settlement, including Sections III and IV of the proposed Settlement, shall be considered or shall constitute an admission, a finding of any fact, or a finding of culpability on the part of Verde in this or any other proceeding. This Settlement is presented without prejudice to any position that either party may have advanced, and without prejudice to the position any party may advance, in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Verde Energy USA, Inc. respectfully request that the Commission enter an Order approving the terms of the Joint Petition for Approval of Settlement in their entirety as being in the public interest.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, we have unto set our hands and seals on this 30th day
of June 2020.

Date: June 30, 2020



Michael A. Gruin
Stevens & Lee
Counsel for Verde Energy USA, Inc.

Date: June 30, 2020



Kayla L. Rost
*Counsel for the Commission's
Bureau of Investigation and Enforcement*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2020-3017229
	:	
Verde Energy USA, Inc.	:	
Respondent	:	

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Settlement Petition filed on June 30, 2020 between the Commission’s Bureau of Investigation and Enforcement and Verde Energy USA, Inc. (“Verde”) is approved in its entirety without modifications.

2. That this Commission retains subject matter jurisdiction over the parties for the purpose of modifying upon request, and enforcing the terms of this Settlement.

3. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within sixty (60) days of the date this Order becomes final, Verde shall pay One Million Dollars (\$1,000,000.00), which consists of the entirety of the civil penalty amount. Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

4. That no amount of the civil penalty shall be passed through as an additional charge to Verde’s customers in Pennsylvania.

5. That, within sixty (60) days of the date this Order becomes final, Verde shall pay Seventy-Five Thousand Dollars (\$75,000.00) to PPL's Hardship Fund. Verde is directed to file a sworn certification with the Commission showing its compliance with this settlement term within ninety (90) days of the date of entry of the Final Order in this proceeding.

6. That, within sixty (60) days of the date this Order becomes final, for each customer identified in the Complaint that actually enrolled with Verde, Verde shall provide refunds equal to the first two months of electricity supply charges, less any amounts previously refunded to that customer. Verde is directed to file a sworn certification with the Commission showing its compliance with this settlement term within ninety (90) days of the date of entry of the Final Order in this proceeding.

7. That, within sixty (60) days of the date this Order becomes final, for each customer who alleged unauthorized enrollment by Verde, and who was actually charged and paid early termination fees ("ETF") to their prior supplier, Verde would refund those ETFs, upon receipt of proof of payment by customer. Verde is directed to file a sworn certification with the Commission showing its compliance with this settlement term within ninety (90) days of the date of entry of the Final Order in this proceeding.

8. That Verde shall cease and desist any and all violation of the Public Utility Code and the Pennsylvania Public Utility Commission's regulations and orders.

Appendix A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2020-3017229
	:	
Verde Energy USA, Inc.	:	
Respondent	:	

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matter docketed above (“Complaint”), submits this Statement in Support of the Settlement Agreement between I&E and Verde Energy USA, Inc. (“Verde” or “Company”).¹ I&E avers that the terms and conditions of the Settlement agreement are just and reasonable and in the public interest for the reasons set forth below herein.

¹ I&E and Verde are collectively referred to herein as the “Parties.”

I. Background

On or about June 12, 2019, the Commission's Office of Competitive Market Oversight ("OCMO") held its routine monthly phone call with PPL Electric Utilities, Inc. ("PPL"). PPL alerted OCMO to its concerns of Verde's alleged deceptive marketing practices and unauthorized account access and enrollment within PPL's service territory. Pursuant to Sections 802 and 1307 of the Commission's Procedures Manual, OCMO brought PPL's concerns to I&E's attention for review and investigation.

I&E initiated an informal investigation of Verde on September 9, 2019, as a result of information provided by OCMO relating to allegations of deceptive and misleading telemarketing practices, deceptive and misleading door-to-door sales, unauthorized account access, and unauthorized enrollment. As part of the investigation, I&E served two (2) sets of I&E data requests to Verde on September 9, 2019 and December 4, 2019, respectively. Additionally, I&E served a data request letter to PPL on September 18, 2019.

After reviewing both data requests responses, I&E determined that the issues identified in PPL's responses were much broader and encompassed more customers than the responses provided by Verde. Notably, in its response, PPL identified and provided 339 customer accounts that revealed deceptive or unauthorized behavior by Verde.

On January 30, 2020, I&E filed the Complaint alleging multiple counts of allegations, including but not limited to allegations related to deceptive and misleading sales tactics, enrolling customers without authorization (i.e., slamming) and accessing customer accounts without authorization in the PPL service territory. I&E sought a civil

penalty of \$8,833,000.00, the revocation of Verde's license to provide electric generation services in Pennsylvania, refunds for any bills rendered during the first two billing periods to any customer who was switched to Verde without consent, refunds to those customers who were charged an early cancellation fee from their prior supplier following an unauthorized switch, and any other relief or remedy as the Commission may deem appropriate.

On February 14, 2020, Verde filed a Motion for Extension of Time to submit its Answer. By Secretarial Letter dated February 14, 2020, Verde's Motion was granted.

On February 24, 2020, the Office of Consumer Advocate ("OCA") filed a Notice of Intervention and Public Statement.

Verde filed additional Motions for Extension of Time on March 30, 2020 and May 15, 2020, which were granted. The deadline for Verde's Answer to the Complaint was extended to June 30, 2020.

On June 30, 2020, the Parties filed a Joint Petition for Approval of Settlement resolving all issues raised in the Complaint. This Statement in Support is submitted in conjunction with the Settlement Agreement.

II. The Public Interest

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to I&E's Complaint involving allegations related to deceptive and misleading sales tactics, enrolling customers without authorization (i.e., slamming),

accessing customer accounts without authorization, and failure to maintain verification records in the PPL service territory.

The terms of the Settlement Agreement, as discussed in more detail below, fully address all allegations brought forth against Verde and provide not only a civil penalty, but refunds to those customers who were harmed by Verde's conduct. I&E's approach of seeking a civil penalty and refunds coupled with extensive marketing and training changes to Verde's business practices provides a corrective measure to both the customers who were harmed as well as ensure that future customers are not harmed by deceptive and misleading marketing practices and/or slamming.

I&E intended to prove the factual allegations set forth in the Complaint at a hearing to which Verde would have disputed. This Settlement Agreement results from the compromises of the Parties. I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, not to mention the potential challenges facing the Parties due to COVID-19 if this matter were litigated, the benefits to amicably resolve the disputed issues through settlement outweigh the risks and expenditures of litigation. I&E submits that the settlement constitutes a reasonable, fair compromise of the issues presented in the Complaint and is in the public interest. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

III. Terms of Settlement

Under the terms of the Settlement Agreement, I&E and Verde have agreed to the following:

A. Penalty and Contribution to EDC Hardship Fund

1. Verde shall pay a civil penalty in the amount of \$1,000,000.00.

Verde shall not claim a tax deduction for the \$1,000,000.00 civil penalty and no amount of the civil penalty shall be passed through as an additional charge to Verde's customers in Pennsylvania.

2. Verde shall make a contribution of \$75,000.00 to PPL's hardship fund.

B. Refunds

3. For each customer identified in the Complaint that actually enrolled with Verde, Verde will provide a refund equal to their first two months of electricity supply charges, less any amounts previously refunded to that customer.

4. For customers who allege unauthorized enrollment by Verde, and who were actually charged and paid early termination fees ("ETF") to their prior supplier, Verde would refund those ETFs, upon receipt of proof of payment by customer.

5. No customer shall be paid any refunds without executing a "Release of Claims" pursuant to which the customer agrees, in exchange for payment of the funds, to release, acquit, and forever discharge the Company and all of its current and former officers, shareholders, and employees from any and all claims related

to the conduct alleged in the Complaint over which the Commission has jurisdiction.

6. That the refunds described in this section shall be provided within sixty (60) days of the date of entry of the Final Order in this proceeding.

C. Voluntary Modification to Business Practices

7. Modifications to Business Practices:

a. In addition to complying with all Commission regulations, Orders and policies, Verde shall implement the following modifications to its business practices in Pennsylvania and with respect to Pennsylvania customers:

8. Marketing Moratorium:

a. Verde voluntarily ceased its in-person marketing and telemarketing in Pennsylvania on or about February 6, 2020. Verde agrees to continue its moratorium on marketing and telemarketing in Pennsylvania for an additional six (6) months after Commission approval of this Settlement Agreement or until May 31, 2021,² whichever is earlier. In addition, even after the expiration of the moratorium, Verde will not conduct any telemarketing or in-person marketing until the quality

² It should be noted that the Pennsylvania Public Utility Commission issued an Emergency Order on March 16, 2020 placing a moratorium on supplier door-to-door and in-person marketing in Pennsylvania. *See generally* M-2020-3019254. Thus, all electric generation suppliers have been prohibited from door-to-door and public, in-person marketing since March 16, 2020 and for the remainder of the pendency of the Proclamation of Disaster Emergency issued by Governor Tom Wolf. In the event that the voluntary marketing moratorium would cease during the pendency of the Proclamation of Disaster Emergency, the March 16, 2020 Emergency Order and marketing moratorium will remain in effect and take precedent.

assurances measures discussed below have been fully implemented and Verde provides confirmation of such information to I&E in writing. The moratorium described herein will not prevent Verde from enrolling new customers online or via the internet, and will not prevent Verde from contacting existing customers to renew their enrollment, or contacting customers by telephone based on inbound requests for information from prospective customers.

9. Limitations on Sales Activities

a. When Verde resumes telemarketing in Pennsylvania, it will restrict the number of telemarketing contacts to prospective customers, such that no prospective customer shall receive a contact from Verde more than three (3) times over any ninety (90) day period. This limitation can be modified by agreement of I&E upon request by Verde, if Verde demonstrates substantial compliance with the provisions of this Settlement.

b. When Verde resumes in-person marketing in Pennsylvania, it will utilize no more than one (1) in-person marketing vendor in any utility territory at a time. This limitation can be modified by agreement of I&E upon request by Verde, if Verde demonstrates substantial compliance with the provisions of this Settlement.

10. General Marketing Commitments:

a. Verde shall comply with all Pennsylvania laws, including the Public Utility Code, 66 Pa. C.S. § 101 *et seq.*, the Unfair Trade Practices

and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (hereinafter “Consumer Protection Law”), and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* (hereinafter “TRA”), and other applicable laws, as well as Commission regulations, Orders and policies.

b. Verde commits that the Company, its agents, employees and representatives shall not make misrepresentations to residential or small business consumers.

c. Verde will provide timely notice of door-to-door marketing activity to the Commission’s Bureau of Consumer Services and the EDCs as required by the Commission’s regulations.

d. Verde will complete an internal review of all its third-party vendors to ensure compliance with the Public Utility Code, 66 Pa. C.S. § 101 *et seq.*, the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (hereinafter “Consumer Protection Law”), and the Telemarketer Registration Act, 73 P.S. § 2241, *et seq.* (hereinafter “TRA”), and other applicable laws, as well as Commission regulations, Orders and policies.

e. Verde will implement a new Third-Party Verification (“TPV”) platform which will include the following:

i. Ensure compliance with the applicable law by creating an internal audit system based on analytics; and

- ii. Ensure that the TPV call center contains bilingual individuals who can accurately confirm the sale in the potential customer's native or preferred language.

11. Compliance Plan:

a. At a minimum, the compliance plan shall include the following:

- i. Training- In General: Verde shall ensure that its training program for internal and external sales representatives meets the requirements of this section.
 - (1) Prior to the resumption of marketing in Pennsylvania, Verde shall provide to I&E a detailed description of the sales training and sales quality assurance program that Verde intends to implement prior to the resumption of marketing in Pennsylvania.
 - (2) After a 30-day review period, the Verde will meet with I&E and designated Commission staff to review and discuss the training and quality assurance program.
- ii. Verde's training materials for its sales representatives and customer service representatives will accurately and comprehensively cover the following:
 - (1) The applicable requirements of the Public Utility Code and the Commission's regulations, Orders and policies regarding marketing and billing practices for EGSs;
 - (2) The applicable requirements of the Consumer Protection Law and TRA, including both prohibited practices and affirmative requirements;

- (3) The applicable requirements of the Commission's regulations regarding door-to-door sales and other applicable state and federal law;
- (4) Training to marketing and customer service representatives on the proper use of the Eligible Customer List and releasing private customer information.
- (5) Training to all customer service representatives and marketing persons to identify themselves, identify his/her representation of Verde, and provide the reasoning for the phone call or in-person meeting upon first contact.
- (6) Training to all marketing persons on the different charges on the electric bill and which charge relates to the generation of electricity.
- (7) Training to all marketing persons on conducting a no-pressure sales call or in-person meeting, and enforcing the concept that a customer is not required to choose a supplier or switch suppliers. Verde will enforce that threatening a customer to switch will not be tolerated.
- (8) An express warning that deceptive sales practices will not be tolerated by Verde's management;
- (9) An express warning and material description of the remedial steps that will be taken against any sales representatives and customer service representatives that violate any term of this Settlement or otherwise engage in improper sales practices; and
- (10) A description of the quality assurance, monitoring, auditing and reporting practices Verde maintains to identify and prevent improper sales practices.

- iii. Verde shall implement and conduct the training and ensure that its internal sales representatives and third-party sales agents comply with the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.
- iv. Individual marketers retained by Verde shall be required to successfully complete Verde's training program. Each trainee shall be required to sign a form acknowledging that he or she has received and understands the information provided in Verde's training materials before marketing to and enrolling customers on behalf of Verde.
- v. Verde will review all paper and physical marketing tools provided to in-person sales to ensure that the documentation does not include any misleading information concerning a relationship with the local EDC, incorrect information on the EDC's rates, or the EDC's logo. This review will also include any sales script provided to telemarketers.
- vi. Verde will review all paper and physical marketing tools provided to in-person sales to ensure that the documentation does not include any misleading information concerning a relationship with other electric generations suppliers (EGS), incorrect information on the EGS's rates, or the EGS's logo. This review will also include any sales script provided to telemarketers.
- vii. Verde will ensure that all door-to-door sales persons and other in-person marketers will be issued a uniform which clearly displays Verde's logo and/or name. Verde maintains its discretion of what will constitute as the "uniform."
- viii. Verde will ensure that all door-to-door sales persons and other in-person marketers are issued a badge with the person's name and Verde's logo and/or name, and that training will be provided on the proper display of such badge during in-person marketing activities.

- ix. Verde will create and implement a compliance program to ensure that all in-person marketing follows the prior two directives, (vii) and (viii).
- x. Verde will implement an internal call system to ensure that all customer service calls, solicitations, and telemarketing are transmitted through a telephone number bearing Verde's name on the caller-ID. Verde will ensure that all business transactions and calls to potential or existing customers will be through its internal call system.
- xi. Verde will confirm that at least 25% of its call center representatives are bilingual and are fluent in the potential and existing customer's native or preferred language.

12. Compliance Monitoring- Sales Calls:

a. Verde shall increase internal quality control efforts to include at least the following:

- i. Verde shall record all telephonic communications between Pennsylvania customers and Verde's customer service representative and maintain such call recordings for a period of at least ninety (90) days.
- ii. Verde shall require its telemarketers to record all communications with residential and small business consumers in Pennsylvania that result in a sale. The Verde representative will record every call placed to potential customers (with proper notice of the call being recorded provided to the potential customer), but will maintain a record all of calls that result in a sale. Verde has the discretion to not keep and maintain those calls which do not result in a sale, unless if Verde decides to use such calls for quality and compliance assurance.
- iii. Verde shall maintain such recordings in accordance with the Commission's requirements.

iv. Verde shall, on a monthly basis, review a random sample of calls recorded from each of Verde's agents and third-party contractors in order to evaluate the sales practices employed and ensure that the sales practices comply with this Settlement Agreement, the Public Utility Code, the Consumer Protection Law, the TRA, and Commission regulations, Orders and policies.

(1) The sample shall include no fewer than three (3) sales for each sales representative conducting sales solicitations for Verde to Pennsylvania customers.

(2) Whenever such sample reveals one or more non-compliant sales calls by an agent, third-party contractor or sales representative, Verde shall investigate whether other Pennsylvania consumers enrolled by the agent, third-party contractor or sales representative were subjected to sales practices that violated this Settlement Agreement, the Public Utility Code, the Consumer Protection Law, the TRA, or Commission regulations, Orders and policies. Such investigation, at a minimum, shall include a review of the sales calls and call notes for the ten (10) Pennsylvania consumers enrolled before the call in question and the ten (10) Pennsylvania consumers enrolled after the call in question.

(3) If Verde identifies additional non-compliant sales calls, Verde shall implement remedial steps as described below.

(a) If the consumer did not file a complaint or allege slamming on the part of the Verde representative but the call was otherwise not in accordance with the Commission's regulations and the Public Utility Code, Verde shall offer to any residential or small business consumer subjected to the non-compliant sales

practices a refund equal to the difference between the price charged by Verde and the consumer's applicable Price to Compare for the period in which the consumer was a customer as a result of the non-compliant sales practice. Such refund shall be paid to the consumer within thirty (30) business days.

- (b) If the consumer did file a complaint or allege slamming on the part of the Verde representative, Verde will follow the customer dispute process provided in 52 Pa. Code § 57.177.
- (c) In the event Verde determines that a sales representative has violated any terms of this Settlement Agreement, the Public Utility Code, the Consumer Protection Law, the TRA, or Commission regulations, Orders and policies or otherwise engaged in improper sales practices, Verde shall take prompt remedial actions against such representative.

13. Reporting: Within ninety (90) days of implementation of the resumption of marketing in Pennsylvania and quarterly thereafter for a period of two (2) years, Verde shall provide to I&E:

- a. An explanation of all internal audits and investigations performed during the reporting period, including a detailed description of the amount of calls reviewed pursuant to this Settlement and including a description of the audit(s) or investigation(s) performed as well as the results thereof and

b. A summary of the number and type of customer complaints and disputes received by Verde during the reporting period.

14. Policy Changes: Verde agrees to provide I&E with written notice of any changes to its practices and procedures related to marketing to Pennsylvania consumers for EGS products and services. This provision will remain in effect for two (2) years following the entry of the Commission's Final Order and may be extended at the discretion of I&E.

IV. Legal Standard for Settlement Agreements

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. “The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a ‘burden of proof’ standard, as is utilized for contested matters.” *Pa. Pub. Util. Comm’n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, et al. (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the

Public Utility Code and Commission Regulations (“Policy Statement”), 52 Pa. Code § 69.1201; *see also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission’s Policy Statement sets forth ten (10) factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest.” *Id.*

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher civil penalty while conduct that is less egregious warrants a lower amount. 52 Pa. Code § 69.1201(c)(1). I&E alleges that the conduct in this matter involves 4 actions: Slamming, the unauthorized switch of a customer’s supplier; Deceptive and Misleading Sales Practices; Releasing Private Customer Information/Unauthorized Account Access; and Failure to Maintain Verification Records. All of these actions were the result of fraudulent conduct or misrepresentations on the part of Verde and/or its agents and are of a serious nature.

The Commission has a zero-tolerance policy for slamming. *See, e.g., Pa. PUC v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric, et al.*, Docket No. M-2013-2325122 (Order entered October 2, 2014); *Pa. PUC v. MXenergy Electric Inc.*, Docket No. M-2012-2201861 (Order entered December 5, 2013); *Pa. PUC v. AP Gas & Electric (PA), LLC, d/b/a APG&E*, Docket No. M-2013-2311811 (Order entered October 17, 2013); and *Pa. PUC v. IDT Energy, Inc.*, Docket No. M-2013-2314312 (Order entered October 17, 2013). Here, I&E avers that Verde slammed 179 customers in the PPL service territory.

In addition to slamming, the extent of the fraudulent and misrepresentation included, but not limited to: failure to identify; misrepresenting as PPL or another generation supplier; providing false information as to the customer's current status with his/her supplier; providing false information as to the status of other generation supplier, such as suggesting that the supplier was going out of business; providing false or incorrect rate information; providing incorrect information on the distribution charge or customer charge; threatening to disconnect service; spoofing, using other companys' or businesses' phone number on the caller ID to entice customers to answer the call; suggesting or explicitly stating that the customer must switch suppliers; wearing clothing or providing documentation which included PPL's logo; failing to terminate contact with the customer after being informed of a language barrier or inability to understand; and using false stories to solicit the customer into providing his/her bill. Accordingly, the egregious nature of the conduct warrants a higher civil penalty.

The second factor considers whether the resulting consequences of Verde's

alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). I&E submits that no personal injury or property damage occurred as a result of the alleged violations. Nonetheless, as stated above, the Commission has a zero-tolerance policy for slamming. Furthermore, the deceptive, and sometimes hostile, conduct alleged in the Complaint creates public distrust and self-loathing towards the electric generation supplier shopping process.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “This factor may only be considered in evaluating litigated cases.” *Id.* Whether Verde’s alleged conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the Parties.

The fourth factor to be considered is whether Verde has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Verde voluntarily issued a moratorium on marketing once I&E brought the allegations to its attention. Additionally, in accordance with the settlement terms, Verde will make tremendous efforts to change its practices and procedures to prevent similar conduct from occurring in the future.

The fifth factor to be considered relates to the number of customers affected by the Company’s actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). I&E identified 339 PPL customers who filed complaints against Verde from the time period of February 2017 to November 2019. Of importance, some customers alleged that the

deceptive and misleading telemarketing calls occurred multiple times a day, some alleged multiple calls a day for a couple days, while others alleged multiple calls over a longer period of time. Verde voluntarily ceased marketing on or about February 6, 2020.

The sixth factor to be considered relates to the compliance history of Verde. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise complaint company may result in a lower penalty, whereas frequent, recurrent violations by a company may result in a higher penalty. *Id.* Verde became a jurisdictional electric generation supplier licensed by the Commission at Docket No. A-2010-2151038. I&E notes that this is its first investigation and formal complaint filed against Verde. However, there are numerous formal complaints filed by *pro se* complainants against Verde.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). I&E submits that Verde cooperated in the investigation in this matter, including cooperating in both informal discovery as well as settlement discussions.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E submits that a civil penalty amount of \$1,000,000.00, which is not tax deductible, combined with a \$75,000.00 payment to PPL's Hardship Fund, refunds equal to the amount of the first two months of electricity supply charges to customers who were slammed, refunds to those customer who were slammed and paid an early termination fee from their prior EGS, a moratorium on marketing and telemarketing in Pennsylvania for a prescribed time-frame, and

extensive training, marketing, and business practice changes/modifications is substantial and sufficient to deter Verde from committing future violations.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). The facts alleged in this case are voluminous and are not similar to past Commission decisions. However, I&E notes that the Commission imposes a \$1,000.00 civil penalty against companies for allegations of slamming and has imposed a higher civil penalty for egregious conduct. *See Pa. PUC v. Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric, et al.*, Docket No. M-2013-2325122 (Order entered October 2, 2014) (Commission approved a settlement agreement imposing a \$150,200.00 civil penalty for allegations of slamming and attempted slamming); *Hiko Energy, LLC v. Pa. Pub. Util. Comm'n*, 209 A.3d 246 (Pa. 2019) (Commission imposed a \$1,836,125.00 civil penalty against Hiko for the egregious conduct of overcharging customers during the polar vortex). Further, as in previous slamming matters, Verde agrees to undertake additional non-monetary corrective actions designed to prevent similar misconduct from occurring in the future.

The tenth factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). In support of the \$1,000,000.00 civil penalty, I&E notes that of the 339 customer accounts affected/impacted by Verde’s deceptive conduct, forty-one (41) identified as senior citizens, three (3) of the customers were deceased, twelve (12) of customers identified as infirmed/disabled or unwell, and at least twelve (12) of the customers alleged that Verde refused to cancel enrollments once the customer complained or brought the deceptive acts to its attention. Additionally, 16 of the complaints indicated


that Verde used private customer information to falsely report a power outage or falsely submit a disconnection of service request. All of these factors, in addition to the allegations brought forth in the Complaint, fully support the civil penalty amount and the affirmative actions to be taken by Verde and are in the public interest.

Additionally, I&E takes note of the current uncertainty and challenges facing the Parties during this COVID-19 pandemic. Due to COVID-19, a hearing in this matter would potentially have to be held virtually or telephonically, which would be a challenge to both Parties in light of the volume and type (paper, electronic recording, testimonial, etc.) of evidence which may be offered. Thus, whether the case was settled or litigated is of pivotal importance to this factor and allows the Parties to move forward and focus on implementing the agreed upon remedial actions without the challenges or time associated with litigation.

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Parties.

WHEREFORE, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the Settlement in its entirety without modification.

Respectfully submitted,



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Dated: June 30, 2020

Appendix B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau	:	
of Investigation and Enforcement,	:	
Complainant	:	
	:	Docket No. C-2020-3017229
v.	:	
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Verde Energy USA, Inc.,	:	
Respondent	:	

**STATEMENT IN SUPPORT OF SETTLEMENT OF
VERDE ENERGY, USA, INC.**

Pursuant to 52 Pa. Code §§ 5.231, 5.232, and 69.1201, Respondent, Verde Energy USA, Inc. (“Verde” or the “Company”), by its undersigned attorneys, submits this statement in support of the Joint Petition for Approval of Settlement, which is being filed in the above-captioned matter (“Settlement” or “Settlement Agreement”). For the reasons set forth below, the Settlement is reasonable and in the public interest, and, as such, should be approved by the Pennsylvania Public Utility Commission (“Commission”).

I. INTRODUCTION

This Settlement provides for a fair, reasonable, and expeditious resolution of a complicated and contested matter. Verde was first made aware of the Bureaus of Investigation & Enforcement (I&E)’s concerns regarding its marketing practices when I&E initiated its informal investigation of Verde on September 9, 2019. I&E informed Verde that it had received information from the Commission’s Office of Competitive Market Oversight (“OCMO”) relating to allegations that sales vendors of Verde used deceptive and misleading sales tactics, enrolled customers without authorization (i.e., slamming), and accessed customer accounts without authorization in the PPL service territory. Upon being notified of I&E’s informal investigation,

Verde immediately initiated its own investigation regarding the alleged actions of vendors acting on behalf of Verde. In addition, Verde fully cooperated with I&E's investigation by providing responses to two (2) data requests issued by I&E, which were served on Verde on September 9, 2019 and December 4, 2019, respectively. On January 30, 2020, I&E filed the Complaint in this matter, which alleged various conduct by vendors of Verde that violated the Commission's regulations in connection with 339 customer interactions. The Complaint also made allegations regarding deficient notification of door to door sales activity and improper account access by agents acting on behalf of Verde. In response, Verde voluntarily ceased all of its in-person sales and telemarketing activity in Pennsylvania on February 6, 2020, and has actively engaged with I&E throughout the entire investigation to provide additional information, address I&E's concerns, and suggest proposed corrective actions.

Verde recognizes the seriousness of the allegations set forth in the Complaint. The sales activity and customer interactions described in the Complaint were not committed by Verde employees or with their knowledge, involvement or approval. Rather, those allegations relate to the acts of third parties sales vendors. Nevertheless, Verde recognizes that the allegations implicate important vendor oversight concerns, and Verde is responsible for ensuring that its sales vendors comply with all applicable sales and marketing rules, regulations, orders and statutes. Therefore, as outlined in the Settlement Petition, Verde is committing to extensive reforms and new processes to ensure that when it resumes in-person marketing and telemarketing in Pennsylvania it is conducted in a fully compliant manner. In addition to the voluntary marketing moratorium that Verde enacted upon the filing of the Complaint, Verde has agreed to continue to cease all in-person marketing and telemarketing in Pennsylvania for an additional six (6) months after the Commission's approval of this Settlement Agreement or until May 31, 2021,

whichever is earlier. Verde also has committed to developing and implementing a new sales quality assurance program which includes a detailed sales agent training program, clear restrictions on sales vendor activity, vendor screening, recording of telemarketing sales calls, a new sales verification system, a sales compliance and quality assurance monitoring program, new staffing commitments for compliance purposes, and ongoing reporting obligations. Importantly, Verde will not resume in-person or telemarketing in Pennsylvania until it has fully implemented its new sales training and quality assurance program and provides written confirmation of such implementation. With the new sales compliance program being implemented in connection with this Settlement, Verde intends to go far beyond minimum compliance with the applicable provisions of the Public Utility Code and Commissions' regulations, orders, and decisions. Verde's goal is to develop a best-in-class program that will set Verde apart as a leader in in marketing and compliance related matters.

II. THE SETTLEMENT IS IN THE PUBLIC INTEREST AND SHOULD BE APPROVED BY THE COMMISSION

It is the Commission's policy to encourage settlements. *See* 52 Pa. Code § 5.231. Settlements decrease the time and expense the parties must expend litigating a case and, at the same time, conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. "The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a 'burden of proof' standard, as is utilized for contested matters." *Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in

the public interest. *See Pa. Pub. Util. Comm'n LBPS v. PPL Utilities Corporation*, M-2009-2058182 (Order entered November 23, 2009); *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, M-00031768 (Order entered January 7, 2004); 52 Pa. Code § 69.1201; *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered April 1, 1996); *Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates*, 74 Pa. PUC 767 (1991).

Verde submits that approval of the Settlement in this matter is consistent with the Commission's Policy for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations ("Policy Statement"). 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic Pa., Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for an alleged violation is reasonable and in the public interest. 52 Pa. Code § 69.1201(a).

These factors are: (i) Whether the conduct at issue was of a serious nature; (ii) Whether the resulting consequences of the conduct at issue were of a serious nature; (iii) Whether the conduct at issue was deemed intentional or negligent; (iv) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) The number of customers affected and the duration of the violation; (vi) The compliance history of the regulated entity that committed the violation; (vii) Whether the regulated entity cooperated with the Commission's investigation; (viii) The amount of the civil penalty or fine necessary to deter future violations; (ix) Past Commission decision in similar situations; and (x) Other relevant factors. 52 Pa. Code. § 69.1201(c).

The Commission will not apply the standards as strictly in settled cases as in litigated cases. *Id.* at § 69.1201(b). In settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” *Id.*

Verde submits that the Settlement is in the public interest because it is a complete and final resolution of this proceeding, which effectively addresses the issues that were the subject of the Complaint, avoids the time and expense of litigation and possible appeals, and provides immediate, concrete benefits to Verde’s current and former customers that would otherwise be unavailable in the near term.

Verde further submits that approval of this Settlement is consistent with the factors and standards for evaluating litigated and settled proceedings, as articulated in *Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company*, Docket No. C-0092409 (Order entered February 10, 2000) and codified in the Commission’s Policy Statement at 52 Pa. Code § 69.1201.

The ten factors of the Policy Statement, as applied to this Settlement are addressed below:

1. The first factor to be considered under the Policy Statement is whether the alleged actions were of a serious nature, such as willful fraud or misrepresentation, or were merely administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). Verde acknowledges that the actions alleged in I&E’s Complaint are serious in nature, as they involved various alleged violations of the Public Utility Code and the Commission’s regulations. Furthermore, Verde agrees with the Commission’s zero tolerance policy towards slamming and takes such allegations seriously. Therefore, Verde submits that the alleged actions of vendors acting on its behalf as set

forth in I&E's Complaint are of serious nature and were appropriately considered in arriving at the civil penalty in this Settlement.

2. The second factor considers whether the resulting consequences of the actions were of a serious nature. 52 Pa. Code. § 69.1201(c)(2). Section 69.1201(c)(2) of the Commission's regulations state that "[w]hen consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty." *Id.* While Verde agrees that the allegations in I&E's Complaint are serious, the consequences of such alleged actions show that they did not cause personal injury or property damage. Therefore, Verde asserts that the resulting consequences of the actions of vendors marketing on Verde's behalf were not of a serious nature. Regardless, Verde takes the allegations very seriously, and, Verde proposed consequential terms and conditions to address the allegations, which were ultimately agreed to and included in the Settlement. First, the Settlement provides for the issuance of refunds to affected customers identified in the Complaint that actually enrolled with Verde. Where applicable, such refunds will be equal to those customers' first two months of electricity supply charges from Verde. Also, Verde will refund the early terminations fees actually charged and paid for by customers who alleged unauthorized enrollment by Verde. More significantly, Verde has agreed to pay a civil penalty of \$1,000,000 and contribute \$75,000 to the EDC's hardship fund to assist customers with the payment of their electricity bills. The Company has proposed and agreed to numerous modifications to its business practices, including a lengthy moratorium on marketing in Pennsylvania. The modifications agreed to by Verde and I&E include, but are not limited to, a wide range of changes to the Company's sales training program, restrictions on sales activities, a new sales verification program, a new sales quality assurance program, vendor screening, and recording of sales calls. The Settlement also includes

ongoing compliance and reporting requirements to allow the implementation of the modifications to be verified. These measures are appropriately designed to respond to the serious nature of the allegations, and therefore are commensurate with the second standard for evaluation of the Settlement.

3. The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “This factor may only be considered in evaluating litigated cases.” *Id.* Since this matter is being resolved by settlement of the parties, this factor is not relevant here.

4. The fourth factor to be considered under the Policy Statement is whether the Respondent has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Prior to the filing of the Complaint by I&E, Verde had already begun the process of overhauling its sales and compliance operations. Verde terminated most of its sales vendors even before the I&E made its initial contact to Verde. Top personnel responsible for sales operations have departed the company, and Verde now has a completely new sales leadership team in place with a renewed commitment to improving oversight of sales. As discussed earlier, upon learning of the investigation by I&E, Verde immediately began its own investigation into any alleged misconduct engaged in by its vendors. Also, Verde voluntarily ceased marketing in Pennsylvania and has agreed to a continued moratorium of in-person marketing and telemarketing activities in Pennsylvania in accordance with the terms of the Settlement. The Settlement outlines additional steps that the Company has agreed to take to modify internal practices and procedures to address the conduct alleged in the Complaint. The Company has agreed to substantial changes in its marketing practices and third-party verification procedures in order to address the alleged conduct and to avoid similar incidents in the future.

(Settlement at pp. 45-52). These changes are intended to result in a sales and quality assurance framework that will be a model for the industry to follow for years to come. The Settlement also includes ongoing compliance and reporting requirements to allow the implementation of the modifications to be verified. All of these factors demonstrate that Verde has made efforts to change its practices and procedures to prevent similar conduct in the future, which supports approval of the Settlement.

5. The fifth factor to be considered under the Policy Statement relates to the number of customers affected by the Company's actions and the duration of its violations. 52 Pa. Code § 69.1201(c)(5). The Complaint stemmed primarily from interactions by vendors of Verde with 339 customers, some of which alleged that they were enrolled with Verde without their authorization. It should be noted that not all of the 339 customers enrolled with Verde. A substantial portion of the customers never enrolled with Verde, but reported concerns about Verde sales vendors' activity to PPL.¹ Under the terms of the Settlement, Verde will provide refunds to those customers identified in the Complaint that actually enrolled with Verde. Also, Verde will refund the early terminations fees actually charged to and paid for by customers who alleged unauthorized enrollment by Verde. Furthermore, the agreed upon civil penalty of \$1,000,000 and the \$75,000 contribution to the EDC's hardship fund (which will benefit all low-income consumers in the EDCs' territories and not solely the customers of Verde), is designed to

¹ The Complaint also alleged the improper accessing of a large number of customer accounts by vendors acting on Verde's behalf. However, while the allegations related to that matter are certainly troubling, there is little to no information about the issue in the Complaint or from the I&E's investigation which justifies making Verde responsible for the unauthorized account access. I&E's investigation materials indicate that the improper account access clearly seems to be the work of an unscrupulous actor who was working for multiple suppliers. Verde was unaware of these alleged actions and certainly did not authorize them.

address the concern that Verde shares with I&E regarding the number of customers potentially impacted by the alleged actions of vendors acting on behalf of Verde.

6. The sixth factor to be considered under the Policy Statement is the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). “An isolated incident from an otherwise compliant company may result in a lower penalty.” *Id.* Verde has a satisfactory compliance history with the Public Utility Code and the Commission’s regulations.

7. The seventh factor to be considered under the Policy Statement relates to whether the Respondent cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). Verde fully cooperated with I&E both prior to and during the pendency of this proceeding, including providing significant amounts of information and data both formally and informally during settlement discussions.

8. The eighth factor to be considered is the amount of the civil penalty necessary to deter future violations as well as past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(8). With respect to this factor, Verde respectfully submits that the size of the civil penalty agreed to (\$1,000,000) is a significant deterrent to not just Verde, but to other EGSs marketing in Pennsylvania as well. From the beginning of discussions with I&E, Verde made it clear that it fully accepts any alleged wrongdoing done by vendors acting on its behalf. Verde also made it clear that it was independently overhauling its business practices in order to develop and implement marketing practices and training programs that are based on industry-wide best practices. Verde realizes that a significant factor in demonstrating its commitment to being an industry leader in marketing and compliance related matters is reflected in its willingness to accept responsibility for alleged wrongdoing done by its vendors by agreeing to pay one of the largest civil penalties brought before the Commission. On the basis of the number of improper

customer interactions alleged in the Complaint, the civil penalty which Verde has agreed to is consistent with or exceeds civil penalties imposed previously by the Commission in connection with allegations of deceptive and misleading marketing practices, unauthorized account access, and unauthorized enrollments. In addition, as previously stated, Verde will offer refunds to affected customers who enrolled with Verde, and it will make a \$75,000 contribution to the EDC's hardship fund. As such, Verde submits that the total amount of refund payments, civil penalty, and hardship contributions to be made by the Company is clearly sufficient to deter future violations and, therefore, constitutes a reasonable and appropriate amount to resolve this proceeding.

9. The ninth factor to be considered under the Policy Statement relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). The civil penalty which Verde has agreed to is consistent with or exceeds civil penalties imposed previously by the Commission in connection with allegations of deceptive and misleading marketing practices, unauthorized account access, and unauthorized enrollments.² This is based, in part, on Verde acknowledging the Commission's zero tolerance of unauthorized enrollments,³ as well as deferring to prior Commission decisions as they relate to civil penalties associated with allegations of deceptive and misleading marketing practices and unauthorized account access.⁴ Accordingly, the Company submits that approval of the Settlement Agreement is reasonable and appropriate and consistent with prior Commission decisions.

² Under 66 Pa.C.S. § 3301, the maximum civil penalty is \$1,000 per violation. While the Complaint identified 339 customer interactions, it alleged multiple violations per interaction.

³ See *Pa. Pub. Util. Comm'n, Law Bureau Prosecutory Staff v. MXenergy Electric, Inc.*, Docket No. M-2012-2201861 (Order entered August 29, 2013); See also *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Energy Service Providers, Inc. d/b/a Pa. Gas & Electric and U.S. Gas & Electric, Inc. d/b/a Pa. Gas & Electric*, Docket No. M-2013-2325122 (Order entered October 2, 2014).

⁴ See *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Great American Power, LLC*, Docket No. M-2018-2617335 (Order entered July 11, 2019).

10. The tenth factor to consider is “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). It goes without saying that all settlements avoid the time, expense, and uncertainty of litigation, which is why the Commission generally encourages settlements as being in the public interest. Approval of the Settlement of the present case is especially beneficial to the public interest because of the unique and complex issues involved, the amount of time that would be required to litigate the case to conclusion, the considerable uncertainty over the outcome, and the immediate customer refunds to be issued as a result of the Settlement. As evidenced by the various communications engaged in throughout the course of this proceeding, there was considerable disagreement between the parties over the legal and factual issues raised by the Complaint. Both I&E and Verde acknowledge that a considerable amount of resources and time would need to be devoted to litigate this matter to its conclusion. By contrast, the Settlement immediately and comprehensively resolves all of the allegations made in the Complaint, establishes a framework to immediately provide refunds to affected customers, and outlines detailed modifications to business practices to implement industry-wide best practices. The Settlement thus provides immediate, concrete benefits to the public that would otherwise be unavailable in the near term. As such, the Settlement meets the criteria for approval of settlements involving allegations of violations of the Public Utility Code and the Commission’s regulations set forth in the Commission’s Policy Statement at 52 Pa. Code § 69.1201. However, the most significant aspects of the Settlement go beyond the criteria enumerated in the Policy Statement.

In summary, Verde respectfully submits that an evaluation of the Settlement Agreement under the factors and standards enunciated in the Commission’s Policy Statement justifies expeditious approval of the Settlement without modification. The Settlement allows the

highly contested allegations of the Complaint to be resolved with no finding of wrongdoing or violation, but provides for a significant civil penalty and business modifications that are commensurate with the nature of the allegations and the number of customers affected (as stated in the Complaint), while avoiding the significant time, expense, and uncertainty of litigating the matter to conclusion. For these reasons, approval of the Settlement Agreement is reasonable and in the public interest.

III. CONCLUSION

Verde respectfully submits that the above-captioned Settlement is in the public interest and should be approved and, therefore, requests that the Commission approve such Settlement without modification.

Respectfully Submitted,

STEVENS & LEE



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DATE: June 30, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2020-3017229
	:	
Verde Energy USA, Inc.	:	
Respondent	:	


CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Joint Petition for Approval of Settlement and Statements in Support** dated June 30, 2020, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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