

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**PREHEARING CONFERENCE MEMORANDUM  
OF  
VERDE ENERGY USA, INC.**

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In accordance with 52 Pa. Code § 5.222 and the July 31, 2020 Prehearing Conference Order issued by Administrative Law Judge Christopher Pell, Respondent, Verde Energy USA, Inc. (“Verde”), respectfully submits its Prehearing Conference Memorandum in the above-captioned matter.

**I. BACKGROUND AND OVERVIEW OF ISSUES FOR RESOLUTION**

Verde is a licensed Electric Generation Supplier (“EGS”) in Pennsylvania. On January 30, 2020, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) filed a Formal Complaint against Verde. The Formal Complaint alleged various conduct by vendors of Verde that violated the Commission’s regulations in connection with 339 customer interactions by marketing representatives acting on behalf of Verde, as well as violations associated with vendors obtaining access to customer accounts without authorization, and failure to provide required notices of door to door marketing activity. The Office of Consumer Advocate (“OCA” filed a Notice of Intervention and Public Statement on February 24, 2020.

Verde immediately began investigating the allegations in the Formal Complaint, as Verde had no prior information regarding any of the allegations. Acknowledging the seriousness of the allegations, Verde voluntarily ceased its marketing its EGS services in Pennsylvania on February 6, 2020. Uncontested Motions for Extension of Time of the deadline for the filing of the Verde's Answer to the Formal Complaint were filed on February 14, 2020, March 30, 2020, and May 15, 2020. Verde actively engaged with I&E to address the allegations, and ultimately Verde and I&E reached a full Settlement of the Formal Complaint. On June 30, 2020, Verde filed its Answer to the Formal Complaint. On the same day, Verde and I&E filed a Joint Petition for Settlement of the Complaint ("Joint Petition") and Statements in Support thereof.

The Joint Petition fully addresses all of the Formal Complaint's allegations against Verde. The Joint Petition provides for a significant civil penalty, refunds to those customers who were identified as being impacted by the conduct alleged in the Formal Complaint, a significant contribution's to PPL's hardship fund to assist customers with the payment of their electricity bills, a lengthy prohibition on Verde's marketing in Pennsylvania, a requirement to implement detailed compliance plan before the resumption of marketing, and ongoing monitoring and reporting requirements. The civil penalty, refunds and hardship fund contributions, coupled with extensive changes to Verde's sales and marketing practices , provide relief to customers who were alleged to have been harmed and ensures that future customers are not harmed by the actions alleged in the Complaint. The specific terms and conditions, as well as the corrective measures to be implemented by Verde, are addressed in full detail in the Joint Petition and in both I&E and Verde's Statements in Support of the Joint Petition, respectively.

OCA declined to join in the Joint Petition. On July 10, 2020, OCA filed a letter stating its intention to file a Statement in Opposition to the Joint Petition and requested that the Commission assign the matter to an Administrative Law Judge. On July 20, 2020, OCA filed its Statement in Opposition stating that it cannot support the Joint Petition, if at all, until it has the opportunity to fully explore the allegations in the Formal Complaint while it seeks further discovery from Verde.

To date, OCA has issued and Verde has or is in the process of responding to three (3) sets of discovery requests. With both the Complainant (I&E) and Verde having agreed to a full Settlement of the Formal Complaint, and with both parties agreeing that the approval of the Joint Petition is warranted and in the public interest, Verde's position is that the Joint Petition is ripe for disposition and that no further litigation is required. Litigation will only delay the implementation of the retroactive and prospective relief provided for in the Settlement, and therefore would not be in the public interest.

## **II. REPRESENTATION AND SERVICE LIST**

Verde is represented in this matter by Michael A. Gruin and Timothy K. McHugh of Stevens & Lee. Copies of all documents should be served on Verde as follows:

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### **III. PROPOSED PLAN AND SCHEDULE OF DISCOVERY**

Verde's position is that no further discovery is needed in this matter. If further discovery is allowed and the Joint Petition is not approved, it will only delay and/or deprive immediate, concrete benefits to customers that would otherwise be unavailable in the near term, and would delay the implementation of the prospective corrective measures provided for in the Joint Petition. Furthermore, both I&E and Verde agree that the Joint Petition 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 Formal Complaint and avoids the time and expense of litigation and possible appeals.

Verde does not propose any modifications to the Commission's discovery regulations, but is amenable to considering any reasonable modifications proposed by the other parties.

To the extent that litigation and discovery proceed, Verde would request the issuance of a Protective Order, and will work with the parties to prepare a Stipulated Motion for Protective Order to be filed in advance of the Prehearing Conference.

### **IV. POSSIBILITY OF SETTLEMENT**

A full Settlement of the Formal Complaint has already been reached between the Complainant and the Respondent. The Joint Petition includes a significant civil penalty, contributions to the EDC's hardship fund, and refunds to customers identified in the Formal Complaint that actually enrolled with Verde and to those who were actually charged and paid early termination fees as a result of the alleged unauthorized enrollment by vendors acting on behalf of Verde. Furthermore, the Joint Petition provides for business modifications that are commensurate with the nature of the allegations and the number of customers affected (as stated

in the Formal Complaint), while avoiding the significant time, expense, and uncertainty of litigating the matter to conclusion. The Joint Petition is reasonable and in the public interest, and, as such, Verde would request that the Joint Petition be approved and that a Recommended Decision approving the Joint Petition be issued at the earliest possible time.

## V. ISSUES

The Formal Complaint alleges various conduct by vendors acting on behalf 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 vendors acting on behalf of Verde.

However, since a full Settlement has been reached between Complainant and Respondent, and a Joint Petition for Settlement has been filed detailing such, the sole issue for resolution is whether the Joint Petition should be approved. 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-20092058182 (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). As explained in detail

in both I&E and Verde's Statement in Support of the Joint Petition for Approval of Settlement, the Joint Petition is consistent with the Commission's Policy for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations. 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic Pa., Inc.*, Docket No. C-00992409 (Order entered March 16, 2000).

## **VI. AMOUNT OF HEARING TIME NEEDED**

Verde submits that hearings are not necessary in this matter for the reasons set forth above. A full Settlement has already been reached between the Complainant and Respondent, and the OCA has had the opportunity to seek discovery, obtain information needed to evaluate the Settlement, and provide its position on the Settlement.

## **VII. WITNESSES**

As set forth above, Verde's position is that no testimony or hearings are required. To the extent that testimony is required, the witnesses that Verde will call will depend in large part on the issues that remain to be litigated if any. As such, Verde has not identified its witnesses at this time. To the extent litigation is required, Verde reserves the right to identify and present the testimony of witnesses, as necessary, in direct, rebuttal, surrebuttal, and rejoinder phases of these proceedings, in accordance with the schedule adopted in this proceeding.

### VIII. PROPOSED LITIGATION SCHEDULE

Verde submits that a litigation schedule is not necessary in this matter because the Complainant and Respondent have reached 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 that would otherwise be unavailable in the near term.

Respectfully submitted,

STEVENS & LEE

A handwritten signature in blue ink that reads "Michael A. Gruin". The signature is written in a cursive style and is positioned above a horizontal line.

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COUNSEL FOR VERDE ENERGY USA, INC.

DATE: August 21, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the enclosed Prehearing Conference Memorandum upon the parties listed below, in accordance with the requirements of § 1.54 (relating to service by a party)

**VIA ELECTRONIC MAIL**

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August 21, 2020



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Michael A. Gruin, Esq.