

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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August 21, 2020

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Laura J. Antinucci
Laura J. Antinucci
Assistant Consumer Advocate
PA Attorney I.D. # 327217
E-Mail: LAntinucci@paoca.org

Enclosures:

cc: The Honorable Christopher P. Pell (**email only**)
Certificate of Service

*294501

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Prehearing Memorandum, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 21st day of August 2020.

SERVICE BY E-MAIL ONLY

Kayla L. Rost, Esquire
Matthew C. Fallings, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
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Michael A. Gruin, Esquire
Stevens & Lee
17 North Second Street
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/s/ Laura J. Antinucci
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Dated: August 21, 2020
*294500

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333(a) of the Public Utility Code, 66 Pa. C.S. § 333(a), and in response to the Prehearing Conference Order issued on July 31, 2020, the Office of Consumer Advocate (OCA) provides the following information:

I. INTRODUCTION.

On January 30, 2020, the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (I&E) filed a Formal Complaint against Verde Energy USA, Inc. (Verde) alleging, *inter alia*, that from February 2017 up to the date of the Complaint, Verde engaged in deceptive and misleading tactics while conducting door-to-door and telemarketing sales, enrolled customers without authorization (i.e., slamming) and accessed customer accounts without authorization. See I&E’s Non-Proprietary Formal Complaint at 4-5 (Formal Complaint). The allegations stemmed from an initial informal investigation by I&E of Verde during which PPL Electric Utilities (PPL Electric), in response to I&E-served data requests, identified and provided 339 customer accounts allegedly affected by Verde’s alleged conduct. Id. The group of customers impacted by Verde’s alleged improper conduct included some of Pennsylvania’s most vulnerable populations: forty-one (41) customers identified as senior citizens, twelve (12) customers

identified as infirmed, disabled or unwell, and three (3) enrolled customers were deceased. Id. at 6. I&E requested, as relief, a total civil penalty of \$8,883,000.00, license revocation, refunds in the amount of the first two billing periods to customers whose electricity supply was changed without their consent, and refunds in the amount of any cancellation fees charged to customers for switching suppliers as a result of an unauthorized switch. Id. at 18-19.

On February 14, 2020, Verde was granted an extension of time to file an Answer to the Complaint. The Office of Consumer Advocate (OCA) filed a Notice of Intervention on February 21, 2020 to protect the interests of consumers in this proceeding before the Commission. Following the OCA's intervention, on March 30, 2020 and again, on May 15, 2020, Verde requested an extension of time to file its Answer. Prior to each request, Verde notified the OCA of the planned request and asked if there were any objections on behalf of the OCA. The OCA was not provided a reason for the request for extensions of time, but nonetheless stated no objection to Verde's requests given the occurrence of the COVID-19 pandemic. As no Answer had yet been filed to the Complaint, the OCA refrained from conducting its own discovery in this matter.

On May 20, 2020, the OCA—given the further extension to file and answer and potential delay—contacted I&E about accessing the confidential data requests and responses in this matter in order to initiate its review of the available information and begin drafting its own discovery. The OCA received the confidential responses to I&E data requests on May 22, 2020 and began its review and drafting of additional discovery. In the process of gaining access to an online data room to examine the complete responses from Verde to the I&E data requests, the OCA was notified for the first time during a call with Verde's counsel on May 26, 2020 that Joint Petitioners had been engaged in settlement negotiations dating back to before the Complaint filing on January 30, 2020 and that Joint Petitioners had reached a near complete settlement. While Verde's Counsel urged

the OCA to hear the details of the proposed settlement, the OCA declined because it was the OCA's view that the settlement was premature and negotiated before the OCA was able to conduct discovery into the allegations in the Complaint. The OCA was not notified of any meetings or discussions concerning the development of this settlement prior to the oral notice on May 26, 2020 and was not included in any settlement negotiations that led up to the proposed settlement. The draft of the settlement was provided to the OCA in an email attachment on May 27, 2020 and counsel for Verde requested that the OCA provide its position and any input on the settlement. Per the email, Joint Petitioners had agreed to nearly all of the terms except for the civil penalty amount.

The OCA served Set I interrogatories to Verde on June 1, 2020. Many of the OCA's interrogatories and requests for documents sought to explore further the information reviewed in Verde's responses to I&E's data requests. After examination of the responses provided to OCA Set I and the Answer to the Complaint filed by Verde on June 30, 2020, the OCA served follow-up discovery, OCA Set II, on July 6, 2020. On July 20, 2020, the OCA filed a Statement in Opposition to the Joint Petition for Approval of the Non-Unanimous Settlement filed by Verde and I&E. The OCA served OCA Set III to Verde on August 3, 2020.

This matter was assigned to the Office of Administrative Law Judge on July 23, 2020 and subsequently assigned to Administrative Law Judge Christopher P. Pell (ALJ Pell). On July 31, 2020 ALJ Pell issued a Prehearing Conference order establishing a Prehearing Conference for this matter on August 27, 2020. Pursuant to ALJ Pell's Prehearing Conference Order, the OCA submits this Prehearing Memorandum.

II. ISSUES.

Based upon an analysis of I&E's Formal Complaint against Verde, the OCA has compiled a list of issues, which it anticipates will be included in its investigation of the allegations listed in

I&E's Formal Complaint and any resolution to this matter. The OCA anticipates that other issues may arise and may be pursued as responses to interrogatories are received and analyzed.

The OCA has identified several issues that may require further review as follows:

A. An Examination of the Allegations and the Impact of the Allegations on Pennsylvania Consumers

The OCA will examine the allegations presented in the Formal Complaint and will investigate the impact on Pennsylvania consumers resulting from the alleged conduct. The issues to be addressed include, but are not limited to, whether Verde engaged in (1) misleading and deceptive conduct relating to telemarketing and door-to-door or in-person marketing (Formal Complaint at ¶¶ 47-58), (2) slamming/unauthorized switching (Formal Complaint at ¶¶ 44), (3) releasing private customer information/unauthorized account access (Formal Complaint at ¶¶ 45 and 61), (4) false or deceptive advertising and false or misleading representations, including prices and savings (Formal Complaint at ¶¶ 59-60), (5) failure to maintain records of verifications (Formal Complaint at ¶ 62), and (6) failure to notify local distribution company of door-to-door marketing campaigns (Formal Complaint at ¶ 46), and the impact on consumers from any found violations.

B. The Remedies that are Necessary and Appropriate in Resolving This Formal Complaint

The OCA will examine what remedies may be warranted for any violations of the Public Utility Code and Commission regulations including refunds for customers, civil penalties and if warranted, suspension or revocation of Verde's license. See Formal Complaint at ¶¶ 63-66. The OCA will also examine whether procedures to ensure compliance with all applicable laws and the Commission's regulations and Orders are necessary.

C. Whether the Non-unanimous Proposed Settlement is in the Public Interest.

I&E and Verde submitted statements in support of the proposed settlement and the OCA submitted a statement in opposition of the proposed settlement. As the matter has been assigned to an ALJ, the OCA submits that, if further settlement negotiations are not a viable option after the OCA has had the opportunity to conduct its initial discovery, an examination of whether the settlement is in the public interest, including supporting testimony and evidence as to the appropriateness of the proposed settlement, will be necessary.

III. WITNESSES.

The OCA intends to present the Direct, Rebuttal and Surrebuttal testimony, as may be necessary, of Barbara R. Alexander regarding the consumer protection issues raised in the Formal Complaint and the consumer protection regulations and policies applicable to electric generation suppliers in the Pennsylvania retail energy markets identified above. Ms. Alexander will present testimony in written form and will also attach various exhibits, documents, and explanatory information, which will assist in the presentation of the OCA's case. Her contact information is as follows:

Barbara R. Alexander
Barbara Alexander Consulting, LLC
83 Wedgewood Drive
Winthrop, Maine 04364
E-Mail: barbalexand@gmail.com

The OCA specifically reserves the right to call additional witnesses and to expand the issues addressed in testimony, as necessary. If the OCA determines that additional witnesses are necessary for any portion of its case, it will notify all parties of record immediately.

IV. DISCOVERY.

At this time, the OCA has issued three sets of discovery and reviewed the discovery

material that was provided in response to I&E discovery requests. The OCA has also participated in an informal discovery conference with Verde. The OCA continues to work with Verde to resolve any discovery disputes. The OCA anticipates that based on the responses received to date and the informal discovery conference, additional discovery and discovery conferences are necessary. At this time, the OCA does not propose any discovery modifications. The OCA reserves the right to request discovery modifications in the future, if necessary.

V. SERVICE OF DOCUMENTS.

The OCA will be represented in this case by Assistant Consumer Advocates Christy M. Appleby and Laura J. Antinucci. Two copies of all documents should be served on the OCA as follows:

Laura J. Antinucci
Assistant Consumer Advocate
Office of Consumer Advocate
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The OCA requests that any documents served electronically also be directed to the OCA's consultant, Barbara R. Alexander, at barbalexand@gmail.com and the OCA's legal assistant, Lauren Myers, at lmyers@paoca.org.

VI. PROCEDURAL SCHEDULE

The OCA proposes that the procedural schedule in this matter be held in abeyance for sixty (60) days in order for the OCA to conduct additional discovery, including formal discovery and further informal discovery sessions. Also during that period, the OCA would plan to engage in further settlement discussions with I&E and Verde to see if there are possible modifications to the settlement that would address the OCA's concerns in this matter. At the end of sixty (60) days,

the parties could each evaluate their respective positions and collectively determine whether there is a need to establish a litigation schedule to address the allegations in the Formal Complaint and determine whether the settlement signed by Verde and I&E is in the public interest.

VII. SETTLEMENT.

The OCA will participate in settlement discussions in this matter.

Respectfully submitted,

/s/Laura J. Antinucci
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DATED: August 21, 2020
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