



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

August 21, 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  
**I&E Prehearing Conference Memorandum**

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's ("I&E") **Prehearing Conference Memorandum** 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 contact the undersigned.

Sincerely,

A handwritten signature in blue ink that reads "Kayla L. Rost".

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

KLR/jfm  
Enclosures

cc: Per Certificate of Service  
Matthew C. Fallings, (via email: [mfallings@pa.gov](mailto:mfallings@pa.gov))

**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.	:	

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**PREHEARING CONFERENCE MEMORANDUM  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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**TO ADMINISTRATIVE LAW JUDGE CHRISTOPHER P. PELL:**

The Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) files this Prehearing Conference Memorandum in accordance with Administrative Law Judge (“ALJ”) Christopher P. Pell’s Prehearing Conference Order dated July 31, 2020.

**I. HISTORY OF THE PROCEEDING**

On June 30, 2020, I&E and Verde Energy USA, Inc. (“Verde”) filed a Joint Petition for Approval of Settlement (“Joint Petition” or “Settlement Agreement”) resolving all issues raised in the Complaint, Docket No. C-2020-3017229. Additionally, Verde filed an Answer to the Complaint, generally denying the allegations set forth in the Complaint and noting that the parties filed a Settlement Agreement.

In addition to the background provided in the Joint Petition, I&E notes that the Office of Consumer Advocate (“OCA”) issued three (3) sets of Interrogatories to Verde

on June 1, 2020, July 6, 2020, and August 3, 2020, respectively. Verde filed objections to the Interrogatories on June 11, 2020 and July 16, 2020, respectively.

On July 10, 2020, OCA filed a letter with Secretary Rosemary Chiavetta providing its intention to file a Statement in Opposition to the Non-unanimous Petition.

On July 20, 2020, OCA filed a Statement of the Office of Consumer Advocate in Opposition of the Joint Petition for Approval of the Non-Unanimous Settlement Filed by Verde Energy USA, Inc. and the Bureau of Investigation and Enforcement (“Statement in Opposition”).

On July 23, 2020, I&E issued correspondence to Secretary Chiavetta requesting that the matter be referred to the Commissioners for consideration and disposition pursuant to 52 Pa. Code § 5.232(g), which provides:

Review of a settlement petition by the Commission. When no presiding officer has been assigned, the Commission will review the settlement. Parties not joining in the settlement may submit objections to the Commission within 20 days of the filing of the petition unless another time period is set by the Commission.

52 Pa. Code § 5.232(g).

On July 24, 2020, Secretary Chiavetta referred the matter to the Commission’s Office of Administrative Law Judge (“OALJ”).

On July 31, 2020, a Call-in Telephone Pre-Hearing Conference Notice was issued, scheduling a telephonic prehearing conference for August 27, 2020 before Administrative Law Judge Christopher Pell. Additionally, on July 31, 2020, a Prehearing Conference Order was issued, instructing the parties to file and serve a prehearing memorandum on or before Friday, August 21, 2020.

## II. I&E PREHEARING CONFERENCE MEMORANDUM

### A. Service

All service on, and communication to, I&E in this proceeding should be addressed to:

By Mail: Kayla L. Rost, Prosecutor  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

By Telephone: (717) 787-1888<sup>1</sup>

By E-mail: karost@pa.gov

### B. Statement Regarding Settlement

I&E and Verde have amicably resolved the pending Complaint and filed a Joint Petition for Approval of Settlement on June 30, 2020. Prior to finalizing resolution of I&E's complaint and filing the Joint Petition for Approval of Settlement, I&E and Verde provided to OCA a settlement term sheet on June 5, 2020 and the opportunity to review and provide comments to the proposed settlement. OCA elected to provide no comments to the proposed settlement terms. The parties held a conference call on July 13, 2020 and discussed the Joint Petition.

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<sup>1</sup> Due to the closure of the Keystone Building, the undersigned currently does not have access to this telephone number and requests that the Parties correspond via email until further notice.

C. Proposed Plan and Schedule of Discovery

Given that a complete settlement has been reached between I&E and Verde resulting in the filing of a Joint Petition for Approval of Settlement on June 30, 2020, I&E respectfully submits that providing a position regarding a proposed plan and schedule for discovery is not necessary. By way of further answer, I&E does not propose any modifications to the Commission's regulations pertaining to discovery at 52 Pa. Code §§ 5.321, *et seq.*

D. Issues

Given that a complete settlement has been reached between I&E and Verde resulting in the filing of a Joint Petition for Approval of Settlement on June 30, 2020, I&E respectfully submits that providing a position regarding issues is limited to the following:

- a) Whether the Joint Petition for Approval of Settlement filed on June 30, 2020 should be approved in its entirety without modification.
- b) Whether the Joint Petition for Approval of Settlement is in the public's interest.

E. Proposed Litigation Schedule

Given that a complete settlement has been reached between I&E and Verde, resulting in the filing of a Joint Petition for Approval of Settlement on June 30, 2020, I&E respectfully submits that providing a position regarding the amount of hearing time needed or a schedule for submission of testimony, hearings, and

briefs is not necessary. By way of further answer, I&E has no opinion regarding a litigation schedule.

F. Witnesses

Given that a complete settlement has been reached between I&E and Verde, resulting in the filing of a Joint Petition for Approval of Settlement on June 30, 2020, I&E respectfully submits that providing a list of I&E witnesses is not necessary. By way of further answer, I&E reserves the right to modify the identified witness and/or present additional witnesses as deemed necessary based on this proceeding's procedural path forward and the issues identified by the parties.

G. Other Appropriate Matter - Request for Referral to the Commission for Disposition

I&E renews its request for this matter to be assigned to the Commission, and not OALJ, for review pursuant to 52 Pa. Code § 5.232(g), which provides:

Review of a settlement petition by the Commission. When no presiding officer has been assigned, the Commission will review the settlement. Parties not joining in the settlement may submit objections to the Commission within 20 days of the filing of the petition unless another time period is set by the Commission.

52 Pa. Code § 5.232(g).

As explained in its July 23, 2020 letter filing with the Commission, I&E was the responsible bureau for this matter at the time of the filing of the Joint Petition, Verde's Answer, and OCA's subsequent "Statement in Opposition." In accordance with 52 Pa. Code § 5.232(g) and the Commission's procedures, I&E's

letter noted that OCA's Statement should be deemed as Objections and that the matter was ripe for the Commission's consideration and disposition.

Instead, the Secretary's Bureau referred this matter to OALJ based on the erroneous assumption that the mere filing of Verde's Answer designated the matter as "contested" and properly before the OALJ despite the concurrent filing of the Joint Petition for Settlement. In fact, the filing of an Answer does not automatically require an assignment to OALJ. *See generally Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Plymouth Rock Energy, LLC*, C-2016-2579276, Opinion and Order adopted April 19, 2018 (Commissioners reviewed Joint Petition for Approval of Settlement pursuant to 52 Pa. Code § 5.232(g) even though an answer, new matter, and reply to new matter were filed because a presiding officer had not been assigned when the Joint Petition was filed.); *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. XTO Energy, Inc. and Mountain Gathering LLC*, C-2014-2444722, Opinion and Order adopted September 3, 2015 (Commissioners reviewed Joint Petition for Approval of Settlement pursuant to 52 Pa. Code § 5.232(g) even though an answer, new matter, and reply to new matter were filed because a presiding officer had not been assigned when the Joint Petition was filed.).

First, the Answer was filed in accordance with the Secretarial Letters granting the various Motions for Extension. Second, the Answer clearly referenced the simultaneous filing of the Joint Petition and the parties' amicable resolution of

the Complaint. Third, even after the Answer was filed, the matter was still assigned to I&E and a presiding officer was not assigned. Accordingly, I&E respectfully requests that the instant Joint Petition be referred to the Commission for consideration and disposition.

Respectfully submitted,

A handwritten signature in blue ink that reads "Kayla L. Rost". The signature is written in a cursive style with a large initial 'K'.

Kayla L. Rost

Prosecutor

PA Attorney ID No. 322768

Matthew C. Fallings

Prosecutor

PA Attorney ID No. 326896

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
Phone: (717) 787-1888  
Email: [karost@pa.gov](mailto:karost@pa.gov)

Dated: August 21, 2020



**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. :

**CERTIFICATE OF SERVICE**


I hereby certify that I have this day served a true copy of the foregoing **Prehearing Conference Memorandum** dated August 21, 2020, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Service by Electronic Mail Only**

Honorable Christopher Pell  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Suite 4063  
801 Market Street  
Philadelphia, PA 19107  
[cpell@pa.gov](mailto:cpell@pa.gov)

Laura J. Antinucci, Esq.  
Christy M. Appleby, Esq.  
Assistant Consumer Advocate  
Pennsylvania Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101  
[lantinucci@paoca.org](mailto:lantinucci@paoca.org)  
[cappleby@paoca.org](mailto:cappleby@paoca.org)

Michael A. Gruin, Esq.  
Timothy K. McHugh, Esq.  
Stevens & Lee  
17 North 2nd Street  
16th Floor  
Harrisburg, PA 17101  
[mag@stevenslee.com](mailto:mag@stevenslee.com)  
[tkm@stevenslee.com](mailto:tkm@stevenslee.com)  
*Counsel for Verde Energy USA, Inc.*

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