



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

October 19, 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

Stipulated Facts in Support of the Joint Petition for Approval of Settlement

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's ("I&E") **Stipulated Facts in Support of the Joint Petition for Approval of Settlement** 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,

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
Matthew C. Fallings (*via email* – mfallings@pa.gov)

**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	:	

**STIPULATED FACTS IN SUPPORT OF THE JOINT PETITION FOR
APPROVAL OF SETTLEMENT**

TO ADMINISTRATIVE LAW JUDGE CHRISTOPHER P. PELL:

Pursuant to the September 25, 2020¹ Order Denying the Office of Consumer Advocate’s Request for Sixty Day Abeyance, 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 Stipulated Facts in Support of the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) in the above-captioned matter.

I. PROCEDURAL BACKGROUND

1. On January 30, 2020, I&E filed the Complaint in this matter based upon the 339 customer account complaints identified and provided by PPL Electric Utilities, Inc. (“PPL”) through its Informal Investigation.

¹ I&E and Verde note that the Order was served upon the parties on September 29, 2020.

2. On February 14, 2020, Verde filed a Motion for Extension of Time to Answer or Respond to Complaint. Verde's Motion was granted by Secretarial letter dated February 14, 2020.

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

4. On March 30, 2020, Verde filed a second Motion for Extension of Time to Answer or Respond to Complaint. Verde's Motion was granted by Secretarial email issued on March 30, 2020.

5. On May 15, 2020, Verde filed a third Motion for Extension of Time to Answer or Respond to Complaint.

6. On June 5, 2020, the Parties agreed upon a settlement in principle. The Parties provided the settlement term sheet to the OCA and offered OCA the opportunity to be included in the Joint Petition. To date, the OCA has declined the opportunity to discuss or be included in the Joint Petition.

7. OCA issued three (3) sets of Interrogatories to Verde on June 1, 2020, July 6, 2020, and August 3, 2020, respectively, to which Verde responded.

8. 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.

9. 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").

10. 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).

11. On July 24, 2020, Secretary Chiavetta referred the matter to the Commission's Office of Administrative Law Judge ("OALJ").

12. 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.

13. On September 25, 2020, ALJ Pell issued an Order Denying the Office of Consumer Advocate's Request for Sixty Day Abeyance. In addition to denying OCA's request for abeyance, ALJ Pell permitted I&E and Verde to file stipulated facts in support of the Joint Petition within twenty (20) days, OCA to file comments within forty (40) days, and I&E and Verde to file reply comments within sixty (60) days.

II. STIPULATED FACTS

14. The Parties to the Settlement Agreement are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, by its 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.

15. 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.*

16. 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).

17. 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.

18. 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.

19. 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).

20. 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.

21. 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, for the limited purposes as described in Sections 2809 and 2810 of the Competition Act, 66 Pa.C.S. §§ 2809-2810.

22. 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).

23. 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. 66 Pa.C.S. §§ 102, 501.

24. 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 from February 2017 to February 2020.

25. 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 within the PPL service territory.

26. The allegations referred to I&E by OCMO were not based on complaints filed with Verde or on complaints filed with the Commission’s Bureau of Consumer Services (“BCS”).

27. 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.

28. Verde provided timely response to both sets of I&E data requests and fully cooperated with I&E in connection with I&E’s investigation.

29. Additionally, I&E served a data request letter to PPL on September 18, 2019. PPL timely responded to the data request letter and provided its customer complaint interactions relating to Verde from 2017 to 2019.

30. On January 30, 2020, I&E filed the Complaint in this matter based upon the 339 customer account complaints identified and provided by PPL.

31. The Complaint was the first time Verde was provided with information regarding allegations in the PPL service territory which formed the basis of I&E’s investigation.

32. 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 EDC 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 EDC 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).

33. With respect to the Complaint's allegations relating to proper notification of door-to-door marketing activity, Verde provided the requisite notices of door-to-door marketing activity to the Commission but failed to copy the local distribution companies on such notices.

34. Verde was unable to provide five (5) telephone third party sales verifications requested by I&E.

35. With the exception of the allegations regarding failure to provide proper notice of door-to-door sales and marketing activity (Complaint, paragraph 46) and the allegations regarding failure to maintain a record of a sales verification (Complaint, paragraph 62), all of the Complaint's allegations were based on customer contacts to PPL that were provided to I&E through the data request letter.

36. Upon receiving the Complaint, Verde immediately acknowledged the seriousness of the allegations to I&E.

37. Upon receiving the Complaint, Verde contacted I&E to address the allegations of the Complaint, to request a copy of the information provided by PPL, and to begin settlement discussions.

38. On February 6, 2020, Verde voluntarily ceased in-person and telemarketing in Pennsylvania and has not resumed such marketing.

39. During the periods covered by the Complaint's allegations, all of Verde's marketing in Pennsylvania was performed by third party vendors.

40. During the periods covered by the Complaint's allegations, Verde had a Code of Conduct for third party marketing vendors.

41. During the periods covered by the Complaint's allegations, Verde had a sales quality assurance program to oversee the activities of telemarketing and door to door marketing vendors acting on its behalf, which involved monitoring of sales calls and third party verification calls.

42. Verde avers that it had no record of 110 of the 339 customers listed in the Complaint as being enrolled with Verde. However, the Parties agree that a lack of confirmed enrollment with Verde does not negate the allegations of deceptive and misleading marketing practices.

43. Since I&E initiated its investigation of Verde, Verde has undergone significant changes in its executive leadership, including the following:

- a) Executive Vice-President of Sales in October of 2019;
- b) Senior Director of Mass Market Sales in March of 2020;
- c) General Counsel in January of 2020; and
- d) Chief Executive Officer in March of 2020.

44. In addition, Verde has hired a new regulatory compliance consultant in January of 2020 and a new Chief Operating Officer in March of 2020.

45. As of the date of this Stipulation, notwithstanding the allegation raised in the instant complaint, Verde has a satisfactory compliance history with the Commission

and no record of any violations of the Public Utility Code or the Commission's regulations.

46. Had this matter proceed to litigation, I&E would have proffered evidence and legal arguments to support the allegations in the Complaint, and Verde was prepared to rebut the allegations of the Complaint with evidence and testimony.

47. Verde and I&E recognize the inherent challenges and unpredictability of the outcome of a contested proceeding involving the issues raised in the Complaint.

48. The Stipulation of Facts is not an admission of wrongdoing or liability by Verde.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Verde Energy USA, Inc. respectfully submit this Stipulated Facts in Support of the Joint Petition for Approval of Settlement and request that Administrative Law Judge Pell 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 19th day of October 2020.

Date: October 19, 2020



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

Date: October 19, 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 :
 :
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 **Stipulated Facts in Support of the Joint Petition for Approval of Settlement** dated October 19, 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
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