

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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October 30, 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 Motion for Protective Order 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

*298558

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 Motion for Protective Order, 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 30th day of October 2020.

SERVICE BY E-MAIL ONLY

Kayla L. Rost, Esquire
Matthew C. Fallings, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Michael A. Gruin, Esquire
Stevens & Lee
17 North Second Street
16th Floor
Harrisburg, PA 17101

/s/ Laura J. Antinucci
Laura J. Antinucci
Assistant Consumer Advocate
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Office of Consumer Advocate
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Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: October 30, 2020
*298557

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.	:	

MOTION FOR PROTECTIVE ORDER

TO ADMINISTRATIVE LAW JUDGE CHRISTOPHER P. PELL:

The Pennsylvania Office of Consumer Advocate hereby requests that Administrative Law Judge Christopher P. Pell enter a Protective Order in this proceeding pursuant to the provisions of 52 Pa. Code § 5.365(a), and in support thereof represent as follows:

1. 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.

2. A preliminary Protective Agreement was signed by all Parties prior to the assignment of an ALJ to this matter.

3. On June 30, 2020, Verde filed its Answer to the Complaint.

4. Also on June 30, 2020, I&E and Verde filed a Joint Petition for Approval of Settlement in this matter.

5. The 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).

6. The Parties to this proceeding have engaged in both formal and informal discovery leading up to the Prehearing Conference held on August 27, 2020.

7. In an Order Denying the OCA's Request for a 60-Day Abeyance, the ALJ permitted that the Joint Petitioners to file stipulated facts in support of the Joint Petition for Settlement within 20 days of the issuance of the Order. The ALJ also permitted the OCA to file Comments on the Joint Petition for Settlement within 40 days of the issuance of the Order and permitted the Joint Petitioners to File Reply Comments within 60 days of the issuance of the Order.

8. Through the course of the investigation, formal and informal discovery information has been exchanged which has been marked Confidential or Proprietary in accordance with the Protective Agreement entered into by the parties.

9. The attached suggested Protective Order will protect the Proprietary or Confidential nature of the information that has been exchanged and marked as such while allowing the parties to use such information for purposes of the instant litigation if necessary. The proposed Protective Order applies the least restrictive means of limitation that will provide the necessary protections from disclosure.

10. The Protective Agreement entered into by the Parties does not address the ALJ's and the Commission's treatment of the information that has been marked Confidential or Proprietary during the investigative or discovery phase.

11. The OCA has consulted with all other active parties to this proceeding (I&E and Verde) and neither of them have an objection to the granting of this Motion.

12. Information provided to and sought by the Parties has been designated as Proprietary or Confidential, including but not limited to marketing and sales information, customer information, and other sensitive information. Treatment of such information as set forth in the

attached proposed Protective Order is justified because unrestricted disclosure of such information would not be in the public interest. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365 and in Administrative Law Judge or Commission Orders granting relief pursuant to said regulation.

13. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential information where the potential harm to a party or person would be substantial and outweighs the public's interest in having access to the confidential information.

WHEREFORE, for all the reasons set forth above, the OCA, with the concurrence of the other parties in this proceeding, respectfully requests that Your Honor issue the attached Protective Order.

Respectfully submitted,

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

**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.	:	

PROTECTIVE ORDER

Upon consideration of the Motion for a Protective Order that was filed by the Office of Consumer Advocate (the OCA);

IT IS ORDERED THAT:

1. The Motion is hereby granted with respect to all materials and information identified in Paragraph 3 below.

2. That the materials subject to this Protective Order are all correspondence, documents, data, information, studies, methodologies and other materials, furnished in this proceeding, which are believed by the producing party to be of a proprietary or confidential nature and which are so designated by being stamped “Proprietary” or “Confidential.” Such materials will be referred to below as “Proprietary Information.”

3. That the parties have and may designate as “Confidential” or “Proprietary” those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public or which, if disclosed freely, would subject that party or others to risk of competitive disadvantage or other business injury.

4. That Proprietary Information shall be made available to counsel for the non-producing party, subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross

examination, argument, or settlement discussions in this proceeding. To the extent required for participation in this proceeding, counsel for a non-producing party may afford access to Proprietary Information subject to the conditions set forth herein.

5. Proprietary Information produced in this proceeding shall be made available to the Pennsylvania Public Utility Commission (“Commission”) and its Staff. For purposes of filing, to the extent that Proprietary Information is placed in the Commission’s report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information is placed in the Commission’s testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Protected Information shall be permitted only in accordance with this Protective Order.

6. That “Confidential” information may be made available to a “Reviewing Representative” who is a person who has signed a Non-Disclosure Certificate in the form attached as **Appendix A** hereto and who is: (i) an attorney for one of the parties who has entered an appearance in this proceeding; (ii) an attorney, paralegal, or other employee associated for purposes of this proceeding with an attorney described in subparagraph (i); (iii) an expert or an employee of an expert retained by a party for the purpose of advising, preparing for or testifying in this proceeding; or (iv) an employee or other representative of a party with significant responsibility in this proceeding.

7. Provided, however, that no Reviewing Representative may be a “Restricted Person.” For the purpose of this Protective Order, “Restricted Person” shall mean: (i) an officer, director, stockholder, partner, or owner of any competitor of a party to this Protective Order or an

employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services; (ii) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of a party to this Protective Order (including any association of competitors of a party) or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services; (iii) an officer, director, stockholder, owner or employee of a competitor of a customer of a party to this Protective Order if the Proprietary Information concerns any specific, identifiable customer of a party; and (iv) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of a party to this Protective Order if the Proprietary Information concerns a specific, identifiable customer of the party; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert's interest in the business would provide a significant motive for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than \$10,000 or constituting more than a 1 percent interest in a business establishes a significant motive for violation.

8. If an expert for a party to this Protective Order, another member of the expert's firm or the expert's firm also serves as an expert for, or as a consultant or advisor to, a Restricted Person, said expert must: (i) identify for the other party to this Protective Order each Restricted Person and each expert or consultant; (ii) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a Restricted Person; and (iii) if segregation of such personnel is impractical, the expert shall give to the producing party written assurances that the lack of segregation will in no way jeopardize the

interests of the party or its customers. The parties retain the right to challenge the adequacy of the written assurances that the parties or their customers' interests will not be jeopardized.

9. If any person who has had access to Proprietary Information subsequently is assigned to perform any duties which would make that person ineligible to be a Reviewing Representative of "Confidential" information, that person shall immediately inform the producing party of his or her new duties, shall dispose of any Proprietary Information and any information derived therefrom in his or her possession and shall continue to comply with the requirements of this Protective Order with regard to the Proprietary Information to which that person previously had access.

10. That no other persons may have access to the Proprietary Information except as authorized by order of the Commission or the Presiding Administrative Law Judge.

11. That Proprietary Information shall be treated by non-producing parties subject to this Protective Order and by all Reviewing Representatives in accordance with the certificate attached as **Appendix A** and executed pursuant to Paragraph 13. Information deemed Proprietary Information shall not be used except as necessary for the conduct of this proceeding, nor shall it be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

12. That Reviewing Representatives may not use information contained in any Proprietary Information obtained through this proceeding to give any commercial advantage. If a party wishes to designate as a Reviewing Representative a person not described in Paragraph 6 above, the party shall seek agreement from the party providing the Proprietary Information. If an agreement is reached, that person shall be a Reviewing Representative with respect to those

materials. If no agreement is reached, the party shall submit the disputed designation to the presiding Administrative Law Judge for resolution.

13. That a Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the agents, paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the party asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative.

14. That attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

15. That none of the parties waive their right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Proprietary Information.

16. That the producing party shall designate data or documents as constituting or containing Proprietary Information by stamping the documents "Proprietary" or "Confidential." Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the parties, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information. The Proprietary Information shall be served

in an envelope separate from the nonproprietary materials, and the envelope shall be conspicuously marked “Proprietary” or “Confidential.”

17. That the non-producing party will consider and treat the Proprietary Information as within the definition of “confidential information” in Section 102 of the Pennsylvania Right-to-Know Law of 2008, 65 P.S. § 67.102 and subject to exemptions from disclosure as provided for in Section 708 of the Pennsylvania Right-to-Know Law of 2008, 65 P.S. § 67.708, until the information is found by a tribunal with jurisdiction to be not confidential or subject to one or more exemptions.

18. That any public reference to Proprietary Information by a party shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

19. That, when a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

20. That any part of the record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination and argument, and including reference thereto as mentioned in Paragraph 18 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this Protective Order or pursuant to an order of the Commission.

21. That the parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and to question or challenge the admissibility of Proprietary Information. If a party challenges the designation of a document or information as

proprietary, the party providing the information retains the burden of demonstrating that the designation is appropriate.

22. That the parties shall retain the right to object to the production of Proprietary Information on any proper ground; to refuse to produce Proprietary Information pending the adjudication of the objection; and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order.

23. That within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within 30 days after appeals are finally decided, the non-producing party, upon request, shall either destroy or return to the producing party all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that the non-producing party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the producing party, the non-producing party shall certify in writing to the other party that the Proprietary Information has been destroyed.

Dated: _____

Honorable Christopher P. Pell

APPENDIX A
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.	:	

TO WHOM IT MAY CONCERN:

The undersigned is a Reviewing Representative of the _____, a party to this proceeding (“Party”), and is not or has no knowledge or basis for believing that he/she is a “Restricted Person,” as that term is defined in Paragraph 7. The undersigned has read and understands the Protective Order in the above-referenced proceeding, which Protective Order deals with the treatment of Proprietary Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Protective Order.

Name

Signature

Address

Employer