

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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January 28, 2021

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 Petition of the Office of Consumer Advocate for Interlocutory Review and Answer to Material Question 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
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Enclosures:

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

*303156

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,
Petition of the Office of Consumer Advocate for Interlocutory Review and Answer to Material
Question, 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 28th day of January 2021.

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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Dated: January 28, 2021
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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.	:	

PETITION OF THE OFFICE OF CONSUMER ADVOCATE FOR INTERLOCUTORY
REVIEW AND ANSWER TO MATERIAL QUESTION

Pursuant to Section 5.302 of the Pennsylvania Public Utility Commission’s (Commission) regulations, 52 Pa. Code Section 5.302, the Pennsylvania Office of Consumer Advocate (OCA) hereby files this Petition for Interlocutory Review and Answer to Material Question (Petition). The OCA respectfully requests the Commission consider the following Material Question:

Did the ALJ err in striking the OCA’s factual evidence presented in support of the OCA’s substantive comments, thereby denying the OCA a meaningful opportunity to be heard regarding its objections to the non-unanimous settlement?

The OCA respectfully submits that the Material Question should be answered in the affirmative.

On January 15, 2021, Administrative Law Judge Christopher P. Pell (ALJ Pell) issued an Interim Order Granting the Motion to Strike of Verde Energy USA, Inc. (Interim Order) which struck from the record portions of the OCA’s Comments in Opposition of Settlement (Comments) filed by the OCA, Appendix A (Findings of Fact), the Affidavit of OCA witness Barbara Alexander (Affidavit), and Exhibit BA-2 (the PPL Report). In the Interim Order, ALJ Pell reasoned that the evidence found within the materials he struck was not available to all parties throughout the course of the proceeding and that it would not be proper for him to rely upon these materials or any references to them since the Bureau of Investigation and Enforcement (I&E) and

Verde Energy USA, Inc. (Verde) never had the opportunity to cross examine this witness or to offer rebuttal testimony. Interim Order at 13. ALJ Pell also noted that the OCA's evidence regarding Verde's dealings in other states was beyond the scope of this proceeding. Id.

ALJ Pell erred in striking the Comments, Findings of Fact, Affidavit, and PPL Report filed by the OCA as the materials provide relevant evidence regarding the allegations in the I&E Complaint and Verde's management history and practices which is largely information gathered from the Formal Complaint, verified discovery responses provided by Verde, or other public documents concerning Verde. The evidence the OCA was able to adduce in the limited discovery period and present is vital in evaluating the proposed settlement filed by I&E and Verde and forms the foundation for the OCA's substantive position that the proposed settlement is not in the public interest.¹

Interlocutory review is necessary in this instance to prevent substantial and irreversible prejudice to the OCA if these materials remain excluded from the evidence of record before the Commission in this proceeding and a decision is rendered without full consideration of the facts. Additionally, the OCA submits that it would deny the OCA a meaningful opportunity to be heard in violation of the OCA's due process rights by excluding necessary facts developed during discovery and necessary corrections to certain misstated, unsworn, unverified facts provided by Verde and I&E which ALJ Pell has determined to be the only evidence of record in this proceeding involving a contested settlement. The evidence that ALJ Pell ordered to be stricken is vital for the OCA to provide substantive comments, based upon necessary and relevant facts in the record, for a contested settlement before the Commission.

¹ On September 25, 2020, ALJ Pell issued an Order (September 25 Order) in which he stated, "...I will allow the OCA an opportunity to provide substantive comments on the Settlement and to delineate the issues they would raise if the Settlement is rejected and to outline how the OCA's interests would be affected if the Settlement is accepted." September 25 Order at 8.

The portions of the OCA's Comments, attached Affidavit, PPL Report, and Findings of Facts stricken from the record by ALJ Pell's Interim Order are material and relevant, and must be included in the record so the Commission has a full and complete record upon which to render its decision in this contested matter. Accordingly, the Office of Consumer Advocate respectfully requests that the Commission grant this Petition for Interlocutory Review of a Material Question and answer the question in the affirmative.

Respectfully submitted,

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