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**A Report by the Staff of the
Public Utilities Commission of Ohio**

In the Matter of the Commission's Investigation into
PALMco Power OH, LLC d/b/a Indra Energy and
PALMco Energy OH, LLC d/b/a Indra Energy's
Compliance with the Ohio Administrative Code and
Potential Remedial Actions for Non-Compliance

Case Number 19-0957-GE-COI

May 10, 2019

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)
Investigation into PALMco Power OH, LLC)
d/b/a Indra Energy and PALMco Energy OH,)
LLC d/b/a Indra Energy's Compliance with the)
Ohio Administrative Code and Potential)
Remedial Actions for Non-Compliance.

Case No. 19-0957-GE-COI

Sam Randazzo, Chairman
M. Beth Trombold, Commissioner
Lawrence K. Friedeman, Commissioner
Daniel R. Conway, Commissioner
Dennis P. Deters, Commissioner

To the Honorable Commission:

Staff has conducted an investigation in the above matter and hereby submits its findings and recommendations to the Commissioners of the Public Utilities Commission of Ohio (PUCO or Commission) in this Staff Report.

The findings and recommendations reached in this Staff Report are presented for the Commission's consideration and do not purport to reflect the views of the Commission, nor should any party consider the Commission as bound in any manner by the findings and recommendation set forth herein.

Respectfully submitted,



Robert P. Fadley
Director
Service Monitoring and Enforcement Department

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I. Introduction

The Public Utilities Commission of Ohio (PUCO or Commission) was created to assure Ohioans adequate, safe, and reliable public utility services at a fair price.¹ More recently, the Commission gained responsibility for facilitating competitive utility choices for Ohio consumers.²

The Commission's Service Monitoring and Enforcement Department contains the Consumer Service Division, which operates the Commission's Call Center, and the Reliability and Service Analysis Division, which monitors service quality and compliance with Commission rules. In the Commission's Call Center, Commission staff (Staff) takes incoming calls and emails from consumers and initiates investigations into individual customer complaints to help resolve customer disputes with companies, including competitive providers.³

In general, during an investigation into a customer's complaint, Staff contacts the company's designated complaint representative as identified in the company's application for competitive retail electric service (CRES) and/or competitive retail natural gas service (CRNGS) certification. Staff provides details of the customer's complaint in an email to the company and requests a response along with any additional information needed to verify that the company has complied with all applicable Commission rules.

The company is required to respond to the customer complaint inquiries pursuant to Ohio Adm.Code 4901:1-21-08 and 4901:1-29-08. The company is also required to establish and maintain records and data sufficient to: (1) verify its compliance with the requirements of any applicable Commission rules; and (2) support an investigation of customer complaints, pursuant to Ohio Adm.Code 4901:1-21-04 and 4901:1-29-04.

Both R.C. 4928.08 and 4929.20 allow the Commission to suspend, rescind, or conditionally rescind the certification of a CRES or CRNGS provider if the Commission determines, after reasonable notice and opportunity for hearing, that the CRES or CRNGS

¹ See, e.g., R.C. 4905.06, 4928.02, and 4929.02; see also, *In the Matter of the Commission's Promulgation of Rules for Minimum Competitive Retail Electric Service Standards Pursuant to Chapter 4928, Revised Code*, Case No. 99-1611-EL-ORD, Finding and Order at 7 (April 6, 2000); see also The Public Utilities Commission of Ohio, <https://www.puco.ohio.gov/how-the-puco-works-for-you/> (last visited May 10, 2019).

² See R.C. 4928 et seq. and 4929 et seq.; see also, *In the Matter of the Commission's Promulgation of Rules for Minimum Competitive Retail Electric Service Standards Pursuant to Chapter 4928, Revised Code*, Case No. 99-1611-EL-ORD, Finding and Order at 7 (April 6, 2000); see also, *In the Matter of the Commission's Promulgation of Rules for Competitive Retail Natural Gas Service and its Providers Pursuant to Chapter 4929, Revised Code*, Case No. 01-1371-GA-ORD, Finding and Order (Nov. 20, 2001); see also The Public Utilities Commission of Ohio, <https://www.puco.ohio.gov/how-the-puco-works-for-you/> (last visited May 10, 2019).

³ See R.C. 4905.261.

provider has failed to comply with any applicable certification standards or has engaged in anticompetitive or unfair, deceptive, or unconscionable acts or practices in this state. Ohio Adm.Code 4901:1-24-13(E) and 4901:1-27-13(E) provide examples of the reasons that the Commission may suspend, rescind, or conditionally rescind a CRES or CRNGS provider's certificate. Additionally and among other things, R.C. 4928.16 and 4929.24 grant the Commission the authority to order any remedy or forfeiture provided under R.C. 4905.54 to 4905.60 and 4905.64, and to order restitution to customers and rescission of customer contracts.

II. Overview of the Company

PALMco Energy OH, LLC d/b/a Indra Energy (PALMco Energy) is a retail natural gas supplier as defined in R.C. 4929.01; is certified to supply CRNGS under R.C. 4929.20; and is subject to the jurisdiction of the Commission under R.C. 4929.24.⁴ PALMco Power OH, LLC d/b/a Indra Energy (PALMco Power) is an electric service company as defined in R.C. 4928.01; is certified to provide CRES under R.C. 4928.08; and is subject to the jurisdiction of the Commission under R.C. 4928.16.⁵ Accordingly, PALMco Energy and PALMco Power (collectively, PALMco) are required to comply with the Commission's rules, including the Commission's minimum CRNGS standards set forth in Ohio Adm.Code 4901:1-29 and minimum CRES standards set forth in Ohio Adm.Code 4901:1-21, respectively.

On April 27, 2018, PALMco filed a material change to its applications to add the name Indra Energy and began to market using that name in the summer of 2018.⁶

III. Discussion of Violations

On April 16, 2019, Staff filed a letter in PALMco's certification dockets requesting the Commission open a Commission Ordered Investigation (COI) due to the Commission's Call Center receiving an increase in the number of customer contacts regarding PALMco.⁷ On April

⁴ *In the Matter of the Application of PALMco Energy OH, LLC for Certification as a Competitive Retail Generation Provider and Power Marketer*, Case No. 10-139-EL-CRS (*In re PALMco CRNGS Certification*).

⁵ *In the Matter of the Application of PALMco Energy OH, LLC for Certification as a Retail Natural Gas Marketer*, Case No. 10-138-GA-CRS (*In re PALMco CRES Certification*).

⁶ *In re PALMco CRES Certification*, Notice of Material Change for Fictitious Name (April 27, 2018); *In re PALMco CRNGS Certification*, Notice of Material Change for Fictitious Name (April 27, 2018).

⁷ *In re PALMco CRNGS Certification*, Staff Letter Requesting a Commission Ordered Investigation (April 16, 2019); *In re PALMco CRES Certification*, Staff Letter Requesting a Commission Ordered Investigation (April 16, 2019).

17, 2019, the Commission issued an Entry establishing a COI to investigate alleged unfair, deceptive, or unconscionable acts or practices in this state by PALMco.⁸

As a result of Staff's investigation, Staff determined that the increase in customer contacts was due to, among other things, PALMco's high variable rates. The amount of PUCO customer contacts from December 1, 2018 to April 15, 2019 with regards to PALMco alone totaled 486, of which 373 were related to high rates, billing inquiries, misleading and deceptive practices, enrollment disputes, and contract inquiries. Most of the customers complained of the high rates PALMco charged after initially providing CRES or CRNGS at rates that were below the utility's default rate listed on the customer's bill.

As a result of Staff's investigation into the customer contacts, Staff identified a pattern of unfair, misleading, deceptive and unconscionable activities. These issues appear to be systemic and demonstrate that the company's management decisions inappropriately orchestrate a marketing program reliant upon misleading and deceiving customers, rather than in a manner that is fair, honest, and in compliance with Ohio laws and rules.

Specifically, after reviewing customer contacts, Staff recommends that the Commission find that the following violations of the Ohio Administrative Code occurred.

A. Unfair, Misleading, Deceptive, or Unconscionable Activities

Ohio Adm.Code 4901:1-21-03(A), 4901:1-21-05(A) and (C), 4901:1-21-11(A), 4901:1-29-03(A), 4901:1-29-05(A) and (D), and 4901:1-29-10(A) ensure that CRES and CRNGS providers do not engage in unfair, misleading, deceptive, or unconscionable tactics in relation to the marketing, solicitation, sale of, administration of, contracts for, or provision of CRES or CRNGS.

These sections of the Ohio Administrative Code state in pertinent part as follows.

Ohio Adm.Code 4901:1-21-03(A):

(A) Competitive retail electric service (CRES) providers shall not engage in unfair, misleading, deceptive, or unconscionable acts or practices related to, without limitation, the following activities:

- (1) Marketing, solicitation, or sale of a CRES.*
- (2) Administration of contracts for CRES.*
- (3) Provision of CRES, including interactions with consumers.*

⁸ *In the Matter of the Commission's Investigation into PALMco Power OH, LLC d/b/a Indra Energy and PALMco Energy OH, LLC d/b/a Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-957-GE-COI, Entry (April 17, 2019) (PALMco COI).

Ohio Adm.Code 4901:1-21-05(A) and (C):

(A) Each competitive retail electric service (CRES) provider that offers retail electric generation service to residential or small commercial customers shall provide, in marketing materials that include or accompany a service contract, sufficient information for customers to make intelligent cost comparisons against offers they receive from other CRES providers.

Offers shall at a minimum include:

** * **

(3) For variable rate offers, a clear and understandable explanation of the factors that will cause the price to vary, including any related indices, and how often the price can change.

** * **

(C) No CRES provider may engage in marketing, solicitation, or sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a CRES. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:

** * **

(8) Advertising or marketing offers that:

(a) Claim that a specific price advantage, savings, or guarantee exists if it does not.

** * **

(f) Offer a variable price for competitive retail electric service that is not based on verifiable factors.

** * **

Ohio Adm.Code 4901:1-21-11(A):

Competitive retail electric service (CRES) providers ... shall arrange for the provision of competitive retail electric service by contracting with their customers. In their administration of such contracts, CRES providers are prohibited from engaging in unfair, deceptive, misleading, and unconscionable acts and practices.

Ohio Adm.Code 4901:1-29-03(A):

(A) A retail natural gas supplier or governmental aggregator shall not engage in unfair, misleading, deceptive, or unconscionable acts or practices related to, without limitation, the following activities:

(1) Marketing, solicitation, or sale of a competitive retail natural gas service.

(2) Administration of contracts for such service.

(3) Provision of such service, including interactions with consumers.

Ohio Adm.Code 4901:1-29-05(A) and (D):

(A) Each retail natural gas supplier and governmental aggregator that offers competitive retail natural gas service to customers shall provide, in marketing materials that include or accompany a service contract, sufficient information for customers to make informed cost comparisons.

** * **

(2) For variable rate offers, such information shall, at minimum, include:

(a) A clear and understandable explanation of the factors that will cause the price to vary (including any related indices) and how often the price can change.

** * **

(D) No retail natural gas supplier or governmental aggregator may engage in marketing, solicitation, sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a competitive retail natural gas service. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:

** * **

(8) Advertising or marketing offers that:

(a) Claim that a specific price advantage, savings, or guarantee exists if it does not.

** * **

Ohio Adm.Code 4901:1-29-10(A):

A retail natural gas supplier or opt-in governmental aggregator shall arrange for the provision of competitive retail natural gas service by contracting with its customers. In its administration of such contracts, a retail natural gas supplier or opt-in governmental aggregator is prohibited from engaging in unfair, deceptive, misleading, and unconscionable acts and practices.

In addition to the restrictions in the Ohio Administrative Code, the Consumer Sales Practices Act, under R.C. 1345.03, states that when determining whether a supplier's act or practice is unconscionable, certain circumstances shall be taken into consideration. While the Consumer Sales Practices Act specifically excludes transactions between persons defined in R.C. 4905.03,⁹ Staff believes that its definition of unconscionable sales practices can be used by the Commission as guidance in this proceeding.

⁹ See R.C. 1345.01(A).

Accordingly, the R.C. 1345.03 states, in pertinent part, as follows:

(A) No supplier shall commit an unconscionable act or practice in connection with a consumer transaction. Such an unconscionable act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

(B) In determining whether an act or practice is unconscionable, the following circumstances shall be taken into consideration:

** * **

(2) Whether the supplier knew at the time the consumer transaction was entered into that the price was substantially in excess of the price at which similar property or services were readily obtainable in similar consumer transactions by like consumers;

(3) Whether the supplier knew at the time the consumer transaction was entered into of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction;

** * **

(5) Whether the supplier required the consumer to enter into a consumer transaction on terms the supplier knew were substantially one-sided in favor of the supplier;

(6) Whether the supplier knowingly made a misleading statement of opinion on which the consumer was likely to rely to the consumer's detriment;

** * **

As part of Staff's investigation, it reviewed customer complaints in which customers indicated that they were misled by being told that they would save money or lower their utility bills by switching their electric and/or natural gas service to PALMco. Customers who contacted the Commission stated that after the initial introductory rate expired, the rate that PALMco charged significantly increased. Staff listened to sales calls provide by PALMco to determine if PALMco used any unfair, misleading, deceptive or unconscionable sales tactics during the marketing of its CRES or CRNGS products. Staff identified a pattern of unfair, misleading, and deceptive statements, such as:

- A sales representative advised a consumer that PALMco could lower her rate. After the consumer agreed to enroll, the representative advised her that she will drop the rate to \$2.60 per one thousand cubic feet (Mcf), a 12% saving for the first two months, and then the customer would go to a variable rate, "...but we do not want to lock you in with a fixed rate at this time because the prices for gas are not going to be going high at all. Now come toward summer time it might be a good time for you to get on a fixed rate." The customer was billed more than \$17.00/Mcf of natural gas or \$1.70 per one hundred cubic feet (Ccf) of natural gas after the introductory period ended – more than six times that of the natural gas utility's default service price. After Staff's investigation, PALMco

rerated the customer for a single month of service to \$3.02/Mcf, resulting in a credit of \$429.11.¹⁰

- A sales representative stated that after the first two months, the "third month can be higher or lower, market conditions are in your favor because of winter months, but we have to tell you that it can be higher or lower because it is a future price." The PALMco representative also said "[w]e are going to shop to make sure it's the best rate we can offer you each and every month" and "[y]our price is going to fluctuate up and down a little." The customer's price went from \$0.052/kWh for the two introductory months, to \$0.15503755/kWh in the third month, to \$0.21304678/kWh in the customer's final month of service.¹¹
- On the audio recording of another sales call, the customer asked, "You are not one of them that tries to switch you to another company, are you?" To which the sales representative answered, "You can't leave DP&L, they are your utility company. As a matter of fact, this is your state's energy choice program that DP&L participates. They printed the message right on your bill and I'm just following up on that message." The sales agent then told the customer that PALMco would, in reference to rates, "[d]rop the rate down all the way down to \$0.053/kWh for two months followed by, every month we shop the market for you to get you the best possible rate available at the time." The month following the two month introductory period, the rate charged by PALMco jumped to \$0.20354881/kWh. The "price to compare" during those same three months of service was \$0.056/kWh.¹²
- A PALMco sales representative stated that, "with this program it will make sure you get the better rate." The agent then stated that the rate will be \$0.052/kWh for two months and then PALMco would "shop the market every month for the best possible rate." The variable rate on PALMco's website for September, 2018, the date of enrollment for the customer, was \$0.10500/kWh. The customer was billed \$0.19887016/kWh in January 2019 and \$0.23766043/kWh in February 2019. The customer's price to compare on his bill was \$0.054/kWh for both months.¹³

In addition to the unfair, misleading, deceptive, and unconscionable sales tactics during telephonic solicitations, Staff identified a pattern of customer complaints from customers who were provided unfair, misleading and deceptive statements during door-to-door enrollments, such as:

¹⁰ PUCO Call Center Case ID# 00259083.

¹¹ PUCO Call Center Case ID# 00249191.

¹² PUCO Call Center Case ID# 00247778.

¹³ PUCO Call Center Case ID# 00252639.

- A consumer contacted the PUCO and said that she was advised by the door-to-door representative that her rate would not go above \$3.00/Mcf. The consumer stated that her first two utility bills stayed below \$3.00/Mcf, but her third bill included a rate of \$7.981/Mcf.¹⁴
- A consumer reached out to the PUCO because a representative came to her door in November 2018, " with a promise of keeping her rates as low as possible after a trial period of three or four months." When the bills were received she stated they had increased from an average of \$90 in the winter months to \$300.¹⁵ According to the company, the customer was enrolled on an introductory rate of \$0.3700/Ccf on October 30, 2018 and then moved to a variable rate.¹⁶
- Staff received a consumer call about a rate increase to \$17.40/Mcf on the gas bill. The caller stated she remembers a guy last summer saying he could save her money on her gas bill charges. The bill statements show an increase on the February 2019 statement from 7.981/Mcf to a March statement charge of 17.364/Mcf.¹⁷ According to the response from PALMco, that customer enrolled in a variable plan via a door-to-door sale.¹⁸ The default utility rate during this same time frame was \$3.020/Mcf in February 2019 and \$2.925/Mcf in March 2019.¹⁹

In conclusion, Staff's investigation discovered that PALMco customers were intentionally being charged rates that were not competitive with the customer's respective default rate or other CRES and/or CRNGS rates published on the Commission's Energy Choice website. PALMco repeatedly enrolled customers at low, short-term introductory rates and then promised that, after the introductory rates expired, the customers would continue to receive low or competitive variable rates. However, Staff discovered that PALMco did not disclose the actual price of its variable rate offer to the customers at the time of sale or the factors that would cause the price to change. PALMco only told the consumers that the variable price will fluctuate and that it may be higher or lower than their respective utility's default rate.

The Commission's Energy Choice website shows that while PALMco advertised its low introductory rate on the Commission's "Apples-to-Apples" chart, it disclosed in the details

¹⁴ PUCO Call Center Case ID# 00249840.

¹⁵ PUCO Call Center Case ID# 00263818.

¹⁶ *Id.*

¹⁷ PUCO Call Center Case ID# 00264207.

¹⁸ *Id.*

¹⁹ Public Utilities Commission of Ohio, Dominion Energy Ohio Historical Natural Gas Rates, available at: http://www.puco.ohio.gov/emplibrary/files/A2aArchive/Gas/Historical%20LDC%20Rate%20Charts/1%20Historical%20Pricing_DEO.pdf (last visited May 10, 2019).

section the actual variable rates for the current month.²⁰ At the time PALMco enrolled customers into an introductory price, it knew the high variable rate it would eventually charge, but did not disclose that rate to the customers during marketing or enrollment. Thus, Staff believes that PALMco representatives intentionally misled or deceived customers into believing that they would receive a competitive market rate after the low introductory rate period ended, with full knowledge that: (1) the subsequent variable price would be as much as six times higher than the default rate and/or introductory rate for gas and as much as five times higher than the default rate for electric and/or their own introductory price; and (2) that the rate would not be competitive with the current market rates. In January 2019, Staff reached out to PALMco about complaints related to its high variable rates and requested that it provide the factors that make the price vary. PALMco provided many factors that make its prices vary, and informed Staff that it made a business decision to increase variable rates in order to recover from a lower than expected financial performance in 2018.²¹

Staff believes that these practices demonstrate unfair, misleading, deceptive, or unconscionable tactics in relation to the marketing, solicitation, sale of, administration of, contracts for, or provision of CRES or CRNGS in violation of the Ohio Administrative Code.

B. Failure to Respond to Staff Record Requests

Ohio Adm.Code 4901:1-21-04, 4901:1-21-06(D)(2)(b), 4901:1-21-08(B), 4901:1-29-04, 4901:1-29-06(E), and 4901:1-29-08(B) ensure that a CRES or CRNGS supplier provides timely responses to Staff inquiries. These sections of the Ohio Administrative Code state in pertinent part as follows.

Ohio Adm.Code 4901:1-21-04:

(A) Each competitive retail electric service provider shall establish and maintain records and data sufficient to:

(1) Verify its compliance with the requirements of any applicable commission rules.

(2) Support any investigation of customer complaints.

(B) Unless otherwise prescribed in this chapter, all records required by this chapter shall be retained for no less than two years.

²⁰ Public Utilities Commission of Ohio, Residential Apples to Apples Comparison Chart, Dominion Energy Ohio (Published Jan. 11, 2019), available at: https://www.puco.ohio.gov/emplibrary/files/A2aArchive/Gas/Dominion_Energy_Ohio/Residential/2019-01-11_Dominion_Energy_Ohio.pdf (last visited May 10, 2019) and Public Utilities Commission of Ohio, Residential Apples to Apples Comparison Chart, American Electric Power (Published Jan. 25, 2019), available at: https://www.puco.ohio.gov/emplibrary/files/A2aArchive/Electric/American_Electric_Power/Residential/2019-01-25_American_Electric_Power.pdf (last visited May 10, 2019).

²¹ Email from Briana Ashiotes to Barbara Bossart dated February 21, 2019.

(C) Unless otherwise prescribed by the commission or its authorized representatives, all records required by this chapter shall be provided to the staff within three business days of its request.

Ohio Adm.Code 4901:1-21-06(D)(2)(b):

(D) Residential and small commercial enrollment

** * **

(2) Telephonic Enrollment

** * **

(b) Following telephonic enrollment, the CRES provider shall comply with all of the following:

(i) Within one business day, send the customer a written contract that details the terms and conditions summarized in the telephone call and the generation resource mix and environmental characteristics information pursuant to rule 4901:1-21-09 of the Administrative Code. Such contract shall in no way alter the terms and conditions to which the customer agreed in the telephone call.

(ii) Retain the audio recording of the customer's enrollment for one year after the contract with the customer is terminated.

(iii) Provide a copy of the audio recording to the customer, commission, or the staff within three business days of a request.

Ohio Adm.Code 4901:1-21-08(B):

(B) Customer complaints

(1) Each CRES provider shall investigate customer complaints (including customer complaints referred by the electric utility) and provide a status report within three business days following receipt of the complaint to:

(a) The customer, when the complaint is made directly to the CRES provider.

(b) The customer and staff, when a complaint is referred to the CRES provider by the staff.

(2) If an investigation is not completed within ten business days, the CRES provider shall provide status reports, either orally or in writing, to the customer, or if applicable, to the customer and staff. Such status reports shall be provided at three business-day intervals until the investigation is complete, unless agreed to otherwise.

Ohio Adm.Code 4901:1-29-04:

(A) Each natural gas company (for records retention related to competitive retail natural gas services), each retail natural gas supplier and each governmental aggregator shall establish and maintain records and data sufficient to:

- (1) Verify its compliance with the requirements of any applicable commission rules.*
- (2) Support any investigation of customer complaints.*
- (B) Unless otherwise prescribed in this chapter, all records required by this chapter shall be retained for no less than two years.*
- (C) Unless otherwise prescribed by the commission or its authorized representatives, all records required by this chapter shall be provided to the staff within three business days of its request.*

Ohio Adm.Code 4901:1-29-06(E):

(E) Telephonic enrollment

- (2) Following telephonic enrollment, the retail natural gas supplier or governmental aggregator shall:*
 - (a) Within one business day, send the customer a written contract that details the terms and conditions summarized in the telephone call pursuant to rule 4901:1-29-11 of the Administrative Code. Such contract shall in no way alter the terms and conditions to which the customer agreed in the telephone call.*
 - (b) Retain the audio recording of the customer's enrollment for one year after the contract with the customer is terminated.*
 - (c) Provide a copy of the audio recording to the commission or its staff within three business days of a request.*

Ohio Adm.Code 4901:1-29-08(B):

(B) Customer complaints

- (1) Each retail natural gas supplier or governmental aggregator (and/or its agent) shall investigate customer complaints (including customer complaints referred by the natural gas company) and provide a status report within three business days following receipt of the complaint to:*
 - (a) The customer, when the complaint is made directly to the retail natural gas supplier or governmental aggregator.*
 - (b) The staff, when a complaint is referred to the retail natural gas supplier or governmental aggregator by the staff.*
- (2) If an investigation is not completed within ten business days, the retail natural gas supplier or governmental aggregator (and/or its agent) shall provide status reports to the customer, or if applicable, to the staff. Such status reports shall be provided at three business day intervals until the investigation is complete, unless the action that must be taken will require more than three business days and the customer has been so notified.*
- (3) The retail natural gas supplier or governmental aggregator (and/or its agent) shall inform the customer, or the staff, of the results of the investigation, orally or*

in writing, no later than three business days after completion of the investigation. The customer or staff may request the report in writing.

(4) If a customer disputes the retail natural gas supplier's or governmental aggregator's (and/or its agent's) report, the retail natural gas supplier or governmental aggregator shall inform the customer that the staff is available to mediate complaints. The retail natural gas supplier or governmental aggregator (and/or its agent) shall provide the customer with the address, local/toll-free telephone numbers, and Ohio relay service telephone number of the commission's call center.

(5) Each retail natural gas supplier or governmental aggregator shall retain records of customer complaints, investigations, and complaint resolutions for two years after the occurrence of such complaints and shall provide such records to the staff within three business days of request.

(6) Each retail natural gas supplier or governmental aggregator shall make good faith efforts to resolve disputes and cooperate with the resolution of any joint issues with the incumbent natural gas company.

As of April 22, 2019, Staff investigators noted that PALMco had not been responding to record requests. The investigators had often times sent multiple requests to the company without any response. Staff continued to send requests in three business day intervals. On April 29, 2019, Staff contacted PALMco's regulatory contact, Briana Ashiotes, and spoke with her by telephone. Staff advised PALMco that it had not been receiving timely responses to Staff's requests. Briana stated that she was just made aware of that fact. She stated that PALMco has newer staff in that department and she was going to look into the matter. As of April 30, 2019, 77 cases where a second records request had been sent to PALMco remained unanswered.

As Staff's investigation showed, PALMco failed to respond to Staff requests for information in violation of the Ohio Administrative Code. By April 29, 2019, Staff had at least 78 outstanding cases where a second notice was sent to PALMco due to PALMco's failure to respond to Staff's original request.²² As of April 30, 2019, Staff noted that PALMco had started to provide responses to Staff's repeated requests.

C. Failure to Provide Sufficient Documentation to Customers at Enrollment

Ohio Adm.Code 4901:1-21-05(A), 4901:1-21-06(D), 4901:1-29-05(A), and 4901:1-29-06(D) in part, provide the information that shall be provided to the customer at the time of enrollment, specifically, for direct solicitation, including door-to-door enrollment. These sections of the Ohio Administrative Code state in pertinent part as follows.

²² Staff's PALMco Outstanding Cases Spreadsheet (on file with Staff) (confidential).

Ohio Adm.Code 4901:1-21-05(A):

- (A) Each competitive retail electric service (CRES) provider that offers retail electric generation service to residential or small commercial customers shall provide, in marketing materials that include or accompany a service contract, sufficient information for customers to make intelligent cost comparisons against offers they receive from other CRES providers.*

Ohio Adm.Code 4901:1-21-06(D):

- (D) Residential and small commercial enrollment.*
- (1) Mailings, facsimiles, and direct solicitation.*
- (a) Where enrollment occurs by mail, facsimile, or direct solicitation, the customer's signature on a contract shall constitute consent.*
- (b) Consistent with rule 4901:1-21-05 of the Administrative Code, prior to entering into a contract for service, CRES providers shall provide each customer with enrollment documents that contain, at a minimum, understandable pricing, the terms and conditions of service, the dollar amount of all recurring and nonrecurring charges (including any fees for early termination of the contract), the applicable generation resource mix and environmental characteristics, and the duration of the contract.*

Ohio Adm.Code 4901:1-29-05(A):

- (A) Each retail natural gas supplier and governmental aggregator that offers competitive retail natural gas service to customers shall provide, in marketing materials that include or accompany a service contract, sufficient information for customers to make informed cost comparisons.*

Ohio Adm.Code 4901:1-29-06(D):

- (D) Mailings, facsimiles, and direct enrollment*
- (1) Where enrollment occurs by mail, facsimile, or direct solicitation, the customer's signature on a contract shall constitute consent.*
- (2) Consistent with rule 4901:1-29-05 of the Administrative Code, prior to entering into a contract for service, a retail natural gas supplier or governmental aggregator shall provide each customer with enrollment documents that contain, at a minimum, clear and understandable pricing, terms and conditions of service, the dollar amount of all recurring and nonrecurring charges (including any fees for early termination of the contract), and the duration of the contract.*

Staff noted that PALMco provided signed contracts for door-to-door enrollments that did not contain clear and understandable pricing, terms and conditions of service. Below are three examples:

- A consumer reported that a PALMco representative offered her a fixed rate which was supposed to be lower than the average fixed rate. She stated that she then “signed something and the representative just walked away.” The signed contract document the company subsequently provided to Staff did not include the terms and conditions with the factors that would cause the price to vary.²³
- After receiving an inquiry from a consumer about her high rate when enrolling with a door-to-door sales PALMco representative, Staff requested enrollment documentation from PALMco. No signed documents were provided to Staff, only the welcome packet information with a cover letter including terms and conditions which were mailed to the customer at a later date.²⁴
- PALMco responded to Staff’s inquiry in another door-to-door solicitation complaint that:

At the time of enrollment, [customer] agreed to enroll his gas account in a variable rate product, which included an introductory rate for the first two billing cycles. During the attached third-party verification recording, the consumer agreed to the following terms: “PALMco will be selling you natural gas at the introductory price of \$2.60 per Mcf for your first two bills.” He also acknowledged his understanding that “Beginning with your third bill, the price you pay for natural gas may vary from month to month....and may be higher or lower than the utility’s price in any given month. There are no guaranteed savings.”

PALMco stated the customer has been billed according to the terms he agreed to at the time of enrollment. However, the documents provided to Staff from PALMco show the enrollment forms signed by the customer did not include the variable pricing information or the terms and conditions of service. It was not until the welcome letter, mailed at a later date, that the customer received this information.²⁵

Staff reviewed many complaints that show that PALMco was engaging in unfair, misleading or deceptive acts and/or practices by providing unfair, misleading, and deceptive statements and/or providing insufficient information in its marketing and enrollment materials for customers to make intelligent cost comparisons. In addition, Staff believes that knowingly charging customers rates that are up to six times the introductory rate and/or natural gas default rate and up to five times the introductory rate and/or the electric utility default rate is an unconscionable sales practice.

²³ PUCO Call Center Case ID# 00255512.

²⁴ PUCO Call Center Case ID# 00264207.

²⁵ PUCO Call Center Case ID# 00245948.

IV. Aggravating Factors Regarding Managerial Capability

During its review of an application for certification or recertification, the Commission assesses an applicant's managerial, financial, and technical capability to provide the service it intends to offer, and its ability to comply with Commission rules or orders.²⁶ In addition, under Ohio Adm.Code 4901:1-24-13(E)(4) and 4901:1-27-13(E)(4), the Commission may suspend, conditionally rescind, or rescind a CRES or CRNGS provider's certificate if the Commission finds that the company is not fit or capable of providing service. Therefore, in addition to notifying the Commission of PALMco's inability to comply with Commission rules, Staff further notes PALMco's incapability to manage a competitive retail utility service.

During Staff's review of PALMco's application, it noted that PALMco and/or affiliates have also experienced compliance issues in other states. In the renewal applications,²⁷ PALMco identified multiple instances where it, or ones of its affiliates, had entered into compliance-related settlements in other states. By way of example and not exclusion, on February 25, 2015, the Connecticut Public Utilities Regulatory Authority (Connecticut PURA) notified PALMco that it opened a proceeding to examine PALMco's marketing and enrollment practices, and compliance with record retention requirements and other terms of its supplier's license.²⁸ PALMco reported in its PUCO filing that as part of a settlement with the Connecticut PURA, it agreed to voluntarily relinquish its electric license in the state of Connecticut for a period of five years.²⁹ Staff additionally discovered that on August 16, 2017, the Connecticut PURA accepted the settlement agreement, under the terms of which, PALMco was also to make a \$5,000,000.00 payment to the state of Connecticut.³⁰

In addition, on March 9, 2017, the People of the State of Illinois filed a complaint against PALMco. The complaint alleged that, among other things, PALMco engaged in unfair and deceptive acts or practices by representing to consumers, either expressly or by implication, that switching to PALMco would save them money when such was not the case; representing, expressly or by implication, that PALMco's electric prices would be comparable to that of a consumer's original electric provider when such was not the case; representing, expressly or by implication that consumers were required to use PALMco's services when such was not the

²⁶ Ohio Adm.Code 4901:1-24-05, 4901:1-24-10, 4901:1-27-05, and 4901:1-27-10.

²⁷ *In re PALMco CRES Certification*, Renewal Application (January 18, 2018); *In re PALMco CRNGS Certification*, Renewal Application (January 16, 2018).

²⁸ *Application of PALMco Power CT, LLC for an Electric Supplier License – Investigation and Enrollment Practices*, Connecticut PURA Docket No. 10-01-24RE-01.

²⁹ *In re PALMco CRNGS Certification*, Renewal Application at p. 20 (January 16, 2018).

³⁰ See *Application of PALMco Power CT, LLC for an Electric Supplier License – Investigation of Marketing and Enrollment Practices*, State of Connecticut PURA Docket 10-01-24RE01, Decision (Aug. 16, 2017), available at <http://www.dpuc.state.ct.us/dockhistpost2000.nsf/8e6fc37a54110e3e852576190052b64d/ac0e4b32c7b9ab9f8525829d003bbfd0?OpenDocument>.

case; and disclosing the method of calculating variable rates in a confusing manner that was not capable of being accurately replicated by consumers. Similarly to the facts of the present matter:

Initially, Palmco gives consumers a discounted rate that is slightly below the market rate of the consumers current electricity supplier for the first two months of services, but then begins a process of systematically raising consumers' rates to an amount that is sometimes as much as 4 times greater than what the consumer would have been paying their original electric provider if they had not switched to Palmco.³¹

On October 11, 2017, PALMco's settlement agreement with the Illinois Attorney General (Illinois AG) was judicially approved. The matter required PALMco to pay \$989,534.00 in restitution to customers and make a voluntary contribution to the Illinois AG in the amount of \$20,000.00, in addition to conducting several remedial activities.³²

On May 2, 2018, PALMco received a renewal certificate as a CRES provider to provide power marketer and power broker services within the State of Ohio.³³ On May 2, 2018, PALMco received a renewal certificate as a CRNGS provider.³⁴ In its applications, PALMco stated that it has made significant managerial investments to enhance its capabilities, including hiring experienced energy industry individuals to conduct oversight and management of essential functions of the business: operations, supply, and regulatory compliance.³⁵ It stated that a new management team has provided greater control, monitoring and oversight of the business operations and has resulted in significant cultural changes at the company.³⁶ Despite PALMco's claims, Staff continues to identify instances of PALMco's unfair, misleading, deceptive or unconscionable acts and practices in Ohio.

On January 31, 2019, Staff sent an email to PALMco about the high variable rates it was charging customers. Staff requested an explanation of the factors for the variable rates for the months on November 2018, December 2018, and January 2019. PALMco responded with a number of factors that go into the determination of pricing a product. In the response it stated that the company experienced lower than expected financial performance in 2018, which led to

³¹ *The People of the State of Illinois v. PALMco Power IL, LLC*, 2017-CH-99, 2017 WL 1032713, Complaint for Injunctive and Other Relief at ¶16 (Mar. 9, 2017) (Ill. 7th Cir.Ct.).

³² *The People of the State of Illinois v. PALMco Power IL, LLC*, 2017-CH-99, 2017 WL 1032713, Final Judgment and Consent Decree (Oct. 11, 2017) (Ill. 7th Cir.Ct.).

³³ *In re PALMco CRES Certification*, Renewal Certificate No. 10-199E(4) issued (May 2, 2018).

³⁴ *In re PALMco CRNGS Certification*, Revised Renewal Certificate No. 10-180G(5) issued (May 2, 2018).

³⁵ *PALMco CRES Certification*, Renewal Application at Ex. B-2 (January 18, 2018); *In re PALMco CRNGS Certification*, Renewal Application at Ex. B-2 (January 16, 2018).

³⁶ *In re PALMco CRES Certification*, Renewal Application at Ex. B-2 (January 18, 2018); *In re PALMco CRNGS Certification*, Renewal Application at Ex. B-2 (January 16, 2018).

the business decision to recover those differences through rate increases in recent months, including on their variable products. PALMco states that it discloses its variable prices methodology in its terms and conditions, which all customers are provided when they sign up and which are also available on their website.³⁷ PALMco also requested a meeting with Staff. Staff met with PALMco on February 26, 2019, at which time PALMco again stated that it was a business decision to raise the variable prices. Staff advised the representatives that it was investigating PALMco's marketing practices and managerial capabilities; specifically, whether the company had misled customers.

Based on these facts, Staff believes that PALMco has not demonstrated that its managerial capabilities are sufficient to ensure it can provide CRES and CRNGS in compliance with the Ohio Administrative Code. In addition, Staff believes that PALMco's management decisions and marketing behavior have caused extreme harm to consumers in Ohio.

V. Recommendations

Based on the results of Staff's investigation, Staff recommends that the Commission find that PALMco: (1) is in probable non-compliance with multiple provisions of the Ohio Administrative Code; (2) has not demonstrated its ability to comply with Commission rules in the future; and (3) does not have the managerial capability to be certified as a CRES or CRNGS provider in the state of Ohio.

Therefore, Staff recommends that the Commission:

- Suspend, conditionally rescind, or rescind PALMco's certification;
- Order PALMco to pay a forfeiture of \$1,400,000.00;
- Order PALMco to provide restitution to customers enrolled during the above noted timeframes by refunding the difference between the electric distribution and/or natural gas utility's default rate, as applicable, and the rate PALMco actually charged them; and
- Prohibit PALMco from transferring any customer contracts to another entity.

If the Commission decides not to suspend, conditionally rescind, or rescind PALMco's certification, Staff recommends that the Commission order the following:

- PALMco shall provide restitution to customers enrolled during the above noted timeframes by refunding the difference between the electric distribution and/or natural gas utility's default rate and the rate PALMco actually charged them;

³⁷ Email from Briana Ashiotes to Barbara Bossart dated February 2019.

- PALMco shall be prohibited from transferring any customer contracts to another entity until all affected customers have been provided notification and restitution; and
- PALMco shall pay a forfeiture of \$1,400,000.00.

Staff believes that the above recommendations will help protect the consumers of Ohio against unfair, misleading, deceptive, and unconscionable acts and practices in relation to the marketing, solicitation, sale of, administration of, contracts for, and provision of CRES or CRNGS.

VI. Conclusion

Staff's investigation demonstrated that PALMco has consistently and continuously violated requirements of the Ohio Administrative Code. Specifically, Staff determined the following:

- PALMco provided untruthful promises of lower rates, which is unfair, misleading, deceptive, and unconscionable in relation to the marketing, solicitation, sale of, administration of, contracts for, or provision of CRES or CRNGS, in violation of Ohio Adm.Code 4901:1-21-03(A), 4901:1-21-05(A) and (C), 4901:1-21-11(A), 4901:1-29-03(A), 4901:1-29-05(A) and (D), and 4901:1-29-10(A);
- PALMco did not respond to Staff record requests, as required by Ohio Adm.Code 4901:1-21-04, 4901:1-21-06(D)(2)(b), 4901:1-21-08(B), and 4901:1-29-04, 4901:1-29-06(E), and 4901:1-29-08(B); and
- PALMco did not provide all the documentation required during marketing and direct solicitation, as required by Ohio Adm.Code 4901:1-21-05(A), 4901:1-21-06(D), 4901:1-29-05(A), and 4901:1-29-06(D).

Furthermore, Staff's investigation has shown that PALMco has failed to meaningfully modify its business practices to bring itself into compliance with the Commission's rules. PALMco was aware that Staff had concerns with its high variable rates and its related sales practices in 2016³⁸ and again in January 2019.³⁹ Staff advised PALMco that it had concerns about PALMco's managerial capabilities in February 2019 and were investigating whether customers were misled during the marketing of its products, yet Staff is unaware of any independent and meaningful steps taken by the company to take corrective action.

In addition, Staff's investigation has shown that PALMco does not currently possess the fitness or managerial capability to provide competitive services in the state of Ohio. In addition

³⁸ E.g., Email from Bill Haiker to Robert Palmese dated January 22, 2016.

³⁹ E.g., Email from Barbara Bossart to Jennifer Coleman dated January 31, 2019.

to the aforementioned violations in Ohio, Staff has determined that PALMco and/or its affiliates have been investigated in other states for similar practices. Therefore, Staff finds PALMco managerially unfit to provide competitive services in Ohio.

Ohio Adm.Code 4901:1-24-13(E) and 4901:1-27-13(E) provide examples of the reasons that the Commission may suspend, rescind, or conditionally rescind a CRES or CRNGS certificate, respectively. These sections of the Ohio Administrative Code state in pertinent part as follows:

Ohio Adm.Code 4901:1-24-13(E):

(E) Reasons that the commission may suspend, rescind, or conditionally rescind a CRES provider's certificate include, but are not limited to:

** * **

(4) A finding by the commission that any information reported to the commission subsequent to granting a certificate adversely affects a CRES provider's fitness or capability to provide any service covered by its certificate.

** * **

(7) A finding by the commission that a CRES provider has violated any applicable commission rule or order adopted pursuant to Chapter 4928. of the Revised Code.

** * **

(9) A finding by the commission that a CRES provider has engaged in an anticompetitive act.

** * **

(11) A finding by the commission that a CRES provider has failed to comply with state laws or rules designed to protect consumers in this state or has otherwise engaged in any fraudulent, misleading, or unfair practice.

Ohio Adm.Code 4901:1-27-13(E):

(E) Reasons that the commission may suspend, rescind, or conditionally rescind a retail natural gas supplier's or governmental aggregator's certificate include, but are not limited to:

** * **

(4) A finding by the commission that any information reported to the commission subsequent to granting a certificate adversely affects a retail natural gas supplier's or governmental aggregator's fitness or capability to provide any service covered by its certificate.

** * **

(7) A finding by the commission that a retail natural gas supplier or governmental aggregator has violated any applicable commission rule or order adopted pursuant to Chapter 4929. of the Revised Code.

** * **

(9) A finding by the commission that a retail natural gas supplier or governmental aggregator has engaged in an anticompetitive act.

** * **

(11) A finding by the commission that a retail natural gas supplier or governmental aggregator has failed to comply with state laws or rules designed to protect consumers in this state, or has otherwise engaged in any fraudulent, misleading or unfair practice.

Based on the Staff's investigation and findings, Staff believes that the evidence shows that PALMco is in violation of each of the above cited provisions of Ohio Adm.Code 4901:1-24-13(E) and 4901:1-27-13(E). Staff believes that, since its last certification renewal, PALMco has: failed to demonstrate the fitness or capability to provide any competitive service covered by its certification(s); violated applicable Commission rules adopted pursuant to Chapter 4928 and/or 4929 of the Ohio Revised Code; engaged in anticompetitive acts by misleading customers into switching away from another CRES/CRNGS provider; failed to comply with state laws or rules designed to protect consumers in this state; and/or has otherwise engaged in fraudulent, misleading, deceptive, unconscionable or unfair acts or practices.

The Public Utilities Commission of Ohio
Mike DeWine, Governor
Sam Randazzo, Chairman

180 E. Broad Street, Columbus, Ohio 43215-3793
(800) 686-PUCO (7826)

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