

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’s Compliance	:	Case No. 19-957-GE-COI
with the Ohio Administrative Code and	:	
Potential Remedial Actions for Non-	:	
Compliance.	:	

JOINT STIPULATION AND RECOMMENDATION

I. Introduction

Ohio Adm. Code 4901-1-30 provides that any two or more parties to a Commission proceeding may enter into a written stipulation concerning the issues presented in the proceeding.¹ This Joint Stipulation and Recommendation (“Stipulation”) sets forth the understanding and agreement of PALMco Power OH, LLC d/b/a Indra Energy (“PALMco Power”), PALMco Energy Ohio, LLC d/b/a Indra Energy (“PALMco Energy”) (collectively “PALMco”) and the Staff of the Public Utilities Commission of Ohio (“Staff”), each of whom is a “Signatory Party” and together constitute the “Signatory Parties.” The Signatory Parties recommend that the Public Utilities Commission of Ohio (“Commission” or “PUCO”) approve and adopt this Stipulation,

¹ Pursuant to Ohio Adm. Code 4901-1-10(C), the Staff is considered a party for purposes of Ohio Adm. Code 4901-1-30.

which is intended to resolve all of the issues identified by the Staff in its Staff Report of Investigation filed in this proceeding on May 10, 2019 (“Staff Report”).

The Signatory Parties, all of whom are represented by capable and knowledgeable counsel, have engaged in lengthy, serious, arm’s length bargaining in an effort to reach a mutually acceptable resolution that would address the concerns raised in the Staff Report. This Stipulation is supported by adequate data and information and as a package, the Stipulation benefits customers and the public interest; represents a just and reasonable resolution of all issues in this proceeding; violates no important regulatory principle or practice; and complies with and promotes the policies and requirements of Title 49 of the Ohio Revised Code.

This Settlement represents an accommodation of the diverse interests represented by the Signatory Parties and, though not binding, is entitled to careful consideration by the Commission. The primary objective of this Stipulation is to provide redress for the consumers that were harmed and to avoid, to the extent possible, the potential for future customer harm resulting from the marketing, solicitation, sale, provision or administration of contracts for competitive retail electric service (CRES) and/or competitive retail natural gas service (CRNGS) by PALMco to customers. In joining in this Stipulation, the Signatory Parties recognize that it is not in the public interest to subject the Signatory Parties and the Commission to the burdens associated with litigating the issues raised in the Staff Report when a reasonable and acceptable outcome can be achieved through a settlement.

The Signatory Parties fully support this Stipulation and urge the Commission to accept and approve the terms found below.

II. Recitals

WHEREAS, PALMco Power is an electric services 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 this Commission pursuant to R.C. 4928.16.

WHEREAS, 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 this Commission pursuant to R.C. 4929.24.

WHEREAS, on May 10, 2019, Staff filed a Staff Report regarding the acts and practices of PALMco identified therein;

WHEREAS, the Signatory Parties negotiated on several occasions to address the issues raised in Staff Report and have reached a resolution of all issues;

NOW, THEREFORE, in consideration of the terms and mutual promises set forth herein, the Signatory Parties hereby agree, as follows:

III. Joint Recommendation of Signatory Parties

The Signatory Parties agree that, for purposes of settlement, the Commission should approve this Stipulation without modification as set forth herein:

1. Signatory parties agree that PALMco voluntarily re-rated² all customers who enrolled between 12/1/18 and 4/15/19 and were charged a variable rate, and that the total cost of re-rating these customers was approximately \$385,000. PALMco will provide a list of the re-rated customers to Staff.
2. Signatory parties agree that PALMco has also reviewed and re-rated accounts in response to informal complaints brought to its attention by Staff. As of July 26, 2019, the amounts refunded to resolve such informal complaints is approximately \$55,000. PALMco will continue to review such informal complaints and issue refunds where appropriate, regardless of when enrollment occurred.
3. PALMco will not enroll any new residential or small commercial customers for the remaining term of its existing certificates (2/14/20 for gas; 3/8/20 for electric). Current customers may renew per terms of current Ohio contracts.
4. PALMco will not renew its Ohio certificates to provide CRES or CRNGS service.
5. Prior to expiration of its current certificates, PALMco will exercise good faith efforts to assign all remaining customer contracts to an unaffiliated third-party supplier, in accordance with a bona fide transaction for value. Such assignment will comply with all relevant statutory and rule requirements, including the requirement that the new supplier will be certified to provide

²As used in this Stipulation, “re-rate” or “re-rated” means PALMco calculated the difference between the rate it charged to the customer and the rate the customer would have paid to the applicable utility under the utility’s standard service offer or default rate, and refunded or credited the difference to the customer.

CRES and/or CRNGS services at the time of assignment. A copy of any contract, agreement, bill of sale, or other instrument transferring PALMco's customer contracts to a third-party will be provided to the Signatory Parties within three business days of execution. The Signatory Parties agree to afford confidential status to such instrument and all information contained therein.

6. PALMco will notify customers of the assignment. PALMco will submit a copy of the customer notice to Staff for review 14 days before sending the notice to customers. This notice will comply with all disclosures required under the Commission's rules, and will also disclose that PALMco will be exiting the Ohio market at the end of its current certification term; that customers are under no obligation to remain with the new supplier; and that customers have the right to: (a) continue receiving service from the new supplier; or (b) terminate their contract at no cost and either return to the standard service offer or enroll with another supplier of their choosing.
7. The funds realized from any transaction associated with the assignment of customer contracts will be used by PALMco to satisfy the following obligations, in order of priority, as follows:
 - a. PALMco will re-rate all gas and electric customers who enrolled between 10/1/18 and 11/30/18 and were not previously re-rated. The Signatory Parties estimate that the total cost to re-rate all such customers will be approximately \$800,000.

- b. Refunds payable under Paragraph 7(a) above will be paid within 30 calendar days of the date PALMco receives the funds from the transaction associated with the assignment. PALMco will provide the Signatory Parties a list of customers and amounts refunded within 10 calendar days thereafter.
- c. If the funds realized from a transaction exceed the amount of the total refund obligation described in Paragraph 7(a) above, then 50% of the remaining funds shall be paid to the State of Ohio as a forfeiture. The forfeiture is subject to a cap of \$750,000 and is payable within 60 calendar days of the date PALMco receives the funds. PALMco agrees to pay the forfeiture by certified check or money order (including the PUCO Case Number) made payable to “Treasurer, State of Ohio,” to:

Public Utilities Commission of Ohio
Attention: Fiscal Division
180 E. Broad Street
Columbus, OH 43215-3793

- 8. If PALMco is unable to effectuate an assignment of customer contracts as contemplated under Paragraph 5 above within 30 days prior to the expiration of its current certificates, then PALMco’s customers shall default to the applicable utility standard or default service offer, effective as of the date following the date of expiration of PALMco’s CRES or CRNG certificate, as applicable.

9. PALMco agrees that it will not transfer or sell any customer contracts to any of PALMco's current owners, officers or partners. In addition, PALMco's current owners agree not to operate as an owner, officer, director or partner for another CRES or CRNGs company in Ohio for five years from the signing of the stipulation. Further, the Signatory Parties understand as part of Staff's review in a CRES or CRNGS application filing and in accordance with Ohio Adm.Code 4901:1-24-05 and 4901:1-27-05, Staff considers the managerial capabilities of an applicant and may share its recommendation with the Commission through a filing in the docket. Any future application for competitive provider certification including a former and/or current owner, officer or partner of PALMco or its affiliate(s) will be considered on a case-by-case basis.

IV. Procedural Matters

1. The Signatory Parties urge the Commission to render a decision adopting the Stipulation as soon as possible, in order to expedite the benefits to consumers relating to the Stipulation.
2. Any Signatory Party may file testimony in support of the Stipulation.
3. Except as may be necessary to enforce the terms of this Stipulation, to establish that the terms of the Stipulation are lawful, or as part of the company's history of violations in determining the appropriate forfeiture or corrective action for any future violations, neither this Stipulation nor the

information and data contained herein or attached hereto shall be cited as precedent in any future proceeding or before the General Assembly for or against any Signatory Party, if the Commission approves the Stipulation. Nor shall the acceptance of any provision within this Stipulation be cited by any party in any forum, including the General Assembly, so as to imply or state that any Signatory Party agrees with any specific provision of the Stipulation. The Signatory Parties request that the Commission not cite this Settlement as precedent in any future case. More specifically, no specific element or item contained in or supporting this Stipulation shall be construed or applied to attribute the results set forth in this Stipulation as the results that any Signatory Party might support or seek, but for this Stipulation in these proceedings or in any other proceeding. This Stipulation contains a combination of outcomes that reflects an overall compromise involving a balance of competing positions, and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken on any individual issue. Rather the Stipulation represents a package that, taken as a whole, is acceptable for the purposes of resolving all contested issues without resorting to litigation. The Signatory Parties believe that this Stipulation, taken as a whole, represents a reasonable compromise of varying interests.

4. The Signatory Parties will support the Stipulation if the Stipulation is contested, and no Signatory Party will oppose an application for rehearing

designed to defend the terms of this Stipulation. If the Stipulation is adopted by the Commission, the Signatory Parties will support the Stipulation in any appeal of the decision.

5. This Stipulation is conditioned upon adoption of the Stipulation by the Commission in its entirety and without material modification. Each Signatory Party has the right, in its sole discretion, to determine whether the Commission's approval of this Stipulation constitutes a "material modification" thereof. If the Commission rejects or materially modifies all or any part of this Stipulation, any Signatory Party shall have the right to apply for rehearing. If the Commission does not adopt the Stipulation without material modification upon rehearing, or if the Commission makes a material modification to any Order adopting the Stipulation pursuant to any reversal, vacation and/or remand by the Supreme Court of Ohio, then within thirty (30) days of the Commission's Entry on Rehearing or Order on Remand any Signatory Party may withdraw from the Stipulation by filing a notice with the Commission ("Notice of Withdrawal"). No Signatory Party shall file a Notice of Withdrawal without first negotiating in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation. If a new agreement achieves such an outcome, the Signatory Parties will file the new agreement for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful, and a Signatory Party

files a Notice of Withdrawal, then the Commission will convene an evidentiary hearing to afford that Signatory Party the opportunity to contest the Stipulation by presenting evidence through witnesses, to cross examine witnesses, to present rebuttal testimony, and to brief all issues that the Commission shall decide based upon the record and briefs. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are successful, then some or all of the Signatory Parties shall submit the amended Stipulation to the Commission for approval after a hearing if necessary.

6. Unless the Signatory Party exercises its right to terminate its Signatory Party status or withdraw as described above, each Signatory Party agrees to and will support the reasonableness of this Stipulation before the Commission, and to cause its counsel to do the same, and in any appeal it participates in from the Commission's adoption and/or enforcement of this Stipulation. The Signatory Parties also agree to urge the Commission to accept and approve the terms hereof as promptly as possible.

WHEREFORE, the Signatory Parties agree and recommend this 31st day of July 2019 that the Commission find that the Stipulation represents a reasonable resolution of this matter, and that the Stipulation should be adopted and approved.

**On behalf of the Staff
The Public Utilities Commission of
Ohio:**

/s/ Jodi J. Bair

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**On behalf of PALMco Power OH,
LLC d/b/a Indra Energy and
PALMco Energy OH, LLC d/b/a
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CERTIFICATE OF SERVICE

I certify that the foregoing Joint Stipulation and Recommendation was electronically filed with the Commission on July 31, 2019. Courtesy copies are also being served this date by electronic mail to the following:

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/s/Mark A. Whitt

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Case No(s). 19-0957-GE-COI

Summary: Text Joint Stipulation and Recommendation electronically filed by Ms. Rebekah J. Glover on behalf of PALMco Energy OH, LLC d/b/a Indra Energy and PALMco Power OH, LLC d/b/a Indra Energy