

**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,	)	Case No. 19-0957-GE-COI
LLC d/b/a Indra Energy's Compliance with	)	
the Ohio Administrative Code and Potential	)	
Remedial Actions for Non-Compliance.	)	

**MEMORANDUM CONTRA OFFICE OF THE OHIO CONSUMERS' COUNSEL'S  
MOTION TO COMPEL AND MOTION FOR CONTINUANCE**

Office of the Ohio Consumers' Counsel (OCC) motion to compel discovery from PALMco Energy OH, LLC d/b/a Indra Energy and PALMco Power OH, LLC d/b/a Indra Energy (collectively, PALMco) must be denied, as must its motion for continuance of this proceeding.

This case arises from a Staff Report alleging violations of certain rules governing marketing and contract administration. The Staff Report mentions hundreds of "contacts" with consumers over a period of months, but provides only six specific examples of alleged "violations." Staff recommends a forfeiture, restitution, and the possibility of suspending PALMco's licenses.

The Staff Report is not a finding of guilt or culpability. It is a charging document, no different in character than a civil complaint or criminal indictment. The Staff Report gives notice of Staff's allegations. If PALMco chose to litigate, Staff would have the burden of proving those allegations through witnesses and evidence—just like a plaintiff has to prove the allegations in a civil complaint or the government has to prove the allegations in a criminal indictment. A document giving notice of allegations is not "evidence" to prove them.

By entering into the July 31, 2019 Stipulation, PALMco has elected to submit to a remedy without putting Staff to its burden of proof. The agreed remedy gives Staff more than it

asked for. PALMco voluntarily agreed to stop marketing variable rate offers. It voluntarily agreed to pay, and has paid, over \$400,000 in restitution. It has agreed not to renew its certificates to serve. And it has agreed to pay a substantial forfeiture, provided it can exit the Ohio market in an orderly fashion. Offers have been made to OCC to guarantee a forfeiture amount regardless of a sale, but “management” has remained silent.

OCC has had as much time to prepare and serve discovery, including depositions, as all other parties to this proceeding since the very beginning. Since the day the investigation opened, it was made clear that the Commission had an interest in reaching a swift resolution, which necessarily meant that all parties involved had to make crucial decisions about how to best prepare and spend their time. Staff, PALMco, and OCC all chose to spend significant time and effort toward reaching a settlement, instead of pursuing a litigation strategy, complete with discovery and depositions. OCC, after extending the time spent on settlement negotiations and then ultimately declining to settle, cannot now seek to delay this proceeding even further by pursuing retributive discovery on issues that are not relevant given the terms of the Stipulation.

OCC’s deposition notice primarily seeks to force PALMco to open up its books, ostensibly to demonstrate PALMco’s ability to pay the amounts it has already agreed to pay under the terms of the Stipulation. It is not OCC’s responsibility to vet PALMco’s financial condition, nor it is OCC’s right to suggest that PALMco cannot pay the amounts it has already stipulated that it is able and willing to pay. What’s more, to the extent that the terms of the Stipulation rely on a future sale and assignment of PALMco’s customer contracts, no witness would be able to do anything more than speculate on the possibility of a sale. PALMco is certainly not in a position to oblige any future buyers and would jeopardize any sale that could occur by doing so.

OCC's motive in seeking to delay this proceeding is unclear. The longer the investigation is open and the more contentious the proceeding, the harder it will be for PALMco to assign its contracts to a willing buyer. This would almost surely result in either a minimal or zero-dollar forfeiture amount, which seems counter-intuitive to OCC's desired outcome. Objecting to the settlement for the sake of objecting is not serving consumers. The outcome of a fully-litigated proceeding would almost certainly result in consumers and the State of Ohio receiving less than what the settlement offers.

The Commission should deny OCC's motion to compel discovery and should deny its motion for continuance. The hearing should proceed as scheduled.

Dated: August 27, 2019

Respectfully submitted,

/s/ Mark A. Whitt

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Memorandum Contra was served by electronic mail this 27th day of August, 2019, to the following:

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Summary: Memorandum Contra Ohio Consumers' Counsel's Motion to Compel and Motion for Continuance 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