

OCC EXHIBIT NO. _____

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Investigation into PALMco Power)	Case No. 19-957-GE-COI
OH, LLC dba Indra Energy and)	
PALMco Energy OH, LLC dba Indra)	
Energy's Compliance with the Ohio)	
Administrative Code and Potential)	
Remedial Actions for Non-)	
Compliance.)	

**DIRECT TESTIMONY
OF
BARBARA R. ALEXANDER
IN OPPOSITION TO THE SETTLEMENT**

On Behalf of
The Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215

September 4, 2019

*Direct Testimony of Barbara R. Alexander
In Opposition to the Settlement
On Behalf of the Office of Ohio Consumers' Counsel
PUCO Case No. 19-0957-GE-COI*

1 ***Q1. PLEASE STATE YOUR NAME, ADDRESS AND OCCUPATION.***

2 ***A1.*** My name is Barbara R. Alexander. I am the sole member of Barbara Alexander
3 Consulting LLC. My address is 83 Wedgewood Dr., Winthrop, ME 04364. I am
4 testifying on behalf of the Office of the Ohio Consumers' Counsel ("OCC").
5

6 ***Q2. WHAT IS YOUR RELEVANT BACKGROUND AND EXPERIENCE?***

7 ***A2.*** I opened my consulting practice in March 1996 after nearly ten years as the
8 Director of the Consumer Assistance Division of the Maine Public Utilities
9 Commission. While there, I testified as an expert witness on consumer protection,
10 customer service and low-income issues. My consulting practice is directed to
11 consumer protection, customer service, and low-income programs and policies
12 relating to utilities regulation. In particular, I have focused on the changes in
13 policies and procedures required by state regulation in the transition to retail
14 competition, analysis of the costs and benefits of proposed Advanced Metering
15 Infrastructure proposals, analysis of rate design proposals for residential
16 customers, and net metering policies. I have appeared on behalf of state utility
17 consumer advocates and state and national consumer advocacy organizations in
18 over 25 states. With regard to the retail energy markets, I have developed
19 regulations for licensing and consumer protection policies and evaluated and
20 testified in investigations of specific retail energy marketers for violations of
21 state-specific regulations in Illinois, Maryland, New York, Pennsylvania, and
22 Massachusetts.

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1 I have advised the OCC on retail energy markets in several regulatory dockets
2 here in Ohio and I am familiar with the licensing and consumer protection
3 regulations applicable to Competitive Retail Electric Service marketers and
4 Competitive Retail Natural Gas Service marketers.

5

6 I am a graduate of the University of Michigan (B.A. 1968) and the University of
7 Maine School of Law (J.D. 1976). My curriculum vitae identifying my written
8 publications and testimony is attached as Exhibit BRA-1.

9

10 ***Q3. WHAT IS THE PURPOSE OF YOUR TESTIMONY?***

11 ***A3.*** I explain why the Public Utilities Commission of Ohio (“PUCO”) should reject or
12 modify the stipulation and recommendation filed in this case on July 31, 2019 (the
13 “Settlement”), by the PUCO Staff and PALMco. The Settlement is unjust and
14 unreasonable and violates the PUCO’s three-prong test used for evaluating
15 settlements.

16

17 ***Q4. PLEASE SUMMARIZE YOUR RECOMMENDATIONS IN THIS CASE.***

18 ***A4.*** I recommend that the PUCO reject the Settlement entered into by the PUCO Staff
19 and PALMco.¹ And I recommend that the PUCO find that PALMco violated
20 various PUCO rules and Ohio law by engaging in a pattern of unfair, misleading,

¹ “PALMco” refers to PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy.

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1 deceptive and unconscionable activities against Ohio consumers. The Staff
2 Report (attached as Exhibit BRA-3), taken in the context of the long history of
3 similar conduct in other states by the owner (Mr. Palmese) demonstrates that
4 PALMco and Mr. Palmese knowingly misled and deceived customers and are
5 incapable of (or uninclined to) managing a competitive retail marketing service
6 that complies with the PUCO's regulations and Ohio law. I further recommend
7 that the PUCO order full restitution to all customers harmed by PALMco, assess a
8 substantial forfeiture to PALMco, and rescind PALMco's operating
9 certificate/license so that it cannot ever again participate in the Ohio retail
10 markets. In my opinion, this proposed Settlement fails to properly respond to the
11 long-standing pattern of misrepresentation and abusive conduct by PALMco in
12 Ohio and its group of companies in other states.

13
14 Additionally, PALMco's customers should be: informed of any temporary or
15 permanent termination of its business; provided with a reasonable level of
16 restitution for excessive prices charged under variable rate contracts; and returned
17 to the standard offer service of the customer's distribution utility unless the
18 customer chooses to affirmatively enroll with another marketer. The sale of
19 PALMco's customers to another marketer and the conditioning of refunds to
20 customers on such a sale is unreasonable and fails to protect customers who
21 deserve refunds. It is against the public interest to let PALMco off the hook for
22 refunds to customers based on the potential outcome of a sale of its business. And

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1 the Settlement's lack of sufficient funding for guaranteed customer restitution is
2 contrary to the public interest as it is a glaring omission compared to other state
3 enforcement actions that have occurred against PALMco. Further and given that
4 the PUCO Staff identified how PALMco acquired customers through deception,²
5 the PUCO should not allow PALMco to profit by selling its business (and its
6 customers) to another marketer.

7

8 ***Q5. WHAT IS THE PUCO'S STANDARD FOR REVIEWING SETTLEMENTS?***

9 ***A5.*** The PUCO uses these criteria for evaluating the reasonableness of a proposed
10 settlement:

11

- 12 1. Is the proposed settlement a product of serious bargaining
13 among capable, knowledgeable parties?
- 14 2. Does the proposed settlement, as a package, benefit
15 customers and the public interest?
- 16 3. Does the proposed settlement violate any important
17 regulatory principle or practice?

18

19 In addition to these three criteria, the PUCO also routinely considers whether the
20 parties to the settlement represent diverse interests.

21

² See Exhibits BRA-2 and BRA-3.

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1 My testimony, taken with the testimony of OCC Witness Kerry Adkins, will
2 document why the proposed Settlement, as a package, violates the second and
3 third prongs because its provisions will harm customers, fail to benefit the public
4 interest, and violate important regulatory principles and practices.

5
6 ***Q6. PLEASE SUMMARIZE HOW THE SETTLEMENT FAILS TO MEET THE***
7 ***SECOND AND THIRD PRONGS OF THE PUCO'S SETTLEMENT***
8 ***CRITERIA.***

9 ***A6.*** My testimony includes a description, as a backdrop for the PUCO to reject or
10 modify the Settlement, of the ongoing and repeated misleading and improper sales
11 and marketing behaviors and promises of reform made by the PALMco group of
12 companies in New York, Pennsylvania, New Jersey, Illinois, and Connecticut as
13 referenced in the Staff Report. The PUCO should consider these prior
14 proceedings in other states as context for how very significant a problem for Ohio
15 consumers PALMco presents as an energy marketer. The PUCO should consider
16 what has been learned and addressed for consumer protection from PALMco in
17 these other state proceedings, in its evaluation and rejection (or improvement) of
18 the Settlement at issue here. These other state proceedings highlight the concerns
19 raised in the Staff Report (which the Settlement claims to but does not adequately
20 address and resolve³), including “a pattern of unfair, misleading, deceptive and
21 unconscionable activities” that “appear to be systemic and demonstrate that the

³ Settlement at 2.

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1 company's management decisions inappropriately orchestrate a marketing
2 program reliant upon misleading and deceiving customers.”⁴ The other state
3 proceedings also demonstrate how “PALMco's management decisions and
4 marketing behavior have caused extreme harm to consumers,”⁵ highlight
5 “PALMco's incapability to manage a competitive retail utility service,”⁶ and
6 demonstrates that “PALMco does not currently possess the fitness or managerial
7 capability to provide competitive services in the state of Ohio.”⁷

8

9 As I will document and as recognized by Staff in its Report,⁸ the owner of the
10 PALMco group of companies has repeatedly been investigated for the same
11 deceptive, misleading and fraudulent behavior documented by the Staff in its
12 Report issued on May 10, 2019. Furthermore, the owner of the PALMco group of
13 companies has paid customer restitution and fines for these same patterns of
14 behavior and careless and improper lack of oversight of their third-party sales
15 agents in all these prior proceedings, none of which have apparently had the
16 desired impact of preventing the sales practices documented by the Staff in this
17 proceeding. As a result, the Settlement fails to impose sufficient penalties and
18 financial harm to PALMco or its owner and fails to provide sufficient protection

⁴ Staff Report at 3 (attached as Exhibit BRA-3).

⁵ Id. at 16.

⁶ Id. at 15.

⁷ Id. at 18.

⁸ Id. at 18-19 (“In addition to the aforementioned violations in Ohio, Staff has determined that PALMco and/or its affiliates have been investigated in other states for similar practices.”).

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1 to all the affected customers or to reimburse these customers for the harm
2 incurred. In other words, it appears that PALMco views state sanctions against it
3 as a mere cost of doing business instead of as a cause for reform of its bad acts.
4

5 ***Q7. PLEASE EXPLAIN THE MEANING OF YOUR PHRASE, “PALMCO***
6 ***GROUP OF COMPANIES.”***

7 ***A7.*** I use this phrase to refer to all the state licensed retail energy marketers owned,
8 operated, and managed by Mr. Robert Palmese. Mr. Palmese appears to be the
9 “Palm” in PALMco. This individual is the owner of Columbia Utilities LLC and
10 Columbia Utilities Power LLC in New York. These New York gas and electric
11 marketers were originally formed by Mr. Palmese who then expanded his gas and
12 electric retail energy business to other states under the “PALMco” brand with
13 separate corporate entities. Until recently, the headquarters of all the PALMco
14 group of companies was 8751 18th Ave., Brooklyn, New York, a building that
15 housed Mr. Palmese’s original business of selling fuel oil and heat system
16 repairs.⁹
17

18 In the last year, PALMco has filed in most states, including Ohio, to do business
19 under the name of Indra Energy with a new business location at 1515 Market St.,
20 Suite 1200, Philadelphia, Pennsylvania.¹⁰ In each of the enforcement actions I

⁹ See PUCO Case Nos. 10-138-GA-CRS and 10-139-EL-CRS, Notice of Material Change (October 29, 2018)

¹⁰ See id.

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1 will describe in my testimony Mr. Robert Palmese is the individual who
2 authorizes the required payments and commits to the reforms mandated by these
3 orders and/or settlements.
4

5 ***Q8. WHICH PROVISIONS OF THE SETTLEMENT IN THIS PROCEEDING***
6 ***DO YOU FIND OBJECTIONABLE AS BEING INADEQUATE FOR***
7 ***PROTECTING CONSUMERS FROM HARM AND AS CONTRARY TO THE***
8 ***PUBLIC INTEREST?***

9 ***A8.*** The Settlement does not obtain funds from Mr. Palmese or the PALMco gas and
10 electric marketers licensed in Ohio to reimburse some customers for the high
11 prices charged by PALMco pursuant to violations in sales and marketing conduct
12 as identified in the Staff Report unless or until PALMco's customers are sold to
13 another marketer. Even if PALMco receives funds from the sale of its customers
14 to another marketer, the maximum refund amount is set at \$800,000. Further, as
15 OCC Witness Kerry Adkins explains, the Settlement does not provide for refunds
16 to customers who enrolled with PALMco outside of the periods identified in the
17 Settlement and/or have not complained to the PUCO, regardless of the amount
18 PALMco may realize from selling its customer contracts. Another potential
19 payment of \$750,000 will be paid to the State of Ohio as a forfeiture if the
20 customer contracts are sold and if the funds realized from the transaction exceed
21 the customer refund amount.

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1 This provision, making certain of PALMco's obligations to refund customers and
2 pay forfeitures contingent upon the proceeds received from the sale of its
3 business, is unique compared to all the other state-initiated enforcement actions
4 against PALMco companies that I describe below. In all these other proceedings
5 the customer restitution and fines were not contingent on the sale of PALMco's
6 customers to another marketer. Also bad is the PUCO Staff's change from
7 originally opposing any transfer of PALMco's customers to another marketer to,
8 in the Settlement, endorsing the sale of PALMco's business (and customer
9 contracts) at PALMco's discretion. The PUCO Staff documented how PALMco
10 built its business in part by deceiving customers, so PALMco should not be
11 allowed to make money from selling such an ill-gained business.

12
13 Furthermore, there is no financial justification presented in the Settlement itself
14 for excusing Mr. Palmese and his corporate entities from bearing the full
15 responsibility for their actions—repeated violations of Ohio law and PUCO rules
16 that have harmed customers. The Settlement overall is contrary to the public
17 interest. A more substantial forfeiture, guaranteed and expanded customer
18 restitution, and transfer of the customers to the safe harbor of the utilities'
19 standard offers should be ordered.

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1 ***Q9. WHAT OTHER STATE PROCEEDINGS DEMONSTRATE A PATTERN OF***
2 ***DECEPTIVE ACTIVITIES THAT THE PUCO SHOULD CONSIDER IN***
3 ***EVALUATING THE REASONABLENESS OF THIS SETTLEMENT?***

4 ***A9.*** There are five proceedings in which Mr. Palmese's retail energy supply entities
5 have been documented as engaging in misleading and deceptive sales practices
6 and in which Mr. Palmese agreed or was ordered to pay customer restitution
7 and/or fines. Mr. Palmese's systemic pattern of unconscionable misleading and
8 deceptive practices has been documented in the following states and proceedings:

9

10 **1. NEW YORK ATTORNEY GENERAL**
11 Columbia Utilities LLC and Columbia Utilities Power
12
13 ASSURANCE OF DISCONTINUANCE (AOD #10-120) [April 12, 2011]
14 MODIFICATION [February 28, 2014]
15

16 **2. PENNSYLVANIA PUBLIC UTILITY COMMISSION**
17 WILLIAM MacLUCKIE V. PALMCO ENERGY PA LLC, DOCKET
18 NO. C-2014-2402558
19
20 FINAL ORDER (June 30, 2015)
21

22
23 **3. ATTORNEY GENERAL OF NJ, BOARD OF PUBLIC**
24 **UTILITIES, NJ DIVISION OF CONSUMER AFFAIRS V.**
25 **PALMCO POWER NJ LLC, PALMCO ENERGY NJ LLC**
26
27 SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION,
28 MERCER COUNTY, DOCKET NO. MER-C-33-14
29
30 FINAL CONSENT JUDGEMENT (May 2016)

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**4. PEOPLE OF THE STATE OF ILLINOIS V. PALMCO
POWER IL LLC**

CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,
SANGAMON COUNTY, ILLINOIS, NO. 2017CHOOO99

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF (March 9,
2017)

FINAL JUDGEMENT AND CONSENT DECREE (October 11, 2017)

**5. CONNECTICUT PUBLIC UTILITIES REGULATORY
AUTHORITY: APPLICATION OF PALMCO POWER CT,
LCC FOR AN ELECTRIC SUPPLIER LICENSE—
INVESTIGATION OF MARKETING AND ENROLLMENT
PRACTICES, DOCKET NO. 10-01-24 RE01**

PUBLIC UTILITY REGULATORY AUTHORITY DECISION (August
16, 2017).

***Q10. PLEASE EXPLAIN THE PATTERN OF SALES AND MARKETING
CONDUCT AND CUSTOMER RESTITUTION AND FINES TO BE PAID BY
MR. PALMESE AND HIS STATE-LICENSED RETAIL ENERGY
MARKETERS IN THESE PROCEEDINGS.***

A10. Every one of these proceedings describe and document a similar pattern of inappropriate conduct that was found to be unreasonable and in violation of various state laws and regulatory rules. In each proceeding, Mr. Palmese and his retail energy supply companies promised to change or reform their conduct. But, in each proceeding, the Attorney General or the state utility commission had received large numbers of customer complaints that described promises of lower prices, “competitive prices,” “savings,” and a high level of customer service by sales agents of each of the PALMco group of companies. In most of these

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1 proceedings, the customers alleged instances of misrepresentation of the identity
2 of the PALMco sales agent at the door or over the phone, as well as a pattern of
3 exorbitant prices charged under the variable rate contracts that conflict with
4 representations of PALMco's sales agents. In each of these proceedings, the fact
5 pattern of the customer complaints is similar to those identified in the Staff
6 Report.

7

8 Unlike the pending Settlement in Ohio, however, the settlements and orders in the
9 other states reflect payments by Mr. Palmese and his retail energy supply
10 companies to reimburse consumers without any requirement that such funds
11 depend on the sale of PALMco's customers to another marketer. The following
12 key attributes of these prior enforcement proceedings demonstrate that the
13 pending Ohio Settlement is seriously deficient even though the pattern of
14 misconduct set forth in the Staff Report is similar to the pattern of misconduct that
15 Mr. Palmese and his PALMco group of companies have persistently failed to
16 correct for many years:

17

- 18 • The New York Attorney General's Assurance of Discontinuance
19 ("AOD") entered into with Columbia Utilities LLC and Columbia
20 Utilities Power LLC in 2011 was based on allegations of deceptive
21 marketing and sales, misrepresentation of bill savings, failure to
22 provide copies of contract terms, failure to properly disclose the

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1 minimum contract term of one year, and slamming. Mr. Palmese
2 on behalf of the Columbia companies agreed to refrain from these
3 behaviors and pay \$2 million to be used by the Attorney General
4 for customer restitution. In addition, Mr. Palmese agreed to
5 upgraded and more comprehensive sales and customer service
6 training programs, record all telephone conversations with
7 customers and prospective customers, monitor customer service
8 and sales representatives, including reviewing a random selection
9 of sales calls. In 2014, due to concerns about the effectiveness of
10 this monitoring provision, the modified AOD included a voluntary
11 agreement by Mr. Palmese and his energy supply companies to
12 cease door-to-door sales and obtain the Attorney General's
13 permission to resume such sales. The 2011 AOD states that the
14 two Columbia energy marketers had gross revenues that exceeded
15 \$41 million in 2010.

- 16 • The New Jersey proceeding was a joint complaint filed by the New
17 Jersey Attorney General, the Board of Public Utilities ("BPU")
18 (the retail marketer licensing authority), and the New Jersey
19 Division of Consumer Affairs. The complaint alleged it was
20 sparked by 858 customer complaints filed with the BPU, 361
21 received by the New Jersey Division of Consumer Affairs, and 178
22 complaints filed with the Better Business Bureau. The complaint

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1 described and alleged aggressive and deceptive marketing
2 practices, claims of agents misrepresenting themselves as being
3 associated with the local utility, charging “exorbitant” prices under
4 variable rate contracts, and customer slamming. At the time of this
5 complaint in early 2016, PALMco Energy (electric) had 27,751
6 customers and PALMco Power (gas) had 27,567 customers in New
7 Jersey. The complaint recited the numerous ways in which
8 PALMco and its sales agents emphasized “competitive energy
9 supply” and “competitive prices” even though the fine print
10 contract terms allowed PALMco to charge gas and electric prices
11 based on a vague pricing mechanism that did not promise savings.
12 The complaint documented that PALMco had charged gas and
13 electricity prices two to four times the rate of default service by the
14 local utility. The Final Consent Judgement signed in May 2016
15 included promises by Mr. Palmese to comply with the Energy
16 Licensing and Registration Regulations, Retail Choice Consumer
17 Protection Regulations, Energy Anti-Slamming Regulations,
18 Consumer Protection Act, Advertising Regulations, and the
19 telephone do not call list and telephone sales practices law. In
20 addition, Mr. Palmese and his energy supply companies agreed to
21 revisions to the website, brochures, and other customer disclosures
22 to include more specific pricing information and a historical

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1 presentation of prices charged by PALMco for each year showing
2 the highest and lowest prices charged. Specifically, Mr. Palmese
3 agreed with the provision that the marketer shall not represent that
4 it provides “competitive prices when such is not the case.” [Para.
5 5.9] Further, “Defendants shall not represent in the Palmco
6 Brochure that Palmco offers ‘Competitive Prices’ and ‘Only
7 Opportunities for Savings’ when such is not the case.” [Para. 5.21]
8 PALMco also agreed to record sales calls, audit sales calls, and
9 refuse agent commissions based on improper sales practices.
10 Finally, Mr. Palmese agreed to pay \$4.5 million for customer
11 restitution, \$500,000 in civil penalties, and \$286,254 in attorney
12 costs and fees.

- 13 • The Pennsylvania Commission approved an Adjudicatory Law
14 Judge’s findings and recommendations concerning an individual
15 customer complaint against PALMco, alleging that the variable
16 rates charged after the two-month introductory price were unfair
17 and misleading after the sales agent repeatedly claimed that
18 PALMco’s prices were “competitive.” The findings concluded
19 that PALMco had misrepresented the actual contract terms
20 concerning the right to charge a variable rate based on a vaguely
21 worded description of wholesale market factors. It is important to
22 consider that the neither the ALJ nor the Pennsylvania

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1 Commission found that PALMco's variable rate contract language
2 was prohibited. Rather, the misrepresentation of the actual
3 operation of that provision by PALMco agents in the sales and
4 customer service calls, by claiming that these prices would be
5 "competitive" (defined as better than or lower than prices charged
6 by either the utility or other marketers), was the key factor in the
7 violation:

- 8
- 9 ○ I find Mr. Mohammed's testimony to be insufficient to
10 refute the persuasive testimony of Mr. MacLuckie
11 regarding misrepresentations. Substantial record evidence
12 in this case demonstrates that Palmco violated the
13 Commission's regulations governing false or misleading
14 representations regarding rates or savings offered by a
15 supplier when Mr. Mohammed represented to Mr.
16 MacLuckie during the May 24, 2013 sales call that he
17 would enjoy monthly competitive variable rates beyond the
18 first two billing cycles. As such, Mr. MacLuckie's
19 Complaint will be sustained and Palmco will be assessed a
20 civil penalty. [Final Decision on Remand at 12.]

21

22 In the resolution of this one customer's formal complaint, the individual
23 customer received a rebate and PALMco was ordered to pay a \$2,000 fine.

- 24
- 25 • The Illinois proceeding was initiated by the Attorney General
26 based on customer complaints that alleged that PALMco's sales
27 agents claimed that switching would result in "savings" or
28 "competitive" energy supply prices, as well as allegations of

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1 misrepresentation of identity and abusive sales conduct in door-to-
2 door sales. The Consent Judgement requires reformed disclosures
3 on the variable rate and/or fixed rate, the disclosure of the rate
4 charged by utility, the rate for the month after introductory rate, as
5 well as upgraded and reformed training programs for sales agents
6 and third-party contractors. Specifically, PALMco agreed that
7 variable rate contracts would be accompanied by information
8 where the customer can learn about the one-year history of actual
9 variable rates charged to Illinois customers after the end of the
10 introductory rate period. Mr. Palmese agreed to a restitution fund
11 of almost \$1 million to refund the difference between the total
12 amount paid and the price a consumer would have paid the utility
13 company for certain Illinois consumers who enrolled with
14 PALMco between January 1, 2014 and December 31, 2016 and to
15 pay to the Office of the Illinois Attorney General \$20,000 as a
16 voluntary contribution to the Attorney General Court Ordered and
17 Voluntary Compliance Payment Projects Fund.

- 18 • The Connecticut settlement approved by the Public Utility
19 Regulatory Authority (“PURA”) recites the conduct and findings
20 by the Prosecutorial Staff, the Attorney General, and the Office of
21 Consumer Counsel who participated in the evidentiary proceeding,
22 all of which explicitly are identified as conduct that PALMco

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1 agrees to “discontinue,” including: providing false and misleading
2 information concerning the pricing of the company’s rates; failure
3 to oversee and discipline sales force; deceptive description of its
4 variable rates and how prices determined; door-to-door deceptive
5 and misleading sales presentations; slamming; impersonating
6 utility employees; clear and consistent pattern of abusive and
7 deceptive sales tactics; failure to maintain records of customer
8 complaints; and failure to directly train and supervise training of
9 sales agents. While PALMco technically denied the allegations of
10 violations, PALMco agreed that the practices identified in the
11 State’s position have been “discontinued” and that in 2016 “it
12 made various improvements, including hiring several individuals
13 with significant retail electric experience for upper management
14 positions, and that “it has committed to undertake a third party
15 compliance audit to identify improvements in its training,
16 compliant, and marketing functions.” [Settlement at Para. 13-15]
17 Under this settlement approved by PURA, Mr. Palmese agreed to
18 pay a \$5 million fine and give up his energy supply company’s
19 license for a minimum period of five years (from 2015 to 2020).
20 (The PURA has no authority to require refunds.)

***Q11. AS A RESULT OF THE HISTORY OF CONSUMER PROTECTION
ENFORCEMENT ACTIONS DIRECTED TO THE PALMCO GROUP OF
COMPANIES AND PATTERN OF UNFAIR, MISLEADING, AND
DECEPTIVE CONDUCT, WHAT DO YOU RECOMMEND?***

A11. I recommend that the PUCO reject the Settlement entered into by the Staff and PALMco, find that PALMco violated various PUCO rules and Ohio law by engaging in a pattern of unfair, misleading, deceptive and unconscionable activities that demonstrate that PALMco and Mr. Palmese knowingly misled and deceived customers. Mr. Palmese is clearly incapable of managing (within the bounds of the law) or operating a competitive retail utility service that complies with reasonable consumer protection regulations as documented in these repeated violations that are similar to those described in the Staff Report. I further recommend that the PUCO order full restitution to all customers harmed by PALMco, assess a substantial forfeiture to PALMco, and rescind its operating certificate/license so that it cannot participate in the Ohio retail markets. The restitution and forfeiture should not be contingent on what proceeds PALMco receives from the sale of its business.

Additionally, to the extent that PALMco agrees to terminate its business in Ohio per the Settlement or the PUCO orders PALMco to terminate its business, its customers should be informed of that fact, provided with a reasonable level of restitution for excessive prices charged under variable rate contracts, and returned

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1 to the standard offer service of the customer's distribution utility unless the
2 customer chooses to affirmatively enroll with another marketer. The Settlement
3 provision regarding the sale of PALMco's customers to another marketer fails to
4 properly respond to any of the harms documented in the Staff Report and the lack
5 of sufficient guaranteed funding for customer restitution is a glaring omission
6 compared to all prior state enforcement actions that I have described.

7

8 For all of these reasons, I conclude that the Settlement, as a package, is
9 unreasonable and violates the second and third prongs of the PUCO's Settlement
10 test because its provisions will harm customers, fail to benefit the public interest,
11 and violate important regulatory principles and practices.

12

13 ***Q12. PLEASE EXPLAIN HOW THE SETTLEMENT DOES NOT MEET THE***
14 ***THIRD PRONG OF THE PUCO'S SETTLEMENT STANDARD – THAT***
15 ***THE SETTLEMENT DOES NOT VIOLATE ANY IMPORTANT***
16 ***REGULATORY PRINCIPLE OR PRACTICE.***

17 ***A12.*** The Settlement violates several important regulatory principles and should be
18 rejected. Several key provisions of the Settlement depend on the amount of
19 money (if any) that PALMco may receive from selling its business. If the sale
20 price is less than \$800,000, PALMco can avoid making full restitution to the
21 consumers harmed by its deceptive practices. All consumers who were harmed
22 by PALMco (including those who did not complain to the PUCO) should be fully

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In Opposition to the Settlement
On Behalf of the Office of Ohio Consumers' Counsel
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1 recompensed for the harm PALMco caused them. Further, depending on the sale
2 price, PALMco could escape paying full or even any forfeitures for harming Ohio
3 consumers and violating the PUCO's rules. And as OCC Witness Kerry Adkins
4 discusses, PALMco may even profit from its unlawful actions.

5

6 ***Q13. DOES THIS CONCLUDE YOUR TESTIMONY?***

7 ***A13.*** Yes. However, I reserve the right to incorporate new information that may
8 subsequently become available through outstanding discovery or otherwise, or to
9 supplement my testimony if any provisions of the Settlement are modified.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Direct Testimony of Barbara R. Alexander* was served on the persons stated below via electronic transmission this 4th day of September 2019.

/s/ Terry L. Etter
Terry L. Etter
Assistant Consumers' Counsel

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Arkansas Attorney General
The Public Utility Project of New York
Ohio Office of Consumer Counsel
District of Columbia Office of People's Counsel
Delaware Division of Public Advocate
Maryland Office of People's Counsel

Areas of Expertise:

- Default Service, Consumer Protection, Service Quality, and Universal Service policies and programs associated with the alternative rate plans and mergers;
- Consumer Protection and Service Quality policies and programs associated with the regulation of competitive energy and telecommunications providers;
- The regulatory policies associated with the regulation of Credit, Collection, Consumer Protection, Low Income, and Service Quality programs and policies for public utilities;
- Rate design and pricing policies applicable to residential customers; and
- Advanced Metering Infrastructure and Grid Modernization costs and benefits, time-based pricing proposals, and performance standards.

Prior Employment

DIRECTOR

*Consumer Assistance Division
Maine Public Utilities Commission*

1986-96

Augusta, Maine

One of five division directors appointed by a three-member regulatory commission and part of commission management team. Direct supervision of 10 employees, oversight of public utility consumer complaint function, appearance as an expert witness on customer services, consumer protection, service quality and low income policy issues before the PUC. Chair, NARUC Staff Subcommittee on Consumer Affairs.

SUPERINTENDENT

1979-83

Bureau of Consumer Credit Protection

Department of Professional and Financial Regulation

Augusta, Maine

Director of an independent regulatory agency charged with the implementation of Maine Consumer Credit Code and Truth in Lending Act. Investigations and audits of financial institutions and retail creditors, enforcement activities, testimony before Maine Legislature and U.S. Congress.

Education

JURIS DOCTOR

1973-76

University of Maine School of Law

Portland, Maine

Admitted to the Bar of the State of Maine, September 1976. Currently registered as “inactive.”

B.A. (WITH DISTINCTION) IN POLITICAL SCIENCE

University of Michigan

1964-68

Ann Arbor, Michigan

Publications and Testimony

“How to Construct a Service Quality Index in Performance-Based Ratemaking”, The Electricity Journal, April, 1996

“The Consumer Protection Agenda in the Electric Restructuring Debate”, William A. Spratley & Associates, May, 1996

Direct Testimony on behalf of the Telecommunications Workers Union, Telecom Public Notice 96-8, Price Cap Regulation and Related Issues, Canadian Radio-Television and Telecommunications Commission, September, 1996. [Analysis of and recommendations concerning the need to regulate service quality in move to price cap regulation]

Direct Testimony on behalf of Public Counsel Section, Office of Attorney General, Docket No. UE-960195, Application by Puget Sound Power and Light Co. And Washington Natural Gas Co. For Approval of Merger), Washington Utilities and Transportation Commission, September, 1996 [Need for and design of a Service Quality Index for both electric and gas business units as part of a multi-year rate plan]

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“The Transition to Local Telecommunications Competition: A New Challenge for Consumer Protection”, Public Counsel Section, Washington Attorney General, October, 1997. [Reprinted in part in NRRI Quarterly Bulletin, Vol. 19, N0.1, Spring, 1998]

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Direct Testimony on behalf of the Maryland Office of People’s Counsel, Universal Service Issues, Case No. 8745, before the Maryland Public Service Commission, November 20, 1998.

“Cramming is the Last Straw: A Proposal to Prevent and Discourage the Use of the Local Telephone Bill to Commit Fraud,” NRRI Quarterly Bulletin, Fall. 1998.

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Alexander, Barbara, “Consumer Protection Issues in Electric Restructuring for Colorado: A Report to the Colorado Electricity Advisory Panel,” on behalf of the Colorado Office of Consumer Counsel, February 1999.

Testimony on Proposed Interim Rules (Consumer Protection, Customer Enrollment, Code of Conduct, Supplier Licensing) on behalf of the New Jersey Division of Ratepayer Advocate before the New Jersey BPU, May 1999.

Direct Testimony on behalf of AARP, West Virginia PUC Investigation into Retail Electric Competition (consumer protection, universal service, Code of Conduct), June 15, 1999.

Direct and Surrebuttal Testimony on behalf of the Pennsylvania OCA, Natural Gas Restructuring proceedings (8 natural gas utilities): consumer protection; consumer education; code of conduct, before the Pennsylvania PUC, October 1999-April 2000.

Comments on Draft Rules addressing Slamming and Cramming (Docket No. RMU-99-7) on behalf of the Iowa Office of Consumer Advocate, before the Iowa Utilities Board, October 1999.

Alexander, Barbara, "Door to Door Sales of Competitive Energy Services," LEAP Letter, January-February 2000 [Wm. A. Spratley & Associates, Columbus, OH]

Direct Testimony on behalf of the Maine Office of Public Advocate, Central Maine Power Company Alternative Regulation Plan [Docket 99-666] on service quality issues, before the Maine PUC, May 2000.

Direct Testimony on behalf of AARP, Universal Service Programs and Funding of low-income programs for electric and natural gas service, before the New Jersey Board of Public Utilities, Docket No. EX000200091, July, 2000.

Comments (on behalf of NASUCA and AARP) on Uniform Business Practices Reports, May and September 2000.

Direct Testimony on behalf of the Pennsylvania OCA, Verizon-Pennsylvania Structural Separation Plan on service quality, customer service and consumer protection issues [Docket No. M-00001353] before the Pennsylvania PUC, October 2000.

Direct and Rebuttal Testimony on behalf of the Maine Office of Public Advocate, Verizon-Maine Alternative Form of Regulation on service quality issues [Docket No. 99-851] before the Maine PUC, January and February 2001.

Direct and Rebuttal Testimony on behalf of the Citizens Utility Board, Nicor Gas Customer Select Pilot Program, on consumer protection and regulation of competitive natural gas suppliers [Docket Nos. 00-0620 and 00-0621] before the Illinois Commerce Commission, December 2000 and February 2001.

Direct and Surrebuttal Testimony on behalf of the Pennsylvania Office of Consumer Advocate on consumer protection and service quality issues associated with the pending merger between GPU Energy and FirstEnergy, before the Pennsylvania PUC, Docket Nos. A-110300F0095 and A-110400F.0040 (February and March, 2001)

Direct and Surrebuttal Testimony on behalf of the New Jersey Division of Ratepayer Advocate on consumer protection, service quality, and universal service issues associated with the pending merger between GPU Energy and FirstEnergy, before the New Jersey Board of Public Utilities, Docket No. EM00110870 (April 2001).

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Responsive Testimony on behalf of the New Jersey Division of Ratepayer Advocate on service quality issues associated with a Plan for Alternative Regulation by Verizon-New Jersey, before the New Jersey Board of Public Utilities, Docket No. To01020095 (May 2001).

Direct and Surrebuttal Testimony on behalf of the New Jersey Division of Ratepayer Advocate on service quality, consumer protection, and universal service issues associated with the pending merger between Conectiv and Pepco, before the New Jersey Board of Public Utilities, BPU Docket No. EM101050308 (September and November 2001).

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Comments on behalf of Consumer Groups before the Texas PUC on Rulemaking Proceeding to Amend Requirements for Provider of Last Resort Service, Docket No. 25360, June 28, 2002.

Direct Testimony on behalf of the New Jersey Division of Ratepayer Advocate before the Board of Public Utilities on Joint Petition of New Jersey-American Water Co. and Thames Water Aqua Holding for Approval of a Change in Control of New Jersey-American Water Co., Docket No. WM01120833, July 18, 2002.

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Direct Testimony on behalf of Consumer Groups before the Texas PUC on Notice and Request of Mutual Energy CPL and Mutual Energy WTU for Approval of Changes in Ownership and Affiliation, Docket No. 25957, October 15, 2002.

Comments on behalf of the Pennsylvania Office of Consumer Advocate before the Pennsylvania PUC, Advanced Notice of Proposed Rulemaking for Revision of Chapter 54 Pertaining to Electric Generation Supplier Licensing, Docket No. L-00020158, March 5, 2003.

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Direct, Rebuttal, and Supplemental Testimony on behalf of the Pennsylvania Office of Consumer Advocate before the Pennsylvania PUC, Petition of Duquesne Light Co. for Approval of Plan for Post-Transition Period POLR Services, Docket No. P-00032071 (February-April 2004).

Comments on behalf of AARP before the California PUC, Order Instituting Rulemaking on the Commission's Own Motion to Establish Consumer Rights and Consumer Protection Rules Applicable to All Telecommunications Utilities, R. 00-02-004 (March 2004).

Comments and Reply Comments on behalf of AARP before the Maine PUC, Inquiry into Standard Offer Supply Procurement for Residential and Small Commercial Customers, Docket No. 2004-147 (April 2004).

Comments on behalf of Wisconsin Citizens' Utility Board before the Wisconsin Public Service Commission's Gas Service Standards, Docket No. 1-AC-210 (July 2004).

Comments on behalf of the Colorado Office of Consumer Counsel before the Public Utilities Commission of Colorado, In the Matter of the Proposed Repeal and Reenactment of all Rules Regulating Telephone Utilities and Providers (Docket No. 03R-524T) (September 2004).

Direct Testimony on behalf of the Pennsylvania Office of Consumer Advocate before the Pennsylvania PUC, Investigation of Metropolitan Edison Co., Pennsylvania Electric Co. and Pennsylvania Power Co. Reliability Performance, Docket no. I-00040102, [customer service and reliability performance] (June 2004).

Direct and Surrebuttal Testimony on behalf of the Vermont Department of Public Service before the Vermont Board of Public Utilities, Investigation into Successor Alternative Regulatory Plan for Verizon Vermont, Docket 6959 [Service Quality] (November 2004 and March 2005).

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Direct and Surrebuttal Testimony on behalf of Wisconsin Citizens' Utility Board before the Wisconsin Public Service Commission, Application of Wisconsin Power and Light Co. for Authority to Increase Retail Electric, Natural Gas and Ripon Water Rates, Docket No. 6680-UR-114 [customer service, credit and collection programs and expenses, low income programs, fixed bill program] (April 2005).

Comments on behalf of the Maine Office of Public Advocate before the Maine Public Utilities Commission, Inquiry into Revisions to Chapter 81, Residential Utility Service Standards for Credit and Collection Programs, and Chapter 86, Disconnection and Deposit Regulations for Nonresidential Utility Service, Docket No. 2005-005 (April and May 2005).

Direct and Rebuttal Testimony on behalf of AARP Montana before the Montana Public Service Commission, Northwestern Energy Electric Cost Tracker, Docket No. D2004.6.90 [Default Service cost recovery policies and integration with low income programs] (December 2004 and July 2005).

Direct Testimony on behalf of the Pennsylvania Office of Consumer Advocate before the Pennsylvania Public Utilities Commission, Joint Application of PECO Energy Co. and Public Service Electric and Gas Co. for Approval of the Merger of Public Service Enterprise Group, Inc. with and into Exelon Corporation, Docket No. A-110550F0160 [customer service, reliability of service, low income programs] (June 2005).

Direct Testimony on behalf of Illinois Citizens' Utility Board, City of Chicago, and Community Action for Fair Utility Practice, before the Illinois Commerce Commission, Petition to Initiate Rulemaking with Notice and Comment for Approval of Certain Amendments to Illinois Administrative Code Part 280 Concerning Deposit Requests and Deposit Refunds by Utilities, Docket No. 05-0237 (June 2005).

Direct Testimony on behalf of The Utility Reform Network (TURN) before the California Public Utilities Commission, Order Instituting Rulemaking on the Commission's Own Motion to Establish Consumer Rights and Consumer Protection Rules Applicable to All Telecommunications Utilities, Docket R-00-02-004 (August 2005).

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Rebuttal and Surrebuttal Testimony on behalf of the Pennsylvania Office of Consumer Advocate before the Pennsylvania PUC, In the Matter of the Petition of the Pennsylvania Power Co. for Approval of an Interim Provider of Last Resort Supply Plan, Docket No. P-00052188 [Default Service policies] (December 2005 and January 2006).

Direct and Rebuttal Testimony on behalf of the Maine Office of Public Advocate before the Maine PUC, Investigation into Verizon Maine's Alternative Form of Regulation, Docket No. 2005-155 [Retail Service Quality] (January and May 2006).

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Direct and Rebuttal Testimony on behalf of the Government and Consumer Parties (CUB, Attorney General of Illinois) before the Illinois Commerce Commission, Petition to Initiate Rulemaking with Notice and Comment for Approval of Certain Amendments to Illinois Administrative Code Part 280, Docket No. 06-0379 (May and September 2006). [Consumer Protection rules]

Direct Testimony on behalf of the Pennsylvania Office of Consumer Advocate before the Pennsylvania PUC, In Re Application of UGI Utilities, Inc., UGI Utilities Newco, Inc., and Southern Union Co., Docket Nos. A-120011F2000, A-125146, A-125146F5000 (June 2006). [Customer Service, Service Quality, and Universal Services]

Direct and Rebuttal Testimony on behalf of the Maryland Office of People's Counsel before the Maryland PSC, In The Competitive Selection of Electricity Supplier/Standard Offer or Default Service for Investor-Owned Utility Small Commercial Customers and, Delmarva Power and Light and Potomac Electric Power Residential Customers, Case No. 9064 (August and September 2006). [Default Service policies]

Direct and Rebuttal Testimony on behalf of the Maryland Office of People's Counsel before the Maryland PSC, In The Matter of the Optimal Structure of the Electric Industry of Maryland, Case No. 9063 (October and November 2006). [Default service policies]

Comments on behalf of AARP Maine before the Maine PUC on various dockets and notices concerning the implementation of Standard Offer Service for residential customers, Docket Nos. 2006-314, 2006-557, and 2006-411 (July-November 2006). [Default service policies]

Comments on behalf of AARP District of Columbia before the District of Columbia PSC, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia, Case No. 1017 (2006). [Default service policies]

Comments on behalf of AARP New Jersey before the New Jersey Board of Public Utilities, In the Matter of the Establishment of a Universal Service Fund Pursuant to Section 12 of the Electric Discount and Energy Competition Act of 1999, Docket No. EX00020091 (August 2006) [Recommendations for USF program changes]

Direct and Rebuttal Testimony on behalf of the Pennsylvania Office of Consumer Advocate before the Pennsylvania PUC, Joint Application of Equitable Resources, Inc. and the People's Natural Gas Co., d/b/a Dominion Peoples, for Approval of the Transfer of All Stock Rights of the Latter to the Former and for the Approval of the Transfer of All Stock of Hope Gas, Inc., d/b/a/ Dominion Hope to Equitable Resources, Inc., Docket No. A-122250F5000 (September and October 2006). [Customer Service, Service Quality, and Universal Service issues]

Direct Testimony on behalf of Pennsylvania Office of Consumer Advocate before the Pennsylvania PUC, Pennsylvania PUC v. Natural Fuel Gas Distribution Corp., Docket No. R-00061493 (September 2006) [Supplier Purchase of Receivables Program]

Direct Testimony on behalf of AARP Montana before the Montana Public Service Commission, Joint Application of NorthWestern Energy and BBI to purchase NorthWestern Energy, Docket No. 2006.6.82 [December 2006] [Conditions for approval of merger; low income and customer service programs]

Rebuttal Testimony on behalf of the Pennsylvania Office of Consumer Advocate before the Pennsylvania PUC, Petition by PPL Electric Utilities Corp. for Approval of a Competitive Bridge Plan, Docket No. P-00062227 (December 2006) [Default Service policies]

Direct and Rebuttal Testimony on behalf of the Pennsylvania Office of Consumer Advocate before the Pennsylvania PUC, Application of Duquesne Light Company for a Certificate of Public Convenience Under Section 1102(a)(3) of the Public Utility Code Approving the Acquisition of Duquesne Light Holding, Inc. by Merger, Docket A-110150F0035 (December 2006 and January 2007) [Conditions for approval of merger; low income and customer service programs]

Testimony before the House Least Cost Power Procurement Committee, Illinois General Assembly, on HB 1510, on behalf of AARP [March 22, 2007]

Rebuttal and Surrebuttal Testimony on behalf of Pennsylvania Office of Consumer Advocate before the Pennsylvania PUC, Petition of Duquesne Light Co. for Approval of Default Service Plan for January 1, 2008 to December 31, 2010, Docket No. P-00072247 [April 2007] [Default Service policies]

Comments and Reply Comments on behalf of AARP New Jersey before the Board of Public Utilities BGS Working Group concerning BGS procurement policies and proposed demand response program, (March-May 2007) [Default Service policies]

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Direct and Surrebuttal Testimony on behalf of Maine Office of Public Advocate before the Maine Public Utilities Commission, Central Maine Power Co. Chapter 120 Information (Post ARP 2000) Transmission and Distribution Utility Revenue Requirement and Rate Design And Request for Alternative Rate Plan, Docket No. 2007-215 (August 30, 2007 and February 2008) [AMI deployment]

Direct and Reply Testimony on behalf of AARP Maryland before the Maryland Public Service Commission, In the Matter of the Commission's Investigation of Investor-Owned Electric Companies' Standard Offer Service for Residential and Small Commercial Customers in Maryland, Case No. 9117, Phase I and II (September 2007) [Default Service policies]

Testimony on behalf of AARP Maryland before the Maryland Public Service Commission, In the Matter of the Commission's Investigation of Advanced Metering Technical Standards, Demand Side Management Competitive Neutrality, and Recovery of Costs of Advanced Meters and Demand Side Management Programs, Case 9111 (November 2, 2007) [Default Service policies; AMI deployment]

Comments on behalf of AARP District of Columbia before the D.C. Public Service Commission, In the Matter of The Application Of Potomac Electric Power Co. For Authorization to Establish A Demand Side Management Surcharge and an Advanced Metering Infrastructure Surcharge And to Establish a DSM Collaborative and an AMI Advisory Group, Formal Case No. 1056 (August 10, September 10, November 13, 2007, April 2008) [Default Service policies; AMI deployment]

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Direct, Rebuttal and Surrebuttal testimony on behalf of the Pennsylvania Office of Consumer Advocate before the Pennsylvania PUC, Petition of the West Penn Power Co. d/b/a Allegheny Power for Approval of its Retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period, Docket No. P-00072342 (February-March 2008) [Default service procurement policies]

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Direct Testimony on behalf of Local 223, UWUA before the Michigan Public Service Commission, In the Matter of the application of Detroit Edison Co. for authority to increase its rates, Case No. U-15244 (July 2008) [Customer Service standards; Advanced Metering proposal]

Reply Testimony on behalf of AARP before the Mississippi Public Service Commission, Proceeding to Review Statewide Energy Generation Needs, Docket No. 2008-AD-158 (August 2008) [Integrated Resource Planning]

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Comments on behalf of AARP before the Idaho Public Utilities Commission, In the Matter of the Application Of Idaho Power Co. for a Certificate of Public Convenience and Necessity to Install Advanced Metering Infrastructure (“AMI”) Technology Throughout its Service Territory, Case No. IPC-E-08-16 (December 2008) [Smart Meter costs and benefits]

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Supplemental Testimony in Opposition to Joint Stipulation and Recommendations of Barbara Alexander before the Public Utilities Commission of Ohio on behalf of the Office of Consumer Counsel, In the Matter of the Application of Ohio Power Co. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan, Case No. 16-1852-EL-SSO (October 11, 2017) [Response to Stipulation approving new surcharge for certain distribution grid investments]

Direct and Rebuttal Testimony of Barbara Alexander on behalf of The Public Utility Project of New York, before the New York Public Service Commission, Case 15-M-0127 In the Matter of Eligibility Criteria for Energy Service Companies, Case 12-M-0476 Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-residential Retail Energy Markets in New York State, and Case 98-M-1343 In the Matter of Retail Access Business Rules (November and December 2017) [Analysis of New York retail energy market for residential customers; recommendations for reform]

Comments of Barbara Alexander before the Delaware Public Service Commission, on behalf of the Delaware Division f the Public Advocate, In the Matter of the Review of Customer Choice in the State of Delaware, Docket No. 15-1693 (December 22, 2017) [Proposals for retail market enhancement programs]

Alexander, Barbara, Analysis and Evaluation of PEPCO's Supplemental Root-Cause Analysis Report: District of Columbia Customer Satisfaction prepared for the District of Columbia Office of People's Counsel and submitted to the D.C. Public Service Commission in Formal Case No. 1119 (January 2018)

Direct, Rebuttal, and Surrebuttal Testimony of Barbara Alexander on behalf of the Office of Consumer Advocate, before the Pennsylvania Utility Commission, Joint Petition of Metropolitan Edison Company Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company For Approval of their Default Service Program and Procurement Plan for the Period June 1, 2019 Through May 31, 2023, Docket Nos. P-2017-2637855, et seq. (February, March, and April 2018) [Retail Market Enhancement Programs in a default service proceeding]

Direct Testimony of Barbara Alexander on behalf of the Arizona Corporation Commission Staff, before the Arizona Corporation Commission, In the Matter of the Application of Brooke Water, LCC for increase in water rates, Docket No. W-03039A-17-0295 (May 15, 2018) [Analysis of customer service, call center performance, and compliance with prior Commission orders]

Alexander, Barbara, “Residential Demand Charges: A Consumer Perspective,” EUCI Conference, Nashville, TN (May 2018)

Direct Testimony of Barbara Alexander in Opposition to the Joint Stipulation and Recommendation on behalf of the Office of the Ohio Consumers’ Counsel, before the Public Utility Commission of Ohio, Case No. 17-0032-EL-AIR et seq. (June 15, 2018) [Analysis of the prudence of Duke Energy Ohio’s Advanced Metering Infrastructure Deployment and request for inclusion of costs in rate base]

Alexander, Barbara, “Time to End the Retail Energy Market Experiment for Residential Customers,” Harvard Electricity Policy Group (June 2018)

Rebuttal Testimony of Barbara Alexander on behalf of the Office of Consumer Advocate, before the Pennsylvania Public Utility Commission, PUC v. Columbia Gas of Pennsylvania, Inc., Docket No. R-2018-2647577 (July 3, 2018) [Analysis of gas utility billing policies for non-commodity services and retail natural gas suppliers]

Direct Testimony of Barbara Alexander on behalf of TURN and Center for Accessible Technology before the California Public Utility Commission, 2018 Rate Design Window, Docket No. A.17-12-011, et al. (October 26, 2018) [Consumer Protections to Accompany the Transition to Default Time of Use Rates for residential customers; analysis of customer education and messaging]

Direct and Surrebuttal Testimony of Barbara Alexander on behalf of the Pennsylvania Office of Consumer Advocate before the Pennsylvania Utility Commission, PUC vs. Pittsburgh Water and Sewer Authority, Docket Nos. R-2018-3002645, R-2018-3002647 (September and October 2018) [Analysis of compliance with Pennsylvania consumer protection and service quality performance of a large water and sewer utility; base rate case]

Direct Testimony of Barbara Alexander on behalf of TURN before the California Public Utility Commission, Southern California Edison Charge Ready 2 Infrastructure and Market Education Programs, Docket No. A.18-06-015 (November 30, 2018) [Analysis of proposed mass market customer education proposal]

Presentations and Training Programs:

- Presentation on Consumer Protection Policies for Solar Providers, New Mexico Public Regulatory Commission, Santa Fe, NM, January 2017
- Presentation on Residential Rate Design Policies, National Energy Affordability and Energy Conference, Denver, CO., June 2016
- Presentation on “Regulatory-Market Arbitrage: From Rate Base to Market and Back Again,” before the Harvard Electricity Policy Group, Washington, D.C., March 2016.
- Presentation on Residential Rate Design and Demand Charges, NASUCA, November 2015.
- Alexander, Barbara, “Residential Demand Charges: A Consumer Perspective,” presentation for Harvard Electricity Policy Group, Washington, D.C., June 2015.
- Presentation on “Future Utility Models: A Consumer Perspective,” for Kleinman Center for Energy Policy, U. of Pennsylvania, August 2015.
- Presentation, EUCI Workshop on Demand Rates for Residential Customers, Denver, CO [May 2015]
- Presentation, Smart Grid Future, Brookings Institute, Washington, DC [July 2010]
- Participant, Fair Pricing Conference, Rutgers Business School, New Jersey [April 2010]
- Presentation on Smart Metering, National Regulatory Conference, Williamsburg, VA [May 2010]
- Presentation on Smart Metering, Energy Bar Association Annual Meeting, Washington, DC [November 2009]
- Presentation at Workshop on Smart Grid policies, California PUC [July 2009]
- National Energy Affordability and Energy Conference (NEAUC) Annual Conference
- NARUC annual and regional meetings
- NASUCA annual and regional meetings
- National Community Action Foundation’s Annual Energy and Community Economic Development Partnerships Conference
- Testimony and Presentations to State Legislatures: Virginia, New Jersey, Texas, Kentucky, Illinois, and Maine
- Training Programs for State Regulatory Commissions: Pennsylvania, Georgia, Kentucky, Illinois, New Jersey
- DOE-NARUC National Electricity Forum
- AIC Conference on Reliability of Electric Service
- Institute of Public Utilities, MSU (Camp NARUC) [Instructor 1996-2006]
- Training Programs on customer service and service quality regulation for international regulators (India and Brazil) on behalf of Regulatory Assistance Project
- Georgia Natural Gas Deregulation Task Force [December 2001]
- Mid Atlantic Assoc. of Regulatory Utility Commissioners [July 2003]
- Illinois Commerce Commission’s Post 2006 Initiative [April 2004]
- Delaware Public Service Commission’s Workshop on Standard Offer Service [August 2004]



**Public Utilities
Commission**

Mike DeWine, Governor
Sam Randazzo, Chairman

Exhibit BRA-2

Page 1 of 4

Commissioners

M. Beth Trombold
Lawrence K. Friedman
Dennis P. Deters
Daniel R. Conway

FILE

April 16, 2016

Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

RE: *In the Matter of the Commission's Investigation into PALMco Power OH, LLC, dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Action.*

Dear Docketing Division:

Enclosed please find the Staff letter to be filed in case Nos. 10-0139-EL-CRS and 10-0138-GA-CRS.

Respectfully submitted by,

Rob Radley

Director, Service Monitoring and Enforcement Dept.
Public Utilities Commission

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**Public Utilities
Commission**

Mike DeWine, Governor
Sam Randazzo, Chairman

Commissioners

M. Beth Trombold
Lawrence K. Friedeman
Dennis P. Deters
Daniel R. Conway

April 16, 2019

Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street, 11th floor
Columbus, Ohio 43215

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PUCO

RE: In the Matter of the Commission's Investigation into PALMco Power OH, LLC, dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Action.

Dear Docketing Division:

On May 2, 2018, PALMco Power OH, LLC, dba Indra Energy (PALMco) received a renewal certificate as a competitive retail electric service (CRES) provider to provide power marketer and power broker services within the State of Ohio. *See* case number 10-0139-EL-CRS. On May 2, 2018, PALMco Energy OH, LLC, dba Indra Energy (PALMco) also received a renewal certificate as an Ohio competitive retail natural gas service (CRNGS) marketer. *See* case number 10-0138-GA-CRS. Therefore, PALMco is subject to the jurisdiction the Public Utilities Commission of Ohio (Commission) pursuant to R.C. 4928.16 and 4929.24.

Between December 1, 2018 and April 15, 2019, Staff of the Commission's Service Monitoring and Enforcement Department (Staff) received 486 customer contacts regarding PALMco's provision of CRES and CRNGS. Of these 486 customer contacts, 373 customer contacts (approximately 76 percent) are related to complaints of high billing, billing inquires, misleading and deceptive practices, enrollment disputes and contract inquiries. Through these customer contacts, Staff discovered PALMco's unfair, misleading, deceptive and unconscionable marketing, solicitation, and sales acts and practices when PALMco committed to provide customers with "competitive" and "the best" rates, when in reality, PALMco charged customers quadruple the price to compare.

For example, one complaint arose from a PALMco customer who stated that after his first two months of a 5.2 cents per kilowatt hour (cents/kWh) rate, he was charged between 19 and 24 cents/kWh. Staff reviewed the PALMco sales call and discovered the customer was advised "it will just ensure you will get a competitive rate," and "the rate will be 5.2 cents/kWh for two months and then after that we shop the market every single month to make sure that you get the best possible rate." The price to compare for AEP Ohio at that time was 5.4 cents/kWh. The median variable price on the Energy Choice Ohio website for February was in the 7 cents/kWh

range, and the highest rate of any supplier other than PALMco was close to 11 cents/kWh for the month of February. PALMco's charge of 23.766043 cents/kWh for the customer's January bill resulted in a charge of \$533.31. If the customer was receiving service on a median rate, his bill would have been approximately \$157.00, and on his AEP Ohio price to compare rate, his bill would have been approximately \$121.00.

In another case, a customer was advised, that the "...program allows you to drop that rate down to a 5.2 cents/kWh rate for the first two months and then you're entitled to receive a competitive variable rate each and every month thereafter." In that instance, the customer was charged a rate of 21.154164 cents/kWh on her third month's bill, which resulted in a charge of \$563.97. Furthermore, Staff has received similar customer contacts on PALMco's provision of CRNGS.

As of April 15, 2019, 22 percent of supplier-related investigations open for review and resolution with Staff are complaints against PALMco. Upon review of these investigations and following receipt of responses from PALMco, Staff believes that PALMco was using unfair, misleading, deceptive, and unconscionable acts and practices to market and enroll customers, in violation of Ohio Administrative Code (Ohio Adm.Code) 4901:1-21 and 4901:1-29, including Ohio Adm.Code 4901:1-21-03(A), 4901:1-21-05(C), 4901:1-29-03(A), 4901:1-29-05(D), and 4901:1-29-10(A).

Due to the egregious nature of PALMco's acts and practices, Staff recommends that a case be opened with a case code of "Commission Ordered Investigation" (COI) in order for Staff to continue a thorough review of PALMco's provision of competitive services in Ohio. During the pendency of Staff's investigation, Staff also recommends that the Commission consider one of the following actions: a suspension of PALMco's certificates; conditional rescission of its certificates; or rescission of its certificates, in accordance with Ohio Adm.Code 4901:1-21-15(A)(2), 4901:1-24-13, 4901:1-27-13 and 4901:1-34-08(D).

Sincerely,

A handwritten signature in black ink, appearing to read "R. Fadley", written in a cursive style.

Robert Fadley
Director, Service Monitoring and Enforcement Department

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

Summary: Text Staff Letter added to case per entry dated 4/17/2019 electronically filed by
Docketing Staff on behalf of Docketing

FILE

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/Cas/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/2019/2019-01-11_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/2019/2019-01-25_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

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in

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

Summary: Testimony Direct Testimony of Barbara R. Alexander in Opposition of the Settlement on Behalf of the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.