



Office of the Ohio Consumers' Counsel

September 11, 2019

Ms. Tanowa Troupe, Secretary
Public Utilities Commission of Ohio
180 East Broad Street, 11th Floor
Columbus, Ohio 43215

RE: *In the Matter of the Commission's Investigation into PALMco Power OH, LLC/d/b/a Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance – PUCO Case No. 19-957-GE-COI*

Dear Ms. Troupe:

On September 4, 2019, the Office of the Ohio Consumers' Counsel ("OCC") filed the Direct Testimony of Kerry J. Adkins in the above-referenced proceeding. Mr. Adkins's testimony contained some information that PALMco deemed to be confidential. The public version of Mr. Adkins's testimony redacted the allegedly confidential information. OCC had asked PALMco to waive confidentiality regarding the information, and on September 6, 2019 PALMco notified OCC that it would waive confidentiality regarding the information.

So that all of Mr. Adkins's testimony may be public, OCC asks that the attached Unredacted Version of his testimony be filed in the record of this case. This will be the only version of Mr. Adkins's testimony OCC will submit as an exhibit at the hearing in this case.

Thank you for your consideration. If you have questions, please feel free to contact me, either by phone (614-466-7964) or e-mail (terry.etter@occ.ohio.gov).

/s/ *Terry L. Etter*
Terry L. Etter, Counsel of Record
Assistant Consumers' Counsel

cc: Parties of Record

OCC EXHIBIT NO._____

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

UNREDACTED VERSION

**DIRECT TESTIMONY
OF
KERRY J. ADKINS
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 11, 2019

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Direct Testimony of Kerry J. Adkins
In Opposition to the Settlement
On Behalf of the Office of the Ohio Consumers' Counsel
PUCO Case No. 19-0957-GE-COI

1 **I. INTRODUCTION**

2

3 ***Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND POSITION.***

4 ***A1.*** My name is Kerry J. Adkins. My business address is 65 East State Street, 7th

5 Floor, Columbus, Ohio 43215. I am employed by the Office of the Ohio

6 Consumers' Counsel ("OCC") as a Senior Regulatory Analyst.

7

8 ***Q2. PLEASE SUMMARIZE YOUR EDUCATION AND PROFESSIONAL***
9 ***EXPERIENCE.***

10 ***A2.*** I earned a Bachelor of Arts degree in History with a pre-law option from Ohio

11 Northern University in 1983. In 1988, I earned a Master of Public Administration

12 degree with specializations in Regulatory Policy and Fiscal Administration from

13 The Ohio State University. In addition, I have attended various utility regulatory

14 seminars and training programs sponsored by the Public Utilities Commission of

15 Ohio ("PUCO") and OCC.

16

17 My professional experience in the utility regulation field began when I was hired

18 by the PUCO in August 1989 as a Researcher II in the Nuclear Division of what

19 was then the Consumer Services Department. In that capacity, I monitored the

20 financial and operating performance of utility-owned and operated nuclear power

21 plants and made policy and recommendations regarding nuclear power issues in

22 rate proceedings. In addition, I served as staff to the Utility Radiological Safety

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1 Board of Ohio (“URSB”) and liaison to the URSB’s Citizens Advisory Council.

2 Around 1995, my career transitioned towards deregulation and the development

3 of competitive options for formerly utility-supplied services. I was a PUCO Staff

4 representative to various committees and working groups that oversaw the

5 development of customer choice (“Choice”) pilot programs, and I analyzed and

6 made recommendations concerning the pilot programs as they progressed. Later,

7 as the pilot programs matured into legislatively-sponsored restructuring programs,

8 I worked with the General Assembly’s Legislative Service Commission on draft

9 bill language concerning the consumer protection provisions in Substitute Senate

10 Bill 3 (122nd General Assembly) that restructured the electric industry in Ohio and

11 Substitute House Bill 9 (124th General Assembly), which restructured the natural

12 gas industry. After the restructuring laws were enacted, I managed PUCO Staff

13 teams that were responsible for drafting and enforcing the PUCO’s rules

14 governing certification of competitive energy suppliers and the competitive

15 suppliers’ interactions with Ohio consumers. In 2008, I transferred to what was

16 then the PUCO’s Utilities Department (now the Rates and Analysis Department)

17 where I supervised Staff teams responsible for analyzing and making

18 recommendations regarding utility rate filings, primarily related to the natural gas

19 industry. I retired from the PUCO in September 2018. I began my current

20 employment at OCC in November 2018. At OCC, I review and analyze utility

21 filings at the PUCO and other regulatory agencies and make recommendations to

22 protect the interests of residential utility consumers.

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1 ***Q3. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY OR TESTIFIED***
2 ***BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO?***

3 ***A3.*** Yes. The cases in which I have submitted testimony or have testified before the
4 PUCO can be found in Attachment KJA-1.

5
6 **II. PURPOSE/BACKGROUND**

7
8 ***Q4. WHAT IS THE PURPOSE OF YOUR TESTIMONY?***

9 ***A4.*** The purpose of my testimony is to recommend, for consumer protection, that the
10 PUCO reject the settlement agreement between PALMco (an energy marketer)
11 and the PUCO Staff that was filed in this case on July 31, 2019 (“Settlement”).

12
13 The Settlement does not provide adequate protection for residential consumers
14 from PALMco’s misleading and deceptive marketing practices. In addition, the
15 Settlement could allow PALMco to profit from its unlawful actions, which would
16 be inappropriate. The Settlement is unjust and unreasonable to consumers. And
17 the Settlement is inconsistent with the PUCO’s standard for approving
18 settlements. The PUCO should reject or modify the Settlement and adopt OCC’s
19 recommendations.

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1 ***Q5. CAN YOU PROVIDE A BRIEF DESCRIPTION OF THE ISSUES IN THIS***
2 ***CASE THAT LED TO THE SETTLEMENT?***

3 ***A5.*** Yes. In a letter dated April 16, 2019 (attached as Exhibit KJA-2), the PUCO Staff
4 requested that the PUCO Commissioners initiate an investigation into PALMco's
5 electric and natural gas marketing practices. The Staff based its recommendation
6 for an investigation on the significant volume of consumer calls (numbering 486)
7 to the PUCO's call center involving issues with PALMco. Those calls included
8 373 calls to the PUCO's call center involving customer complaints alleging
9 inordinately high electric and/or gas bills and misleading and deceptive marketing
10 practices by PALMco. On page one of the PUCO Staff's letter, the Staff stated
11 that it "discovered PALMco's unfair, misleading, deceptive and unconscionable
12 marketing, solicitation, and sales acts and practices when PALMco committed to
13 provide customers with 'competitive' and 'the best' rates, when in reality,
14 PALMco charged customers quadruple the price to compare." In the letter, the
15 PUCO Staff recommended, due to "the egregious nature of PALMco's acts and
16 practices," that the PUCO should consider suspending or rescinding PALMco's
17 certificates.

18
19 In light of the Staff's findings, on April 17, 2019, the PUCO issued an Entry that,
20 among other things, directed PALMco to "show cause why its certification as an
21 electric Marketer and its certification as a natural gas Marketer should not be

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1 suspended, rescinded, or conditionally rescinded.”¹ On May 10, 2019, the PUCO
2 Staff filed a formal report (attached as Exhibit KJA-3) detailing the results of its
3 investigation of the customer complaints noted in its April 16, 2019 letter. On
4 April 24, 2019, OCC filed a motion to suspend PALMco’s certificate.

5
6 The PUCO Staff reported an alarming 486 customer contacts to its call center
7 involving PALMco during a six-month period (December 1, 2018 and April 15,
8 2019).² Staff noted that 373 of these contacts (77%) involved allegations of
9 inordinately high rates, misleading and deceptive practices, enrollment disputes,
10 and contract inquiries. Staff concluded that PALMco engaged in a pattern of
11 probable non-compliance with Ohio Adm. Code 4901:1-21 and Ohio Adm. Code
12 4901:1-29,³ provisions in the PUCO’s rules that set forth the minimum
13 requirements for electricity and natural gas marketing to Ohio consumers.

14
15 The PUCO Staff found that the most common misleading and deceptive tactic
16 perpetrated by PALMco was enrolling electric and natural gas customers by
17 offering customers an introductory (“teaser”) rate lower than the local utility’s
18 rate for a short period of time with the promise of “low,” “competitive,” or “best
19 possible” rates in future months. Staff reported that the actual rates that PALMco

¹ PUCO Entry (April 17, 2019) at 4.

² Staff Report at 3.

³ *Id.*

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1 charged customers after the teaser period ended were as much as four to six times
2 higher than the rates charged by the customers' incumbent electric and natural gas
3 utilities.⁴ PALMco's outrageously high rates were inconsistent with any
4 commonly understood definition of the words it used for selling to customers:
5 "low," "competitive," or "best possible" rates. The PUCO Staff also stated that,
6 at the time PALMco enrolled customers into a teaser price, it knew the high
7 variable rate it would eventually charge, but did not disclose that rate to the
8 customers during marketing or enrollment.⁵

9
10 The Staff also noted other rules violations by PALMco, including failure to
11 respond to PUCO record requests and failure to provide proper documentation to
12 customers upon enrollment.⁶

13
14 Based on its findings, the PUCO Staff recommended that the PUCO: (1) suspend,
15 rescind, or conditionally rescind PALMco's electric and natural gas Marketer
16 certifications; (2) order PALMco to pay a forfeiture of \$1.4 million to the state;
17 (3) order PALMco to make restitution to customers harmed during the period of
18 December 1, 2018 to April 15, 2019, equal to the difference between the
19 customers' applicable local utility rates and the rates PALMco actually charged to

⁴ See Staff Letter at 1.

⁵ Staff Report at 9.

⁶ See *Id.* at 9-12.

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1 customers; and (4) prohibit PALMco from transferring customer contracts to
2 another entity.⁷ In addition, the PUCO Staff reasonably concluded that the
3 number and egregious nature of the violations demonstrate that PALMco is
4 unable to maintain the required management oversight that is necessary for
5 marketer certification.⁸

6
7 On July 31, 2019, the PUCO Staff and PALMco filed a Settlement, purportedly to
8 “resolve all issues identified by the Staff in its Staff Report of Investigation filed
9 in this proceeding on May 10, 2019.”⁹

10

11 ***Q6. CAN YOU PROVIDE AN OVERVIEW OF THE MORE NOTABLE***
12 ***PROVISIONS INCLUDED IN THE SETTLEMENT?***

13 ***A6.*** Yes. The Settlement provides that PALMco and the PUCO Staff agree that
14 PALMco has made restitution to all customers who enrolled between December
15 1, 2018 and April 15, 2019 that were charged a variable rate and all customers
16 who made informal complaints to the PUCO Staff through July 26, 2019. It also
17 provides that PALMco will cease enrolling new residential or small commercial
18 customers for the remaining terms of its electric and natural gas marketing
19 certificates and that PALMco will not seek to renew its electric and natural gas

⁷ *Id.* at 17.

⁸ *Id.* at 18-20.

⁹ Settlement at 1-2.

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1 marketing certificates. The Settlement provides that PALMco will endeavor in
2 good faith to sell its customer contracts to another certified marketer and use the
3 proceeds from the sale to make restitution to customers enrolled between October
4 1, 2018 and November 30, 2018 who have not already been compensated up to an
5 estimated \$800,000. Any proceeds above the initial \$800,000 will be split fifty-
6 fifty between PALMco and payment of a civil forfeiture up to \$750,000. If
7 PALMco is unable to sell its customer contracts prior to the end of its marketing
8 certificates, then its customers will default to their incumbent utility for electric or
9 natural gas service. Finally, the Settlement provides that PALMco will not sell or
10 transfer any customer contracts to any of its current owners, officers, or partners.
11 And PALMco agrees that its current owners, officers, or partners will not operate
12 as an owner, officer, director, or partner for another competitive electric or natural
13 gas marketer in Ohio for at least five years.

14
15 ***Q7. ARE YOU FAMILIAR WITH THE COMPETITIVE ELECTRIC AND***
16 ***NATURAL GAS CONSUMER PROTECTION RULES THAT PALMCO***
17 ***VIOLATED AND THE PUCO'S RULES THAT GOVERN CERTIFICATION***
18 ***OF COMPETITIVE ELECTRIC AND NATURAL GAS MARKETERS SUCH***
19 ***AS PALMCO?***

20 ***A7.*** Yes. When I was a PUCO employee, I was the team-lead or co-lead of the PUCO
21 Staff teams that drafted the initial electric and natural gas marketer rules that
22 govern interactions between competitive electric and natural gas suppliers and

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1 customers and the competitive electric and natural gas supplier certification rules.
2 These rules were mandated by Substitute Senate Bill 3 (122nd General Assembly)
3 and Substitute House Bill 9 (124th General Assembly) and are currently embodied
4 in Ohio Adm. Code 4901:1-21 (electric), 4901: 1-29 (natural gas), 4901:1-24
5 (electric marketer certification), and 4901:1-27 (natural gas marketer
6 certification). In addition, I was the PUCO Staff manager directly responsible for
7 enforcing these rules from their adoption dates in 2000 for electric and 2002 for
8 natural gas through 2007.

9

10 ***Q8. ARE YOU FAMILIAR WITH THE PUCO'S SETTLEMENT PROCESS AND***
11 ***STANDARDS FOR APPROVING SETTLEMENT AGREEMENTS?***

12 ***A8.*** Yes. While working at the PUCO I represented the PUCO Staff in numerous
13 cases that involved settlement discussions and that ultimately led to stipulated
14 agreements that were approved by the PUCO. Additionally, although I am not an
15 attorney and my opinions expressed herein are not represented as legal opinions, I
16 have a considerable amount of experience developing testimony and testifying
17 about stipulated agreements regarding the PUCO's settlement standards.

18

19 ***Q9. WHAT IS THE PUCO'S STANDARD FOR EVALUATING AND***
20 ***APPROVING SETTLEMENT AGREEMENTS?***

21 ***A9.*** Generally, the PUCO will evaluate and adopt a stipulation only if it meets all the
22 following criteria:

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- 1 1. Is the settlement a product of serious bargaining among capable,
2 knowledgeable parties?¹⁰
- 3 2. Does the settlement, as a package, benefit customers and the public
4 interest?
- 5 3. Does the settlement package violate any important regulatory
6 principle or practice?¹¹
- 7

8 **III. ANALYSIS AND RECOMMENDATIONS**

9

10 ***Q10. IN YOUR OPINION, DOES THE SETTLEMENT IN THIS CASE MEET***
11 ***THE PUCO'S STANDARD FOR EVALUATING AND APPROVING***
12 ***STIPULATED AGREEMENTS?***

13 ***A10.*** No. The settlement fails all three prongs of the PUCO's standard.

¹⁰ The PUCO takes into account the “diversity of interests” as part of the first part of the stipulation assessment. See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer*, Case No. 10-388-EL-SSO, Opinion and Order at 48 (August 25, 2010).

¹¹ *Consumers' Counsel v. Pub. Util. Comm'n.* (1992), 64 Ohio St.3d 123, 126.

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1 ***Q11. PLEASE EXPLAIN HOW THE SETTLEMENT DOES NOT MEET THE***
2 ***FIRST PRONG OF THE PUCO'S SETTLEMENT STANDARD – THAT THE***
3 ***SETTLEMENT IS A PRODUCT OF SERIOUS BARGAINING AMONG***
4 ***CAPABLE, KNOWLEDGEABLE PARTIES.***

5 ***A 11.*** The only parties that signed the Settlement are PALMco and the PUCO Staff (the
6 “Signatory Parties”). Neither of these parties directly nor wholly represents the
7 interests of PALMco’s residential consumers, the people who were directly
8 harmed by PALMco’s actions.

9
10 Moreover, the Settlement states that the “Signatory Parties engaged in lengthy,
11 serious, and arm’s length bargaining in an effort to reach a mutually acceptable
12 resolution that would address the concerns raised in the Staff Report.”¹²
13 Noticeably absent from this statement, however, is that OCC (the agency that
14 does fully represent the interests of PALMco’s residential customers) was
15 excluded from at least some of these negotiations. And OCC was only provided
16 settlement terms after several exclusive meetings between PUCO Staff and
17 PALMco, where the bulk of the settlement terms were hammered out and agreed
18 to.

¹² Settlement at 2.

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1 As a result, the Settlement is not a product of serious bargaining because the
2 bargaining at times excluded an entire class of customers –residential customers,
3 who were in the fact the customers harmed by PALMco’s misleading and
4 deceptive marketing practices. The PUCO Staff’s role in the process is important,
5 of course, but the Staff’s role is not a substitute for the role of an advocate for
6 consumers. The settlement does not pass the first prong of the PUCO’s settlement
7 standard.

8
9 ***Q12. PLEASE EXPLAIN HOW THE SETTLEMENT DOES NOT MEET THE***
10 ***SECOND PRONG OF THE PUCO’S SETTLEMENT STANDARD – THAT***
11 ***THE SETTLEMENT AS A PACKAGE BENEFITS CUSTOMERS AND THE***
12 ***PUBLIC INTEREST.***

13 ***A12.*** The Settlement provides that that its primary objective is “...to provide redress for
14 the consumers that were harmed and to avoid, to the extent possible, the potential
15 for future harm...”¹³ That is generally a good objective, though it is not a good fit
16 in the objective to say that “to the extent possible” the “potential for future harm”
17 should be avoided (because such harm from PALMco can be avoided with
18 certainty through a better settlement outcome than what occurred). The
19 Settlement’s provisions leave open the very real possibility that thousands of
20 customers harmed by PALMco’s actions will not be made whole. In addition,

¹³ Settlement at 2.

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1 PALMco could escape paying full or even any punitive measures for harming
2 Ohio consumers and violating the PUCO's rules. And PALMco may even profit
3 from its unlawful actions. Therefore, the Settlement is unjust, unreasonable, not
4 in the public interest, and does not benefit customers. Accordingly, the
5 Settlement should be rejected.

6

7 ***Q13. PLEASE EXPLAIN HOW THE SETTLEMENT DOES NOT MEET THE***
8 ***THIRD PRONG OF THE PUCO'S SETTLEMENT STANDARD – THAT***
9 ***THE SETTLEMENT DOES NOT VIOLATE ANY IMPORTANT***
10 ***REGULATORY PRINCIPLE OR PRACTICE.***

11 ***A13.*** First, under the Settlement, PALMco can avoid making full restitution to
12 consumers harmed by its deceptive practices. Second, it could escape paying full
13 or even any punitive measures at all for harming Ohio consumers and violating
14 the PUCO's rules. Lastly, under the Settlement PALMco may even profit from
15 its unlawful actions. Therefore, the Settlement violates several important
16 regulatory principles and should be rejected.

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1 ***Q14. CAN YOU ELABORATE FURTHER ON HOW THE SETTLEMENT***
2 ***LEAVES OPEN THE POSSIBILITY THAT THOUSANDS OF CUSTOMERS***
3 ***HARMED BY PALMCO'S MISLEADING AND DECEPTIVE***
4 ***MARKETING WILL NOT BE MADE WHOLE?***

5 ***A14.*** Yes. There are two ways that the Settlement leaves open the possibility that some
6 customers harmed by PALMco's actions will not receive restitution for the harm
7 caused. First, restitution for many customers will be contingent on the sale of
8 PALMco's customer contracts. This involves customers who enrolled with
9 PALMco between October 1, 2018 and November 30, 2018 who have not already
10 received restitution. Under the terms of the Settlement if PALMco does not sell
11 its customer contracts or does not receive at least \$800,000 for the sale of its
12 customer contracts, then some number of customers will not receive full
13 restitution. For example, if PALMco decides that it is easier and less costly to cut
14 its losses in Ohio and simply conduct a "fire sale" and sell its customer contracts
15 for a nominal amount or if it is unable to obtain at least \$800,000 from the sale,
16 then customers could be left with only partial restitution or no restitution at all.

17
18 And, at this point, it is important to recognize that there is a very real possibility
19 that PALMco could receive less than \$800,000 for sale of its customer contracts.
20 The majority of its contracts are month-to-month variable rate contracts.¹⁴ These

¹⁴ Per PALMco's confidential responses to OCC interrogatories INT-012(a) and OCC INT-012(b), PALMco had 8,372 gas accounts and 6,629 electric accounts as of August 12, 2019 for a total customer count of 15,001. Per PALMco's confidential responses to OCC interrogatories INT-012(d) and OCC INT-

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1 contracts likely will not have substantial value to other marketers because the
2 purchasing marketer will have no assurance of retaining the customers long
3 enough to recoup its costs of acquiring them. Another issue that could diminish
4 the value of a sale of PALMco's business is that some substantial portion of
5 customers may either return to their local utility's standard service offer ("SSO")
6 or choose another competitive electric and/or natural gas marketer for their
7 service after being informed that PALMco is exiting the Ohio market.¹⁵
8 Competitive electric and natural gas marketers interested in purchasing
9 PALMco's customer contracts will no doubt factor this potentially large customer
10 exodus into the purchase price they will offer to PALMco.
11
12 There is nothing in the Settlement or anywhere else in the record in this case that
13 discusses the likelihood that PALMco will receive at least \$800,000 for the sale of
14 its customer contracts. Moreover, and more importantly, there is nothing in the
15 Settlement, or anywhere else in the record in this case, that provides for full
16 restitution to all of the customers harmed by PALMco's actions if PALMco is
17 unable to sell the customer contracts or if the sale price is less than the estimated

012(e), PALMco had 634 fixed rate gas accounts and 1,742 fixed rate electric accounts as of August 12, 2019 for a total of 2,376 fixed rate accounts. 15,001 total customers – 2,376 fixed rate accounts = 12,625 variable rate accounts. Month-to-month variable contracts from PALMco responses to OCC interrogatories RPD-1-006, OCC RPD-1-007, and OCC RPD-1-008.

¹⁵ Settlement Paragraph 6, at 5.

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1 \$800,000. Paragraph III.8 of the Settlement recognizes the possibility that
2 PALMco might not be able to sell its customer contracts.

3
4 Indeed, the PUCO Staff's original position stated in the Staff Report,¹⁶ that
5 PALMco should not be allowed to transfer its customers to another marketer,
6 provides consumer protection that is missing from the Settlement that allows such
7 a transfer. After suffering the bad acts of PALMco, consumers should not be
8 subject to PALMco's discretion to sell consumers' contracts to another marketer
9 of PALMco's choosing. In addition to this unfairness to consumers, there is the
10 bad result that PALMco could profit from the sale of its business despite what the
11 PUCO Staff found to be PALMco's building of that business on deception of
12 Ohio consumers. Consumers should be switched to their utility's standard offer.

13
14 The second indication that some customers may not receive full restitution for the
15 harm caused by PALMco is that the Settlement does not address restitution for all
16 customers. The Settlement represents that PALMco made restitution to all
17 customers enrolled to a variable rate contract between December 1, 2018 and
18 April 15, 2019 and all customers who made informal complaints to the PUCO
19 Staff that were referred to PALMco regardless of when the customer enrolled. It
20 also represents that PALMco will make restitution to customers who enrolled

¹⁶ Staff Report at 17.

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1 with PALMco between October 1, 2018 and November 30, 2018 who have not
2 already received restitution if PALMco sells its customer contracts for at least
3 \$800,000.

4
5 However, the Settlement is completely silent about all other variable rate
6 customers who enrolled with PALMco outside of the periods identified in the
7 Settlement and have not complained to the PUCO. And there are more of these
8 customers than there are customers who have received or may receive restitution
9 in the future . According to PALMco's responses to OCC discovery, PALMco
10 has made or intends to make restitution (contingent on the sale of its customer
11 contracts) to approximately 6,143 customers.¹⁷ But it currently has approximately
12 12,625 electric and natural gas customers being served under variable rate
13 contracts.¹⁸ This means that more than half of PALMco's variable rate customers
14 (12,625 – 6,143 = 6,482) will not receive restitution for overcharges unless they
15 complain to the PUCO before this case is resolved. That is an unreasonable result
16 that harms customers, and is not in the public interest. Further, the Settlement
17 does not explain how restitution was made to customers to date. At this point,
18 there should be no trust extended by the PUCO to PALMco for any matter, and
19 especially not for the matter of restitution to consumers for PALMco's harm to
20 them.

¹⁷ Calculated from PALMco confidential responses to OCC Interrogatories RPD-2-016 and RPD-2-017.

¹⁸ See Footnote 14.

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1 ***Q15. IS IT IN THE PUBLIC INTEREST TO MAKE PALMCO'S RESTITUTION***
2 ***TO CUSTOMERS CONTINGENT ON THE SALE OF ITS CONTRACTS***
3 ***AND TO LEAVE CUSTOMERS AT RISK FOR NOT GETTING***
4 ***RESTITUTION FOR THE HARM THAT PALMCO CAUSED?***

5 ***A15.*** Clearly it is not. As noted above, under the Settlement's provisions, PALMco
6 may decide that it is less costly to simply cut its losses in Ohio and sell its
7 customer contracts for the first offer that comes along for a nominal amount. If
8 that happens, or if PALMco receives less than \$800,000 for the customer
9 contracts for any reason, then all customers will not get full restitution. Similarly,
10 the Settlement provides for restitution for variable rate customers who enrolled
11 with PALMco outside of the time periods specified in the Settlement only if they
12 complain to the PUCO prior to the resolution of this case. Given the known
13 violations of Ohio law and the PUCO's rules, customers should not have to
14 complain to the PUCO in order to receive restitution for overcharges by PALMco.
15 Many customers may not even be aware that they were overcharged. Because
16 they were misled into believing that they were offered a competitive variable rate,
17 some customers may not know what competing rates are or that they can
18 complain to the PUCO. Many customers may have simply switched to their
19 incumbent utility's SSO or to another marketer after a month or two on
20 PALMco's service at rates that were well above the prevailing SSO rates.
21 Regardless if customers are still being served by PALMco or if customers
22 switched after being overcharged, if they were charged the same exorbitant rates

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1 as the customers covered under the Settlement were charged, then these customers
2 were harmed by PALMco's actions. And it is in the public interest that they
3 should also be recompensed. The public interest is served when all customers
4 who experienced harm are made whole.

5
6 ***Q16. DOES IT VIOLATE ANY IMPORTANT REGULATORY PRINCIPLES TO***
7 ***MAKE PALMCO'S RESTITUTION TO CUSTOMERS CONTINGENT ON***
8 ***THE SALE OF PALMCO'S CONTRACTS AND LEAVE CUSTOMERS AT***
9 ***RISK FOR NOT GETTING RESTITUTION FOR THE HARM THAT***
10 ***PALMCO CAUSED?***

11 ***A16.*** Yes. Restitution for harm done to consumers is fundamental to enforcement of
12 consumer protection rules. And R.C. 4928.16 (electric) and 4929.24 (gas)
13 expressly provide the PUCO the authority to order competitive electric and
14 natural gas marketers found to have violated the competitive electric or natural
15 gas rules to make restitution to customers harmed by the violations.¹⁹ The
16 PUCO's authority should not be limited by the Settlement's provision that
17 restitution due to customers harmed by PALMco's actions is contingent on the
18 sale of PALMco's customer contracts.

¹⁹ R.C. 4928.16(B)(1) and R.C. 492.24(B)(1).

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1 ***Q17. WHAT DO YOU RECOMMEND REGARDING RESTITUTION TO***
2 ***CUSTOMERS HARMED BY PALMCO'S ACTIONS?***

3 ***A17.*** First, the PUCO should order PALMco to immediately transfer all customers to
4 their local utility's standard offer in accordance with each utility's tariffs. Next,
5 the PUCO should order PALMco to immediately make restitution to all customers
6 harmd by its unlawful actions without any contingency provision related to the
7 sale of its customer contracts. And, this order should apply for all customers
8 harmd, not just those groups identified in the Settlement or those customers who
9 have complained to the PUCO. PALMco should be required to identify all
10 customers it overcharged and make the appropriate monetary restitution.

11
12 The PUCO should not be swayed by any claims that PALMco lacks the resources
13 necessary to make full restitution to aggrieved customers. There is no evidence in
14 the record of this case that PALMco lacks sufficient resources to fully
15 recompense all customers harmed by its unlawful actions. The PUCO should
16 order full restitution to customers even if PALMco must liquidate its assets in
17 order to do so.

18
19 If the PUCO decides to adopt the Settlement, then it should modify it to impose a
20 minimum "exit fee" that would apply to PALMco to cover any shortfall between
21 the amount it receives from sale of its customer contracts and the amount
22 necessary to make full restitution to customers. There should be no instance

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1 where customers receive less than full restitution for the harm that PALMco
2 caused them.

3
4 ***Q18. CAN YOU ELABORATE FURTHER ON HOW THE SETTLEMENT***
5 ***LEAVES OPEN THE POSSIBILITY THAT PALMCO COULD PAY ONLY***
6 ***PARTIAL CIVIL FORFEITURES OR ESCAPE ANY PUNITIVE***
7 ***MEASURES FOR HARMING CUSTOMERS?***

8 ***A18.*** Yes. Because the Settlement makes PALMco's payment of forfeitures for
9 violating the PUCO's rules contingent on the sale of its customer contacts and
10 completing customer restitution for certain customers, PALMco must be able to
11 sell its customer contracts for more than \$800,000 before it pays any amount of
12 civil forfeiture. The first \$800,000 is reserved for customer restitution. After that
13 amount is met, all additional proceeds are split evenly between payment of a civil
14 forfeiture up to \$750,000 and PALMco. PALMco gets to keep all proceeds from
15 the sale of the customer contracts above \$2.2 million (\$800,000 restitution +
16 \$750,000 forfeiture + \$750,000 retained by PALMco). Therefore, if PALMco
17 sells its customer contracts for \$800,000 or less, it will pay nothing towards a civil
18 forfeiture. And it will pay less than the full \$750,000 civil forfeiture provided in
19 the Settlement if it sells the customer contracts for less than \$2.2 million.

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1 ***Q19. IS IT IN THE PUBLIC INTEREST TO POTENTIALLY ALLOW PALMCO***
2 ***TO PAY ONLY PARTIAL FORFEITURES OR ESCAPE ANY PUNITIVE***
3 ***MEASURES FOR HARMING CUSTOMERS?***

4 ***A19.*** No. The public interest is served by requiring marketers to comply with the
5 PUCO's competitive electric and natural gas rules and by imposing punitive
6 measures for violation of the rules. It is not in the public interest to simply let
7 PALMco walk away without paying any form of penalty or allowing it to pay
8 only a partial forfeiture if it sells its customer contracts for \$800,000 or less or for
9 less than \$2.2 million.

10
11 ***Q20. DOES IT VIOLATE ANY IMPORTANT REGULATORY PRINCIPLES TO***
12 ***POTENTIALLY ALLOW PALMCO TO ESCAPE ANY PUNITIVE***
13 ***MEASURES OR PAY ONLY PARTIAL FORFEITURES FOR HARMING***
14 ***CUSTOMERS?***

15 ***A20.*** Yes. Punitive measures in the form of civil forfeitures or some other form of
16 monetary penalty (e.g. treble damages) are fundamental principles for enforcing
17 consumer protection rules. Such measures serve to punish bad actors for violating
18 the rules and bringing harm to consumers. The measures also demonstrate that
19 rule breaking will not be tolerated. And they serve as a deterrent to other
20 potential bad actors. Ohio law envisions that bad actors will be penalized for bad
21 acts by expressly giving the PUCO authority to assess forfeitures for violating the

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1 PUCO's rules.²⁰ The Settlement provision making payment of any forfeiture
2 contingent on the sale of PALMco's customer contracts leaves open the
3 possibility that PALMco will pay only a partial forfeiture or may not pay any
4 forfeiture at all. Worse yet, the fact that PALMco may keep a portion of the sale
5 proceeds from the sale of its book of business means that there is distinct
6 possibility that PALMco may profit from its bad acts. Thus, it violates the
7 important regulatory principle that punitive measures should be imposed for rule
8 violations and future deterrence.

9

10 ***Q21. WHAT DO YOU RECOMMEND REGARDING PUNITIVE MEASURES AS***
11 ***A RESULT OF THE HARM THAT PALMCO CAUSED CUSTOMERS?***

12 ***A21.*** The PUCO should not make payment of any forfeiture contingent on the sale of
13 PALMco's customer contracts. Instead it should directly impose the original \$1.4
14 million civil forfeiture that Staff recommended in the Staff Report. And it should
15 order PALMco to pay the full amount immediately. However, if the PUCO
16 adopts the Settlement, it should modify the Settlement to set a minimum exit fee
17 that would, first, cover all restitution owed to customers and then at least some
18 amount of guaranteed civil forfeiture. PALMco should be subject to paying this
19 fee regardless of any proceeds from the sale of its customer contracts.

20

²⁰ R.C. 4928.16 (electric) and R.C. 4929.24 (natural gas).

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1 ***Q22. CAN YOU ELABORATE FURTHER ON HOW THE SETTLEMENT***
2 ***LEAVES OPEN THE POSSIBILITY THAT PALMCO COULD PROFIT***
3 ***FROM ITS UNLAWFUL ACTIONS?***

4 ***A22.*** Yes. There are two ways under the Settlement that PALMco can profit from its
5 unlawful actions. First, PALMco gets to keep one-half of the proceeds from the
6 sale of its customer contracts that exceed the initial \$800,000 reserved for
7 restitution to customers enrolled between October 1, 2018 and November 30,
8 2018 who have not yet received restitution. As discussed above, in order to pay
9 full restitution to customers and the full forfeiture provided in the Settlement
10 PALMco would have to sell the customer contracts for \$2.2 million. At the \$2.2
11 million mark, PALMco will have fully met the Settlement's proposed \$750,000
12 forfeiture and it will have retained \$750,000 for itself. PALMco will keep 100%
13 of all proceeds above \$2.2 million. This means, so long as PALMco sells its
14 customer contracts for more than \$800,000, it will gain proceeds from the sale
15 and potentially profit from deceptively acquiring customers.
16
17 Second, the Settlement provides that PALMco will continue serving its existing
18 customers and accept customer contract renewals until it completes the sale of the
19 customer contracts or the expiration dates of its current PUCO certifications.²¹ As
20 a result, PALMco will continue to receive the profit margin that is built into the

²¹ Settlement at 4-6.

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1 rates that it is currently charging customers until the date that sale of its contracts
2 is completed or its certification expire.

3
4 ***Q23. IS IT IN THE PUBLIC INTEREST TO ALLOW PALMCO TO POTENTIALLY***
5 ***PROFIT FROM ITS UNLAWFUL ACTIONS?***

6 ***A23.*** No. The public interest would best be served if customers are transferred to their
7 incumbent utility's SSO as soon as the transfer can be completed pursuant to each
8 utility's tariffs. Customers would be protected from any ongoing harm by
9 PALMco and not be subject to transfer and to the risks of and potential harm from
10 being served by another marketer at unknown variable rates. Additionally,
11 PALMco will not continue to profit from its unlawful actions.

12
13 ***Q24. DOES IT VIOLATE ANY IMPORTANT REGULATORY PRINCIPLES TO***
14 ***ALLOW PALMCO TO POTENTIALLY PROFIT FROM ITS UNLAWFUL***
15 ***ACTIONS?***

16 ***A24.*** Yes. The Staff Report makes it clear that PALMco acquired at least some, and
17 potentially all, of its customer base through deceptive means. It should not be
18 permitted to sell its book of customers and then use the proceeds to pay some
19 forfeitures and then pocket the rest. PALMco should not be permitted to profit
20 from its unlawful actions. Allowing it to do so clearly violates a fundamental
21 tenet of rule enforcement. Therefore, to protect consumers the PUCO should find

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1 that the Settlement is unjust, unreasonable, and not in the public interest and reject
2 it.

3
4 ***Q25. WHAT DO YOU RECOMMEND REGARDING POTENTIALLY ENABLING***
5 ***PALMCO TO PROFIT FROM ITS UNLAWFUL ACTIONS?***

6 ***A25.*** The PUCO should order that all PALMco customers be transferred to their
7 incumbent utility's SSO as soon as the transfer can be completed in accordance
8 with each utility's tariffs. The PUCO should recognize that some or even all of
9 PALMco's customers enrolled with PALMco after being deceived about the rates
10 they would pay. Neither PALMco nor a marketer that purchases PALMco's
11 customer contracts should profit from PALMco's deception. The PUCO should
12 also order PALMco to make full restitution to all customers harmed by its actions
13 and immediately pay the \$1.4 million forfeiture originally recommended in the
14 Staff Report. And payment of the customer restitution and forfeitures should not
15 be contingent on the sale of PALMco's customer contracts. These measures
16 would serve to make it less likely that PALMco gains any profit from its
17 deceptive practices.

18
19 If, however, the PUCO decides to accept the Settlement, it should at the very least
20 modify it to include a minimum exit fee that PALMco would pay regardless of the
21 proceeds it realizes from the sale of its customer contracts to cover restitution to
22 customers and some level of civil forfeiture.

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1 ***Q26. ARE THERE ANY OTHER DEFICIENCIES IN THE SETTLEMENT THAT***
2 ***CAUSE IT NOT TO BE IN THE PUBLIC INTEREST AND/OR TO VIOLATE***
3 ***IMPORTANT REGULATORY PRINCIPLES?***

4 ***A26.*** Yes, there are several. First the Settlement's first two recommendation
5 paragraphs state that PALMco and PUCO Staff agree that PALMco has
6 voluntarily "re-rated"²² all customers enrolled between December 1, 2018 and
7 April 15, 2019 and all customers who brought informal complaints to the PUCO
8 through July 26, 2019.²³ A significant omission, however, is that the Settlement
9 is completely silent on how the re-rating was or will be verified. It does not
10 include an attachment, incorporate by reference, or point to any process that
11 describes how Staff or an independent third-party has or will verify that the
12 customers referred to in the Settlement have indeed received the full restitution
13 due them. Similarly, the Settlement provides no consequences if PALMco has
14 not fully provided refunds to customers. It is not in the public interest and it
15 violates basic principles of rules enforcement to simply accept the word of a
16 company that, in effect, has admitted to deceiving customers.²⁴

²² At Footnote 2 on page 4, the Settlement defines the terms "re-rate" or "re-rated" to mean the difference between the rate PALMco charged a customer and the rate the customer would have paid to the applicable utility under the utility's SSO or default rate that was refunded or credited to the customer.

²³ Settlement at 4.

²⁴ On page 2 of the Settlement, PALMco, as a Signatory Party, admits that the purpose of the Settlement is "to provide redress for the consumers that were harmed." This consumer harm primarily took the form of PALMco enrolling customers by deceptively offering customers lower rates when in fact it charged rates 4 to 6 times higher than applicable utility SSO rates.

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1 A second deficiency is that the Settlement calls for PALMco's existing customer
2 contracts to be sold to another marketer at some unknown rate. Although the
3 Settlement doesn't say so explicitly, transfer of the customer contracts will
4 presumably comply with the PUCO's contract assignment rules.²⁵ Accordingly,
5 PALMco customers currently being served under fixed-rate contracts will
6 continue with the new marketer under the same fixed rate. But most of
7 PALMco's customers have variable rate contracts and it is unknown what
8 variable rate the new marketer might charge. Variable rate customers could end
9 up paying more than they are currently paying PALMco. It is not in the public
10 interest for customers that may have been deceptively enticed to enroll with one
11 marketer to potentially end up paying even more to another marketer. It is safer
12 and more in the public interest to simply transfer PALMco's customers back to
13 their incumbent utility's SSO and let them choose another marketer on their own,
14 if they prefer to do so.

15
16 Third, the Settlement provides that customers will be notified of the contract
17 assignment to the marketer that purchases PALMco's contracts. And it provides
18 that the notice will comport with the PUCO's disclosure requirements for such
19 notices, notify customers that PALMco is exiting the Ohio markets, and inform
20 customers of their rights to continue service with the new marketer or return to

²⁵ Ohio Adm. Code 4901:1-21-11(D) (electric) and Ohio Adm. Code 4901:1-29-10(D) (natural gas).

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1 their utility's SSO service. The Settlement does not, however, provide that
2 customers will be told why PALMco is exiting the Ohio markets. Customers
3 should be informed why and the circumstances surrounding PALMco's exit from
4 Ohio as they are considering their options to stay with the new marketer that
5 PALMco has chosen or return to their utility's SSO service. Moreover, customers
6 still served by PALMco who were unaware that they may have been overcharged
7 can go back over their billing statements to determine if they overpaid. If so, they
8 can still complain to the PUCO and receive restitution per the terms of the
9 Settlement. Ensuring that PALMco's customers have the maximum amount of
10 unbiased information as they consider their options is surely in the public interest.
11 Conversely, leaving vital information out of customer notices is contrary to the
12 public interest.

13
14 A fourth deficiency is that Recommendation Paragraph 9 in the Settlement
15 provides that PALMco agrees it will not transfer or sell any customer contracts to
16 any of its current owners, officers, or partners.²⁶ However, this limitation does
17 not apply to PALMco's past owners, officers, or partners, especially any who
18 were affiliated with PALMco during the time periods encompassed by the Staff
19 Report's documented violations. It is clearly in the public interest that any owner,
20 officer, or partner who was involved with PALMco at the height of the deceptive

²⁶ Settlement at 7.

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1 practices described in the Staff Report should not be eligible to be involved in any
2 way with the purchase or ongoing service of PALMco's customer accounts. Yet,
3 the Settlement fails to offer this basic customer protection.

4

5 ***Q27. WHAT DO YOU RECOMMEND REGARDING THE ADDITIONAL***
6 ***DEFICIENCIES IN THE SETTLEMENT THAT CAUSE IT TO BE NOT IN***
7 ***THE PUBLIC INTEREST AND/OR TO VIOLATE IMPORTANT***
8 ***REGULATORY PRINCIPLES?***

9 ***A27.*** First, I would recommend that the PUCO reject the Settlement altogether in favor
10 of a simple and direct order to PALMco to immediately return all customers to
11 their incumbent utility's SSO (in accordance with each applicable utility's tariffs),
12 make full restitution to customers for the harm it has caused that is not
13 conditioned on the sale of PALMco's contracts, and require the utility to pay a
14 \$1.4 million civil forfeiture that is not conditioned on the sale of PALMco's
15 contracts.

16

17 Second, if the PUCO decides to accept the Settlement, then at a minimum it
18 should modify it (in addition to all other modifications discussed in my testimony)
19 to: (1) include a comprehensive independent verification process to ensure that all
20 restitution represented as completed in the Settlement has indeed been made; (2)
21 provide for consequences to PALMco if the verification process reveals that
22 PALMco has not made the proper customer restitution represented in the

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1 Settlement, including a directive to complete such restitution and additional
2 monetary penalties; (3) require that the notice to customers informing them that
3 PALMco is exiting the Ohio markets also inform them of the reasons why
4 PALMco is leaving and advise them to consult the PUCO's Apples-to-Apples
5 chart as they consider whether to continue service with the new marketer or return
6 to their utility's SSO; and (4) prohibit the sale of customer contracts to any entity
7 that has any association with past PALMco owners, officers, or partners that were
8 associated with PALMco during the time periods covered by the PUCO Staff's
9 investigation as reported in the Staff Report.

10

11 **IV. SUMMARY AND CONCLUSION**

12

13 ***Q28. CAN YOU SUMMARIZE YOUR RECOMMENDATIONS?***

14 ***A28.*** Yes. In summary fashion, I recommend that the PUCO do all of the following:

15

16 1. Reject the Settlement because the negotiation process was flawed, the
17 settlement is unjust and unreasonable, is not in the public interest, and
18 violates important regulatory principles.

19 A. Order PALMco to immediately return all customers to their
20 incumbent utility's standard offer in accordance with each
21 applicable utility's tariffs.

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1 B. Order PALMco to identify all customers who were overcharged
2 (including those who were charged four- to six-times higher rates
3 than the utilities' standard offer) as described in the Staff Report,
4 not just the customers who enrolled during the time periods
5 specified in the Staff Report or who have complained to the
6 PUCO.

7 C. Order PALMco to make full restitution to all customers who were
8 overcharged, not just the customers who enrolled during the time
9 periods specified in the Staff Report or who have complained to
10 the PUCO.

11 D. Order PALMco to immediately pay a \$1.4 million civil forfeiture
12 (the amount recommended in the Staff Report) without any
13 contingencies regarding sale of PALMco's customer contracts or
14 customer restitution.

15 2. If the PUCO adopts the Settlement, (and it should not) first modify the
16 Settlement to:

17 A. Include an exit fee that would set a minimum payment payable by
18 PALMco regardless of the amount of proceeds realized from the
19 sale of its customer contracts that would cover any shortfalls
20 between the amount needed for full restitution to customers plus
21 some level of civil forfeiture and the proceeds for the sale of the
22 customer contracts.

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- 1 B. Include a comprehensive and independent verification process to
- 2 ensure that all restitution represented as completed in the
- 3 Settlement has indeed been completed.
- 4 C. Include a provision for consequences to PALMco if the
- 5 verification process reveals that PALMco has not made all the
- 6 customer restitutions represented in the Settlement, a requirement
- 7 for PALMco to make restitution to any customers missed, and
- 8 provision for additional monetary penalties.
- 9 D. Include a requirement that the notice to customers informing them
- 10 that PALMco is exiting the Ohio markets also inform them of the
- 11 reasons why PALMco is leaving and advise them to consult the
- 12 PUCO's Apples-to-Apples chart as they consider whether to
- 13 continue service with the new marketer or return to their utility's
- 14 SSO.
- 15 E. And, include a provision prohibiting PALMco from selling its
- 16 customer contracts to any entity that has any association with past
- 17 PALMco owners, officers, or partners that were associated with
- 18 PALMco during the time periods covered by the PUCO Staff's
- 19 investigation as reported in the Staff Report.

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1 ***Q29. DOES THIS CONCLUDE YOUR TESTIMONY?***

2 ***A29.*** Yes. However, I reserve the right to incorporate new information that may
3 subsequently become available through outstanding discovery or otherwise, or to
4 supplement my testimony if any provisions of the Settlement are modified.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Direct Testimony of Kerry J. Adkins on Behalf of the Office of the Ohio Consumers' Counsel*, **UNREDACTED** **VERSION** was served via electronic transmission to the persons listed below on this 11th day of September 2019.

/s/ Terry Etter

Terry Etter
Assistant Consumers' Counsel

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Testimony of Kerry J. Adkins
Filed at the Public Utilities Commission of Ohio

1. *In the Matter of the Complaint and Appeal of the Cleveland Electric Illuminating Company from Ordinance 21-1994 of the Council of the City of Garfield Heights, Ohio Passed March 10, 1994, entitled "An Emergency Ordinance to Establish and Fix a Schedule of Rates, Terms and Conditions for Electric Service Being Provided by the Cleveland Electric Illuminating Company to its Electric Customers in the City of Garfield Heights, Ohio, Case No. 94-578-EL-CMR (March 20, 1995).*
2. *In the Matter of the Application of The Toledo Edison Company for Authority to Amend and Increase Certain of Its Rates and Charges for Electric Service, Case No. 95-299-EL-AIR (January 22, 1996).*
3. *In the Matter of the Application of The Cleveland Electric Illuminating Company for Authority to Amend and Increase Certain of Its Rates and Charges for Electric Service, Case No. 95-300-EL-AIR (January 22, 1996)*
4. *In the Matter of the Conjunctive Electric Guidelines Proposed by Participants of the Commission Roundtable on Competition in the Electric Industry, Case No. 96-406-EL-COI (February 10, 1998).*
5. *In the Matter of the Application Not for an Increase in Rates of The Dayton Power and Light Company for Approval to Modify Its Existing Alternative Generation Supplier (AGS) Tariff Sheet No. G8., Case No. 03-2341-EL-ATA (September 22, 2004)*
6. *In the Matter of the Commission Staff's Investigation into the Alleged MTSS Violations of Buzz Telecom., Case No. 06-1443-TP-UNC (February 7, 2007).*
7. *In the Matter of the Application of The East Ohio Gas Company dba Dominion East Ohio to Adjust Its Pipeline Infrastructure Replacement (PIR) Cost Recovery Charge and Related Matters, Case No. 09-458-GA-UNC (October 14, 2009)*
8. *In the Matter of the Application of Vectren Energy Delivery of, Inc. for Authority to Adjust its Distribution Replacement Rider Charges, Case No. 11-2776-GA-RDR (August 10, 2011).*
9. *In the Matter of Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Adjust its Automated Meter Reading Cost Recovery Charge and Related Matters., Case No. 5843-GA-RDR (April 27, 2012)*
10. *In the Matter of the Application of Vectren Energy Delivery of, Inc. for Authority to Adjust its Distribution Replacement Rider Charges, Case No. 12-1423-GA-RDR (August 28, 2012).*

11. In the Matter of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates, Case No. 12-1682-EL-AIR (March 20, 2013).
12. *In the Matter of Duke Energy Ohio, Inc., for an Increase in Gas Rates.*, Case No. 12-1685-GA-AIR (April 22, 2013).
13. *In the Matter of the Application of Duke Energy Ohio Inc., for Approval of an Alternate Rate Plan Pursuant to Section 4929.05, Revised Code, for an Accelerated Service Line Replacement Program*, Case No. 14-1622-GA-ALT (November 6, 2015).
14. *In the Matter of the Application of Northeast Natural Gas Corp. for an Increase in Gas Distribution Rates*, Case No. 18-1720-GA-AIR (July 25, 2019).
15. *In the Matter of the Application of Duke Energy Ohio, Inc. for Implementation of the Tax Cuts and Jobs Act of 2017*, Case No. 18-1830-GA-UNC (July 31, 2019).

**Public Utilities
Commission**Mike DeWine, Governor
Sam Randazzo, ChairmanM. 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

PUCO

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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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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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Summary: Testimony Unredacted Version of the Direct Testimony of Kerry J. Adkins in Opposition to 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.