

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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PROCEEDINGS

before Mr. Gregory Price and Ms. Anna Sanyal,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 9:10 a.m. on Friday,
September 20, 2019.

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1 Friday Morning Session,
2 September 20, 2019.

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4 EXAMINER PRICE: Good morning. The
5 Public Utilities Commission has set for hearing at
6 this time and place, Case No. 19-957-GE-COI, being In
7 the Matter of the Commission's Investigation of
8 PALMco Power Ohio, LLC d/b/a Indra Energy and PALMco
9 County -- PALMco Energy Ohio, LLC d/b/a Indra
10 Energy's Compliance with the Ohio Administrative Code
11 and Potential Remedial Actions for Non-Compliance.

12 My name is Gregory Price, with me is Anna
13 Sanyal. We are the Attorney Examiners assigned to
14 preside over today's hearing. This is Day 2 in this
15 hearing in this matter.

16 We'll begin by -- we'll dispense with
17 appearances and begin by taking our first witness.

18 Ms. Bossart, you are here under subpoena.

19 (Witness sworn.)

20 EXAMINER PRICE: Please be seated. State
21 your name and business address for the record.

22 THE WITNESS: Barbara Bossart. 180 East
23 Broad Street, Columbus, Ohio 43215.

24 EXAMINER PRICE: Please proceed,
25 Ms. Bojko.

1 MS. BOJKO: Mine is not working, but I
2 talk loudly.

3 - - -

4 BARBARA BOSSART
5 being first duly sworn, as prescribed by law, was
6 examined and testified as follows:

7 CROSS-EXAMINATION

8 By Ms. Bojko:

9 Q. Good morning, Ms. Bossart.

10 A. Good morning.

11 Q. What is your current position at the
12 Commission?

13 A. I'm the Chief of the Reliability and
14 Service Analysis Division in the Service Monitoring
15 and Enforcement Department.

16 Q. And was this your role in April of 2019?

17 A. Yes.

18 Q. And it was also your role between
19 December 1, 2018 and April 15, 2019?

20 A. Yes.

21 Q. How long have you been in this role?

22 A. Since 2013.

23 Q. In your position were you responsible for
24 analyzing PALMco's compliance with the rules?

25 A. Yeah. I oversaw, yes.

1 Q. And were you responsible for
2 investigating the customer complaints associated with
3 PALMco prior to this case?

4 A. I oversaw my staff who reviewed customer
5 complaints.

6 Q. Prior to the instant matter, have you
7 previously recommended enforcement actions against
8 PALMco for violating Commission rules?

9 A. Prior to this case, I do not recall.

10 Q. Of the 4 -- you're familiar with the 486
11 contacts or complaints that were filed from
12 approximately December 1, 2018 to April 15, 2019?

13 A. I'm familiar that there were 486
14 contacts.

15 Q. Of those 486 contacts or complaints, 373
16 were related to high rates, billing inquiries,
17 misleading and deceptive practices, enrollment
18 disputes, and contract inquiries, correct?

19 A. One moment, I want to verify.

20 According to the Staff Report, there are
21 373 related to high rates, billing inquiries,
22 misleading and deceptive practices, and enrollment
23 disputes.

24 EXAMINER PRICE: Please do not let your
25 voice drop off.

1 THE WITNESS: All right. Sorry.

2 Q. What were the other 113 complaints
3 related to?

4 A. I do not know.

5 Q. Would you agree with me that 486
6 contacts, in four and a half months, is a high number
7 of complaints to receive against one supplier?

8 A. Staff was concerned with the number.

9 Q. And it was due to this high number of
10 contacts or complaints that Staff asked the
11 Commission to investigate by filing the letter in
12 PALMco's certification dockets, correct?

13 A. No.

14 Q. Why did Staff ask to file -- or, why did
15 Staff decide to file a letter in the certification
16 docket?

17 A. As stated in the Staff Report, it was as
18 a result of Staff's investigation into the customer
19 contacts that Staff identified a pattern of unfair,
20 misleading, deceptive, and unconscionable activities.

21 Q. And PALMco was serving customers prior to
22 December 2018, correct?

23 A. PALMco was serving customers. They were
24 certified as a competitive retail electric --
25 competitive retail natural gas supplier.

1 Q. And how many complaints did Staff receive
2 prior to December 2018?

3 A. I do not know.

4 Q. Although the Staff Report focuses on
5 December 2018, you would agree with me that some
6 customers may have been affected by the high rates
7 and harmed by the high rates prior to December 2018?

8 MR. EUBANKS: Objection. Asked and
9 answered by Melissa and --

10 MR. WHITT: Objection. Beyond the scope.

11 EXAMINER PRICE: Mr. Whitt, Ms. Glover's
12 witness, I'm afraid. We already established that
13 while you were out of the room.

14 MR. WHITT: In my absence.

15 EXAMINER PRICE: In your absence, yes.

16 MR. EUBANKS: In addition, even if she
17 didn't ask Melissa that, which I know she did, she
18 could have asked Melissa that question and,
19 therefore, objection.

20 EXAMINER PRICE: We'll get to the "could
21 have asked" when that's relevant.

22 MR. EUBANKS: Okay.

23 EXAMINER PRICE: But I was not here, so.

24 The objection is sustained.

25 Q. (By Ms. Bojko) At the conclusion -- or,

1 Staff performed an investigation after the letter was
2 filed and the Commission Entry was issued ordering
3 them to do an investigation, correct?

4 A. Correct.

5 Q. And then Staff did perform that
6 investigation, correct?

7 A. We -- yes.

8 Q. And at the conclusion of that
9 investigation, then Staff filed a Staff Report on
10 May 10, 2019 and that's what you were referencing
11 previously this morning, correct?

12 A. Correct.

13 Q. And for background, SMED, the department
14 you are a part of or your employment is with, is the
15 one that conducted the investigation, correct?

16 A. Correct.

17 Q. In your current role with SMED, did you
18 participate in the investigation in this case?

19 A. Yes.

20 Q. And did you review the 486 contacts or
21 complaints?

22 A. I reviewed some of the 486 complaints.

23 Q. Did you investigate or review the
24 specific customer complaints that were identified in
25 the Staff Report?

1 A. I don't recall if I reviewed them all.

2 Q. After your review, did you conclude that
3 PALMco violated the Commission rules identified in
4 the Staff Report?

5 A. Staff believed, after discussions with my
6 staff, that there was a -- Staff believed there was a
7 pattern possibly of unfair, misleading, and deceptive
8 statements. I'm trying to find --

9 Q. Did you recommend the enforcement actions
10 that are set forth in the Staff Report?

11 MR. EUBANKS: Objection.

12 EXAMINER PRICE: Grounds?

13 MR. EUBANKS: The witness is here to
14 offer an opinion on behalf of Staff, not her own
15 personal opinion about -- about whether or not PALMco
16 committed a violation.

17 EXAMINER PRICE: Objection is sustained.

18 Q. (By Ms. Bojko) Did Staff recommend
19 enforcement actions in the Staff Report?

20 EXAMINER PRICE: The Staff Report speaks
21 for itself. Don't answer.

22 Q. (By Ms. Bojko) Did you draft or have
23 input into sections of the Staff Report?

24 A. Yes, I did.

25 Q. Yesterday -- you were here during

1 Ms. Scarberry's testimony yesterday, correct?

2 A. Yes.

3 Q. Yesterday, I identified four categories
4 of the Staff Report; do you recall that?

5 A. Yes.

6 Q. If we could go through each section that
7 Ms. Scarberry could not answer who was responsible
8 for certain sections. Do you know who was
9 responsible for each section of the Staff Report?

10 A. There was not one individual responsible
11 for each section of the Staff Report.

12 Q. Okay.

13 EXAMINER PRICE: Ms. Bossart, you've got
14 to keep your voice up.

15 MS. BOJKO: Yes, because I don't mean to
16 interrupt you.

17 EXAMINER PRICE: Lower your -- there you
18 go, and ignore it.

19 Q. Did you have overall responsibility for
20 the Staff Report?

21 A. I oversaw, you know, the majority of the
22 Staff Report.

23 Q. So you would have drafted or had input to
24 all of the categories of the Staff Report?

25 A. Yes.

1 Q. Having overall responsibility for the
2 Staff Report and the investigation, you believe that
3 this was a good and thorough investigation by the
4 team that investigated, correct?

5 A. I believe our investigation was thorough.

6 Q. And you believe that the Staff Report was
7 a true and accurate reflection of the investigation
8 when it was filed, correct?

9 A. The Staff Report was the summary of our
10 investigation.

11 Q. And you believe it was a true and
12 accurate reporting of your investigation, correct?

13 A. Yes.

14 Q. So in the first category that's entitled
15 "Unfair, Misleading, Deceptive, or Unconscionable
16 Activities," it starts on page 6, there's a listing
17 of sales calls. Did you listen to the sales calls
18 provided by PALMco to determine if PALMco used any
19 unfair, misleading, deceptive, or unconscionable
20 sales tactics during the marketing of its CRES or
21 CRNGS services or products?

22 A. I listened to some of the sales calls. I
23 don't know the rest of the question.

24 Q. That was the question. Did you listen to
25 the sales calls.

1 A. I listened to some.

2 EXAMINER PRICE: Did you listen to the
3 four sales calls that are identified on pages 6 and
4 7?

5 THE WITNESS: I cannot recall if I
6 listened to -- I believe I listened to some of the
7 calls. I cannot recall if I listened to all of them.

8 EXAMINER PRICE: Can you identify which
9 of the four you listened to?

10 THE WITNESS: I believe I listened to the
11 third one.

12 EXAMINER SANYAL: Is that on page 7?

13 THE WITNESS: On page 7.

14 EXAMINER SANYAL: And it starts with "On
15 the audio recording," that one?

16 THE WITNESS: Yeah. Yes. Yeah, I mean,
17 I believe I listened -- I at least listened to maybe
18 some or all of them.

19 Q. (By Ms. Bojko) Some or all of them?

20 A. Yeah.

21 Q. And you mentioned earlier that Staff
22 found a pattern of unfair, misleading, deceptive, and
23 unconscionable activities. Are the sales calls part
24 of that determination of a pattern?

25 THE WITNESS: Could you reread that,

1 please?

2 (Record read.)

3 A. The Staff Report identifies these as
4 examples.

5 Q. Let's turn to category 2 which was
6 "Failure to Respond to Staff Record Requests." Did
7 you have an opportunity to be a part of this section
8 and experience the failure to respond to Staff record
9 requests? I'll rephrase.

10 A. Yeah, please.

11 Q. Category 2 is about failure to respond to
12 Staff record requests. Were you -- did you ask
13 PALMco for certain data requests, or Indra, and not
14 receive responses back to your inquiries?

15 A. I -- I did not.

16 Q. You didn't send e-mails to PALMco,
17 requesting information, and then send follow-up
18 e-mails asking to continually receive that
19 information?

20 MR. EUBANKS: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. EUBANKS: Only to the extent the
23 question is ambiguous. When Counsel uses the word
24 "you," it's unclear whether she's speaking about
25 Staff or Ms. Bossart.

1 MS. BOJKO: In that case they were
2 e-mails directly from Ms. Bossart, so I was speaking
3 of Ms. Bossart.

4 EXAMINER PRICE: You can answer. You,
5 personally.

6 A. I personally do not recall. I recall
7 sending e-mails. I do not recall having to send
8 follow-up e-mails on my specific e-mail.

9 Q. Let's go ahead and talk about what's been
10 identified as OCC Exhibit 12. Do you have that in
11 front of you?

12 A. Yes.

13 Q. This is a series of -- a string of
14 e-mails between you and the Company; is that correct?

15 A. Yes.

16 Q. And if you look at the last page, page 6,
17 January 31, there's a request for an explanation of
18 the factors for the high variable rates that were
19 being charged to customers, correct?

20 A. Correct.

21 Q. And then if you look, there was a
22 response from Indra and they said they would respond
23 and then you sent an e-mail thanking them on the same
24 day, January 31, correct?

25 A. Correct.

1 Q. And then on February 1, they sent a
2 request for an in-person meeting, correct? Indra
3 requested an in-person meeting?

4 A. Yes.

5 Q. And then on February 7, you responded
6 with some meeting dates and then you also gave them a
7 deadline for the information they had not yet
8 provided you, correct?

9 A. Correct.

10 Q. Then there's some discussion of the
11 meeting date and time and then there's an e-mail, on
12 February 21, with the requested information, correct?

13 A. Yes.

14 Q. So several weeks went by before the
15 information was provided, correct?

16 A. Yes.

17 Q. Did you participate in the meeting with
18 PALMco?

19 A. Which meeting?

20 Q. The one that was discussed in this e-mail
21 string that was set for the 26th of February.

22 A. Yes.

23 Q. So did you have multiple meetings with
24 PALMco?

25 A. No.

1 Q. So the meeting on the 26th, who was in
2 attendance at that meeting from PALMco or Indra?

3 MR. EUBANKS: Objection.

4 EXAMINER PRICE: Grounds?

5 MR. EUBANKS: It sounds like Counsel is
6 asking her to divulge settlement information.

7 MS. BOJKO: First of all, there was no
8 pending case, Your Honor.

9 Secondly, we've already established,
10 numerous times at the Commission, that dates, times,
11 and people in attendance are not confidential
12 settlement discussions.

13 EXAMINER PRICE: Overruled.

14 A. I believe I know Briana was in
15 attendance, but I -- and there was one other person,
16 but I do not recall.

17 Q. Do you know if Mr. Palmese was in the
18 meeting?

19 A. He was not.

20 Q. In the description provided in the e-mail
21 on February 21, 2019, isn't it true that Indra-PALMco
22 stated that one of the factors that went into the
23 high variable rates was that they had experienced
24 lower-than-expected financial performance in 2018?

25 THE WITNESS: Could you repeat that,

1 please?

2 (Record read.)

3 MR. EUBANKS: Objection. Asked and
4 answered. Melissa has already answered this
5 question.

6 MS. BOJKO: Actually, she couldn't speak
7 to the e-mail so she didn't answer any to e-mails.
8 There was an objection by Counsel and we were asked
9 to move on and this wasn't admitted because of that
10 reason.

11 MR. EUBANKS: Well, first of all, I
12 believe this was admitted.

13 MS. BAIR: Yup.

14 MR. EUBANKS: Second of all, your
15 question was not to the e-mail. Your question was --
16 could you read the question back? I'm sorry.

17 (Record read.)

18 MR. EUBANKS: So there's already been a
19 separate question asked to Melissa about what went
20 into PALMco's decision to raise these rates and she
21 already gave the answer to that on the record.

22 The fact that she's now saying, "Oh, it's
23 mentioned in the e-mail," doesn't change the fact
24 that that specific question has already been asked
25 and answered.

1 EXAMINER PRICE: Well, we'll give
2 Ms. Bojko a little bit of leeway on this question,
3 but I will note this exhibit was admitted yesterday;
4 it was not denied admission, so.

5 MS. BOJKO: Right, but the question --
6 and I forgot we did that because it was attached to
7 the Staff Report, but the questioning was not allowed
8 because of --

9 EXAMINER PRICE: I said you could -- you
10 don't have to further explain. You won.

11 MS. BOJKO: Thanks.

12 THE WITNESS: Can you read that question
13 one more time, please?

14 (Record read.)

15 A. Not exactly, no.

16 Q. It doesn't say Indra considered "factors
17 such as overhead expenses, compliance costs,
18 marketing margin, as well as energy costs. Indra
19 experienced lower than expected financial
20 performance...which led to the business decision to
21 recover those differences through prices" --

22 MR. EUBANKS: Objection.

23 Q. -- "in recent months, including on our
24 variable products"?

25 EXAMINER PRICE: Let her finish the

1 question. Now you can object.

2 MR. EUBANKS: Objection. The document
3 speaks for itself.

4 EXAMINER PRICE: I think she's testing
5 Ms. Bossart's reading skills. Overruled.

6 A. Indra stated the factors -- they
7 considered factors such as overhead expenses,
8 compliance costs, marketing margin, as well as energy
9 costs.

10 Q. Did you review PALMco's financials for
11 2018 to determine the truthfulness of its statements?

12 A. I did not.

13 Q. Do you know whether Staff did?

14 A. I do not recall.

15 Q. Do you typically review the financials
16 that are filed with the certification application?

17 A. I do not.

18 Q. Did you review complaints or contacts
19 where customers were charged up to six times the
20 intro rate for gas?

21 THE WITNESS: I'm sorry, could you repeat
22 that?

23 (Record read.)

24 A. I do not recall. I reviewed many
25 complaints.

1 EXAMINER PRICE: Ms. Bossart, if you can
2 look at the Staff Report on page 6.

3 THE WITNESS: Yes.

4 EXAMINER PRICE: The bullet point at the
5 bottom.

6 THE WITNESS: Uh-huh, yes.

7 EXAMINER PRICE: Did you review this
8 particular complaint?

9 THE WITNESS: I was aware of this
10 complaint.

11 EXAMINER PRICE: But you do not recall
12 specifically reviewing this complaint file?

13 THE WITNESS: I do not recall. I
14 could -- like I said, I could have reviewed this
15 complaint. A lot of them are -- this specific
16 complaint, I can't say specifically if I've reviewed
17 this specific complaint because I reviewed a lot.

18 Q. (By Ms. Bojko) Are you finished?

19 A. Yes. I was trying to rack my memory, I'm
20 sorry.

21 Q. Would your answer be the same -- would
22 you recall -- did you -- do you recall whether you
23 reviewed complaints where the customers were charged
24 up to four times more for electric service?

25 A. I reviewed complaints where, yes,

1 possibly.

2 Q. And, Ms. Bossart, do you have in front of
3 you what's been previously identified as OCC
4 Exhibit 15?

5 A. Yes. Sorry.

6 Q. This is a complaint -- first of all, do
7 you know who William Schaaf is?

8 A. No, I do not.

9 Q. Does it appear William Schaaf is with
10 Indra? If you turn to the second page.

11 A. It says he's the Assistant Compliance
12 Officer.

13 EXAMINER PRICE: Let's establish that
14 she's got a foundation first and then we'll ask
15 questions.

16 Q. Look at page 2 of that packet. This
17 looks to be what I think is a form that the Staff
18 creates when they receive an informal customer
19 complaint. Is that a fair representation of the form
20 starting on page 2?

21 THE WITNESS: Could you repeat that?

22 (Record read.)

23 MR. EUBANKS: Objection. We went through
24 this yesterday. It's irrelevant whether or not a
25 particular document follows the form that the

1 Commission usually has.

2 The question is whether this specific
3 document is a public record. The only way you can
4 establish that is to have someone who can identify
5 the document, identify that the document was taken in
6 the regular course of business, and she's not asking
7 those questions.

8 What she's basically doing is going
9 through, saying is this the basic form, and then
10 she'll read parts of it into the record and say
11 doesn't it say this or that. You can't have
12 testimony on the document until you establish a
13 foundation for the document.

14 EXAMINER PRICE: She's trying to lay the
15 foundation. Overruled. If she fails to lay the
16 foundation, we won't allow her to read parts of the
17 record.

18 A. Yes.

19 Q. Okay. And this is -- I thought that's --
20 I was trying to say this is regularly done by the
21 Commission Staff, this complaint form that's in
22 here; is that correct?

23 A. Correct.

24 Q. And you're familiar with that process at
25 the Commission and you've reviewed these complaints

1 before previously?

2 A. I review customer contacts, yes.

3 Q. And is it also typical that after you
4 have created this -- Staff has created this form,
5 then the form is sent to the company that the
6 complaint is against and Staff asks the company to
7 provide a response?

8 MR. EUBANKS: Objection.

9 A. Correct.

10 MR. EUBANKS: Asked and answered by
11 Melissa. She's already established the exact process
12 that Staff goes through to take in complaints, file
13 them, forward them to OCC.

14 EXAMINER PRICE: I would have sustained
15 your objection but she already answered the question.

16 You might want to pause and let your
17 counsel object. When you answer questions, it's too
18 late.

19 MS. BOJKO: Your Honor, I'm trying to
20 establish exactly what Counsel wanted me to
21 establish; the foundation that she's familiar with
22 the process.

23 Q. (By Ms. Bojko) So is this complaint --
24 have you reviewed this customer contact? Have you
25 reviewed this complaint previously?

1 A. I do not recall.

2 Q. You could have?

3 A. I could have.

4 EXAMINER PRICE: Do you have a specific
5 recollection or recall of reviewing this document?

6 THE WITNESS: I do not recall this
7 particular document, this particular case.

8 Q. I mean, sitting here today, would you --
9 you receive and review thousands, probably, of
10 customer complaints; is that fair?

11 A. I review many customer complaints.

12 Q. I mean, would you be able to sit here
13 today and look at a specific complaint and have a
14 recollection of it?

15 A. If I looked at it yesterday, I probably
16 could identify it.

17 Q. But if you looked at it in April of 2019,
18 you probably would not be able to, correct?

19 A. I do not recall this specific complaint.

20 EXAMINER PRICE: Was this complaint
21 prepared by you or at your direction?

22 THE WITNESS: No.

23 MS. BOJKO: But wasn't the -- was the
24 complaint prepared by her?

25 Q. (By Ms. Bojko) Was the Staff record

1 prepared under your direction?

2 A. I don't know what "Staff record" means.

3 EXAMINER PRICE: Do you supervise the
4 people who prepare these complaints?

5 THE WITNESS: No, I do not.

6 Q. (By Ms. Bojko) And would -- who does
7 supervise these people?

8 A. This is -- a call center complaint would
9 be Nicole Moore.

10 Q. And who does she report to?

11 A. Director Rob Fadley.

12 Q. Do you work directly with employees of
13 Indra or PALMco, the compliance officers for example,
14 to address complaints, customer complaints?

15 A. Not on -- not typically on individual
16 customer contacts or complaints into the Commission.

17 Q. You would work with the individuals -- if
18 there was an overall concern or policy concern, then
19 you would work with the employees of specific
20 suppliers or utility companies?

21 A. The regulatory contacts usually.

22 Q. And you mentioned Briana Ashiotes
23 earlier. Was she, at one time, the Compliance
24 Officer of PALMco?

25 A. She was a regulatory contact. I'm not

1 sure what her exact title was.

2 Q. And that's who you said you met with on
3 February 26th?

4 A. Yes.

5 Q. Was -- who else from Staff was there?
6 Was Mr. Fadley in that meeting?

7 A. I don't recall.

8 Q. Do you recall any other Staff members?

9 A. I recall Melissa Scarberry.

10 Q. Let's go back to the Staff Report. We're
11 on category 3 which begins on page 12. This is
12 titled "Failure to Provide Sufficient Documentation
13 to Customers at Enrollment." Do you see that?

14 A. Yes.

15 Q. In this section, did you review the
16 contracts that are identified here to determine the
17 noncompliance with the rules?

18 A. I did not.

19 Q. But you did have input into this section?

20 A. Yes.

21 Q. Let's look at category 4, which is
22 "Aggravating Factors Regarding Managerial Capability"
23 on page 15. Do you see that?

24 A. Yes.

25 Q. Who was -- did you have responsibility

1 for input into this section?

2 A. Yes.

3 Q. And did you review PALMco's certification
4 applications that are referenced in this section?

5 EXAMINER PRICE: Can you -- I'm not sure
6 what you're asking there. Do you mean in preparation
7 of the Staff Report or do you mean at the time they
8 were certified?

9 MS. BOJKO: Well, I guess either, but the
10 Staff Report references certification applications,
11 so I'll ask.

12 Q. (By Ms. Bojko) Did you review them in
13 preparation of the Staff Report?

14 A. I reviewed parts of them in preparation
15 of the Staff Report.

16 Q. And do you typically review certification
17 applications in your role?

18 A. No, I do not.

19 Q. The Staff Report lists two proceedings
20 where there were investigations or rule violations
21 found in other states: Connecticut and Illinois.
22 Did you review those?

23 A. I reviewed the allegation.

24 Q. You reviewed the proceedings in
25 Connecticut and Illinois?

1 A. I did not review the full proceedings. I
2 reviewed parts of the filings, public filings.

3 Q. Okay. So you reviewed some of the Orders
4 that were issued in those cases?

5 A. Yes.

6 Q. Did you review any other state
7 proceedings? There were several other ones mentioned
8 in the certification application. Did you review
9 those?

10 A. No.

11 Q. Are you aware of other states that have
12 had similar compliance proceedings regarding PALMco
13 that weren't identified in the Staff Report?

14 MS. GLOVER: Objection. This feels
15 outside the scope of the Bench's ruling that
16 Ms. Bossart is to be asked questions specifically
17 regarding the Staff Report. If there are issues
18 outside of the Staff Report, Ms. Bojko, I believe,
19 has been instructed not to ask those questions.

20 EXAMINER PRICE: Sustained.

21 Q. (By Ms. Bojko) Does the Staff review a
22 lot of information and then select what they put into
23 the Staff Report? They can't possibly put all of the
24 complaints and everything in the Staff Report,
25 correct?

1 A. We review -- we -- we select the
2 information that we -- we want to present in our
3 Staff Report.

4 Q. And if you look at page 15 of the Staff
5 Report, it actually says that by way of example and
6 not exclusion, and then they talk about the
7 Connecticut case and the Illinois case, correct?

8 A. Correct.

9 Q. So, by those terms of the Staff Report,
10 there were other investigations that Staff reviewed
11 in preparing their Staff Report, correct?

12 A. In its renewal application, PALMco
13 identified multiple instances where it or one of its
14 affiliates had entered into compliance-related
15 settlements; so Staff was -- put in the examples, it
16 appears.

17 Q. So Staff reviewed all of those and then
18 put in the examples from those, correct?

19 A. Staff reviewed the renewal application.

20 Q. So the answer is yes?

21 A. What was the question again?

22 MR. EUBANKS: Objection. Asked and
23 answered.

24 EXAMINER PRICE: Let's have the question
25 back.

1 (Record read.)

2 A. No.

3 Q. I thought I understood you to say that
4 from the Staff Report, by way of example and not
5 exclusion, so there were other compliance proceedings
6 pending that Staff reviewed and then they selected
7 two examples.

8 A. Staff reviewed the renewal application.

9 Q. Which included statements of other open
10 proceedings or concluded proceedings regarding
11 compliance issues with PALMco?

12 A. Yes.

13 Q. It's your understanding that Staff raised
14 concerns with PALMco's management prior to filing the
15 Staff Report, correct?

16 THE WITNESS: Could you repeat that
17 again, please?

18 (Record read.)

19 MR. EUBANKS: Objection. Asked and
20 answered by Melissa.

21 EXAMINER PRICE: Sustained.

22 MS. BOJKO: Your Honor, that's foundation
23 for me to bring in the discussion that Ms. Scarberry
24 could not answer.

25 EXAMINER PRICE: Go ahead and ask the

1 question.

2 MS. BOJKO: Okay.

3 Q. (By Ms. Bojko) You were here yesterday
4 when there was a discussion of a January 22, 2016
5 e-mail from Bill Haiker to Palmese; is that correct?

6 A. Yes.

7 Q. And you were copied on that e-mail,
8 correct?

9 A. Which -- could you specifically --

10 Q. Sure. It's OCC Exhibit 9.

11 A. Yes.

12 Q. And then there was another e-mail dated
13 February 12, 2016, it's OCC Exhibit 10, that you were
14 also copied on, where Staff talked about
15 unconscionable rates being charged to customers from
16 PALMco, correct?

17 A. Yes.

18 Q. And then if you look at OCC Exhibit 11,
19 dated January 31, 2019, this is the e-mail we were
20 talking about previously that you had sent an e-mail
21 to PALMco about, correct?

22 A. Correct.

23 Q. Okay. So then there's -- I'm sorry, we
24 talked about that one. I'm trying not to repeat
25 discussions.

1 I'm sorry, we didn't talk about this one.

2 So if you look at OCC Exhibit 11, this is
3 an e-mail from you to Indra Energy and it talks about
4 Staff receiving, again receiving many complaints
5 about PALMco's high variable rates, correct?

6 MR. EUBANKS: Objection. The document
7 speaks for itself. It's already been admitted into
8 evidence. I just have a general objection to her
9 asking questions, recharacterizing an exhibit that is
10 admitted. It's the best evidence rule.

11 EXAMINER PRICE: If your witness thinks
12 she's mischaracterizing the exhibit, she'll explain
13 why she's mischaracterizing the exhibit. Overruled.

14 THE WITNESS: Would you read the question
15 again?

16 (Record read.)

17 A. Yes.

18 Q. So you have been involved in e-mails and
19 discussions with PALMco, from January 2016 till
20 January 31, 2019, regarding PALMco's high variable
21 rates, correct?

22 MS. GLOVER: Objection. That feels like
23 Counsel is testifying to a length of time that may or
24 may not include a large break in between when e-mails
25 are dated. Just simply because there's an e-mail

1 dated in 2016 and another e-mail dated in 2019 -- I
2 would simply ask that Counsel rephrase.

3 EXAMINER PRICE: I think the point that
4 you want to make is a point that should be brought
5 out on redirect. I don't think there's anything
6 wrong with the question. If you want an opportunity
7 to address that with this witness, you can when we
8 get to redirect. Overruled.

9 THE WITNESS: Can you read the question
10 again, please?

11 (Record read.)

12 THE WITNESS: I would not say we've been
13 in discussions from 2016 until 2019.

14 EXAMINER PRICE: What would you say?

15 THE WITNESS: We had discussions in 2016
16 and we had discussions again in 2019.

17 Q. (By Ms. Bojko) Multiple discussions in
18 2016 and multiple discussions in 2019, correct?

19 A. We had -- we had multiple discussions in
20 2016 on the issue at that time. And then we had
21 discussions on a particular issue, multiple
22 discussions on a particular issue in 2019.

23 MS. BOJKO: Your Honor, may I have two
24 minutes, please?

25 EXAMINER PRICE: You may.

1 MS. BOJKO: Your Honor, I have no further
2 questions.

3 EXAMINER PRICE: Thank you.

4 I don't think it's fair to characterize
5 this as redirect, but Mr. Whitt or Ms. Glover, any
6 questions for this witness?

7 MS. GLOVER: No questions, Your Honor.

8 EXAMINER PRICE: Mr. Eubanks, any
9 questions for this witness?

10 MR. EUBANKS: Your Honor, may we have a
11 brief break?

12 EXAMINER PRICE: You may. Let's go off
13 the record.

14 (Recess taken.)

15 EXAMINER PRICE: Let's go back on the
16 record.

17 Mr. Eubanks.

18 MR. EUBANKS: We have no follow-up
19 questions for the record.

20 EXAMINER PRICE: Ms. Sanyal.

21 EXAMINER SANYAL: I have no follow-up
22 questions. Thank you.

23 EXAMINER PRICE: Nor do I. Thank you.

24 Ms. Bojko, do you want to move?

25 MS. BOJKO: Yes, Your Honor. I'd like to

1 move the admission of -- I don't think there were any
2 new documents, so we will still continue to hold
3 admission -- request for admission for the other
4 documents from yesterday.

5 EXAMINER PRICE: What is your approximate
6 time for cross-examining Mr. Fadley?

7 MS. BOJKO: Very brief, Your Honor.

8 EXAMINER PRICE: He is a Director and he
9 has got a department to run.

10 Mr. Fadley, you are next.

11 (Witness sworn.)

12 EXAMINER PRICE: Please be seated and
13 state your name and business address for the record.

14 THE WITNESS: Robert Fadley. 180 East
15 Broad Street, Columbus, Ohio 43215.

16 EXAMINER PRICE: Please proceed.

17 - - -

18 ROBERT FADLEY

19 being first duly sworn, as prescribed by law, was
20 examined and testified as follows:

21 CROSS-EXAMINATION

22 By Ms. Bojko:

23 Q. Good morning, Mr. Fadley.

24 A. Good morning.

25 Q. What is your current position at the

1 Commission?

2 A. I am the Director of the Service
3 Monitoring and Enforcement Department.

4 Q. And, in this role, is it fair to say that
5 you're very familiar with the CRES and CRNGS rules
6 and minimum standards set forth by the Commission?

7 A. I am familiar.

8 Q. And you're also familiar with the actual
9 certification of suppliers?

10 A. Somewhat, yes.

11 Q. And you have been the Director for how
12 long?

13 A. I was named permanent director in May of
14 this year, and served as interim director for about a
15 year before that.

16 Q. And in your position as Director, were
17 you responsible for analyzing PALMco's compliance
18 with the Commission's rules?

19 A. Not directly. I oversaw the
20 investigation and analysis of compliance.

21 Q. And you oversaw the investigation of
22 customer complaints associated with PALMco, correct?

23 A. Correct.

24 Q. Prior to the instant matter, did you
25 recommend enforcement actions against PALMco for

1 violating the Commission's rules?

2 A. Prior to?

3 Q. The instant case.

4 EXAMINER PRICE: Don't answer that.

5 Are you asking him personally as a
6 residential consumer in the state or are you asking
7 him in some other capacity?

8 MS. BOJKO: I'm sorry. As Director, did
9 he recommend --

10 MS. BAIR: Then I have an objection.

11 EXAMINER PRICE: Ms. Bair.

12 MS. BAIR: That was asked of Barb, I
13 remember that, and she answered it.

14 MS. BOJKO: I actually think that it is a
15 different question. He's Director, and she said she
16 didn't know from her perspective or she personally
17 had not recommended enforcement actions.

18 EXAMINER PRICE: No. We said you could
19 not answer that question -- ask her that question
20 because she is here representing Staff as is he. So
21 if you want to rephrase it as "Did the Staff
22 previously recommend enforcement action."

23 MS. BOJKO: Thank you.

24 Q. (By Ms. Bojko) Did the Staff -- did the
25 Staff previously recommend enforcement actions

1 against PALMco for violating the Commission rules?

2 A. Prior to this proceeding?

3 Q. Yes.

4 A. Not that I recall.

5 EXAMINER PRICE: But the state of your
6 knowledge would only be from May of 2018 to the
7 present; is that correct?

8 THE WITNESS: Correct.

9 EXAMINER PRICE: Prior to that, what
10 position did you hold at the Commission?

11 THE WITNESS: I was Chief of the Facility
12 and Operations Field Division within SMED.

13 EXAMINER PRICE: And as Chief of that
14 division, you had nothing to do with marketers and
15 regulation of marketers.

16 THE WITNESS: That is correct.

17 EXAMINER PRICE: Thank you.

18 Q. (By Ms. Bojko) Sir, you were here
19 yesterday when Ms. Scarberry testified, correct?

20 A. For most of it.

21 Q. And you, sir, on April 16, 2019, signed a
22 letter on behalf of Staff and filed it in the PALMco
23 certification dockets, requesting the Commission open
24 an investigation because of the large number of
25 customer contacts; is that correct?

1 A. That's correct.

2 Q. And is OCC Exhibit 5 before you?

3 A. I found it.

4 MS. BAIR: Could you let me know what
5 Exhibit 5 is? I can't locate that right now.

6 MS. BOJKO: It's the letter he wrote.

7 MS. BAIR: Okay. Thank you.

8 Q. (By Ms. Bojko) Exhibit 5 is the letter
9 that we just referenced that you filed on April 16,
10 2019, in your capacity as Director of SMED?

11 A. It appears to be.

12 Q. And when you filed this letter, it was
13 true and accurate to the best of your knowledge,
14 correct?

15 A. Of course.

16 Q. And then this letter was also filed in
17 the instant proceeding on April 17, after an Order of
18 the Commission, correct?

19 A. Correct.

20 Q. I'd like to clarify one thing. Could you
21 look at OCC Exhibit 5?

22 A. I'm looking at it.

23 Q. On your cover letter, it's dated
24 April 16, 2016. That's a typo; is that correct?

25 A. No. Mine says 2018.

1 MS. BAIR: Yeah, mine does too.

2 MS. BOJKO: It says what?

3 MS. BAIR: 2019. April 16, 2019.

4 MR. WHITT: Ours says 16.

5 EXAMINER SANYAL: There's a stamp and
6 then there's a --

7 THE WITNESS: Oh, I see what you're
8 talking about. Yeah, at the top, it does say '16 and
9 that was a typo.

10 MS. BOJKO: Okay.

11 THE WITNESS: Sorry, I was looking at the
12 stamp.

13 Q. (By Ms. Bojko) That was a cover letter
14 that says 2016, but then if you turn the page to the
15 actual letter you drafted, it is dated April 16,
16 2019.

17 A. That's correct.

18 Q. So it's all about April 16, 2019.

19 A. Correct.

20 Q. And the Commission issued an Entry on
21 April 17, 2019 --

22 EXAMINER PRICE: Ms. Bojko, I know you're
23 trying to lay a thorough foundation, but time marches
24 on here. Let's get to the questions that Ms. Bossart
25 couldn't answer.

1 MS. BOJKO: Ms. Bossart couldn't answer
2 these questions because she didn't sign the
3 documents. I'm merely authenticating the documents
4 and asking him --

5 EXAMINER PRICE: I thought these already
6 have been admitted.

7 EXAMINER SANYAL: They have.

8 EXAMINER PRICE: It's been admitted.

9 Q. (By Ms. Bojko) The Commission opened an
10 investigation and then you filed a Staff Report on
11 behalf of the Staff, dated May 10, 2019, correct?

12 A. Correct.

13 Q. And you signed that Staff Report,
14 correct?

15 A. I did.

16 Q. And when you signed, you believed the
17 Staff Report was true and accurate to the best of
18 your knowledge, correct?

19 A. Yes.

20 Q. And sir, did you -- did you participate
21 in the investigation that led to that Staff Report?

22 A. Not directly.

23 Q. And you oversaw, though, the entirety of
24 the Staff Report, correct?

25 A. Yes.

1 Q. And you oversaw the review of the
2 customer contacts and complaints that were filed with
3 the Commission?

4 A. Yes.

5 Q. And would you, sitting here today, be
6 able to look at a complaint and say that you
7 personally reviewed that?

8 A. Probably not.

9 Q. Let's take one just as an example. Could
10 you look at OCC Exhibit 15.

11 A. I have it.

12 Q. OCC Exhibit 15, if you look at page 2,
13 this is the informal complaint record and process
14 that your department undergoes when taking down a
15 customer complaint, correct?

16 A. That's what it looks like.

17 Q. And you oversaw that process, correct?

18 A. I oversee the Consumer Services Division,
19 or CSD, which handles informal complaints, yes.

20 Q. And it's your understanding that your
21 department -- the informal complaint is then sent to
22 the Company and then the Company then offers a
23 response, correct?

24 A. Correct.

25 Q. And is this packet of documents something

1 typical that you would expect to happen and that you
2 would see from the complaint process?

3 MS. BAIR: Objection.

4 EXAMINER PRICE: Grounds?

5 MS. BAIR: She's -- he has no -- there's
6 no foundation. She's speaking specifically to this
7 packet.

8 EXAMINER PRICE: Sustained.

9 MS. BOJKO: Your Honor, I think, as the
10 Director of SMED and the person that oversees SMED,
11 he can speak to the complaint process and the
12 complaints that were filed under his direction.

13 MS. BAIR: I don't disagree with that,
14 but you did ask about this packet and that is not a
15 general question about the way it operates.

16 EXAMINER PRICE: I agree. Sustained.

17 MS. BOJKO: I'll rephrase.

18 Q. (By Ms. Bojko) Mr. Fadley, the process
19 would be that the informal complaint is recorded by a
20 Commission Staff member; is that correct?

21 A. That's correct.

22 Q. And then the Commission Staff member
23 requests information from the person that's being
24 complained against, whether it's a utility or a CRES
25 provider or CRNGS provider.

1 A. Yes.

2 Q. And then the CRNGS provider/CRES
3 provider/utility would send a responsive e-mail to
4 the complaint and they would also attach documents
5 and any kind of verification that they had, correct?

6 A. Yeah, it depends on the type of complaint
7 and who the complaint is against, so it can vary what
8 they send back to us, but generally they do send back
9 a response and sometimes that includes attachments or
10 other documents.

11 Q. And the attachments or other documents
12 could be letters to the customer, correct?

13 A. I believe so.

14 Q. They could be contracts with the
15 customer?

16 A. Yes.

17 Q. They could be terms and conditions of the
18 contract?

19 A. Yes.

20 Q. And they could be an advertisement that
21 they've sent to the customer?

22 A. Yes.

23 Q. And they could be TPVs, which is the
24 third-party verification, either a transcript of that
25 or an actual audio link, correct?

1 A. Correct.

2 Q. And looking at OCC Exhibit 15 in front of
3 you, are all of these documents, do they fall into
4 that regular process that your Staff would have gone
5 through?

6 MS. BAIR: Objection. Lack of
7 foundation.

8 EXAMINER PRICE: Sustained.

9 Have you seen this document before?

10 THE WITNESS: I have not.

11 EXAMINER PRICE: How many customer
12 complaints are filed annually with your Department?

13 THE WITNESS: Ooh. I want to say we get
14 contacts, total contacts somewhere in the
15 neighborhood of 70,000. I know -- I don't know the
16 exact number. I can tell you we've got approximately
17 900-and-change open investigations currently,
18 informal.

19 Q. (By Ms. Bojko) And how many of those are
20 against PALMco?

21 A. I have no idea.

22 Q. Is the -- is OCC Exhibit --

23 EXAMINER PRICE: We're going to strike
24 that last question and answer as having already been
25 asked and answered numerous times.

1 MS. BOJKO: Actually that was never asked
2 and answered. Of the 900 open complaints, how many
3 are against PALMco. That wasn't asked and answered.

4 MS. BAIR: That's outside the scope and
5 it shouldn't be asked.

6 EXAMINER PRICE: That has been well
7 established in this case.

8 Q. (By Ms. Bojko) Is OCC Exhibit 15
9 representative of the work, as Director of SMED, you
10 would expect to see?

11 MS. BAIR: Objection.

12 EXAMINER PRICE: Sustained.

13 MS. BOJKO: So, Your Honor, is your
14 ruling we cannot have a director of a department
15 testify to the documents produced by his subordinates
16 and that we have to call each subordinate to talk
17 about each complaint?

18 EXAMINER PRICE: I didn't say that at
19 all. I said he's not familiar with this document and
20 he can't authenticate it. That's all I said.

21 Overruled -- sustained. The objection is
22 sustained.

23 You see the difficulty in putting on this
24 case, Ms. Bojko. That's why we're here.

25 MS. BOJKO: I don't understand that

1 comment. We're here because the Commission --

2 EXAMINER PRICE: I withdraw my comment.

3 MS. BOJKO: -- ordered an investigation
4 and a hearing.

5 EXAMINER PRICE: Go ahead and ask your
6 next question, Ms. Bojko.

7 Q. (By Ms. Bojko) Mr. Fadley, would you --
8 if I showed you five more complaints, would you be
9 able to say that you have reviewed them to the extent
10 that the Attorney Examiner just asked you?

11 A. I'm not sure I understand the question.

12 Q. Would you be able to look at a complaint
13 and say that you have affirmatively reviewed that
14 customer complaint?

15 A. I don't typically review individual
16 complaints on a regular basis.

17 Q. And if you had, would you be able to sit
18 here today and say you could recall a specific
19 complaint?

20 A. If it was recent, possibly; if it wasn't,
21 then probably not.

22 Q. Similar to Ms. Bossart's response.

23 A. Correct.

24 Q. Do you believe that as Director of SMED,
25 do you believe the Staff Report was a true and

1 accurate reflection of the investigation that had
2 occurred?

3 MS. BAIR: Objection. Asked and
4 answered.

5 EXAMINER PRICE: Sustained. You asked
6 that earlier.

7 MS. BOJKO: I asked him if he as Director
8 of SMED. I couldn't have asked that to anybody else.
9 There are no --

10 EXAMINER PRICE: You asked him the
11 question earlier in your foundation. Yeah, you did.
12 You shake your head. You asked him the question
13 earlier.

14 MS. BOJKO: I did. There was a
15 distinction in the question. Then I asked if the
16 Staff Report was true and accurate. This question I
17 asked if he believed that the Staff Report was a true
18 and accurate reflection of the investigation that
19 occurred, which is different.

20 MR. WHITT: The Company will stipulate to
21 the honesty and integrity of Staff.

22 EXAMINER PRICE: Okay. Just to make
23 things move along, go ahead and answer that question.

24 THE WITNESS: Yes, I do.

25 MS. BOJKO: May I have one minute,

1 please?

2 EXAMINER PRICE: You may.

3 MS. BOJKO: Your Honor, I have no further
4 questions. Thank you.

5 EXAMINER PRICE: Mr. Whitt.

6 MR. WHITT: Very briefly.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Whitt:

10 Q. Mr. Fadley, when Staff issued its report,
11 was the -- was it Staff's expectation that the
12 Commission would give PALMco the opportunity to
13 respond to the allegations and matters raised in the
14 report?

15 A. Presumably yes, through hearing.

16 Q. And I'm assuming that Staff didn't have
17 any expectation that the Commission would simply look
18 at the Staff Report and take actions based only on
19 the Staff Report. That wasn't --

20 MS. BOJKO: Objection.

21 Q. -- the expectation, was it?

22 MS. BOJKO: Objection.

23 EXAMINER PRICE: Grounds?

24 MS. BOJKO: He can't speak to the
25 expectation of the Commission or what the Commission

1 would have done.

2 EXAMINER PRICE: He can speak to what
3 Staff expected after the Staff Report was filed. He
4 certainly can speak to that.

5 MS. BOJKO: From the Staff's perspective
6 not the Commission's perspective. He can't speak to
7 what --

8 EXAMINER PRICE: From the Staff's
9 perspective. From the Staff's perspective.

10 A. Staff believed the Staff Report was a
11 recommendation and a summary of its findings and
12 expected that, at some point, the Commission would
13 rule on whether or not they agreed with us or not.

14 Q. Is it your understanding that, as a
15 result of the Stipulation, the matters in the Staff
16 Report essentially have been resolved by agreement
17 among the parties? Is that a fair characterization
18 of the Stipulation?

19 A. Yes, it is.

20 Q. Is it unusual, in your experience
21 personally and as Director, for compliance matters to
22 be resolved by Stipulation?

23 MS. BOJKO: Objection.

24 EXAMINER PRICE: Grounds?

25 MS. BOJKO: First, you would not let me

1 ask him any questions about personal --

2 EXAMINER PRICE: Just say "outside the
3 scope."

4 MS. BOJKO: Outside the scope.

5 EXAMINER PRICE: Sustained.

6 MR. WHITT: No further questions.

7 EXAMINER PRICE: Thank you.

8 Ms. Bair, questions?

9 MS. BAIR: No redirect or whatever it is.
10 It's not redirect.

11 EXAMINER PRICE: Ms. Bojko, further
12 recross, I guess?

13 MS. BOJKO: No, Your Honor.

14 EXAMINER PRICE: Thank you.

15 Mr. Fadley, you're excused. Thank you.

16 THE WITNESS: Thank you.

17 EXAMINER PRICE: Let's go off the record.

18 (Discussion off the record.)

19 EXAMINER SANYAL: Let's get back on the
20 record.

21 OCC, you may call Mr. Steele.

22 MR. ETTER: Thank you, Your Honors. The
23 Ohio Consumers' Counsel calls to the stand,
24 Mr. Robert Steele.

25 EXAMINER SANYAL: Mr. Steele, if you'll

1 come up here and, before you sit down, I'll be
2 swearing you in. If you'll raise your right hand.

3 (Witness sworn.)

4 EXAMINER SANYAL: You may be seated and
5 if you'll state your full name and your address for
6 the record, and if you'll speak into the microphone,
7 it is helpful for our court reporter.

8 THE WITNESS: My name is Robert W.
9 Steele. I reside at 5492 Chatford Square, Columbus,
10 Ohio 43232.

11 EXAMINER SANYAL: You may proceed,
12 Mr. Etter.

13 MR. ETTER: Thank you.

14 - - -

15 ROBERT W. STEELE
16 being first duly sworn, as prescribed by law, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Etter:

20 Q. Good morning, Mr. Steele.

21 A. Good morning.

22 Q. We're here today, as you know, to --
23 regarding issues concerning PALMco Energy and PALMco
24 Power here in Ohio. Were you a PALMco customer at
25 one time?

1 A. Yes.

2 Q. And are you a PALMco customer now?

3 A. No.

4 Q. Did you contact the Public Utilities
5 Commission of Ohio to complain about the service
6 provided by PALMco?

7 A. Yes, I did.

8 Q. And can you describe your experience with
9 PALMco for us?

10 A. Well, I guess they talked a good game
11 over the phone. When they contacted me, they were
12 telling me about what good rate they could give me,
13 better than what AEP was doing, and I said well, I'm
14 not for sure if I want to do this because I'm
15 thinking at one other time before I might have tried
16 one of these companies and what they told me on the
17 phone and what ended up happening, I said I didn't
18 want to get involved in that again, but they said
19 well, we guarantee you that's not going to happen. I
20 said okay.

21 So they said -- well, they play a
22 recording and it said this will be your contract or
23 whatever over the phone. And I said well, at the end
24 of the recording I want to add a caveat as far as if
25 I'm going to agree to this, and that caveat was that

1 I needed in writing exactly what I was agreeing to
2 and also that if I did not receive that, that I would
3 not have to honor any contract. And they said oh,
4 that's no problem, you can do that.

5 I said what I had to say. I said well, I
6 have the right to reject this contract if I don't
7 receive it in writing and that my rate does not
8 increase. But, however, I don't think it got
9 recorded because when my bills started going up and
10 up and up, I tried to contact -- well, I contacted
11 AEP and they said we don't have anything to do with
12 it, we've been getting a lot of calls because people
13 were told one thing and then something else happened.
14 And so they said they were getting a lot of
15 complaints.

16 So basically I called PUCO and talked
17 with them, and I forget who I actually talked with,
18 but I -- I can't remember how much, but they paid
19 maybe 100, 130 bucks to keep my electric from being
20 shut off.

21 Q. Did you receive a disconnection notice
22 regarding your electric bill?

23 A. I received several.

24 Q. And do you know whether you received any
25 refunds or anything back from PALMco?

1 A. No, I have not received anything.

2 Q. Do you have anything more to add?

3 A. When you talk about the disconnection
4 because first I thought it was AEP because I didn't
5 know it was really PALMco because it said something
6 about Indra Energy and all that stuff, so I was
7 like -- because when I did call PUCO -- well, when I
8 saw the bill and I called AEP and they said well,
9 it's not us, they said it's this other company that
10 you signed up with that's causing your disconnect so,
11 and that's when I talked with PUCO and they gave me
12 some money to try to help me stop the disconnect.

13 EXAMINER PRICE: Did you receive a credit
14 on your bill to stop the disconnect?

15 THE WITNESS: I think when PUCO -- PUCO
16 paid that, they did stop for --

17 EXAMINER PRICE: The disconnection was
18 stopped.

19 THE WITNESS: Yeah, for right then.

20 EXAMINER PRICE: Thank you.

21 MR. ETTER: Thank you, Mr. Steele.

22 I have no further questions, Your Honor.

23 EXAMINER SANYAL: Mr. Whitt?

24 MR. WHITT: No questions.

25 EXAMINER SANYAL: Ms. Bair?

1 MS. BAIR: No questions.

2 EXAMINER SANYAL: Thank you very much,
3 Mr. Steele, for your testimony today. You may step
4 down.

5 EXAMINER PRICE: Thank you for coming.

6 EXAMINER SANYAL: Is Ms. Alexander
7 prepared to go next?

8 MS. BOJKO: Yes, Your Honor.

9 EXAMINER SANYAL: Okay. Well, you may
10 call her.

11 MS. BOJKO: Thank you, Your Honor. At
12 this time, the Office of the Ohio Consumers' Counsel
13 calls Barbara Alexander to the stand.

14 THE WITNESS: I forgot my water.

15 EXAMINER SANYAL: Good morning,
16 Ms. Alexander.

17 THE WITNESS: Good morning.

18 (Witness sworn.)

19 EXAMINER SANYAL: You may be seated.

20 THE WITNESS: Can I move these documents?
21 Well, maybe I'll just stack them up in case they come
22 up.

23 MS. BOJKO: That would be wonderful.
24 Thank you.

25 THE WITNESS: Yes.

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BARBARA R. ALEXANDER

being first duly sworn, as prescribed by law, was
examined and testified as follows:

DIRECT EXAMINATION

By Ms. Bojko:

Q. Ms. Alexander, could you please state
your name and business address for the record.

A. Yes. Barbara R. Alexander. 83 Wedgewood
Drive, Winthrop, Maine 04364.

Q. Did you file or cause to be filed
testimony regarding the Stipulation filed by Staff
and PALMco or Indra in this proceeding?

A. I did.

MS. BOJKO: Your Honors, at this time, I
would like to mark as OCC Exhibit 1, the Direct
Testimony of Barbara R. Alexander in Opposition to
the Settlement, which was filed on September 4, 2019.

EXAMINER SANYAL: It is so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MS. BOJKO: May I approach, Your Honor?

EXAMINER SANYAL: Yes, you may, and you
may do so freely during your examination of this
witness.

MS. BOJKO: Thank you.

1 Q. (By Ms. Bojko) Ms. Alexander, do you have
2 in front of you what's been marked as OCC Exhibit 1?

3 A. I do.

4 Q. Do you recognize this document as your
5 testimony?

6 A. Yes, I do.

7 Q. Was this testimony prepared by you or
8 under your direction?

9 A. Yes.

10 Q. And on whose behalf are you testifying
11 today?

12 A. The Office of the Ohio Consumers'
13 Counsel.

14 Q. Since the filing of your testimony, do
15 you have any changes to your testimony?

16 A. No.

17 Q. And do you have -- if I were to ask you
18 the same questions today as they appear in your
19 testimony, would your answers be the same?

20 A. Yes.

21 MS. BOJKO: At this time, Your Honor, I'd
22 like to move OCC Exhibit 1, subject to
23 cross-examination.

24 EXAMINER SANYAL: Thank you, Ms. Bojko.

25 We'll take cross from Mr. Whitt.

1 MR. WHITT: Thank you, Your Honors, and I
2 would merely note for the record our previous motion
3 to strike. I understand it has been ruled on. I do
4 have an additional motion to strike that would be
5 Questions and Answers 9 and 10. I'm not sure if
6 others' testimony is numbered the way mine is, but it
7 goes from page 9 to page 1 on the version I'm looking
8 at for Question 9.

9 EXAMINER SANYAL: Yeah.

10 MR. WHITT: And then Question 10 begins
11 on the second number 2. For clarity, rather than I
12 guess refer to the page numbers, again Questions 9
13 and 10 pertain to proceedings involving different
14 states which obviously have different rules than
15 Ohio. The testimony is, for that reason, irrelevant.
16 It is also cumulative to the extent it covers the
17 same proceedings already addressed in the Staff
18 Report.

19 And, finally, the testimony is in
20 violation of the evidence rules that prohibit
21 evidence of alleged prior bad acts which is, by the
22 witness's own testimony that is the reason the prior
23 instances are cited to attempt to show action in
24 conformity therewith of the prior conduct. So we
25 would ask that Questions and Answers 9 and 10 be

1 stricken.

2 EXAMINER SANYAL: Whenever you're ready,
3 Ms. Bojko, your response.

4 MS. BOJKO: Thank you, Your Honor.

5 Page 15 of the Staff Report specifically
6 discusses that the Commission is required to review
7 Ohio Administrative Code 4901:1-24-13(E) and 27-13(E)
8 in order to determine whether the Commission may
9 suspend, rescind, or conditionally rescind, and
10 that's on pages 19 and 20 of the Staff Report. And
11 then again on page 15 of the Staff Report, the Staff
12 Report talks about aggravating factors regarding
13 managerial capability.

14 The certifications out of state, just as
15 the Staff Report found, do actually affect the
16 managerial capability of PALMco and Indra, and
17 because of that managerial capability, they had to
18 look at whether PALMco had an ability to comply with
19 Commission rules and whether they could actually
20 manage a competitive retail utility service.

21 These are the exact issues before us
22 today, and their activity in other states as well as
23 their activity in Ohio and how those activities are
24 strikingly similar actually goes to the pattern of
25 unfair, misleading, and deceptive practices which the

1 Staff Report found occurred, so those provisions of
2 the Staff Report directly affect her discussion and
3 her testimony.

4 Then additionally, if you go to the
5 Stipulation, the Stipulation at pages -- excuse me.
6 The Stipulation at paragraphs 8 and 9, paragraphs 8
7 and 9 talk about the certification and whether these
8 companies can retain their certification, whether
9 owners and officers, and then it even talks about
10 Staff reviewing the managerial capability in the
11 future, after the five-year stay-out period, to
12 determine if they will be able to get a
13 certification. So this directly discusses the
14 certification requirements and is directly on point
15 and within the scope of the Staff Report and the
16 Stipulation by the Company's and Staff's own
17 provisions of its Stipulation.

18 As for the evidence rule, there is no
19 problem with an evidence rule. It's not cumulative.
20 These are discussions of Ms. Alexander, from her
21 expert opinion, about how the pattern has occurred
22 and that the pattern is what has led to the Staff
23 Report and her testimony and the Stipulation because
24 it discusses the certification and whether they can
25 maintain that certification or not

1 MR. WHITT: If I may, Your Honor. In the
2 Stipulation --

3 EXAMINER SANYAL: Yes, briefly.

4 MR. WHITT: In the Stipulation, the
5 Company commits to not renewing its certificates, so
6 its managerial capability is irrelevant until such
7 time, at least five years into the future, if the
8 Company would ever reapply, managerial capability
9 would be relevant at that time and properly
10 considered at that time. It is irrelevant at this
11 time. Thank you.

12 EXAMINER SANYAL: Thank you.

13 MS. BOJKO: May I respond to that piece,
14 Your Honor?

15 EXAMINER SANYAL: Briefly.

16 MS. BOJKO: Briefly. Actually why we're
17 here is the Staff Report found violations, current
18 violations, with regard to the certification that's
19 been pending. So the issue is whether the
20 Stipulation is just and reasonable and in the public
21 interest in light of those violations and that's
22 where this testimony comes in.

23 MR. WHITT: Alleged violations.

24 EXAMINER SANYAL: Thank you for the
25 clarification.

1 Does Staff have anything to add?

2 MS. BAIR: No.

3 EXAMINER SANYAL: Thank you. At this
4 time, Mr. Whitt, your motion is overruled -- is
5 denied.

6 MR. WHITT: Thank you. I have no
7 questions.

8 EXAMINER SANYAL: Thank you.

9 MS. BOJKO: Thank you, Your Honor.

10 I'm sorry, did you say no questions for
11 the witness?

12 MR. WHITT: No questions.

13 EXAMINER SANYAL: Staff?

14 MS. BAIR: Yes, I have questions.

15 EXAMINER SANYAL: Okay.

16 - - -

17 CROSS-EXAMINATION

18 By Ms. Bair:

19 Q. My name is --

20 A. I'm glad that you do since I've come all
21 this way.

22 Q. My name is Jodi Bair.

23 EXAMINER PRICE: She's a Michigan
24 graduate. She's coming into hostile territory. It
25 takes a lot of bravery.

1 THE WITNESS: Well --

2 EXAMINER SANYAL: I'm glad you don't have
3 anything blue on or yellow.

4 MS. BOJKO: The day before a game.

5 THE WITNESS: I should have done that.

6 EXAMINER SANYAL: Primo opportunity.

7 THE WITNESS: Yes. Sorry.

8 Q. (By Ms. Bair) Okay. I'm going to ask you
9 to look at page 3 of your testimony.

10 A. Yes.

11 Q. On page 3 of your testimony, specifically
12 lines 14 and 15, you said that PALMco customers
13 should be informed of any temporary or permanent
14 termination of its business, correct?

15 A. Yes.

16 Q. And are you familiar with the terms of
17 the Stipulation that is marked and you have it up
18 there as Joint Exhibit 1?

19 A. Yes.

20 Q. Could you please look to page 5,
21 paragraph 6 of that settlement.

22 A. I'm sorry, I have to find the document up
23 here, so let me.

24 MS. BOJKO: It's Joint Exhibit 1.

25 EXAMINER SANYAL: Or if someone may

1 assist her.

2 MS. BAIR: Your Honor, may I approach the
3 witness?

4 THE WITNESS: I found it.

5 Q. (By Ms. Bair) I'm asking you to look at
6 page 5, paragraph 6 and review that, please.

7 A. Page 5, paragraph 6. Yes, it talks about
8 PALMco notifying customers of the assignment, yes.

9 Q. Does it also say that PALMco will be
10 exiting the market?

11 A. Yes.

12 Q. So that would be, would it not, informing
13 the customers that PALMco is exiting the Ohio market?

14 A. Not necessarily.

15 Q. What does that statement say in the
16 settlement agreement?

17 A. The "notice will comply with all
18 disclosures required under the Commission's rules,
19 and will also disclose that PALMco will be exiting
20 the Ohio market at the end of its current
21 certification term" --

22 Q. Thank you.

23 A. -- and more, but I didn't read that part
24 because it's there.

25 Q. Thank you.

1 And I would also -- reading on in the
2 paragraph that we're referencing, basically lines 14
3 through 21, you've recommended, am I correct, that
4 PALMco customers be returned to the standard offer;
5 is that a correct reading of your testimony?

6 A. Where are you looking at now, please?

7 Q. 16 and 17.

8 A. Yes. I'm basically repeating Mr. Kerry
9 Adkins' recommendations on behalf of the OCC in this
10 portion of my testimony.

11 Q. So that is not your recommendation that
12 they be returned to the standard service offer?

13 A. Oh, it is my recommendation, but I'm
14 pointing out that it is based on the OCC's expert
15 recommendation that this occur and I agree with that.

16 Q. So you would never recommend that a
17 customer take gas or electric service from a
18 marketer?

19 A. No, I never said that.

20 Q. Why would you recommend in this case that
21 they be returned to the standard service offer
22 entirely?

23 A. That is because in this case the
24 allegation, which is on the record and not disproven
25 by any evidence otherwise, that these customers were

1 misled into their enrollment with PALMco.

2 MR. WHITT: I'll object and move to
3 strike the witness's commentary about allegations not
4 being disproved, which PALMco has no burden of
5 disproving.

6 MS. BOJKO: Your Honor, first, I'd like
7 that you instruct Mr. Whitt to let her finish her
8 response before objecting. I don't think she was
9 finished.

10 Secondly, I think that this is very on
11 point of whether the Stipulation is just and
12 reasonable and whether the Stipulation is in the
13 public interest, that's what she's testifying to.

14 EXAMINER SANYAL: Your objection --

15 EXAMINER PRICE: She's not here to
16 testify as to who has the burden of proof under Ohio
17 law, is she?

18 MS. BOJKO: As a regulatory expert, this
19 Commission often --

20 EXAMINER PRICE: We do not take testimony
21 on legal issues, do we, Ms. Bojko?

22 MS. BOJKO: Yes, we do. We take
23 testimony about whether somebody violated a rule all
24 the time --

25 EXAMINER PRICE: That's not what I asked.

1 MS. BOJKO: -- and the interpretation of
2 statutes.

3 EXAMINER PRICE: We don't have witnesses
4 testify as to burden of proof. That's a matter for
5 brief, is it not?

6 MS. BOJKO: I don't think she was talking
7 about the legal standard of burden of proof, but I do
8 think, as a regulatory expert, you give a lot of
9 leeway to utility witnesses and the like to talk
10 about their interpretation of statutes and rules and
11 their interpretation of Commission process.

12 MR. WHITT: Is the witness licensed in
13 Ohio?

14 EXAMINER SANYAL: Okay. We're going to
15 stop right here. Your objection is sustained. Let's
16 move on to the next question.

17 MS. BOJKO: I didn't ask the question.

18 THE WITNESS: What is your question,
19 please?

20 MS. BAIR: I don't know.

21 Q. (By Ms. Bair) Could you please move on to
22 page 8 of your testimony.

23 A. I would like to answer the one you asked
24 me --

25 Q. I think you --

1 A. -- in a proper way.

2 Q. I think you adequately answered it.

3 Thank you very much.

4 Could you please move on to page 8 of
5 your testimony.

6 MS. BOJKO: Wait. I thought the answer
7 was stricken. Was it not? Or just partial? I'm
8 asking for clarification.

9 EXAMINER PRICE: A portion.

10 EXAMINER SANYAL: A portion of it, yes,
11 per --

12 MS. BOJKO: Oh, okay. Thank you.

13 EXAMINER SANYAL: -- Mr. Whitt's
14 objection.

15 MS. BOJKO: Thank you.

16 I'm sorry, what page?

17 MS. BAIR: Page 8.

18 MS. BOJKO: Of the testimony?

19 MS. BAIR: Of the testimony.

20 Q. (By Ms. Bair) Question and Answer 8,
21 lines 9 and 10, that first sentence. In that
22 sentence are you stating that PALMco has not refunded
23 customers or credited their customers?

24 A. It is my understanding that PALMco has
25 done so, yes, in some small -- in amounts we do not

1 know and the extent of which we do not know in terms
2 of the exact customers, but yes, there is statements
3 that some sort of reimbursement has been given to
4 some customers, yes.

5 Q. And is it your understanding that the
6 Commission ordered PALMco to give these refunds?

7 A. I'm not aware of any Commission Order.

8 Q. Okay. Could you please turn to page 10
9 of your testimony.

10 A. Yes.

11 EXAMINER SANYAL: Is that also page 1?

12 MS. BAIR: No.

13 THE WITNESS: I can see the problem.
14 Sorry.

15 MS. BAIR: I think it's page 10. I'm
16 sorry, it's Question and Answer 11.

17 EXAMINER SANYAL: Thank you.

18 THE WITNESS: Question and Answer 11,
19 okay. I see the difficulty with the page numbers. I
20 did not know that before. Sorry. So we're doing
21 Question and Answer 11. Yes, I'm with you.

22 Q. (By Ms. Bair) And I'm focusing on lines
23 12 through 15.

24 A. Yes.

25 Q. And you're recommending that PALMco not

1 renew its license to operate in Ohio; is that
2 correct?

3 A. It says rescind its operating certificate
4 and license.

5 Q. And you would agree that the settlement
6 states that PALMco is exiting the market, correct?

7 A. It does say that, yes, it does.

8 Q. And could you please look at the
9 settlement document, page 4, paragraph 4. That's
10 Joint Exhibit 1.

11 A. Page 4, PALMco will not renew its Ohio
12 certificates, yes.

13 Q. So you understand that's a term of the
14 settlement?

15 A. That it will not renew. Yes, I see that.
16 Yes.

17 Q. And was OCC aware of these PALMco
18 complaints?

19 A. That I cannot testify to.

20 Q. Do you know if OCC gets copies of the
21 customer contacts?

22 MS. BOJKO: Objection.

23 A. I am not involved in that process.

24 EXAMINER SANYAL: Well, she's answered
25 it, I'm sorry.

1 Q. Can OCC file a formal complaint at the
2 PUCO?

3 MS. BOJKO: Objection.

4 EXAMINER SANYAL: Basis?

5 MS. BOJKO: This is beyond the scope of
6 her testimony. She's not an OCC employee. I think
7 this could have been asked or could be asked of an
8 OCC employee.

9 MS. BAIR: She's testifying on behalf of
10 OCC and she's talking about the complaints. I'm
11 asking if OCC can file a complaint at the PUCO.

12 MS. BOJKO: That's not asking about the
13 complaint --

14 EXAMINER SANYAL: Your objection --

15 MS. BOJKO: -- that's a future complaint.

16 EXAMINER SANYAL: Your objection is
17 sustained.

18 Q. (By Ms. Bair) Can OCC intervene in
19 renewal certification cases?

20 MS. BOJKO: Objection. This is not her
21 testimony. It's beyond the scope. Any
22 certification, just as I was not allowed to ask about
23 any complaints --

24 EXAMINER SANYAL: Your objection is
25 sustained.

1 MS. BAIR: Could I respond, please?

2 EXAMINER SANYAL: I think you can move on
3 to your next question.

4 Q. (By Ms. Bair) Do you know how often a
5 CRES, and that is a competitive electric supplier --

6 A. Yes.

7 Q. -- or gas competitor would have to renew
8 their license?

9 A. I would have to look that up. Every
10 several years I know there is a renewal process;
11 beyond, I do not know the exact time period that it
12 is required to be done.

13 MS. BAIR: I have nothing else.

14 EXAMINER SANYAL: Redirect?

15 MS. BOJKO: May I have five minutes,
16 please, Your Honor?

17 EXAMINER SANYAL: Yes, you may.

18 (Recess taken.)

19 EXAMINER SANYAL: Let's go back on the
20 record.

21 Ms. Bojko, questions?

22 MS. BOJKO: Yes, Your Honor, I have a
23 few.

24 EXAMINER SANYAL: Okay. And then both of
25 us have some questions as well, just so you know.

1 MS. BOJKO: Would you like to go first?

2 EXAMINER PRICE: No.

3 EXAMINER SANYAL: No. You go first.

4 MS. BOJKO: I tried.

5 - - -

6 REDIRECT EXAMINATION

7 By Ms. Bojko:

8 Q. Ms. Alexander, do you recall discussing
9 with counsel for Staff, paragraph 6 of the Joint
10 Stipulation, it's been marked as Joint Exhibit 1,
11 about notice?

12 A. Yes.

13 Q. When will the notice be provided to
14 customers under the Stipulation?

15 A. Not now, which is exactly my
16 recommendation; so it would be done later after the
17 assignment.

18 Q. Is there any timing, except for providing
19 the notice to Staff to review, is there any timing
20 listed in the Stipulation for providing notice to
21 customers?

22 A. No.

23 Q. And do you recall having a discussion
24 with Counsel about rescission of the contract versus
25 termination of the -- I'm sorry -- rescission of the

1 certificate versus termination of the certificate?

2 A. Yes.

3 Q. Does the Stipulation require immediate
4 rescission of the certificate?

5 A. No.

6 Q. And is that your recommendation?

7 A. Yes.

8 Q. Does the Stipulation allow current
9 customers to be served by PALMco?

10 A. Yes.

11 Q. Could you explain your recommendation
12 with regard to current customers?

13 A. Well, the Stipulation allows PALMco to
14 serve existing customers, while it attempts to exit
15 the market, by selling those customers to another
16 supplier, and that process is one that I certainly
17 object to and documented why I objected to it as well
18 as Mr. Adkins, and we think that immediately PALMco
19 should exit the market and that it should notify
20 customers of their situation and, without hearing
21 otherwise from them, put them over into standard
22 offer service.

23 Q. Your answer talked about retaining
24 customers until the sale. If there's no sale, how
25 long does the Stipulation allow customers to retain?

1 MS. BAIR: Objection. Outside the scope
2 of my questioning.

3 MS. BOJKO: She talked about exiting the
4 market and termination, and these questions all go to
5 when PALMco is required to exit the market per the
6 Stipulation.

7 MS. BAIR: There was no questioning
8 whatsoever about transferring the customers and
9 that's what your question was about.

10 MS. BOJKO: I'll rephrase, Your Honor.

11 EXAMINER SANYAL: Okay. Thank you.

12 Q. (By Ms. Bojko) Ms. Alexander, if there is
13 no sale, when does PALMco have to exit the market?

14 MS. BAIR: Objection. Goes beyond the
15 scope of my cross. I did not discuss the sale nor
16 ask any questions about it.

17 MS. BOJKO: Your Honor, she explained
18 exiting the market. I'm just asking when -- I'll
19 rephrase.

20 Q. (By Ms. Bojko) Ms. Alexander, when does
21 the Stipulation require PALMco to exit the market?

22 A. At the end of its current certificates.

23 Q. Which is when?

24 A. I do not know the exact date. I believe
25 it is 2020.

1 Q. Thanks.

2 And do you know -- strike that.

3 MS. BOJKO: I have no further questions.
4 Thank you, Your Honor.

5 EXAMINER SANYAL: Any recross based on
6 that?

7 MS. BAIR: None from the Staff. Thank
8 you.

9 EXAMINER SANYAL: Okay. I'll go with my
10 questions first.

11 - - -

12 EXAMINATION

13 By Examiner Sanyal:

14 Q. Ms. Alexander, if you'll turn to page --
15 new page 3 which is a continuation of Question 10 and
16 it is that portion of your testimony where you go
17 through and kind of give us an overview of the
18 various other jurisdictions which have had cases
19 involving the PALMco family --

20 A. Yes.

21 Q. -- or companies. So with regard to the
22 New York decision, in that decision in that
23 jurisdiction, was Columbia ever prevented from
24 operating there? Do you know?

25 A. I believe not. They did cease

1 door-to-door sales. And I'm not aware that they
2 have -- since the issuance of these Orders, I am not
3 aware of the subsequent compliance activities
4 involving whether they've ever restarted door-to-door
5 sales.

6 Q. Okay. So same question with New Jersey.
7 In New Jersey, was that entity prevented from
8 operating there?

9 A. I'm reviewing my summary here.

10 Q. And I believe your summary didn't address
11 that, which is why I ask the question.

12 A. I -- I -- my recollection, without going
13 to the document in question, which could be done of
14 course because they're available, is that no, there
15 was no, at that time, no halt to their ability to
16 market, just a long list of reforms that would have
17 to govern future marketing.

18 Q. Okay. Thank you.

19 So moving on, the next one is
20 Pennsylvania. Same question. Was the PALMco entity
21 in question there prevented from operating there?

22 A. This was not a system-wide investigation.
23 It was an individual customer complaint and violation
24 documented.

25 Q. Okay. So the answer is no.

1 A. That is correct.

2 Q. Okay. And I believe the next state is
3 Illinois which is on new page 7. So same question.
4 Was that particular PALMco entity prevented from
5 operating there?

6 A. I do not believe so. I believe I
7 described the reforms, the restitution, and the fines
8 involved there.

9 EXAMINER SANYAL: Okay. Those are the
10 questions I have.

11 THE WITNESS: Okay.

12 EXAMINER SANYAL: Mr. Price may have some
13 questions.

14 EXAMINER PRICE: Just a couple.

15 - - -

16 EXAMINATION

17 By Examiner Price:

18 Q. If you could turn to Exhibit BRA-1.

19 A. That would be my CV.

20 Q. Exactly.

21 A. Yes.

22 Q. And previously you were Director of the
23 Consumer Assistance Division of the Maine Public
24 Utilities Commission; is that correct?

25 A. That is correct.

1 Q. Now, just because I don't know, that is
2 not similar to the Ohio Consumers' Counsel where
3 they're independent of the Commission, that is a part
4 of the Commission staff; is that correct?

5 A. That is correct. There is an Office of
6 Public Advocate who is the equivalent of the OCC in
7 Maine. I was the Director of a Commission staff
8 division.

9 Q. Perfect. And when you testified as an
10 expert witness on consumer service, consumer
11 protection, service quality, and low-income policy
12 issues, were you testifying primarily with the
13 interests of the consumer in mind in providing
14 testimony?

15 A. What -- over my 25 to 30 years, which
16 testimony are you referring to?

17 Q. The one you refer to: Appearance as an
18 expert witness on consumer services, consumer
19 protection, service quality, and low-income policy
20 issues.

21 EXAMINER SANYAL: Ms. Alexander, it's on
22 page 2 of your Exhibit BRA-1.

23 A. Right. That is a generic description of
24 my overall --

25 Q. Right. So I'm asking you overall

1 generically --

2 A. Oh, yeah.

3 Q. -- were you testifying on behalf of
4 consumers in these proceedings.

5 A. Yes, that is true.

6 Q. You were representing the interests of
7 consumers in these proceedings.

8 A. I was.

9 Q. Thank you.

10 Your testimony today, is this part of a
11 long-term retainer with Ohio Consumers' Counsel or
12 were you engaged for the purpose of this proceeding?

13 A. I have a contract that has, in the past,
14 involved other proceedings and this was specifically
15 added to that contract in the spring.

16 Q. In the spring. Can you tell me the date?

17 A. No. I mean I just don't know. I don't
18 remember, sorry.

19 Q. Can you give me the month?

20 A. Offhand, no. I mean it was April or May.

21 Q. April or May?

22 A. Oh, yeah, yeah. It's in that timeframe,
23 yes.

24 Q. Okay. Thank you.

25 A. Yes.

1 EXAMINER PRICE: That's all I have.

2 EXAMINER SANYAL: Any questions based on
3 our questions?

4 MS. BOJKO: No, Your Honor.

5 EXAMINER PRICE: Don't give them a chance
6 to clean up after us.

7 EXAMINER SANYAL: I try to be nice.

8 EXAMINER PRICE: Too nice.

9 EXAMINER SANYAL: Ms. Alexander, thank
10 you for flying in today.

11 THE WITNESS: Thank you.

12 EXAMINER SANYAL: You are relieved of
13 your testimonial duties.

14 EXAMINER PRICE: Let's go off the record.
15 (Discussion off the record.)

16 EXAMINER PRICE: We're back on the
17 record.

18 Mr. Whitt, I understand you are content
19 to stand on the deposition of Ms. Joseph rather than
20 produce her as a witness today?

21 MR. WHITT: Yes, Your Honor. We would
22 not object to the introduction of the deposition in
23 lieu of live appearance.

24 EXAMINER PRICE: Thank you.

25 MS. BOJKO: Your Honor, if I may state

1 for the record that the Office of the Consumers'
2 Counsel does object to this process that you have
3 directed.

4 We believe that there's no opportunity to
5 cross-examine the witness, there was no opportunity
6 to, as you've given for Mr. Palmese, there was no
7 opportunity to construct a fact-finding discovery
8 tool into a cross-examination. There were many
9 exhibits and things that we intended to use with
10 Ms. Joseph per the subpoena.

11 And so we just offer for the record our
12 objection to the quashing of the subpoena, the lack
13 of cross-examination being provided, as well as the
14 lack of -- or the opportunity.

15 Usually, if depositions get put in, they
16 stand on their own. You're not allowed to then go
17 back through the briefing process and raise issues to
18 objection, which is what I understood yesterday
19 you're allowing that Mr. Whitt, instead of standing
20 on the deposition depending how we use the
21 deposition, he may then, in his reply brief, object
22 and move to strike. So I think it has to be --

23 EXAMINER PRICE: No.

24 MS. BOJKO: -- one or the other.

25 EXAMINER PRICE: It has to be an

1 objection he made at the deposition.

2 MS. BOJKO: Right, but then --

3 EXAMINER PRICE: If he wins that ruling,
4 then he wins that ruling.

5 MS. BOJKO: When is the opportunity for
6 us to respond to his objection which we would be able
7 to do in live proceeding? So I understood the
8 process yesterday to be you said we can file our
9 brief --

10 EXAMINER PRICE: If he moves to strike
11 that, then you'll have a chance to file a memo
12 contra.

13 MS. BOJKO: So --

14 EXAMINER PRICE: We can sort this out if
15 you guys want to sort this out or if you're just
16 trying to make a point.

17 MS. BOJKO: No. I wanted the opportunity
18 to cross-examine Ms. Joseph on the stand.

19 EXAMINER PRICE: You cross-examined
20 Ms. Joseph under oath. If anyone is being deprived,
21 it's Mr. --

22 MS. BOJKO: I did not cross-examine, Your
23 Honor. I did a discovery fact-finding mission as a
24 discovery --

25 EXAMINER PRICE: You took her testimony.

1 MS. BOJKO: A deposition is a different
2 tool than cross-examination.

3 MR. WHITT: If I may be heard, Your
4 Honor?

5 EXAMINER PRICE: You may.

6 MR. WHITT: When the deposition was
7 noticed and subpoenas issued, we didn't wait the full
8 period of time we could have waited to raise our
9 objections. We raised those objections immediately
10 prior to the deposition.

11 OCC was on notice that we were objecting
12 to the personal appearances of these witnesses, yet
13 OCC had the opportunity, they had the witness in the
14 chair under oath and had notice and an opportunity to
15 obtain the testimony that they would need to
16 perpetuate it for hearing purposes. The fact that
17 they didn't do that is on them. It's not on me and
18 it's not on the witness. Every opportunity has been
19 provided.

20 Again, I'm not affirmatively moving this
21 testimony into the record. I've merely indicated
22 that if OCC would like to do so, which it appears
23 again they're complaining about getting something
24 they asked for, if they don't want to do that now, I
25 don't object to that either but I want it to be clear

1 that these claims that OCC has been deprived of its
2 opportunity is simply contrary to fact.

3 EXAMINER PRICE: Okay. Let's resolve
4 this issue about how we will handle objections. I
5 think Ms. Bojko makes a good point about doing it on
6 the briefing.

7 So notwithstanding what I said before, if
8 you have an objection to any testimony they rely upon
9 that is subject to one of your objections, file a
10 motion to strike. We will deal with that on an
11 expedited basis, and Ms. Bojko will be able to file a
12 memo contra, and then you'll be able to make your
13 arguments. If you win, you win; if she wins, she
14 wins.

15 MR. WHITT: I'm fairly confident, Your
16 Honor, this will all be moot. If you've read the
17 transcript there isn't really much of substance or
18 relevance there. In all likelihood it isn't going to
19 be cited. In the off-chance that it is, we'll simply
20 deal with what is before us at that time.

21 EXAMINER PRICE: Thank you.

22 EXAMINER SANYAL: Any questions,
23 Ms. Bojko?

24 MS. BOJKO: No questions. I mean I
25 obviously disagree with his characterization of the

1 deposition transcript.

2 EXAMINER PRICE: It will say what it
3 says. Would you care to mark and move this exhibit,
4 understanding that we are waiving the requirement to
5 be filed ahead of time?

6 MS. BOJKO: Yes, Your Honor. At this
7 time, the Office of the Ohio Consumers' Counsel would
8 like to mark the depo transcript of Ms. Joseph as OCC
9 Exhibit --

10 MR. ETTER: 18.

11 MS. BOJKO: -- 18.

12 EXAMINER PRICE: Then it will be
13 admitted. So marked and admitted.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 MS. BOJKO: Oh, thank you. I move to
17 admit it as well. I do have copies that I provided
18 yesterday. I will find those.

19 EXAMINER SANYAL: And then, Ms. Bojko,
20 would you want to move Exhibit -- OCC Exhibit 1 at
21 the moment?

22 MS. BOJKO: Thank you, Your Honor. At
23 this time I'd like to move OCC Exhibit 1.

24 EXAMINER SANYAL: Any objections? It is
25 admitted.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 EXAMINER PRICE: If you could provide
3 copies of the deposition to the court reporter and
4 the Bench while we're on break.

5 At this time, we'll take a 10-minute
6 break, after which time we'll take Mr. Adkins. We
7 are off the record.

8 (Recess taken.)

9 EXAMINER PRICE: Let's go back on the
10 record.

11 MS. BOJKO: Your Honor, before the break
12 we talked about the motion to quash, and we were
13 making objection arguments and then we switched to
14 process. Just for the record's sake, I would like to
15 reserve our right to appeal that decision of the
16 motion to quash to the extent it's necessary under
17 4901-1-15(F) to be able to brief the issue.

18 EXAMINER PRICE: I understand.

19 MS. BOJKO: Thank you.

20 EXAMINER PRICE: You can brief any
21 objections I overrule.

22 MS. BOJKO: To the extent necessary.

23 EXAMINER PRICE: You may call your next
24 witness.

25 MS. BOJKO: Thank you, Your Honor. At

1 this time, the Office of the Ohio Consumers' Counsel
2 would like to call Kerry J. Adkins.

3 (Witness sworn.)

4 EXAMINER PRICE: Please be seated and
5 state your name and business address for the record.

6 THE WITNESS: My name is Kerry Adkins.
7 My business address is 65 East State Street,
8 7th Floor, Columbus, Ohio 43215.

9 EXAMINER PRICE: Thank you.

10 Please proceed, Ms. Bojko.

11 MS. BOJKO: Thank you.

12 - - -

13 KERRY J. ADKINS

14 being first duly sworn, as prescribed by law, was
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 By Ms. Bojko:

18 Q. Mr. Adkins, did you file or cause to be
19 filed testimony regarding the Stipulation filed by
20 PALMco and Staff in this case?

21 A. I did.

22 MS. BOJKO: Your Honors, at this time, I
23 would like to mark as OCC Exhibit 2, a document
24 titled "Unredacted Version, Direct Testimony of Kerry
25 J. Adkins in Opposition to the Settlement."

1 EXAMINER PRICE: It will be so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MS. BOJKO: Your Honor, to be clear, I am
4 -- the document we are marking is dated September 11,
5 2019. It had a cover letter saying there was an
6 agreement to unredact information that was initially
7 deemed to be confidential.

8 EXAMINER PRICE: So we will only be
9 hearing and seeing the unredacted version?

10 MS. BOJKO: Correct.

11 May I approach?

12 EXAMINER PRICE: You may.

13 Q. (By Ms. Bojko) Do you have a copy in
14 front of you of what's been marked as OCC Exhibit 2?

15 A. Yes.

16 Q. Mr. Adkins, do you -- do you recognize
17 this document as your testimony filed in this
18 proceeding?

19 A. Yes.

20 Q. Was this testimony prepared by you or
21 under your direction?

22 A. Yes.

23 Q. On whose behalf are you testifying today?

24 A. The Office of the Ohio Consumers'
25 Counsel.

1 Q. Since the filing of your testimony, do
2 you have any changes?

3 A. I do.

4 Q. Okay. Could you please go through those
5 by page number?

6 A. Starting on page 21, at line 15, there is
7 a number stated there of "\$2.2 million." That number
8 should be \$2.3 million based on the Bench's math
9 yesterday.

10 That same "2.2 million" should be changed
11 also on page 21 at line 19.

12 It appears again on page 22, line 9. The
13 same "2.2 million" should be referenced as 2.3
14 million.

15 Similarly on page 24, at line 10. It
16 appears twice on line 10. "\$2.2 million" should be
17 \$2.3 million. And again on that same page, line 13,
18 the reference to "\$2.2 million" should be changed to
19 \$2.3 million. And that's all that I saw.

20 Q. Do you have any other revisions to your
21 testimony beyond the correction to the amount?

22 A. I do not.

23 Q. And if I were to ask you the same
24 questions today as they appear in your testimony,
25 would the answers be the same?

1 A. Yes.

2 MS. BOJKO: At this time, Your Honors, I
3 would like to move OCC Exhibit 2, subject to
4 cross-examination.

5 EXAMINER PRICE: We'll defer ruling on
6 the admission of OCC Exhibit 2 after the conclusion
7 of cross-examination.

8 Mr. Whitt.

9 MR. WHITT: Thank you, Your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Whitt:

13 Q. Mr. Adkins, on page 9 of your testimony,
14 at lines 6 through 8, you indicate that you were the
15 person responsible for enforcing the CRES and CRNGS
16 rules from their adoption in 2000 for electric, 2002
17 for natural gas, through the period 2007. Do you see
18 that?

19 A. I do.

20 Q. Did you, or the department that you led,
21 bring any enforcement actions during that period?

22 A. Yes.

23 Q. How were those -- well, how many
24 enforcement proceedings can you recall being involved
25 in?

1 A. It depends on the definition of
2 "enforcement action." There were -- there were
3 varying levels of enforcement proceedings.

4 Q. Enforcement proceedings against a CRES or
5 CRNGS provider.

6 A. I'm not trying to be evasive but, again,
7 there are informal resolutions that Staff may pursue
8 with a company and there are more formal Staff tools
9 such as a Notice of Probable Noncompliance. Staff
10 can also recommend that the Commission open a
11 Commission Ordered Investigation. So there are
12 varying levels, that's why I'm trying to understand
13 your question.

14 Q. Fair enough.

15 Were you involved in any proceedings
16 where Staff did something similar to what it did in
17 this case by filing a Staff Report and recommending
18 that the Commission take certain actions?

19 A. We certainly created Staff Reports. I
20 don't know if they were filed in those proceedings or
21 not.

22 I'm thinking, for example, Energy
23 America. There was a gas marketer called Energy
24 America. It was a Canadian company we took several
25 enforcement actions against. Same with United Gas

1 Management, they were also a Canadian gas marketer
2 that we took enforcement actions against. At least
3 one of those resulted in what was called a consent
4 decree.

5 Q. Okay. Were any of the enforcement
6 actions, you were involved in, litigated at the
7 Commission?

8 A. Yes.

9 Q. Meaning there was some sort of
10 evidentiary hearing?

11 A. Yes.

12 Q. Okay. Do you recall who the company was
13 involved in that?

14 A. One that immediately comes to mind was an
15 enforcement action related to the minimum telephone
16 standards for Buzz Telecom.

17 Q. How about gas or electric?

18 A. I don't recall any that immediately come
19 to mind that involve a Commission Ordered
20 Investigation.

21 Q. During your tenure, would it have been a
22 normal practice to resolve enforcement actions by
23 Stipulation?

24 MS. BOJKO: Objection. I'm not sure what
25 "normal" means.

1 EXAMINER PRICE: Overruled.

2 A. It was a -- it's one of the tools
3 available to Staff. I mean, it depends on the terms
4 agreed to or reached. I mean, most cases, many cases
5 involve settlement discussions; whether or not you
6 reach agreeable terms is a different matter.

7 Q. Was it more common for cases to be
8 resolved through a stipulation or other agreeable
9 terms than it was to litigate the matter and have it
10 resolved by the Commission?

11 A. As I said, I don't know -- I don't recall
12 any specific ones that rose to the level of a
13 Commission Ordered Investigation, but we did reach a
14 consent decree with Energy America to the best of my
15 knowledge.

16 Q. Do you recall any instance where -- well,
17 strike that.

18 On page 11 of your testimony, beginning
19 at line 15, you state that "OCC was only provided
20 settlement terms after several exclusive meetings
21 between PUCO Staff and PALMco, where the bulk of the
22 settlement terms were hammered out and agreed to."
23 Do you see that?

24 A. I do.

25 Q. And I take it this statement in your

1 testimony is based on information that you've
2 reviewed in the case?

3 A. It's based on my understanding of the
4 settlement process that occurred.

5 Q. And is your understanding also informed
6 by e-mails that you may have reviewed?

7 A. I don't think I was copied on every
8 e-mail that was part of the settlement process. I
9 don't recall, but I don't think I was.

10 EXAMINER PRICE: That wasn't the question
11 he asked you. Let's have the question back, please.

12 (Record read.)

13 THE WITNESS: Again, I may not have been
14 copied on every e-mail, but partially, yes.

15 Q. (By Mr. Whitt) But did you review e-mails
16 that you weren't necessarily copied on but somebody
17 forwarded to you to help you understand what the
18 settlement process had been?

19 A. Not that I recall.

20 Q. How would you know what discussions OCC
21 was involved or not involved in?

22 A. I do know I participated in at least one
23 face-to-face settlement discussion. And primarily
24 what this term is getting -- what this part of my
25 testimony is getting to is that at least one -- being

1 careful I'm not divulging confidential settlement
2 discussions here, but one term that OCC finds key to
3 this -- to the settlement itself was presented as a
4 fait accompli. The agreement had already been
5 reached between Staff and PALMco.

6 MR. WHITT: Okay. Let me -- we're going
7 to mark an exhibit for identification as Company
8 Exhibit 1. It may require some sharing here.

9 EXAMINER PRICE: How would you like this
10 marked?

11 MR. WHITT: Company Exhibit 1. It's a
12 compilation of e-mails I've been provided.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. (By Mr. Whitt) Mr. Adkins, I've handed
15 you a collection of documents we've marked as Company
16 Exhibit 1. We'll go through some of these
17 individually and we're going to be focusing primarily
18 on the subject matter and date lines and who these
19 e-mails are to and from.

20 The first e-mail in the stack, dated
21 Friday, May 24, 2019, is from me to several members
22 of Staff. I recognize your name is -- the e-mail
23 doesn't indicate that it was sent to you, but do you
24 recall seeing this e-mail as part of your work in the
25 case?

1 MS. BOJKO: Objection, Your Honor. This
2 appears to be a collection of attorney-client
3 privileged settlement information going back and
4 forth. The Bench's ruling yesterday was that I was
5 not allowed to inquire into settlement discussions
6 and this is exactly what this pile of communications
7 intends to do. There are numerous references to
8 substantive issues in here.

9 EXAMINER PRICE: Well, again, Mr. Whitt
10 said he was focusing primarily on the date and time.
11 We haven't moved to admit this yet, so let's let this
12 play out, but no, settlement proposals are not going
13 to be admitted into this proceeding.

14 MS. BOJKO: Thank you.

15 EXAMINER PRICE: Now, having said that,
16 Mr. Adkins did open the door that there was one term
17 of particular importance to OCC, so Mr. Whitt --
18 that's what he said -- and so Mr. Whitt is entitled
19 to inquire into what that means.

20 MS. BOJKO: Your Honor, he said he
21 couldn't talk about it because it was confidential
22 settlement discussions.

23 EXAMINER PRICE: He also said they were
24 excluded from the negotiations because there was one
25 term of particular importance they were not allowed

1 to negotiate on. If he wants to withdraw that claim,
2 that would be fine.

3 Please proceed, Mr. Whitt.

4 MR. WHITT: Could you read the last
5 question and answer?

6 (Record read.)

7 EXAMINER PRICE: Please proceed.

8 A. I don't recall seeing this document.

9 Q. Okay. If we could go to the second page
10 of Company Exhibit 1, the e-mail is dated May 30th,
11 2019, from Mark Whitt, that's me, to Staff and as
12 well as Terry Etter and Amy Botschner of OCC. Do you
13 recall seeing this e-mail in the course of your work
14 in this case?

15 A. I don't recall.

16 MS. BOJKO: I'm sorry, where? I must not
17 be on the right page because I don't see --

18 EXAMINER PRICE: It's the second page.

19 MS. BOJKO: I see an e-mail from
20 Mr. Whitt to Ms. Bair and Ms. Bojko and Ms. Glover.

21 MR. WHITT: Right.

22 MS. BOJKO: I thought you said Amy.

23 EXAMINER PRICE: I'm on page 2.

24 MR. WHITT: Terry Etter and Amy
25 Botschner.

1 EXAMINER PRICE: I'm on page 2, Thursday,
2 May 30, 2019, at 2:46:25 p.m. Is that where you are
3 at, Ms. Bojko?

4 MS. BOJKO: I don't have that on page 2,
5 Your Honor.

6 EXAMINER PRICE: It's not page 2. It's
7 the second page. The page numbers are off. Ignore
8 the page numbers.

9 EXAMINER SANYAL: Just the second page,
10 so 1 and then 2.

11 MS. BOJKO: Well, everybody else has the
12 right copy? Can we check the copy on the -- what's
13 been marked? Thank you.

14 Q. (By Mr. Whitt) Have you seen the May 30,
15 2019 e-mail, sir?

16 A. This e-mail that's currently in front of
17 me, I don't recall seeing.

18 Q. Okay. If we go to the next page and
19 actually on the other side of the second page. Mine
20 are double-sided. There's an e-mail dated May 29,
21 2019, from me to several people at Staff and OCC.
22 Have you seen that e-mail?

23 MS. BOJKO: Objection. Your Honor, these
24 are all to attorneys. Anything that would have been
25 forwarded to Mr. Adkins would be covered under

1 attorney-client privilege. He's not on any of these
2 e-mails.

3 MR. WHITT: Not if he's testifying and
4 his testimony is OCC has been excluded.

5 EXAMINER PRICE: Mr. Whitt is not asking
6 about the content of this communication. He's just
7 asking whether he's seen this document. I think it's
8 a fair question particularly given the "excluded from
9 meetings" discussion. Overruled.

10 A. I was not copied on this document and I
11 don't recall seeing it.

12 Q. The next e-mail, dated June 6, 2019, from
13 me to several people at Staff and OCC, have you seen
14 that e-mail?

15 A. Again, my name is not on the list, and I
16 don't recall if perhaps it was shared with me, but I
17 don't recall seeing it.

18 Q. Okay. The next e-mail, dated May 29,
19 2019, I think we already covered so we will go to the
20 one that follows, dated June 18, 2019. Do you see
21 that e-mail?

22 A. I do.

23 Q. And again from myself to several members
24 of Staff and OCC. Did you review this e-mail in the
25 course of your work in this case?

1 MS. BOJKO: Objection. Your Honor, we're
2 not talking about confidential settlement discussions
3 now, although I think we are getting to that point,
4 but we are talking about privileged e-mails and he's
5 not allowed to read privileged e-mails into the
6 record.

7 Whether somebody responded or not,
8 whether an attorney responded -- he's trying to show
9 that there were many e-mails I guess to show there
10 were discussions, but just because an e-mail said "I
11 will get back to you over the weekend" doesn't mean
12 that it is the date, time, or who was present at a
13 settlement discussion. And everything else between
14 attorneys is privileged. You can't have a witness
15 reading these documents into the record.

16 EXAMINER PRICE: First of all, I don't
17 recall him asking him to read anything in the
18 document into the record.

19 MR. WHITT: I haven't.

20 MS. BOJKO: The dates are being read into
21 the record.

22 MR. WHITT: The client owns the privilege
23 and can waive it and there's no waiver of anything
24 privileged when I'm not asking about privileged
25 information. I'm just asking if he's seen e-mails

1 copied between the counsel in this case.

2 EXAMINER PRICE: Mr. Adkins has testified
3 as to the form and manner of the negotiations, saying
4 they were insufficient and OCC was excluded. Why is
5 Mr. Whitt precluded from introducing evidence that
6 rebuts OCC was excluded?

7 MS. BOJKO: Because this isn't evidence
8 that does that; and to do that you have to show, that
9 on the dates and e-mails he's reading, there was
10 actually negotiations taking place which is not what
11 he's doing.

12 He's reading dates as an implication that
13 there was some kind of settlement discussion or
14 negotiation on that date and that's just not true.
15 And it's prejudicial because he's implying or making
16 the record imply that there were actual settlement
17 discussions that occurred on each of these dates
18 where the witness wasn't even copied.

19 EXAMINER PRICE: You're saying you can't
20 have settlement negotiations by e-mail, it has to be
21 something face-to-face?

22 MS. BOJKO: No, no, no, that's not what
23 I'm saying. I'm saying the dates he's reading are
24 not settlement discussions and that's what he's
25 trying to put in the record and that's what's

1 prejudicial. He's reading e-mails that say --

2 EXAMINER PRICE: If they're not
3 settlement --

4 MS. BOJKO: -- I'll get back to you
5 tomorrow.

6 EXAMINER PRICE: If they're not
7 settlement discussions, then the whole thing should
8 come in. You were complaining earlier because you
9 were saying the text of this is settlement privilege.
10 Now you're saying these are not settlement
11 discussions. If they're not settlement discussions,
12 he can introduce the whole thing. If they are
13 settlement discussions, it undermines your point.

14 MS. BOJKO: Well, Your Honor, this is a
15 large collection of documents. There are some of
16 both.

17 EXAMINER PRICE: Well --

18 MS. BOJKO: The purpose he's using it for
19 is not the appropriate purpose and it's prejudicial.

20 EXAMINER PRICE: Overruled. It's not
21 prejudicial at all. He opened the door in his
22 testimony.

23 MR. WHITT: If Counsel would like, we can
24 -- because I am going to go through every single
25 e-mail, as long as it takes, to rebut the point that

1 OCC attempted to make. I'm happy to dispense with
2 that if OCC is willing to enter into a stipulation
3 that on the dates indicated on the e-mails there were
4 communications between the parties about settlement.

5 EXAMINER PRICE: Will you stipulate to
6 that?

7 MS. BOJKO: It's not true, Your Honor.
8 I'm not going to stipulate to something that's not
9 true. It's simply not true. And I object --

10 EXAMINER PRICE: Well, what are the
11 negotiations or what are these e-mails representing
12 in your mind, Ms. Bojko?

13 MS. BOJKO: Some of the e-mails are
14 negotiations. Some of them are "I'll get back to you
15 after the holiday weekend." That is not a
16 negotiation, that is not a settlement term.

17 EXAMINER PRICE: Okay. Fine, fine. What
18 we're going to do is you and Mr. Whitt are going to
19 get together, on our next break, and decide which
20 ones you can stipulate to, and then we'll stipulate
21 this into the record and we'll avoid the whole
22 discussion, fair?

23 MR. WHITT: Fair.

24 MS. BOJKO: No. They cannot be
25 authenticated. This witness -- I'm not going to

1 agree to the admission of a document that can't be
2 authenticated by this witness.

3 MR. WHITT: Well, but --

4 MS. BOJKO: I was not allowed to have
5 customer complaints put in the record because nobody
6 on the stand could authenticate them. He is not on
7 any of these e-mails. He should not be able to
8 authenticate it, so the admission --

9 EXAMINER PRICE: We haven't gotten to
10 that yet.

11 MS. BOJKO: It's inadmissible.

12 EXAMINER PRICE: We haven't gotten to
13 that yet.

14 MR. WHITT: Your Honor, I will -- let's,
15 after lunch, Ms. Glover can put me on the stand --

16 EXAMINER PRICE: No.

17 MR. WHITT: -- and I'll testify.

18 EXAMINER PRICE: We're not doing that.
19 We're not doing that.

20 We don't know yet whether Mr. Adkins can
21 or cannot authenticate any of these documents because
22 we've only gotten through five of them. If you're
23 saying you're not going to stipulate to these
24 discussions, then I'm going to let him walk through
25 them one by one. If you're saying you will stipulate

1 that certain of these involve settlement
2 negotiations, then we don't have to walk through them
3 one by one.

4 MS. BOJKO: I guess I don't understand,
5 because I thought before I was stipulating to the
6 ones that did not contain any settlement because we
7 can't put in the record ones that contain settlement
8 discussions.

9 EXAMINER PRICE: You can put into the
10 record that, on X date, settlement proposals were
11 exchanged. There's nothing wrong with that under the
12 form and manner of negotiations. The Supreme Court
13 has already held you can have settlement negotiations
14 in a variety of means. It does not involve everybody
15 sitting in any room at any one time.

16 MS. BOJKO: Your Honor, that is correct
17 in --

18 EXAMINER PRICE: Ms. Bojko, you can help
19 to resolve this or you're going to have to live with
20 what I rule. Now, would you like to sit and talk to
21 Mr. Whitt and resolve this or are we going to walk
22 through these one by one? I'm tired of talking about
23 this.

24 MS. BOJKO: I guess I don't understand
25 what you're asking me to resolve. You want me to

1 have a stipulation of a document that's going to be
2 admitted --

3 EXAMINER PRICE: No.

4 MS. BOJKO: -- or just a list of dates?

5 EXAMINER PRICE: I want you to stipulate
6 that on certain days, settlement proposals were
7 exchanged. That's all we're asking you to stipulate
8 to. Is that correct, Mr. Whitt?

9 MR. WHITT: That's correct, and I will
10 not be moving for the admission of the documents into
11 the record.

12 MS. BOJKO: Your Honor, they had an
13 opportunity to file testimony to make their point and
14 to rebut OCC; they did not. I do not think it's
15 proper to ask a witness that wasn't copied on the
16 e-mails to --

17 EXAMINER PRICE: So you're saying he can
18 file rebuttal testimony with that information. I'm
19 sure he can live with that.

20 MR. WHITT: Well, if that's what I have
21 to do, that's fine. I don't know how I rebut
22 something on September 4th, when that's the testimony
23 deadline, and I read for the first time, nearly
24 falling out of my chair --

25 EXAMINER PRICE: You can file rebuttal

1 testimony on this issue, Mr. Whitt.

2 MR. WHITT: If that's what I have to do.

3 EXAMINER PRICE: Or Staff can file
4 rebuttal testimony. Somebody can file rebuttal. She
5 said he can rebut it.

6 MS. BOJKO: I did not say that. We
7 actually requested that the testimony be filed at
8 separate dates so that this wouldn't be an issue
9 that --

10 EXAMINER PRICE: You asked him to be
11 first. That's -- that's a spurious argument. So
12 your observation is correct, we don't know whether he
13 can authenticate these anyway, so Staff or the
14 Company can file rebuttal testimony saying settlement
15 documents and proposals were exchanged and we can
16 deal with that on the next day of hearing.

17 MR. WHITT: We would not have an
18 objection if OCC would like to move to withdraw this
19 portion of his testimony. That's another way to
20 resolve it.

21 EXAMINER PRICE: That is another way to
22 resolve it.

23 Would you care to withdraw this portion
24 of the testimony?

25 MS. BOJKO: No, thank you, Your Honor.

EXAMINER PRICE: Okay. Well, in light of the objections and the dubious ability of Mr. Adkins to authenticate this anyways, we will postpone this topic. And if Staff or the Company cares to file rebuttal testimony on this point, then we'll deal with that on another day of hearing. Let's move on.

Mr. Adkins, I do have one question for you. At every OCC negotiation with the Company and the Staff, did you attend?

THE WITNESS: No. Not to my knowledge.

EXAMINER PRICE: Thank you.

Q. (By Mr. Whitt) Mr. Adkins, are you aware of meetings or discussions that were held between OCC and Staff without the Company present? And I'm not asking for the substance of the discussion, just whether there were discussions without the Company.

A. Not to my knowledge.

THE WITNESS: Your Honor, may I amend my answer to be perfectly frank here?

EXAMINER PRICE: Yes. We would like the truth; delayed or not.

THE WITNESS: I recall one instance where one of the Staff witnesses, Mr. Fadley, and I did discuss the fact that early on that there were complaints against PALMco and that's the only one I

1 recall.

2 MR. WHITT: Fair enough. Thank you.

3 THE WITNESS: Before the Staff Report
4 existed. That's it. That's the only one I recall.

5 Q. (By Mr. Whitt) Okay. But I was more
6 interested on the specific topic of settlement,
7 whether you are aware of OCC and Staff talking about
8 settlement without anyone from PALMco present. Do
9 you know whether that happened?

10 THE WITNESS: Your Honor, may I have the
11 question reread, please?

12 EXAMINER PRICE: You may.

13 (Record read.)

14 A. I do not know.

15 Q. If that did happen, that wouldn't
16 necessarily indicate something wrong with settlement
17 negotiations, would it?

18 MS. BOJKO: Your Honor, I'm sorry, may I
19 have that question reread?

20 EXAMINER PRICE: You may.

21 (Record read.)

22 A. I'm not offering a legal conclusion here
23 but, in my experience, parties are free to discuss
24 with whomever they want.

25 Q. Sure. And in your experience when you

1 were involved in these types of proceedings, would
2 you, in the settlement context, have discussions with
3 the parties separately in an effort to resolve a
4 case?

5 A. Conceivably, yes.

6 Q. Not only -- not conceivably. You would
7 and, in fact, did do that, didn't you?

8 A. It depends on the case. It's case by
9 case.

10 Q. But it's something that you have done,
11 haven't you?

12 A. If I understand your question correctly,
13 you're asking me if I -- I'll let you ask the
14 question. I'm sorry, if you could rephrase your
15 question.

16 Q. Well, let me present it in terms of a
17 hypothetical. If you're doing -- if you're
18 representing Staff and there's a complaint between
19 Mr. Smith and Mr. Brown, you may meet or talk with
20 Mr. Smith and Mr. Brown separately and together in
21 the process of trying to reach a settlement.

22 A. Potentially, yes.

23 EXAMINER PRICE: Okay. I'll ask a
24 real-world hypothetical.

25 Could you turn to KJA-1.

1 THE WITNESS: I'm there, Your Honor.

2 EXAMINER PRICE: No. 5. In the Matter of
3 the Application Not for an Increase in Rates of The
4 Dayton Power and Light Company for Approval to Modify
5 Its Existing Alternative Generation Supplier Tariff
6 Sheet. Do you see that reference?

7 THE WITNESS: I do.

8 EXAMINER PRICE: You filed testimony in
9 that case?

10 THE WITNESS: That's what it says here,
11 yes.

12 EXAMINER PRICE: Do you recall that case?

13 THE WITNESS: No, not really.

14 EXAMINER PRICE: Really?

15 THE WITNESS: I vaguely remember it, Your
16 Honor.

17 EXAMINER PRICE: Okay.

18 THE WITNESS: It was a while ago.

19 EXAMINER PRICE: Did you participate in
20 settlement negotiations with the Staff on behalf of
21 the Staff?

22 THE WITNESS: Probably.

23 EXAMINER PRICE: Probably. Did you
24 participate in settlement discussions where OCC was,
25 although an intervenor, was not party to the

1 settlement negotiations?

2 THE WITNESS: Probably.

3 EXAMINER PRICE: Probably. I'll take
4 that.

5 OCC did not sign that stipulation; is
6 that correct?

7 THE WITNESS: I have no idea if OCC did
8 or did not sign that stipulation.

9 EXAMINER PRICE: Please proceed,
10 Mr. Whitt.

11 MR. WHITT: Thank you, Your Honor.

12 Q. (By Mr. Whitt) On page 15 of your
13 testimony, lines 1 through 10, you generally talk
14 about factors that could diminish the value of
15 PALMco's business, and you indicate that one of those
16 factors is that customers could either return to
17 their local utility standard service offer or choose
18 another competitive electric and/or natural gas
19 marketer. Do you see that?

20 A. I don't know if I discuss it in terms of
21 devaluing business. I think I discuss it in terms of
22 the book of business, the value to other marketers.
23 I don't know if I discuss it in terms of what value
24 it does to PALMco's business. I discuss it in terms
25 of the value, the potential value to other marketers

1 who might purchase the book of business.

2 Q. Correct. And one of the factors that a
3 potential purchaser would look at is the potential
4 for customers to migrate from PALMco to somewhere
5 else, correct?

6 A. The context I use it is that the majority
7 of PALMco's contracts are month-to-month variable
8 rate contracts and I believe a marketer, any marketer
9 that's looking to purchase the book of business would
10 factor in, in a purchase price that it might offer,
11 would factor in the idea these are only
12 month-to-month contracts and you would need to recoup
13 your investment, if you're that other marketer, by
14 retaining the customers. I guess I don't know how
15 likely that is. I don't think it's very likely.

16 Q. And if the Commission adopted
17 Ms. Alexander's recommendation and immediately
18 rescinded PALMco's certificates, that would certainly
19 make PALMco less valuable to a potential purchaser,
20 wouldn't it?

21 A. Well, from OCC's perspective, the most
22 protective, most protective way -- the best way to
23 protect customers is to return them to the standard
24 service offer and not get involved and not have the
25 sale or the forfeiture or the restitution to

1 customers be contingent on the sale. We believe the
2 best idea is to simply return the customers to the
3 standard service offer as soon as possible.

4 Q. Okay. So you were present for the
5 testimony yesterday, I believe, weren't you?

6 A. I was.

7 Q. And were you present -- well, it's your
8 understanding, is it not, that restitution has
9 already been paid to customers who enrolled with
10 PALMco during the period of Staff's investigation,
11 correct?

12 A. I don't believe that's been confirmed.
13 That's one of our criticisms of the settlement
14 agreement.

15 Q. Okay. Did you read or have you reviewed
16 the spreadsheets that were circulated, listing, by
17 customer and by amount, the restitution that has been
18 paid?

19 A. I have.

20 Q. Okay. And that's not good enough for
21 you?

22 MS. BOJKO: Objection. Argumentative.

23 EXAMINER PRICE: Overruled.

24 A. I don't see a spreadsheet as confirming
25 anything.

1 Q. How would you confirm whether restitution
2 has been paid?

3 A. There's various manners of doing it.

4 Q. Tell me one.

5 A. For example, I don't mean to be exclusive
6 here but, for example, somebody independent of
7 PALMco, such as the Staff, could contact a
8 representative sample of customers and confirm
9 whether or not they've actually received the
10 restitution that was allegedly provided.

11 Q. Were you present today or have you
12 reviewed the complaint files that OCC attempted to
13 introduce that indicate customers, in fact, had been
14 paid restitution as noted by the Commission
15 investigator; did you read any of those?

16 MS. BOJKO: Objection. I don't believe
17 that's what those say.

18 MR. WHITT: Well, let's get one.

19 EXAMINER PRICE: Sustained. They're not
20 in evidence at this point and you can't use them if
21 she can't use them.

22 Mr. Adkins, did you hear the testimony of
23 the public witness today?

24 THE WITNESS: I stepped outside for most
25 of his testimony. My apologies, Your Honor.

1 EXAMINER PRICE: So you were not here
2 when he discussed getting -- whether or not he got a
3 bill credit to avoid a disconnect.

4 THE WITNESS: I'm sorry, Your Honor, I
5 was not.

6 EXAMINER PRICE: Fair enough.

7 Q. (By Mr. Whitt) Okay. You understand that
8 the --

9 EXAMINER PRICE: I'd like to ask a
10 question before you go on there.

11 When you worked for the Staff, if you
12 reached an agreement with a company to reimburse
13 customers, would you have had your staff call a
14 representative sample of the customers to ensure they
15 got reimbursement?

16 THE WITNESS: If I had doubts about the
17 credibility of the company, yes, I would.

18 EXAMINER PRICE: Fair enough.

19 Q. (By Mr. Whitt) Have you ever done that
20 when you were at the Commission?

21 A. Not that I specifically recall.

22 Q. You understand that the \$800,000 in
23 restitution encompasses a group of customers that are
24 not covered by the Staff Report, correct?

25 MS. BOJKO: Objection. Mischaracterizes

1 the Stipulation. It's a contingency.

2 EXAMINER PRICE: Overruled.

3 THE WITNESS: May I have the question
4 reread, please?

5 EXAMINER SANYAL: Yes, you may.

6 EXAMINER PRICE: May I have the question
7 again, please?

8 EXAMINER SANYAL: She's doing it.

9 (Record read.)

10 A. I think, as we indicated before, the
11 Staff Report stands for itself, so the idea of the
12 period covered in the Staff Report, Staff stated its
13 investigation was from December 1, I believe, through
14 April 15. However, OCC believes firmly that the harm
15 described in the Staff Report extends well beyond
16 those dates.

17 Q. And OCC has done what to -- what
18 investigation has OCC done to substantiate that
19 belief?

20 A. I believe there's ample record in this
21 case to show that anybody who was charged that
22 variable rate experienced harm.

23 EXAMINER PRICE: That's not the question,
24 Mr. Adkins. If you could please -- he let you off
25 the hook on the last one which I thought you didn't

1 answer at all. If you could answer this one, I would
2 appreciate it.

3 Can I have the question back again. And,
4 Mr. Adkins, I'll direct you to listen to Counsel's
5 question, answer the question and only the question.
6 If there's additional information that you believe
7 the Bench would benefit from hearing, Ms. Bojko will
8 ask you that on redirect.

9 THE WITNESS: Sure.

10 EXAMINER PRICE: Can I have that question
11 again.

12 (Record read.)

13 A. Can you refresh my recollection on the
14 belief we're discussing?

15 Q. Well, the Staff Report -- actually, let's
16 look at the Staff Report. Do you have a copy in
17 front of you? I think it's with your testimony.

18 A. It is.

19 Q. Okay. Let's go to the recommendations on
20 page 17. On page 17, there's a section, Roman
21 numeral V, under Recommendations, there's some
22 recommendations listed there and bullet points,
23 correct?

24 A. Yes, on this particular page there appear
25 to be five bullet points.

1 Q. The first of Staff's recommendations is
2 to suspend, conditionally rescind, or rescind
3 PALMco's certification. Do you see that?

4 A. I do.

5 Q. And you're aware, are you not, that
6 PALMco voluntarily ceased enrolling new customers
7 when the Staff Report came out?

8 A. I'm aware that's what PALMco has
9 represented.

10 Q. Okay. And do you have any information to
11 suggest that PALMco has not honored its
12 representation to the Commission?

13 A. I do not.

14 Q. And you're aware, obviously, that the
15 Stipulation requires PALMco to not renew its
16 certificate, correct?

17 A. That is in the settlement agreement.

18 Q. And, in fact, if the Commission rejected
19 the Stipulation, then PALMco would not be prohibited
20 from seeking to renew its certificates, correct?

21 MS. BOJKO: Objection. Assumes facts not
22 in evidence the Commission could order it.

23 EXAMINER PRICE: Sustained.

24 Q. The next recommendation is to order
25 PALMco to pay a forfeiture of \$1,400,000, correct?

1 A. Yes.

2 Q. We'll circle back to that one in a
3 moment.

4 The third bullet says "Order PALMco to
5 provide restitution to customers enrolled during the
6 above noted timeframes...." Do you see that?

7 A. I do.

8 Q. And you understand that the "above noted
9 timeframes" refers to the period of December 1, 2018
10 to April 15, 2019?

11 MS. BOJKO: Objection.

12 EXAMINER PRICE: Grounds?

13 MS. BOJKO: I think the document speaks
14 for itself and I don't think the document says what
15 he says it says. That was a question.

16 EXAMINER PRICE: Well, what Counsel says
17 he thinks the documents says, you shouldn't be
18 testifying on behalf of your client nor tipping him
19 off as to how to answer.

20 You can answer the question.

21 THE WITNESS: May I have the question
22 reread?

23 EXAMINER PRICE: You may.

24 (Record read.)

25 A. That was the investigation period

1 described in the Staff Report.

2 Q. Okay. And the Stipulation provides for a
3 re-rating or a restitution to consumers during the
4 period of the investigation, correct?

5 A. I believe the settlement states that
6 PALMco voluntarily provided restitution to customers
7 for that time period.

8 Q. Okay. And the fourth bullet is "Prohibit
9 PALMco from transferring any customer contracts to
10 another entity," correct?

11 A. That's what it says.

12 Q. And under the Stipulation, if PALMco
13 transfers any customers, then it is obligated to
14 follow Commission rules as well as provide Staff with
15 a copy of any agreements or other documents
16 associated with any such transfer, correct?

17 A. I don't recall specific provisions in the
18 settlement.

19 THE WITNESS: He's reading from the
20 Stipulation. I don't have it in front of me right
21 now, so I don't know if it's an accurate reading of
22 the Stipulation is my point.

23 EXAMINER PRICE: Ms. Bojko, can you
24 provide the witness a copy of the Stipulation?

25 MS. BOJKO: I believe you have one

1 Mr. Adkins, right?

2 Is there a reference you're looking at,
3 Mr. Whitt?

4 MR. WHITT: Actually, I was looking at
5 the Staff Report.

6 MS. BOJKO: Could I have the question
7 repeated?

8 EXAMINER PRICE: You may.

9 MS. BOJKO: Well, wait. He may need it
10 repeated too.

11 Did you find it, Mr. Adkins?

12 THE WITNESS: Not yet.

13 MS. BOJKO: It's attached to your
14 testimony.

15 THE WITNESS: The settlement agreement?

16 MS. BOJKO: May I approach, Your Honor?

17 EXAMINER PRICE: You may.

18 THE WITNESS: Now may I have the question
19 reread, Your Honor?

20 EXAMINER PRICE: You may.

21 (Record read.)

22 A. Yes.

23 Q. You're not aware of PALMco transferring
24 any customers since issuance of the Staff Report, are
25 you? Other than in the ordinary course of business

1 if the contract expired and they defaulted to the
2 utility, but in terms of a transaction for value,
3 you're not aware of PALMco doing that, are you?

4 A. I would have no way of knowing.

5 Q. So if we go quickly through our bullets
6 again, starting at the top. In terms of suspension/
7 rescission of PALMco's certification under the
8 Stipulation, once PALMco's certificates expire, then
9 Staff's recommendation effectively becomes moot at
10 that point, doesn't it?

11 A. Would you ask your question again,
12 please?

13 MR. WHITT: Can you read it?

14 (Record read.)

15 A. In my mind, a voluntarily -- a voluntary
16 withdrawal is different than a Commission Order for
17 rescission. A rescission would carry more weight.

18 If PALMco is doing business in other
19 states, it's important for customers to be aware in
20 other states that a certificate was rescinded, so I
21 think it's better that it be -- that it be rescinded.
22 I don't know that it becomes moot. I believe
23 rescission is the better option.

24 Q. As a practical matter, whether you call
25 it rescission or relinquishment or what have you,

1 after the current certificates expire, PALMco will
2 not be doing business in the State of Ohio, correct?

3 A. It has represented that it will not.

4 Q. Okay. In terms of the third bullet
5 point, if PALMco has already made restitution to
6 customers enrolled during the above-noted timeframes,
7 then Staff's recommendation will have been satisfied,
8 correct?

9 MS. BOJKO: Objection. Asked and
10 answered. We already went through this.

11 EXAMINER PRICE: Can I have the question
12 back again?

13 (Record read.)

14 EXAMINER PRICE: Sustained.

15 Q. (By Mr. Whitt) Regarding the fourth
16 bullet, if PALMco has not transferred any customers
17 to another entity, then Staff's recommendation will
18 have been or has been satisfied, correct?

19 MS. BOJKO: Objection. Mischaracterizes
20 the Staff Report recommendation.

21 EXAMINER PRICE: Overruled.

22 A. I believe I testified earlier that I have
23 no idea whether PALMco has or has the ability to
24 transfer customers.

25 Q. Well, my question, I guess, assumes, and

1 I'm asking you to make an assumption I suppose, that
2 if PALMco has not transferred any customers, then
3 Staff's recommendation has been satisfied or at least
4 honored, hasn't it?

5 MS. BOJKO: Objection. Same objection.

6 EXAMINER PRICE: Overruled. He can
7 answer if he knows.

8 A. I believe that calls for speculation on
9 my part. I don't know what PALMco -- you know, I
10 guess both documents, the Staff Report and the
11 Stipulation, speak for themselves. I don't know that
12 I can interpret either of them for you.

13 Q. Well, I think you've given us plenty of
14 interpretation about what you think is wrong with it.
15 I'm trying to figure out how the Stipulation differs
16 from what Staff is recommending; can you help me?

17 MS. BOJKO: Objection. Argumentative.

18 EXAMINER PRICE: Sustained.

19 Q. Have you ever been involved in an
20 enforcement action, when you were at the Commission,
21 where the Commission attempted to take enforcement
22 action against an entity no longer certified in the
23 State of Ohio and not subject to the statutes that
24 apply to certified entities?

25 MS. BOJKO: Objection. Highly

1 speculative. Beyond the scope. Those aren't the
2 facts here today.

3 EXAMINER PRICE: He asked him about his
4 background in -- when he was in SMED. It's part of
5 his rÃ©sumÃ© as to why he's an expert involves his
6 experience in SMED from 2001 to 2007. He's asking
7 about the experience. Overruled.

8 MS. BOJKO: May I have the question
9 reread, please?

10 (Record read.)

11 A. I cannot think of an instance, but I
12 believe the Commission, I mean if there was an action
13 that started, a proceeding that -- some sort of
14 enforcement action started against a company and they
15 involuntarily withdrew, I think the Commission would
16 still have the ability to pursue a company after its
17 certificate. I mean, for example, they'd go to
18 Common Pleas Court or wherever they would need to go
19 to enforce any payment of restitution or forfeitures.

20 Q. Is it your understanding the Commission
21 would have to enlist the aid of a Court or the
22 Attorney General to take enforcement under those
23 circumstances?

24 MS. BOJKO: Objection. Calls for a legal
25 conclusion.

1 EXAMINER PRICE: He can answer if he
2 knows.

3 A. Based on my experience, I'm not sure yes
4 or no.

5 MR. WHITT: Okay. Those are all my
6 questions.

7 EXAMINER PRICE: Thank you.
8 Staff?

9 MR. EUBANKS: Just a few.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Eubanks:

13 Q. Mr. Adkins, if you could turn to page 11
14 of your testimony.

15 Okay. I will state that again.

16 Could you please turn to page 11 of your
17 testimony.

18 A. I'm there.

19 Q. I'm looking at lines 10 through 18. I'm
20 going to ask you some questions of those. Looking at
21 line 15, you have the phrase there that says "at
22 least some of these negotiations." Do you see that?

23 A. I do.

24 Q. When you say "some," is there a number
25 value that you mean when you use the word "some"?

1 A. As I testified earlier this morning, this
2 portion of my testimony was discussing what OCC
3 believed to be a key provision in the settlement that
4 OCC was not -- was not a party to developing. It was
5 developed before it came to OCC in our judgment.

6 Q. Okay. But line 15, with all due respect,
7 is not talking about a term. It's talking about
8 negotiations, is that correct, because the phrase is
9 "at least some of these negotiations."

10 A. It does involve an assumption that since
11 the term was previously agreed to by the parties that
12 did not include OCC, that there had to be at least
13 some discussion and I would term those negotiations.

14 Q. So when you say "some," could it be one?

15 A. Yes.

16 Q. Okay. On line 16, do you see the phrase,
17 it says "after several exclusive meetings"?

18 A. I see that.

19 Q. When you use the word "several," is there
20 a number value that you're associating with the word
21 "several"?

22 A. Since OCC, in my belief, was not a party
23 to these, we would have no way of knowing really
24 whether there was several.

25 Q. So could "several" mean one?

1 A. "Several" means several, but it could
2 mean more, certainly more than one.

3 Q. For the purposes of your testimony, could
4 "several" here mean just one meeting?

5 A. Again, we weren't a party to those
6 meetings so I wouldn't know if it was one, two,
7 three, four, five. I -- I don't know.

8 Q. I guess what I'm saying, sir, this is
9 your testimony, correct?

10 A. It is.

11 Q. And when you wrote the word "several,"
12 did you have anything in mind, any number of meetings
13 in mind when you used the word "several"?

14 A. It assumed more than one but, again, it's
15 an assumption. We were not there.

16 EXAMINER PRICE: I'm going to strike the
17 word "several" from his testimony. It is clear he is
18 not capable of testifying how many there were. He
19 does not make any effort to explain how he came up
20 with how there was more than one or not.

21 Q. I would like to move to line 17. You
22 said -- do you see the phrase "where the bulk of
23 these settlement terms...."? Do you see that phrase?

24 A. I do.

25 Q. Based off of your earlier testimony, when

1 you say "bulk," you mean one term; is that correct?

2 A. It's more than one term. It's the key
3 term.

4 Q. "One key term," would that be a fair way
5 of stating it?

6 A. A better way of stating it is "a pivotal
7 term."

8 Q. Okay. But "one pivotal term," is that a
9 better way of saying that?

10 A. That's primarily what this speaks to,
11 yes.

12 Q. Lines 10 through 18, were they written by
13 you?

14 MS. BOJKO: Objection.

15 EXAMINER PRICE: Grounds?

16 MS. BOJKO: He already testified it was
17 done by him or under his direction.

18 EXAMINER PRICE: Sustained.

19 Q. I believe your earlier testimony
20 concerning lines -- while it is true that initially
21 you were asked whether or not the entire testimony
22 was written by you or at your -- or at your -- I'm
23 sorry, I'm losing the word there.

24 EXAMINER SANYAL: "Direction."

25 Q. -- under your authority or under your

1 direction and you did answer yes; when you were asked
2 questions about lines 10 through 18, you continually
3 say "Well, OCC...." So -- and I think you've also
4 testified that you were only a part of one meeting.

5 So, based off of that, is it a fair
6 assumption of mine, and you can answer yes or no,
7 that lines 10 through 18 would be an exception to
8 your general statement that you prepared this
9 testimony or that it was prepared under your
10 direction?

11 MS. BOJKO: Objection, Your Honor.

12 EXAMINER PRICE: Sustained. Mr. Adkins
13 is here to testify on behalf of OCC. Just like I
14 precluded Ms. Bojko from narrowing the witnesses to
15 their personal opinion, he's here on behalf of OCC,
16 he's here representing their collective knowledge.
17 It's fair on the point earlier with "several," where
18 he had no basis for his testimony, to strike that.
19 We're not going to parse as to which lines he did and
20 didn't write personally.

21 MR. EUBANKS: Okay. Fine.

22 Q. (By Mr. Eubanks) As is stated, you are
23 here to testify on behalf of OCC with regard to your
24 entire testimony that you submitted. For lines 10
25 through 18, did you come here today prepared to

1 discuss OCC's position on what is written between
2 lines 10 and 18?

3 MS. BOJKO: Objection, Your Honor.

4 EXAMINER PRICE: I think that the
5 objection should be sustained and I think we've
6 belabored this point. You can move on to the next
7 issue.

8 MR. EUBANKS: Well, Your Honor, I guess
9 you made a ruling that we could have rebuttal
10 testimony and here's my problem: If we don't know
11 what we're having rebuttal testimony on --

12 EXAMINER PRICE: Rebut the words of his
13 testimony. That's all you need. If you can prove he
14 was incorrect, more power to you.

15 Q. (By Mr. Eubanks) If you could turn to
16 page 17 of your testimony.

17 A. I'm there.

18 Q. Specifically I'm going to focus on
19 lines 11 through 15 and maybe even more specifically
20 line 14. The 12,625 number, that number is supposed
21 to represent the current -- well, the number of
22 customers that PALMco has that are on variable
23 rates; is that correct?

24 A. This number came from documents that
25 PALMco provided to OCC in response to interrogatories

1 where OCC had asked the number of customers on --
 2 asked for the total number of customers under the
 3 electric and the total number of customers under gas.
 4 We also asked the number of customers served by fixed
 5 rate contracts. PALMco only has, based on the
 6 evidence they provided us, they only have fixed rate
 7 contracts and they have variable rate contracts.
 8 Subtracting the total number of customers that PALMco
 9 provided in response to OCC interrogatories,
 10 subtracting the fixed rate contracts, left the
 11 number, the 12,625 variable rate contracts.

12 Q. As of what date?

13 A. I believe that number was accurate -- I
 14 don't recall the specific date that PALMco responded
 15 to the interrogatory.

16 Q. Do you recall the month?

17 A. I'm sorry, I do not.

18 Q. Do you recall when you made the data
 19 request?

20 A. I want to say it was the April-May
 21 timeframe.

22 Q. Of?

23 A. Of -- I'm sorry. Of 2019. April to
 24 May 2019 was the initial request to the best of my
 25 recollection.

1 Q. Okay. And is it your contention and your
2 testimony that every variable rate customer of PALMco
3 was overcharged?

4 A. As I indicated earlier, I believe there's
5 ample evidence in this case that suggests that's very
6 much the case.

7 Q. And is that evidence in the Staff Report?

8 A. It is partly in the Staff Report. It's
9 primarily the practice -- based on the -- based on
10 the interrogatories, I'm sorry, that we just spoke
11 about, OCC asked at least five sets of discovery
12 requests to PALMco. Based on that, every contract
13 that we saw indicated it was the same variable rate.
14 Regardless of when customers enrolled, it was the
15 same variable rate.

16 And since it's the same variable rate,
17 the customers covered by the Staff Report period or
18 outside the Staff Report period were covered by the
19 same variable rate which was, as evidenced in the
20 Staff Report, 4 to 6 times higher than the comparable
21 price to compare for the utility. So our contention
22 is any customer outside that time period covered by
23 the Staff Report suffered the same harm as those
24 during the Staff Report period.

25 Q. And how many customer complaints did you

1 review?

2 A. PALMco did not provide us -- we asked,
3 back in the April-May timeframe, for copies of
4 everything that the Company had provided to Staff,
5 and we did not get that until September 10th.
6 Despite asking for it multiple times, we didn't get
7 it until September 10th.

8 MR. WHITT: I'll object and move to
9 strike.

10 EXAMINER PRICE: Sustained. I mean
11 granted. Sorry.

12 MS. BOJKO: Your Honor, could I just ask
13 the witness be allowed to finish his answer before
14 objections.

15 EXAMINER PRICE: Please allow the witness
16 to finish his answer before moving to strike it.

17 MR. WHITT: Standing moving to strike on
18 all testimony.

19 THE WITNESS: Based on the information we
20 received -- I'm sorry, may I have the question again,
21 please?

22 EXAMINER PRICE: You may.

23 (Record read.)

24 THE WITNESS: May I have my response up
25 to the point of the objection?

1 (Record read.)

2 EXAMINER PRICE: I'm going to strike the
3 entire answer as nonresponsive. He asked you for a
4 number. If you could provide him the number and, if
5 there's additional information that you think is
6 relevant, Ms. Bojko will ask you that on redirect.

7 THE WITNESS: Between myself and other
8 OCC staff members, we have reviewed somewhere north
9 of 80 of the customer contacts that were provided to
10 us. Certainly enough to confirm the same pattern and
11 practice that was identified in the Staff Report.

12 MR. EUBANKS: I have no further questions
13 for the witness.

14 EXAMINER PRICE: Thank you.

15 Ms. Bojko, redirect?

16 MS. BOJKO: Yes. Could we have a few
17 minutes, Your Honor?

18 EXAMINER PRICE: Yes.

19 (Recess taken.)

20 EXAMINER PRICE: Let's go back on the
21 record.

22 Ms. Bojko, redirect?

23 MS. BOJKO: Yes. I have some or several.

24 EXAMINER PRICE: So that will be one.

25 EXAMINER SANYAL: Or more than one.

- - -

REDIRECT EXAMINATION

By Ms. Bojko:

Q. Mr. Adkins, do you remember being asked a question about the number of customers and you referenced an interrogatory?

A. Yes.

Q. Could you please -- up there, we marked yesterday, OCC Exhibit 14. Do you have that?

A. I'm trying to find it.

I have Exhibit 14.

MS. BOJKO: And just to remind the Bench, even though the response is confidential, this is deemed to be not confidential now. This is a public document.

Q. Mr. Adkins, does this look like the interrogatory question that you were referring to in your answer to Counsel?

A. Yes.

Q. And could you review the question and does it tell you a date that the customer account you were referencing is in regards to?

A. Introduction -- Interrogatory 2, INT-2-012 says "Assuming that 'current' or 'currently' means August 2, 2019, please respond to

1 the following" and there's a list of several
2 questions.

3 Q. And then if you look at the next page,
4 PALMco responds with a number of accounts that it
5 has; is that correct?

6 A. Yes.

7 Q. And so it's your understanding that the
8 15,001 that then became 12,625 in your testimony was
9 based on current customers as of August 2, 2019?

10 A. Yes, all the calculations described in my
11 testimony came from this document and the responses
12 to this document.

13 Q. Do you remember questions from Mr. Whitt
14 with regard to spreadsheets that depicted refunds?

15 A. Yes.

16 Q. And you were asked your recommendation
17 regarding verification. Do you recall those?

18 A. I do.

19 Q. Would the spreadsheets -- would you be
20 able to tell from a spreadsheet about whether every
21 single customer harmed received a refund?

22 A. A spreadsheet is simply that, a
23 spreadsheet. It has no verification to it at all.
24 It's just a representation of numbers on a page.

25 Q. Yes, but would every customer that was

1 harmed necessarily be on that spreadsheet?

2 A. Not in our opinion. We believe that
3 there are multiple customers that were harmed outside
4 of the period of the spreadsheets that were provided
5 to us representing that customers were going to get
6 restitution.

7 Q. Well, even within the period, you would
8 not know if there was a customer that was left off
9 the spreadsheet, correct?

10 A. I would have no way of knowing that.

11 EXAMINER PRICE: Ms. Bojko, that was
12 awfully leading.

13 MS. BOJKO: Sorry.

14 EXAMINER PRICE: If you could not lead
15 the witness for the remainder of redirect, I would
16 appreciate it.

17 MS. BOJKO: Thank you, Your Honor. I
18 will do my best.

19 Q. (By Ms. Bojko) Could you turn to the
20 Stipulation, paragraph 8.

21 A. I'm there.

22 Q. I'm sorry. It's paragraph 7. It's on
23 page 5 of the Joint Stipulation.

24 A. I'm there as well.

25 Q. Do you recall questions about 7(a) with

1 regard to restitution to customers?

2 A. Yes.

3 Q. Could you tell me if the restitution in
4 this paragraph, when it will occur?

5 A. The restitution discussed here will only
6 occur if PALMco sells its book of business, and it
7 will only be fully provided to customers, the
8 customers discussed here, if PALMco is able to sell
9 the book of business for \$800,000 or more.

10 Q. So when you were asked about the
11 Stipulation -- about the Staff Report recommendations
12 and whether the Stipulation satisfied the restitution
13 provision, in your mind would this provision satisfy
14 the restitution provision?

15 A. No, because it's contingent. There's no
16 contingency discussed in the Staff Report.

17 Q. Also looking at the Stipulation, do you
18 recall, in comparing that to the recommendations of
19 the Staff Report, do you recall a discussion about
20 rescission or conditional rescission and suspension?

21 A. Yes.

22 Q. Does the Stipulation require rescission
23 of the certificate?

24 A. No. The Stipulation specifically
25 provides that PALMco will continue to serve customers

1 until either it sells the book of business or until
2 the end of its certificates, the dates of its
3 certificates.

4 Q. If you look at the recommendation of the
5 second bullet with regard to forfeiture, does the
6 Stipulation satisfy the forfeiture provision in the
7 Staff Report?

8 A. No. First, the -- the Stipulation calls
9 for a forfeiture amount that's less than what's
10 provided for in the Staff Report and it also provides
11 that forfeiture will be contingent on the sale of
12 PALMco's book of business and, moreover, the amount
13 of that sale, before any forfeiture has to be paid,
14 has to exceed \$800,000.

15 Q. So there could be zero forfeiture in this
16 case?

17 A. There could be zero forfeiture in this
18 case. That's one of our principal concerns with the
19 reasonableness of the settlement.

20 Q. The last bullet in the list of
21 recommendations on the Staff Report is the "Prohibit
22 PALMco from transferring any customer contracts to
23 another entity." Do you remember a discussion about
24 that?

25 A. I do.

1 Q. Does the Stipulation prohibit the
2 transfer?

3 A. No. In fact, it provides that
4 customers will -- that PALMco will be transferring
5 customers if it's able to sell its book of business.

6 Q. Do you recall questions from Counsel
7 about what you reviewed?

8 A. Yes.

9 Q. And you stated you reviewed 80 customer
10 complaints; is that correct?

11 A. Somewhere north of 80, yes.

12 Q. Could you explain here today what exactly
13 you and the Consumers' Counsel reviewed with regard
14 to customer complaints in this case?

15 MR. WHITT: I'll object and ask for
16 clarification. Is she asking the witness what he
17 reviewed or what the Office of Consumers' Counsel
18 reviewed?

19 EXAMINER PRICE: I think she's asking
20 what was reviewed by him or under his direction.

21 MS. BOJKO: Yes, I did. Thank you.

22 MR. EUBANKS: Can I have the question
23 read back, please?

24 (Record read.)

25 MR. EUBANKS: I'm going to object. It's

1 outside the scope of my cross. I asked him a number.
2 I did not ask him about the specific complaints.

3 EXAMINER PRICE: I think this question is
4 still within the scope of your cross, but she's
5 getting very close to being outside.

6 You can answer if you know.

7 THE WITNESS: May I have the question
8 reread, please?

9 EXAMINER PRICE: You may.

10 (Record read.)

11 A. In response to OCC interrogatories,
12 PALMco provided all of the customer complaints that
13 were provided to the PUCO Staff. We reviewed -- I
14 personally reviewed somewhere more than 60, other OCC
15 Staff reviewed an additional 20-plus, to total more
16 than 80, and we found, again, the same pattern of
17 abuse.

18 I listened to sales calls that were
19 attached to those. In my opinion, as someone who is
20 experienced in enforcing the particular rules here, I
21 found, in my opinion, those sales calls violated the
22 Commission's rules.

23 MR. EUBANKS: Object -- oh.

24 EXAMINER PRICE: Let him finish, then you
25 can move to strike.

1 A. We saw the same pattern of abuse where
2 customers were charged 4 to 6 times. There was
3 discussions -- there were documents within the
4 folders, the complaint folders, there was discussions
5 of re-rates. I prefer the term "restitution" but
6 there were re-rates to customers.

7 So there -- we saw -- we also
8 independently reviewed and found the 4 to 6 times
9 rates that were charged to customers. We saw the
10 same pattern of abuse that customers -- that the
11 Staff identified in the Staff Report and that
12 Ms. Alexander testified to that occurred in other
13 states. The Stipulation itself discussed customer
14 harm. That's the basis of our point.

15 EXAMINER PRICE: Can I have the
16 question -- the answer read back, please?

17 (Record read.)

18 EXAMINER PRICE: Stop there.

19 Yes, sir.

20 MR. EUBANKS: Okay. I would like to make
21 a motion to strike. I believe after the language
22 that you just read, he referred to reviewing sales
23 calls, and my questioning was not in reference to
24 sales calls, so any testimony on that matter, I move
25 to strike.

1 EXAMINER PRICE: We will strike
2 everything after "80," after that sentence. All the
3 remainder of his answer will be stricken.

4 Q. (By Ms. Bojko) I think that -- well,
5 Mr. Adkins, did you actually -- you were asked about
6 the 80 contacts. Did you actually review
7 documentation from customers and communications from
8 customers?

9 EXAMINER PRICE: Now you're outside the
10 scope of your testimony -- the scope of the question.
11 He asked about customer complaints, you asked him a
12 follow-up what did that mean, and so anything more
13 than that is going to be beyond the scope of his
14 cross.

15 MS. BOJKO: Well, Your Honor, during the
16 cross, and I'm sorry I don't remember if it was
17 Mr. Whitt or Staff's counsel, but they also asked
18 about how he knew it was outside the period and why
19 do you think the rates were 4 to 6 times the rate and
20 that was --

21 EXAMINER PRICE: But that's not how you
22 introduced this line of questioning. So if you want
23 to go on to a new line of questioning, that will be a
24 different matter altogether.

25 MS. BOJKO: I will do so. He

1 consolidated, I'll consolidate.

2 Q. (By Ms. Bojko) Mr. Adkins, you were asked
3 about how you believe there was harm outside the
4 period. Do you recall that?

5 A. I do.

6 Q. And could you explain why you came to the
7 conclusion that more customers were harmed than
8 what's provided for in the settlement?

9 A. Yes.

10 Customers -- just by reviewing the
11 customer contacts, the complaints that were provided
12 to us, again we saw the same pattern that was
13 described in the Staff Report.

14 It also -- that pattern -- we're also
15 aware that, based on everything PALMco provided us,
16 that there's one variable rate that customers were
17 charged. All customers were charged the variable
18 rate. Regardless of whether they're in the period,
19 outside the period, they were charged the same
20 variable rate. That rate was 4 to 6 times higher.
21 We independently confirmed those rates were indeed 4
22 to 6 times higher.

23 Customers don't willingly or knowingly
24 pay 4 to 6 times higher. So the deception that
25 happened during the period, it's pretty safe to

1 assume it also happened outside the period.

2 Customers, in this type of industry, they
3 shop based on price. They don't know -- an electron
4 is an electron, a molecule of gas is a molecule of
5 gas. There's no product differentiation. So
6 customers outside the period are the same as
7 customers inside the period. If they were charged
8 the variable rate that was 4 to 6 times higher, it's
9 pretty safe to assume they were deceived.

10 Also just based on that same pattern and
11 practice that, you know, Ms. Alexander described in
12 other states that Staff described in the Staff
13 Report, customers in the period, there's no real
14 difference between customers inside the period and
15 customers outside the period. Customers shouldn't
16 have to complain in order to get restitution for the
17 harm that was caused. The Stipulation itself
18 describes that customers were harmed. That's the
19 purpose of the Stipulation was to redress the harm.

20 EXAMINER PRICE: And what precludes the
21 Consumers' Counsel from filing a complaint about
22 those outside-the-period violations that you believe
23 occurred?

24 THE WITNESS: Well, Your Honor, this is a
25 Commission Ordered Investigation.

1 EXAMINER PRICE: Which had a defined
2 period of time. You're not answering my question.
3 Again, what precludes Consumers' Counsel from filing
4 a complaint, before the Commission, regarding those
5 outside-the-period allegations that you have?

6 THE WITNESS: The customer harm is
7 customer harm regardless of what period it happened
8 in.

9 EXAMINER PRICE: Strike that, please.

10 Mr. Adkins, once again, you need to
11 answer the Bench's questions directly and clearly,
12 and answer the question and only the question.

13 THE WITNESS: There's nothing to
14 preclude, but I don't know that the obligation is
15 there, but there's nothing that precludes it.

16 EXAMINER PRICE: Thank you.

17 Q. (By Ms. Bojko) Mr. Adkins, are you
18 familiar with the Commission Entry that was issued on
19 April 17, 2019?

20 A. Yes.

21 Q. Do you know, with regard to the ordering
22 of the investigation, whether the Commission
23 established a defined timeframe for the
24 investigation?

25 EXAMINER PRICE: Whose --

1 MR. WHITT: Objection. Beyond the scope.

2 EXAMINER PRICE: Whose cross-examination
3 is this responding to?

4 MS. BOJKO: It's the question about
5 whether it's beyond the scope of the -- while -- why
6 he came to the conclusion that the Stipulation was
7 not sufficient because of narrowing the Stipulation
8 to the December timeframe, and his cross about how he
9 came to the conclusion. I think it was Mr. Eubanks
10 said how he came to the conclusion that's put forth
11 in his testimony that the customers were harmed
12 outside of the period.

13 MR. EUBANKS: That is not the question I
14 asked. The question I asked was how he reached the
15 conclusion that all of the current customers were
16 harmed, were overcharged, who were on variable rates.

17 EXAMINER PRICE: The objection that it is
18 outside the scope of cross is sustained.

19 MS. BOJKO: Thank you, Your Honor. I
20 have no further questions.

21 EXAMINER PRICE: Recross, Mr. Whitt?

22 MR. WHITT: Very briefly, Your Honor.

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RECROSS-EXAMINATION

By Mr. Whitt:

Q. Mr. Adkins, the Stipulation provides a mechanism to re-rate or provide restitution to any customer regardless of when that customer enrolled, correct?

MS. BOJKO: Objection. Mischaracterizes.

EXAMINER PRICE: He can answer if he believes it's not correct. Overruled.

A. I believe the --

THE COURT REPORTER: Sir, you are going to have to speak up and into the microphone, please.

THE WITNESS: Sorry.

THE COURT REPORTER: Thank you.

A. I believe the --

EXAMINER SANYAL: I don't think she can hear, so if you could repeat.

EXAMINER PRICE: Lower your microphone just a bit and ignore it.

THE WITNESS: May I have the question reread now, please?

MS. BOJKO: Your Honor, I think he's trying to look at Mr. Whitt. Maybe if he just looks straight.

EXAMINER PRICE: Just look at Ms. Bojko.

1 Keep your eye focused on the point of the wall just
2 above her head.

3 (Record read.)

4 A. I don't believe that accurately
5 characterizes the Stipulation, no.

6 Q. Okay. Let's turn to page 4 of the
7 Stipulation, paragraph 2.

8 A. I'm there.

9 Q. The first two sentences talk about
10 reviewing and re-rating accounts over a certain
11 period of time, and then the last sentence of
12 paragraph 2 says "PALMco will continue to review such
13 informal complaints and issue refunds where
14 appropriate, regardless of when enrollment occurred."
15 Did I read that correctly?

16 A. You did read it correctly, yes.

17 Q. Can you give me the name of one customer
18 who allegedly sustained harmed and who is not listed
19 on the spreadsheets, that the Company has provided to
20 Staff, listing customers who have received
21 restitution?

22 A. I believe I -- in my direct testimony I
23 identified there were 6,400-some customers --

24 Q. Can you name one of them?

25 MS. BOJKO: Your Honor, may he finish,

1 please?

2 EXAMINER PRICE: Allow him to finish and
3 then you can follow up.

4 A. I believe, in my testimony, I identified
5 6,400-plus.

6 Q. But you can't tell me who anybody is?

7 MS. BOJKO: Your Honor, he was not
8 finished with his statement.

9 EXAMINER PRICE: Allow him to finish,
10 Mr. Whitt.

11 Go ahead, Mr. Adkins.

12 A. I guess to repeat my answer, I believe
13 there was 6,400-some customers who are outside the
14 period who did not -- will not receive restitution
15 unless they complain to the PUCO.

16 Q. And the Stipulation provides no barrier
17 for anyone, who wishes to complain, to complain and
18 be re-rated and, in fact, OCC could publicize that
19 fact if it so chose, couldn't it?

20 MS. BOJKO: Objection. This is beyond
21 the scope of redirect.

22 EXAMINER PRICE: Sustained.

23 MR. WHITT: No further questions.

24 EXAMINER PRICE: Staff?

25 MR. EUBANKS: I have no further

1 questions.

2 EXAMINER PRICE: Thank you.

3 Examiner Sanyal.

4 EXAMINER SANYAL: I have one question.

5 - - -

6 EXAMINATION

7 By Examiner Sanyal:

8 Q. So if you turn to page 13 of your
9 testimony, line 11, and you reference this phrase
10 several times, it's the phrase "full restitution."
11 So, in your opinion, what is full restitution? Just
12 so we can clarify for the record.

13 A. Well, OCC has recommended the full
14 \$1.4 million that was originally described in the
15 Staff Report. However, this particular provision
16 describes that PALMco can avoid paying any
17 restitution if it sells the book of business for less
18 than 800,000. 800,000 or less.

19 Q. To clarify for an individual customer,
20 what does OCC consider full restitution to an
21 individual customer who may have been allegedly
22 harmed?

23 A. The -- for OCC, full restitution would be
24 the difference between the variable rate that was 4
25 to 6 times higher than the local utility's price to

1 compare, multiplied -- the difference multiplied by
2 the time period that the customer was with PALMco,
3 multiplied by the corresponding price to compare for
4 those customers for the time period. I'm sorry if
5 that was a convoluted answer. I can try again if
6 that wasn't clear.

7 Q. I think that makes sense.

8 And it is OCC's belief that, under the
9 Stipulation, not all customers will be receiving that
10 full refund that they are entitled to?

11 A. There are -- the Stipulation makes
12 restitution to some customers contingent on the sale
13 of the book of business; and it also fails, in our
14 opinion, to provide restitution for any customers --
15 other customers who are outside the period of the
16 Staff Report who were charged that same 4 to 6 times
17 variable rate, we believe, and there are more of
18 those customers than there are customers during the
19 period of the Staff Report.

20 Q. So that's a no.

21 A. I believe that's a no, Your Honor.

22 - - -

23 EXAMINATION

24 By Examiner Price:

25 Q. You're not testifying the Staff Report

1 recommended restitution in the amount of 1.4 million,
2 are you?

3 A. The Staff Report?

4 Q. Yeah.

5 A. I am testifying to that.

6 Q. That the Staff Report requests
7 restitution --

8 A. I'm sorry.

9 Q. -- of \$1.4 million?

10 A. I'm sorry, Your Honor. I misunderstood
11 your question. I understood 1.4 million to be
12 forfeiture. It just provides for restitution. My
13 apologies, Your Honor.

14 Q. So it's not 1.4 million.

15 A. The 1.4 million was discussed in
16 forfeitures. My apologies.

17 Q. No problem.

18 Mr. Adkins, you retired from the
19 Commission in 2018; is that correct?

20 A. September of 2018, that's correct.

21 Q. And two months later, in November, you
22 began employment with the Office of Consumers'
23 Counsel; is that correct?

24 A. Yes.

25 Q. What is your job title there?

1 A. I am a Senior Regulatory Analyst.

2 Q. And what do you analyze? What are your
3 job duties?

4 A. I generally review rate filings and any
5 other types of filings that come before the
6 Commission, to determine potential impact on
7 residential consumers, and I make recommendations
8 regarding whether the Office should intervene and I
9 guess represent the interests of residential
10 consumers in those rate filings.

11 Q. And while at OCC, how many hours a week
12 do you work on either competitive retail electric
13 service marketer issues or competitive retail natural
14 gas service marketer issues, excluding PALMco and
15 Verde?

16 A. It would vary, Your Honor. If -- if
17 issues come up, you know, I would address it, so I
18 can't say for certain.

19 Q. So in addition to reviewing rate filings,
20 you have an additional duty to OCC regarding marketer
21 issues.

22 A. Split with other OCC staff, yes.

23 Q. Between 2007 and 2018, how many hours a
24 week, while you were at the Commission, did you work
25 on marketer issues?

1 A. Very little, Your Honor.

2 Q. And since 2007 there have been
3 substantial changes in the retail electric service
4 market and the retail electric gas service market; is
5 that correct?

6 A. I would suggest that, for example, the
7 price of natural gas has certainly dropped.

8 Q. We had the Great Recession.

9 A. That's one thing, yes, Your Honor.

10 Q. We had the fracking boom.

11 A. Also true, Your Honor.

12 Q. What had what people call the "Dash to
13 Gas," the rise of gas generation in the electric
14 market.

15 A. I would agree with that as well.

16 Q. We had Senate Bill 221, which passed in
17 Ohio, which had an impact on the CRES and CRNGS --
18 the CRES market.

19 A. Yes.

20 Q. We had a growth in switch rates from that
21 time. In 2007, approximately what was the switch
22 rate in Ohio statewide? Best guess.

23 A. I would guess, it would vary by utility,
24 but I think in the FirstEnergy territories, electric,
25 the number was probably already north of 50 due to --

1 50 percent due to governmental aggregation. The rest
2 was less than that. Gas was less than that as well.

3 Q. In 2019, the switch rates were
4 substantially higher; is that correct?

5 A. To the best of my knowledge, yes.

6 Q. And since that time, we've also had the
7 deployment of smart meters in AEP's service territory
8 and the deployment of not-so-smart meters in Duke's
9 service territory; is that correct?

10 A. I would agree with the characterization
11 of both, Your Honor.

12 Q. Thank you.

13 And you worked on the -- in your
14 testimony you indicate you worked on the Staff rules
15 for CRES and CRNGS. You understand what I say when I
16 say CRES and CRNGS, right?

17 A. I do.

18 Q. Okay. You worked on the rules for CRES
19 and CRNGS while you were in SMED; is that right?

20 A. Yes.

21 Q. And your understanding is every five
22 years the State has to review its rules.

23 A. Yes.

24 Q. And so there would have been a rule
25 review between the time that you worked on the CRES

1 and CRNGS rules at the Commission and today; is that
2 right?

3 A. Yes.

4 Q. And do you know if there were any changes
5 to the rules in that rule review?

6 A. It's likely, but I don't know.

7 Q. You've not done any analysis of how the
8 rules were changed in 2012.

9 A. I have reviewed the rules, the current
10 rules, in preparation for this case, but I've not sat
11 down side-by-side versus what the rules were back
12 then versus now.

13 Q. Great.

14 Okay. If you can turn to page -- your
15 discussion of the three-prong test.

16 A. I believe it starts at page 10, Your
17 Honor.

18 Q. You have a footnote in there that says
19 the Commission "takes into account the 'diversity of
20 interests' as part of the first part of the
21 stipulation assessment"; is that correct?

22 A. Yes.

23 Q. Now, you would agree that the Commission
24 has opined, numerous times since the case you cite,
25 on the role of diversity, would you not?

1 A. I'm not certain, Your Honor. I don't
2 know.

3 Q. You don't know. That's fair.

4 When -- at one point SMED had a different
5 name, did it not?

6 A. Yes, Your Honor.

7 Q. It was called Consumer Services.

8 A. Yes.

9 Q. When you were employed in the Consumer
10 Services Division, was it your belief that you
11 represented the consumer, the interests of the
12 consumer, or did you balance the interests of the
13 consumers and the utility or marketer?

14 A. The latter, Your Honor.

15 Q. The latter.

16 A. The latter.

17 Q. When you were at SMED, you believed you
18 were balancing the interests of the two.

19 A. Always, Your Honor.

20 Q. 50/50 balance or a different ratio? Did
21 you put more weight on the consumer interests and
22 less on the utility side?

23 A. Your Honor, it would depend case by case.

24 Q. It varied.

25 A. It varied, yes.

1 Q. In an enforcement action against a
2 marketer, would you be balancing the interests of the
3 marketer or would you be primarily interested in the
4 consumer when you were there?

5 A. Again, it would be both.

6 Q. It would be both.

7 A. You're required -- first, when I was
8 there, we were -- it's the integrity of the
9 Commission's rules that you're enforcing. The
10 Commission's rules -- if the rules are violated then
11 there would be customer harm determined by -- or, I
12 guess, as a result of those.

13 Q. But you were balancing the interests.

14 A. We were required to. For example, if we
15 were doing a forfeiture, we had to take into account
16 a number of things; we were required to.

17 Q. On Attachment KJA-1, you indicate that
18 you testified In the Matter of the Commission Staff's
19 Investigation into the Alleged MTSS Violations of
20 Buzz Telecom; is that correct?

21 A. Yes.

22 Q. And you recommended a substantial civil
23 forfeiture in that case.

24 A. Yes, and I also recommended the
25 rescission of its operating certificate as well.

1 Q. And, in that way, were you balancing the
2 interests of the consumers with Buzz Telecom by
3 asking that Buzz Telecom terminate their business in
4 Ohio, or were you solely recommending the interests
5 of the consumers in that case?

6 A. I was recommending the actions based on
7 the enforcement action.

8 Q. That's not what I -- that's not my
9 question.

10 My question is, whose interests were you
11 representing when you testified in that case: The
12 interests of the consumers or the interests of the
13 company that you were asking to be banned from Ohio?

14 A. Again, Your Honor, I would argue it was
15 both.

16 Q. You were balancing them. It was a great
17 balance for Buzz Telecom, wasn't it?

18 A. We had no choice, Your Honor. We're
19 always -- as a rule enforcer you always have to, for
20 example, back then we had what was called an
21 Enforcement Matrix where we had to determine the size
22 of a forfeiture, the impact it would have on a
23 utility -- I'm sorry, in this case the
24 telecommunications company. We had to determine
25 whether the company had -- it was aggravating

1 circumstances, mitigating circumstances. We had to
2 balance all of those. So that does take into account
3 the supplier or, in that case, the telecommunication
4 company's interests.

5 Q. Okay. Interesting.

6 You seem to indicate in your testimony
7 that the Commission should not adopt this settlement
8 because OCC did not sign onto the settlement; is that
9 a fair characterization?

10 A. Your Honor, a better characterization is
11 I believe that OCC is the statutory representative of
12 consumers.

13 Q. So you're saying the Commission should
14 never approve a settlement unless OCC has signed onto
15 the settlement?

16 A. The Commission is always free to do
17 whatever the Commission does.

18 Q. I'm asking for what your testimony is.
19 Do you believe OCC should have an effective veto over
20 the Commission's adoption of stipulations?

21 A. I believe the Commission should provide
22 heavy weight to the interests of residential
23 consumers, or all consumers for that matter, when it
24 is considering a stipulation.

25 Q. I don't think that answers my question,

1 so I'll say it again. Do you believe that the
2 Commission should not adopt a stipulation if OCC is
3 opposed to the stipulation? It's kind of a yes or no
4 question, Mr. Adkins.

5 A. I don't -- I guess, Your Honor, I don't
6 mean to be argumentative, I just don't see it as a
7 yes or no question. I don't know that I can answer
8 yes or no.

9 Q. Why don't you answer yes or no, and then
10 explain why you think it's on a sliding scale.

11 A. May I have the question reread, please?

12 Q. I'll restate it.

13 Do you believe the Commission should not
14 adopt a stipulation if OCC is opposed to the
15 stipulation?

16 A. Considering that I represent OCC, I would
17 much prefer that the Commission sign it, agree to a
18 stipulation when OCC has agreed as well.

19 Q. So your answer to my question is yes.

20 A. I don't believe OCC should have veto
21 rights over, but --

22 Q. So the answer to my question is no.

23 A. That was my point, Your Honor. It's
24 circumstance by circumstance.

25 Q. That's fair.

1 You indicate in your testimony that you
2 have testified as to the three-prong test in cases
3 before the Commission; is that correct?

4 A. Yes.

5 Q. And in fact one of those cases would be
6 In the Matter of the Application, Item No. 7 on
7 KJA-1, In the Matter of the Application of The East
8 Ohio Gas Company to Adjust Its Pipeline
9 Infrastructure Replacement (PIR) Cost Recovery Charge
10 and Related Matters, Case No. 09-458-GA-UNC; is that
11 correct?

12 A. It is.

13 Q. You testified in that case.

14 A. I believe so.

15 Q. You testified in favor of the three-prong
16 test.

17 A. That's my recollection, yes.

18 Q. OCC was not opposed to the stipulation in
19 that case.

20 A. I don't recall OCC's position in that
21 case.

22 Q. Okay. Well, that will make the
23 hypothetical easier. Assume, as a hypothetical, the
24 only variable in that case is OCC is opposed to the
25 stipulation. Would you have recommended to the

1 Commission that the Commission adopt that
2 stipulation?

3 A. Back when I was representing Staff, if
4 that's what Staff management had determined to be the
5 case, then yes, I would have made the same
6 recommendation.

7 Q. Now, Mr. Adkins, you have said many times
8 the Commission cannot ethically require a witness to
9 testify to something he does not believe.

10 A. I believe that to this day.

11 Q. And so I would like you to answer my
12 question again then. Would you have testified -- to
13 the hypothetical in the Dominion East Ohio Gas case
14 with the sole variable being that OCC was opposed to
15 the stipulation, would you have testified to the
16 Commission that the Staff -- that the stipulation
17 should be adopted?

18 A. In that case, to the best of my
19 recollection, I believe the stipulation in that case
20 met the three-part test, and whether OCC was on board
21 or not on board would not have influenced my
22 decision.

23 Q. Another case where you testified in favor
24 of the three-prong test is Item No. 8, In the Matter
25 of the Application of Vectren Energy Delivery of Ohio

1 for Authority to Adjust Its Distribution Replacement
2 Rider Charges, Case No. 11-2776-GA-RDR; is that
3 correct?

4 A. Yes, Your Honor.

5 Q. You testified in that case.

6 A. I did.

7 Q. You testified in favor of the three-part
8 test.

9 A. I did.

10 Q. OCC was unopposed to the stipulation.

11 A. I don't recall.

12 Q. In the event in the hypothetical that OCC
13 had opposed the stipulation, would you have testified
14 to the Commission to adopt the stipulation
15 notwithstanding OCC's opposition?

16 A. My answer would be the same. If I
17 believed the stipulation met the three-part test, I
18 would have testified to that effect.

19 Q. I'm asking you what you -- that's what
20 I'm asking you. Would it have met the three-part
21 still with the one variable change that OCC was
22 opposed.

23 MS. BOJKO: I'm sorry, Your Honor. Are
24 you asking him if the one variable, which was whether
25 it was a unanimous settlement or not a unanimous

1 settlement, would have changed the three-part test?

2 EXAMINER PRICE: I'm asking him whether
3 the change from OCC non-opposing to OCC opposing the
4 stipulation would have changed his testimony in that
5 case.

6 A. I would like to have thought, during the
7 settlement discussions during that case, we would
8 have seriously considered OCC's points of view but,
9 as a Staff representative, if I believed that the
10 settlement met the three-part test, I would have made
11 the same recommendations.

12 Q. Thank you.

13 While you were employed in Consumer
14 Services/SMED, did you have occasion to review the
15 complaint files that were prepared by our
16 investigators -- the investigators?

17 A. Yes.

18 Q. How many do you think you reviewed in the
19 course of the six years you were at SMED? Consumer
20 Services and SMED.

21 A. I just -- numerous, Your Honor.

22 Q. Ten?

23 A. Many more than ten.

24 Q. A hundred?

25 A. Many more than a hundred.

1 Q. A thousand?

2 A. Probably, yes.

3 Q. Okay. In reviewing all of those
4 complaint files, was it ever the case that you found
5 that however well-documented the evidence was in the
6 complaint file, you just judged for yourself, as the
7 manager of the division, that the conduct was not in
8 violation of the Administrative Code even though the
9 investigator thought it was?

10 A. It's certainly possible, Your Honor. I
11 don't recall a specific instance, but it's certainly
12 possible.

13 Q. How about the opposite. Did you ever
14 judge that yes, you'd agree the conduct alleged in
15 the complaint file would have been a violation of the
16 rules, but you just didn't feel like there was enough
17 evidence in the complaint files to pursue an
18 enforcement action?

19 A. In that instance, I would have sought
20 more evidence.

21 Q. That's not what I asked.

22 Did you ever find the complaint files did
23 not contain a sufficient amount of evidence to pursue
24 an enforcement action without additional work?

25 A. Yes.

1 EXAMINER PRICE: Thank you. You're
2 excused.

3 THE WITNESS: Thank you, Your Honor.

4 MS. BOJKO: Your Honor, at this time, I'd
5 like to move the admission of OCC Exhibit 2.

6 EXAMINER PRICE: Any objection to the
7 admission of OCC Exhibit 2, subject to the overruled
8 motion to strike?

9 MR. WHITT: Yeah, Your Honor. I guess in
10 light of the witness's testimony when we were
11 discussing e-mails, we would like to move to strike
12 the testimony at page 11, line 15, the sentence
13 beginning with "And" through the rest of the page.

14 EXAMINER PRICE: Ms. Bojko.

15 MS. BOJKO: Your Honor, I think you made
16 a ruling on this already, but I would reiterate that
17 Mr. Adkins is a representative of the Consumers'
18 Counsel. He was able to state instances where he
19 believed that the OCC was excluded from meetings that
20 led up to certain terms. He did testify to this.
21 You already struck the word "several." I think this
22 is a fair and accurate characterization of the
23 Consumers' Counsel testimony that was done under his
24 direction or by him.

25 EXAMINER PRICE: We're going to deny the

1 motion to strike subject to my striking -- previously
2 striking the word "several." If Staff or the Company
3 believe this is not a factually-accurate statement,
4 their remedy is rebuttal testimony that we discussed
5 earlier.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 MS. BOJKO: Your Honor, at this time, I
8 would also like to move OCC Exhibit 14, which was the
9 discovery response referred to by Mr. Adkins.

10 EXAMINER PRICE: Any objections?

11 Seeing none, it will be admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 MS. BOJKO: Your Honor, also at this
14 time, I would like to renew our request for admission
15 of OCC Exhibit 7, which were the customer contacts or
16 complaints.

17 EXAMINER PRICE: The document will be
18 admitted subject to two caveats: No. 1, it still
19 needs to be redacted for any customer-specific
20 account information.

21 MS. BOJKO: Just account information is
22 my understanding. That's how the documents were
23 provided to us from Staff.

24 MR. EUBANKS: Can we clarify? Are we
25 talking about the customer contacts?

1 MS. BOJKO: Yes.

2 MR. EUBANKS: The four-hundred and --

3 EXAMINER SANYAL: Eighty-six.

4 MR. EUBANKS: -- eighty-six customer
5 contacts?

6 EXAMINER SANYAL: Is what I understand
7 those two Bankers Boxes.

8 MR. EUBANKS: And I take it you've
9 already taken into account the objections of the
10 parties as to lack of foundation?

11 EXAMINER PRICE: Uh-huh.

12 MR. EUBANKS: Okay.

13 MS. BOJKO: I'm sorry, so I think I had
14 asked the question, just for clarity, is that the
15 consumer account number needs to be --

16 EXAMINER PRICE: We're going to direct
17 you to talk to Staff Counsel Donald Leming, because
18 he will give you some guidance as to what we
19 typically redact when it comes to customers. I think
20 it's probably more than just the account number. It
21 might be the address. I suspect it's the telephone
22 number, but I'm just guessing.

23 MS. BOJKO: I will do so. Those were not
24 redacted by Mr. Leming on the documents provided to
25 me, but I will verify.

1 EXAMINER PRICE: Verify with him, but you
2 can follow his model.

3 MS. BOJKO: Okay.

4 EXAMINER PRICE: Second, we would
5 appreciate it if you would work with Docketing to
6 determine a manner to submit this that would not
7 require them to scan two Bankers Boxes filled with
8 documents.

9 MS. BOJKO: Fair enough, Your Honor.
10 Thank you.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 MS. BOJKO: With that ruling, Your
13 Honor -- I'm checking my notes.

14 EXAMINER PRICE: One second. Hold on.
15 (Pause in proceedings.)

16 EXAMINER PRICE: Ms. Bojko, my apologies.

17 MS. BOJKO: Your Honor, I have in my
18 notes, so if we could please confirm because I think
19 Staff said it was admitted but my notes do not have
20 it. OCC Exhibit 11, is that one admitted?

21 EXAMINER SANYAL: I have it as admitted.

22 MS. BAIR: Yes.

23 MS. BOJKO: Okay. That's what Staff said
24 earlier. And then with the rulings you've made, I
25 don't think it's necessary to move the admission of

1 8, 15, 16, or 17.

2 EXAMINER SANYAL: 8 --

3 MS. BOJKO: Those are customer
4 complaints.

5 EXAMINER SANYAL: 8, 15, 16, and what
6 else?

7 MS. BOJKO: 17.

8 MS. BAIR: Those are not admitted,
9 correct?

10 MS. BOJKO: That's what I said. I'm not
11 going to move them. They were the individual
12 complaints.

13 I believe that's all the housekeeping for
14 me. Thank you, Your Honor.

15 EXAMINER PRICE: I do want to make a note
16 for the record that we are mindful of Mr. Whitt's
17 hearsay objection as to the contents of the Staff --
18 of the complaint investigations and it will go to the
19 weight of that evidence.

20 MS. BOJKO: So you're saying you're
21 denying the objection for admitting or not admitting
22 the Staff Report because of hearsay?

23 EXAMINER PRICE: I'm saying it is
24 admitted, but we understand the hearsay objection and
25 it will go to the weight of the evidence that the

1 evidence will be given.

2 MS. BOJKO: Okay. And you understand the
3 opposition to the objection?

4 EXAMINER PRICE: I understand it. I'm
5 not sure that I agree with it, but the Commission
6 will decide that.

7 Anything further?

8 Let's go off the record for one moment.

9 (Discussion off the record.)

10 EXAMINER PRICE: Ms. Bojko, you wanted to
11 renew your motion to compel?

12 MS. BOJKO: Yes, Your Honor. We had
13 filed a motion to compel PALMco's responses to
14 Requests for Admissions that were not answered and
15 they were attached to the motion to compel that we
16 filed at the Commission. We do not believe that
17 portion was ruled upon --

18 EXAMINER PRICE: It was not.

19 MS. BOJKO: -- at the prehearing
20 conference.

21 EXAMINER PRICE: It was not.

22 Unfortunately for you, I believe clever
23 lawyering is not a grounds for granting the --
24 granting the motion to compel. The motion to compel
25 is denied.

1 Let's go off the record now.

2 (Discussion off the record.)

3 EXAMINER PRICE: Let's get back on the
4 record.

5 Staff, would you care to call your
6 witness?

7 MR. EUBANKS: I'm sorry?

8 EXAMINER PRICE: That's okay. Would you
9 care to call your next witness?

10 MR. EUBANKS: Yes, Your Honor. At this
11 time, I would like to call Rob Fadley.

12 (Witness sworn.)

13 EXAMINER PRICE: Please be seated.

14 Proceed.

15 - - -

16 ROBERT FADLEY

17 being first duly sworn, as prescribed by law, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 By Mr. Eubanks:

21 Q. Good morning.

22 A. Good morning.

23 EXAMINER SANYAL: "Afternoon."

24 Q. I believe you've already introduced
25 yourself for the record, so I just want to pose a

1 couple of questions to you.

2 On page 11 of Kerry Adkins' testimony,
3 lines 15 through 18, beginning with the word "And",
4 he makes the following statement: "And OCC was only
5 provided settlement terms after several exclusive
6 meetings between PUCO Staff and PALMco, where the
7 bulk of the settlement terms were hammered out and
8 agreed to." Do you agree with that statement?

9 A. No.

10 Q. And why do you not agree with that
11 statement?

12 A. Staff never agreed to any term verbally,
13 and every single draft of the term sheet and every
14 single draft of the Stipulation was circulated to all
15 parties.

16 MR. EUBANKS: I have no further questions
17 for the witness.

18 EXAMINER PRICE: So, just to be clear,
19 Mr. Fadley, you agree that there were bilateral
20 meetings with Staff and PALMco?

21 THE WITNESS: Yes.

22 EXAMINER PRICE: But your contention is
23 that you never agreed to any terms in those bilateral
24 meetings.

25 THE WITNESS: That is correct, Your

Honor.

EXAMINER PRICE: Cross?

MS. BOJKO: Thank you, Your Honor.

- - -

CROSS-EXAMINATION

By Ms. Bojko:

Q. Mr. Fadley, were you at a meeting with Palmese -- or, PALMco and Indra on February 26, 2019?

A. Is that the one where the two ladies came? I can't think of her name. Briana? Briana?

Q. Since I wasn't at the meeting, I can't answer that.

A. Yes, I believe I was at that meeting if it's the one I'm thinking of.

Q. And were there additional meetings between PALMco and Indra prior to the Staff Report being filed on May 10th?

A. I believe we met with PALMco prior to -- say that again? Prior to?

Q. The Staff Report being filed on May 10th.

A. No, I don't think we met with them prior to the Staff Report other than that.

Q. But you would agree with me -- you would agree with me that you meant that Staff met bilaterally, to use the Examiner's word, met with

1 PALMco after the Staff Report was filed on May 10th?

2 A. Yes.

3 Q. And you would agree with me, I think,
4 that OCC was not present at some of those meetings?

5 A. Correct.

6 Q. And would you also agree with me, sir,
7 that you might not necessarily have been on a phone
8 call between Staff's counsel and counsel for PALMco?

9 A. I'm not aware of any calls that went on
10 that I wasn't on.

11 Q. Well, were you on a call that Ms. Bair
12 and I was on, regarding settlement discussions?

13 A. I don't recall one.

14 Q. Right. And were you on a call that
15 Ms. Bair and Mr. Whitt and I had?

16 EXAMINER PRICE: Can you -- just for the
17 benefit of the record, can you identify the dates of
18 these calls?

19 MS. BOJKO: Your Honor, of course I
20 cannot sit here, with no notice of what Mr. Fadley
21 was going to say or not, the dates of every single
22 phone call that may have occurred that I know of
23 between either myself and others or between Mr. Whitt
24 and Ms. Bair.

25 EXAMINER PRICE: Can you give an

1 approximate time --

2 MS. BOJKO: Sure.

3 EXAMINER PRICE: -- of these phone calls?

4 Q. (By Ms. Bojko) A couple days before the
5 Stipulation was filed, are you aware there were
6 conversations between Ms. Bair and Mr. Whitt?

7 A. I am not aware offhand of any
8 conversations between them, but I find it difficult
9 to believe that Ms. Bair would have agreed to any
10 terms without bringing them back to Staff.

11 Q. Well, I asked if you were on the
12 conversations.

13 A. Not that I recall.

14 Q. And you wouldn't necessarily know if
15 Ms. Bair had settlement discussions, or Mr. Eubanks
16 for that matter, would have had settlement
17 discussions with PALMco and Indra without yourself
18 present, would you?

19 A. I guess I wouldn't if I wasn't there.

20 EXAMINER PRICE: Were Ms. Bair or
21 Mr. Endress (sic) authorized to agree to any terms
22 without bringing them to you first?

23 THE WITNESS: No, they were not.

24 Q. Isn't it true, sir, that PALMco and Staff
25 had agreed to a term that was in the settlement that

1 was first presented to OCC prior to OCC seeing the
2 term?

3 A. That is absolutely not true.

4 Q. Well, sir, isn't it possible that there
5 could have been settlement negotiations between
6 counsel, and then your counsel could have brought
7 back terms that were talked about and discussed and
8 hypothetically agreed to and then final confirmation
9 would not have been given until your consent?

10 MR. EUBANKS: Objection, calls for
11 speculation. Objection, calls for the revealing of
12 confidential attorney-client information.

13 EXAMINER PRICE: Sustained.

14 Q. Sir, could Mrs. Bair -- Ms. Bair had, or
15 Mr. Eubanks -- I don't mean to exclude you, sir --
16 had conversations with PALMco and discussed various
17 settlement terms and then brought those terms to
18 Staff?

19 MR. EUBANKS: Same objection.

20 EXAMINER PRICE: Can I have the question
21 back again?

22 MS. BOJKO: Your Honor, I'm not talking
23 about substance, I'm talking about process.

24 EXAMINER PRICE: I'm just asking for the
25 question back again.

1 (Record read.)

2 EXAMINER PRICE: I'll allow the question.

3 A. I don't recall that ever happening.

4 Q. You would agree with me that there were
5 meetings held by Staff with PALMco, without OCC
6 present, that led to the Stipulation, correct?

7 MR. EUBANKS: Objection. Asked and
8 answered.

9 EXAMINER PRICE: You can answer.

10 A. We had meetings. I suppose ultimately
11 they did lead to a Stipulation. That was the purpose
12 of the negotiations.

13 MS. BOJKO: That's all I have, Your
14 Honor. Thank you.

15 EXAMINER PRICE: Mr. Whitt, any
16 questions?

17 MR. WHITT: No questions.

18 EXAMINER PRICE: Redirect?

19 MR. EUBANKS: No redirect, Your Honor.

20 EXAMINER PRICE: Thank you, Mr. Fadley.
21 You're excused.

22 At this time, we will adjourn the
23 hearing --

24 MR. EUBANKS: Yes.

25 (Laughter all around.)

EXAMINER PRICE: -- subject to numerous late-filed exhibits primarily, but not limited to new redacted copies of various exhibits submitted by OCC, as well as potentially the deposition transcript of Mr. Palmese, which may or may not take place in the next couple weeks. After the deposition transcript is filed, a briefing schedule will be set by Examiner Entry.

Any other issues for the Bench?

Any other issues?

Seeing none, we are adjourned.

(Thereupon, the proceedings concluded at 1:58 p.m.)

- - -

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Friday, September 20, 2019, and carefully compared with my original stenographic notes.

Carolyn M. Burke
Carolyn M. Burke, Registered
Professional Reporter, and
Notary Public in and for the
State of Ohio.

My commission expires July 17, 2023.

- - -



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in

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

Summary: Transcript Volume II - 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, hearing held on September 20th, 2019. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Burke, Carolyn