

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

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 10:09 a.m. on Thursday,  
September 19, 2019.

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VOLUME I

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and

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On behalf of Ohio's Residential  
Consumers.

- - -

1	INDEX		
2	- - -		
3	WITNESSES		PAGE
4	Miranda Warner		
	Direct Testimony by Ms. Warner		11
5	Cross-Examination by Mr. Whitt		12
	Cross-Examination by Ms. Bojko		15
6			
	Melissa Scarberry		
7	Direct Examination by Ms. Bair		19
	Cross-Examination by Ms. Bojko		21
8	Redirect Examination by Ms. Bair		191
9	- - -		
10	STAFF EXHIBIT	IDENTIFIED	ADMITTED
11	1 - Testimony in Support of	20	193
12	the Stipulation of		
	Melissa Scarberry		
13	- - -		
14	JOINT EXHIBIT	IDENTIFIED	ADMITTED
15	1 - Joint Stipulation and	20	193
16	Recommendation		
17	- - -		
18	OCC EXHIBITS	IDENTIFIED	ADMITTED
19	3 - DIS Case Record for	30	194
	Case No. 10-0138-GA-CRS		
20	4 - DIS Case Record for	30	194
	Case No. 10-0139-EL-CRS		
21	5 - Staff letter filed in	41	194
22	Case Nos. 10-0139-EL-CRS		
	and 10-0138-GA-CRS		
23	6 - Staff Report	49	194
24	7 - 486 Customer Contacts	57	--
25			

INDEX (Continued)

- - -

OCC EXHIBITS	IDENTIFIED	ADMITTED
--------------	------------	----------

8 - 3/25/2019 e-mail from William Schaaf	60	--
---	----	----

9 - 1/22/2016 e-mail from William Haiker	81	197
---	----	-----

10 - 2/12/2016 e-mail from William Haiker	82	197
--	----	-----

11 - 1/31/2019 e-mail from Barbara Bossart	84	198
---	----	-----

12 - 6/26/2019 e-mail from Barbara Bossart	87	198
---	----	-----

13 - INT-2-015, INT-2-016, INT-2-017, RPD-2-015, RPD-2-016, RPD-2-017	112	200
---	-----	-----

14 - INT-2-012	133	--
----------------	-----	----

15 - 4/10/2019 e-mail from William Schaaf	148	--
--	-----	----

16 - 5/1/2019 e-mail from Keenia Joseph	158	--
--	-----	----

17 - 5/1/2019 e-mail from Keenia Joseph	163	--
--	-----	----

- - -

Thursday Morning Session,  
September 19, 2019.

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EXAMINER SANYAL: Good morning, everyone.  
The Public Utilities Commission of Ohio has called  
for hearing, Case No. 19-957-GE-COI, which is  
captioned as: In the Matter of the Commission's  
Investigation into PALMco Power Ohio LLC d/b/a Indra  
Energy and Indra Energy's Compliance with the Ohio  
Administrative Code and Potential Remedial Actions  
for Non-Compliance.

My name is Anna Sanyal, and along with  
Greg Price, we are the Attorney Examiners assigned to  
this case.

At this point, let's do appearances  
really quickly. We'll start with the Company.

MR. WHITT: Thank you, Your Honor. On  
behalf of PALMco Power Ohio, LLC and PALMco Energy  
Ohio, LLC, Mark Whitt and Rebekah Glover from the law  
firm of Whitt Sturtevant LLP, 88 East Broad Street,  
Suite 1590, Columbus, Ohio 43215.

EXAMINER SANYAL: Thank you.

And we'll go with Staff next.

MS. BAIR: Thank you, Your Honor. On  
behalf of the Staff of the Public Utilities

Commission of Ohio, Dave Yost, Attorney General, Jodi Bair and Robert Eubanks, Assistant Attorneys General, 30 East Broad Street, Columbus, Ohio 43215.

EXAMINER SANYAL: Thank you.

And OCC.

MR. ETTER: Good morning, Your Honor. On behalf of residential utility consumers, the Office of the Ohio Consumers' Counsel, Bruce Weston, Consumers' Counsel, Terry L. Etter and Amy Botschner O'Brien, Assistant Consumers' Counsel. We are at 65 East State Street, 7th Floor, Columbus, Ohio 43215.

Also for OCC is Kimberly Bojko with Carpenter Lipps & Leland. They are at 280 North High Street, Suite 1300, Columbus, Ohio 43215.

EXAMINER SANYAL: Thank you.

So we have had some discussions off the record, so I will try to quickly get that put on the record.

So we have a couple of pending motions. We have the Company's motion to strike all OCC expert testimony, and a Staff Motion to Quash subpoenas for Witnesses Fadley and Bossart. These were filed yesterday. OCC has indicated that it will have a response to these motions by noon today, so we will wait to rule on those motions until we have reviewed

1 OCC's response.

2 It is also my understanding that we have  
3 some consumer witnesses that OCC has subpoenaed who  
4 are not here yet, though it appears a couple of them  
5 might have shown up by now, but OCC is also in the  
6 process of confirming which consumers will be  
7 available today versus tomorrow.

8 Ms. Bojko, do you, or Mr. Etter, do you  
9 have an update on the witnesses?

10 MR. ETTER: No, I haven't heard back yet  
11 from any of the witnesses.

12 EXAMINER SANYAL: Okay. So --

13 MS. BOJKO: We believe the one public  
14 witness is here, Your Honor.

15 MR. ETTER: Yes, the one public.

16 EXAMINER SANYAL: Okay. So what we're  
17 going to do is we're going to allow OCC to reach out  
18 to these consumers and see if they're available  
19 today. It is our preference to conduct -- to receive  
20 testimony from these public witnesses first thing  
21 today and then follow it up with Staff Witness  
22 Melissa Scarberry, since the other experts, we're not  
23 sure yet if they will be able to provide testimony or  
24 not.

25 So I am going to give OCC about 30

1 minutes to give me an update, so that would be  
2 around, we should be back here around 10:45.

3 Any questions about what we're doing?

4 Okay. Well, let's go off the record.  
5 I'll be back at 10:45, hopefully to hear some good  
6 news.

7 MS. BOJKO: Thank you, Your Honor.

8 (Recess taken.)

9 EXAMINER SANYAL: OCC had about 30  
10 minutes to contact the public witnesses it had  
11 subpoenaed.

12 I understand, from what Mr. Terry  
13 said when -- Mr. Etter said while we were off the  
14 record, that the person responsible for contacting  
15 these witnesses was out for two weeks, so we're still  
16 trying to determine if these witnesses will be  
17 available.

18 I would like to note that OCC subpoenaed  
19 these witnesses, so we expect OCC to follow-up and  
20 let the Commission know as to their status,  
21 especially since we had informed OCC about our order  
22 of -- our preferred order of witnesses. So we will  
23 get an update after lunch from what I understand.

24 So, at this time, I understand there is a  
25 public witness who wishes to provide testimony, so I



1 will proceed with that witness, and then we will take  
2 Staff Witness Scarberry, and then I understand OCC  
3 will file a response to the pending motions, yes?  
4 Correct?

5 MS. BOJKO: Correct, Your Honor.

6 EXAMINER SANYAL: Okay. And then we will  
7 review that, and I assume we'll take lunch so we have  
8 time to review the motions and the response, and then  
9 we'll have a ruling on those. Any questions?

10 Okay. Well, I would like to call -- I  
11 don't know the name of the public witness.

12 MS. BOJKO: Ms. Warner, Your Honor.

13 EXAMINER SANYAL: Okay. Ms. Warner, if  
14 you want to come up here.

15 THE WITNESS: Where to?

16 EXAMINER SANYAL: Over here would be  
17 great. And then, Ms. Warner, I'll swear you in, so  
18 if you'll --

19 THE WITNESS: Oh, I swear very well.

20 EXAMINER SANYAL: Oh, good.

21 (Laughter all around.)

22 EXAMINER SANYAL: We'll just try to keep  
23 that off the record.

24 (Laughter all around.)

25 (Witness sworn.)

1 EXAMINER SANYAL: Okay. If you'll be  
2 seated and then if you'll give us your full name and  
3 your address for the record.

4 THE WITNESS: Okay. My name is -- okay,  
5 all you attorneys don't laugh. My name is Miranda  
6 Warner. I hear giggling. The address is 670 Raleigh  
7 Drive, R-a-l-e-i-g-h, Columbus, 43228.

8 MS. BOJKO: Could we ask her to use the  
9 microphone, please?

10 EXAMINER SANYAL: Okay. Would you,  
11 please, just you can move the microphone, so if  
12 you'll move it close to you.

13 THE WITNESS: Does this bend?

14 EXAMINER SANYAL: Yes. I'll help you.

15 THE WITNESS: Nothing.

16 EXAMINER SANYAL: Try speaking into it.

17 THE WITNESS: Is this any better?

18 EXAMINER SANYAL: No.

19 THE WITNESS: How is this? It works.  
20 Do I need to repeat?

21 EXAMINER SANYAL: No, I think she has  
22 everything. So, Ms. Warner, why don't you just give  
23 us a brief overview of why you're here. And then  
24 what's going to happen is then I'll let counsel from  
25 various parties ask some follow-up questions, okay?

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MIRANDA WARNER

presented herself as a public witness, and being  
first duly sworn, testified as follows:

DIRECT TESTIMONY

THE WITNESS: It was in 2018, I had a  
door-to-door salesperson come from PALMco and it  
sounded really good. You know, I'm retired, on a  
small pension, and trying to save money any way I  
can, so the offer that he presented sounded like,  
well, it will save me a few pennies, that'd be great.  
And it started off, I think the rate was .39 and so  
that sounds great and I signed up for it.

And it worked really well for a while and  
then, all of a sudden, the rate jumped. And at one  
point -- I mean, for three months it stayed steady.  
And then for the four months after that, the rate was  
all over the place. And then it kind of settled down  
a little bit.

And then later that year, you know, first  
part of 2019, latter part of 2018, the rate  
quadrupled and my bill went up a hundred dollars and,  
whoa, wait a minute, something is wrong. So I called  
PALMco and the answer was not satisfactory to me. I  
didn't -- I don't remember hearing any of that. And

1 so then I called Public Utilities and filed a  
2 complaint. And shortly after that, I cancelled my  
3 contract with them.

4 EXAMINER SANYAL: I actually have some  
5 follow-up questions before I allow the other  
6 attorneys. Is this for electric or gas, just for the  
7 record?

8 THE WITNESS: Okay. The problem was with  
9 gas.

10 EXAMINER SANYAL: Okay. Mr. Whitt, any  
11 questions?

12 MR. WHITT: Just very briefly.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Whitt:

16 Q. Ma'am, this person, this door-to-door  
17 person, how did you know that they were from PALMco?  
18 Did they have a badge or something to identify  
19 themselves?

20 A. Yes.

21 Q. So they --

22 A. They had a folder with papers and that  
23 kind of stuff.

24 Q. Okay. So this person was forthright  
25 about who they were working for?

1           A.    Yes.

2           Q.    Okay.  After you talked to this  
3 individual, did you have a telephone conversation  
4 with anyone about the contract?

5           A.    Yes.  And during the -- excuse me.  
6 During the telephone conversation I had some  
7 questions, but the person on the other end of the  
8 line couldn't answer my questions before I could  
9 answer their questions, so that was a bit  
10 frustrating, but yes, there was a third-party  
11 telephone call.

12          Q.    And was the PALMco salesperson around  
13 when that phone call was made, or did the phone call  
14 occur after this person left?

15          A.    Truthfully, I can't remember if he had  
16 stayed in the living room while the phone call was  
17 taking place or if he had stepped outside or if he  
18 had left.  I don't remember that.

19          Q.    Fair enough.

20                And did you receive some paperwork at  
21 some point after you had talked to the salesperson?  
22 Did you get something in the mail, what they -- we  
23 sometimes call it a "Welcome Kit," but just something  
24 with some papers letting you know about PALMco?

25          A.    I don't recall.

1           Q.    Okay.  And when you cancelled your  
2   service, you weren't charged anything to do that,  
3   were you?

4           A.    No.

5           Q.    And were you subsequently issued a refund  
6   or bill credit or something like that in response to  
7   your complaint?

8           A.    Truthfully, I don't recall if I did or  
9   not.  I might have.  And I didn't think to hunt for  
10   it yesterday, you know, trying to get information  
11   together, you know, from the bills and that kind of  
12   thing, and I never even thought to see if I had made  
13   a notation about a refund check from PALMco, so I --  
14   I can't answer the question one way or the other.

15          Q.    Okay.  Do you feel that your -- when you  
16   talked to the people at the PUCO, that your concern  
17   had been satisfactorily resolved?

18          A.    Well, at the time, I thought that I had  
19   done everything I could that, you know, I was not  
20   satisfied and I'm not putting up with that anymore,  
21   so I cancelled and I figured that was the only thing  
22   I could do.  I didn't know I had any other recourse.

23               MR. WHITT:  Fair enough.  Thank you,  
24   ma'am.

25               EXAMINER SANYAL:  Staff or OCC?

1 MS. BAIR: Staff has no questions.

2 MS. BOJKO: Just a clarifying question,  
3 Your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Ms. Bojko:

7 Q. Ms. Warner, you answered the question of  
8 the Attorney Examiner that you were talking about  
9 gas, but you also had electric service with PALMco?

10 A. Yes, ma'am.

11 Q. And what did you review before coming  
12 here today to make your statement?

13 A. Well, after I found out about the meeting  
14 and I had been invited to meet all of you, uh-oh, I  
15 better get some facts straight, so I sat down and I  
16 went through three years' worth of gas and electric  
17 bills, and I looked at the rate that was charged, how  
18 many units were used and what my bill was, and I did  
19 that for gas and for electric.

20 Q. And after that review, what did you  
21 conclude about the rates you were charged?

22 A. Well, as far as the gas rates were  
23 concerned, they were all over the place. It wasn't  
24 what I expected at all when I signed up. You know, I  
25 figured, okay, this is the rate and that's what it's

1 going to be and I can budget my household ledger and  
2 figure out how to "rob Peter to pay Paul" kind of  
3 thing so I could keep a real tight rein on my  
4 expenditures, and when it went wonky, I got to find  
5 out about this.

6 And the electric bill has stayed pretty  
7 steady. I mean they have -- I could not find the  
8 electric contract -- or, no. I could not find the  
9 gas contract. I did find the electric contract and  
10 they have honored that, the electric, and so, you  
11 know, I don't have any particular complaints about  
12 that, but it was the gas that seemed totally  
13 inappropriate.

14 And it felt almost -- to me it felt  
15 almost like a bait-and-switch. Oh, we're going to  
16 give you this rate and that's, boy, that's great, I  
17 can do my budgeting and everything and I thought  
18 that's what it was going to be. And then, later down  
19 the road, it's not what I thought it was going to be  
20 and so I figured I better look into it.

21 MS. BOJKO: Thank you.

22 I have no further questions, Your Honor.

23 Thank you for your time today.

24 THE WITNESS: Thank you.

25 EXAMINER SANYAL: Mr. Whitt, any



1 questions?

2 MR. WHITT: No, Your Honor.

3 EXAMINER SANYAL: Okay.

4 Ms. Warner, I just have one follow-up  
5 question. So just to -- just so I'm on the same  
6 page. Your electric prices, you had no complaints  
7 with your electric contract.

8 THE WITNESS: Until I found out AEP has a  
9 lower rate than PALMco or Indra, so I may have to  
10 switch over for that too.

11 EXAMINER SANYAL: Okay. Do you know  
12 what --

13 THE WITNESS: I normally don't go  
14 hunting. I don't go shopping. You know, once it's  
15 set, just leave it alone, you know, and I don't have  
16 time to go hunting prices every month or every three  
17 months.

18 And even when I get my bills, I figure  
19 okay, I know what the rate is going to be, I know  
20 what my bill is going to be. So I get the envelope  
21 in the mail and it says gas. Okay. So I open up the  
22 envelope and unfold it. Pay this amount. Okeydokey.  
23 Gas bill, pay it, and I'm done.

24 And I don't take the time to go over the  
25 document like a federal documents inspector and look

1 at each and every single solitary line and look for  
2 any, you know, discrepancies. I figure it's going to  
3 be what I signed up for it to be. And when it  
4 started going off of that, you know, I thought there  
5 might be a problem.

6 EXAMINER SANYAL: Okay. And then just to  
7 clarify, Ms. Warner, you don't know the prices you  
8 paid for electric with Indra?

9 THE WITNESS: Yes, I do.

10 EXAMINER SANYAL: How much was that?

11 THE WITNESS: As a matter of fact -- here  
12 it is. Oops, sorry. 0.07900.

13 EXAMINER SANYAL: Okay.

14 THE WITNESS: And that -- that is what  
15 was on the electric contract.

16 EXAMINER SANYAL: Okay. That's all the  
17 questions I have.

18 Any more questions of this witness?

19 Okay. You may step down. Thank you,  
20 Ms. Warner.

21 THE WITNESS: Do I need to turn this off?

22 EXAMINER SANYAL: You can leave it on.

23 THE WITNESS: Maybe the next person will  
24 have a soft voice. Thank you.

25 EXAMINER SANYAL: Thank you.

1 THE WITNESS: Would it be permissible for  
2 me to sit in and listen for a while?

3 EXAMINER SANYAL: Yes. It's a public  
4 hearing, so you may.

5 We'll take Staff Witness --

6 MS. BAIR: Thank you.

7 EXAMINER SANYAL: -- Scarberry next.

8 MS. BAIR: Thank you, Your Honor. The  
9 Staff calls Melissa Scarberry as its witness.

10 (Witness sworn.)

11 EXAMINER SANYAL: You may be seated.

12 Ms. Bair, you may proceed when you're  
13 ready.

14 MS. BAIR: Thank you.

15 - - -

16 MELISSA SCARBERRY

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

19 DIRECT EXAMINATION

20 By Ms. Bair:

21 Q. Could you please state your name and  
22 spell it for the record.

23 A. Melissa Scarberry. M-e-l-i-s-s-a,  
24 Scarberry, S-c-a-r-b-e-r-r-y.

25 Q. By whom are you employed and what are

1 your responsibilities?

2 A. The Public Utilities Commission of Ohio,  
3 Service Monitoring and Enforcement Department. We  
4 review competitive provider applications for  
5 certification as well as follow up on any complaints  
6 or investigations.

7 MS. BAIR: Your Honor, I would like to  
8 have marked as Joint Exhibit 1, the Stipulation and  
9 Recommendation in this case, and also Staff  
10 Exhibit 1, Melissa Scarberry's Direct Testimony.

11 EXAMINER SANYAL: Okay. These shall be  
12 so marked.

13 (EXHIBITS MARKED FOR IDENTIFICATION.)

14 Q. Ms. Scarberry, could you please identify  
15 what has been marked as Joint Exhibit 1?

16 A. It is a copy of the Joint Stipulation and  
17 Recommendation for this case.

18 Q. Thank you. And could you please identify  
19 Joint -- Staff Exhibit 1?

20 A. It is a copy of my testimony in support  
21 of the Stipulation.

22 Q. Was this testimony prepared by you or  
23 under your direction?

24 A. Yes.

25 Q. Do you have any additions or corrections

1 to make to the testimony at this time?

2 A. No.

3 Q. If I were to ask you the questions  
4 contained in your prefiled testimony, Staff  
5 Exhibit 1, would your answers be the same today?

6 A. Yes, they would.

7 MS. BAIR: Thank you, Your Honor. I move  
8 Staff Exhibit 1 and Joint Exhibit 1 into the record,  
9 subject to cross-examination.

10 EXAMINER SANYAL: Okay. Well, let's do  
11 cross. We'll go with Ms. Bojko.

12 MS. BOJKO: Your Honor, I would move to  
13 ask that PALMco, Indra, parties supporting the  
14 Stipulation on the same side of the issue, go first.

15 EXAMINER SANYAL: Sure.

16 Mr. Whitt.

17 MR. WHITT: I have no questions.

18 EXAMINER SANYAL: Okay. Ms. Bojko.

19 MS. BOJKO: Thank you.

20 - - -

21 CROSS-EXAMINATION

22 By Ms. Bojko:

23 Q. Good morning, Ms. Scarberry.

24 A. Good morning.

25 Q. On page 2 of your testimony, you state

1 that you are responsible for analyzing competitive  
2 providers' compliance with rules; is that correct?

3 A. Yes.

4 Q. And you're also responsible for  
5 recommending enforcement actions?

6 A. Yes.

7 Q. And you're also responsible for  
8 monitoring the competitive industry?

9 A. Yes.

10 Q. And that role is part of the Service  
11 Marketing and Enforcement Division, also known as  
12 SMED?

13 A. Yes. "Service Monitoring."

14 Q. Oh. "Monitoring." Sorry, my apologies.

15 And in this role is it fair to say that  
16 you are very familiar with the certified retail  
17 electric service and certified retail natural gas  
18 service rules?

19 A. Yes.

20 Q. And also with the minimum standards that  
21 are contained in Chapters 4901:1-21 and 4901:1-29?

22 A. Yes.

23 Q. And you're also very familiar, that  
24 includes the certification rules for a supplier to  
25 become certified by the Commission to provide service

1 in Ohio?

2 A. What includes?

3 Q. Are you familiar with the certification  
4 rules which is where the rules set forth how a  
5 supplier becomes certified to provide either electric  
6 or natural gas service in Ohio?

7 A. Yes.

8 Q. And this was -- your current role is what  
9 your role was in April 2019; is that correct?

10 A. Yes.

11 Q. And was it also your role from October 1,  
12 2018 till April 15, 2019?

13 A. Yes.

14 Q. You've been in this role, I guess, since  
15 February 2015; is that how I understand your  
16 testimony?

17 A. Correct.

18 Q. What was your role prior to February  
19 2015?

20 A. I worked in a different department at the  
21 Commission.

22 Q. Which department was that?

23 A. At the time it was the Utilities  
24 Department.

25 Q. And what was your role in the Utilities

1 Department?

2 A. I worked in the Telecommunications  
3 Division.

4 Q. How long has PALMco been certified?  
5 Well, let's back up.

6 If I refer to the competitive supplier  
7 that's the subject of this investigation, we've heard  
8 a couple terms today, it's PALMco Power is the  
9 electric side and PALMco Energy is the gas side and  
10 both of those entities are referred to as PALMco  
11 Ohio; is that correct?

12 A. That's how we refer to them, yes.

13 Q. And then they're also registered to do  
14 business as Indra Energy or Indra; is that correct?

15 A. Yes.

16 Q. So if I refer to the entities as PALMco,  
17 you'll understand what I'm talking about?

18 A. Yes.

19 Q. Okay. How long has PALMco been certified  
20 to provide services in Ohio?

21 A. I don't know off the top of my head. I  
22 would have to look that up.

23 Q. Subject to check, would you believe that  
24 it's about 2010 for both electric and gas?

25 A. I believe that's accurate.



1           Q.     During PALMco's certification, at least  
2     since you've been in your current role since 2015,  
3     were you responsible for analyzing PALMco's  
4     compliance with the Commission's rules?

5           A.     For most of that time I would have been  
6     one of the people responsible.

7           Q.     And who else would have been responsible?

8           A.     It would depend on who was working on  
9     certifications at each renewal and who was reviewing  
10    complaints during that time period.

11          Q.     So what exactly was your role in  
12    analyzing PALMco's compliance with the rules?

13          A.     Depends on exactly which time.

14          Q.     Okay. So, since 2015, you've had  
15    different roles within SMED?

16          A.     I've had different primary roles, yes.

17          Q.     Okay. Can you tell me the rough time  
18    periods of those different primary roles?

19          A.     The first year, around, I worked  
20    primarily on the government aggregation applications  
21    and helped with the other reviews, but it was not my  
22    primary responsibility.

23          Q.     Other reviews of certification  
24    applications?

25          A.     Yes.

1           Q.    Okay.  And then what about after 2016  
2   roughly?

3           A.    Then I started reviewing the electric  
4   certifications and some gas.

5           Q.    So, since that period, have you primarily  
6   been responsible for reviewing electric and gas  
7   certification applications?

8           A.    Mostly electric.

9           Q.    Mostly electric?

10          A.    Uh-huh.

11          Q.    Do you recall any period during  
12   certification, since your role in February 2015 or  
13   '16, did you recommend enforcement actions against  
14   PALMco?

15          A.    After our most-recent investigation,  
16   Staff recommended enforcement actions.

17          Q.    Was that prior to April 16th, when Staff  
18   filed a letter in the certification dockets, or was  
19   that after the Commission Ordered Investigation?

20          A.    Our investigation of the complaints  
21   started slightly prior to that.

22          Q.    Do you know about when?

23          A.    The month of December, 2018.

24          Q.    And as your role is to monitor the  
25   competitive industry, have you monitored the

1 competitive industry as it relates to PALMco during  
2 your period with SMED?

3 A. Yes.

4 Q. And have you specifically reviewed the  
5 CRES and CRNGS certification applications for PALMco?

6 A. I have reviewed them, yes, but my primary  
7 responsibility was the electric.

8 Q. And just for the record when I said  
9 "CRES," you understood me to mean certified retail  
10 electric service?

11 A. Yes.

12 Q. And "CRNGS," you understood me to mean  
13 certified retail natural gas service?

14 A. Yes.

15 Q. Thank you.

16 And are you familiar with PALMco's  
17 most-recent renewal filings that were made in  
18 January 2018?

19 A. Yes.

20 MS. BAIR: I'd like to object now. The  
21 relevance of the renewal proceedings have nothing to  
22 do with this hearing. It's irrelevant.

23 MS. BOJKO: Actually, Your Honor, it's  
24 very relevant. The certificates and the managerial  
25 capability to operate a CRES and CRNGS is in the

1 Stipulation. It's a key issue of the Stipulation.  
2 It's an issue in the Scarberry testimony in support,  
3 at pages 4, 5, and 6. It's in the Staff Report  
4 throughout.

5 The certification was stated as an issue  
6 in the Commission's April 17, 2019, Entry, where the  
7 Commission required a hearing be held at which PALMco  
8 shall, among other things, have the opportunity to  
9 respond to the findings contained in the Staff Report  
10 and show cause why its certification as a CRES  
11 provider and its certification as a CRNGS supplier  
12 should not be suspended, rescinded, or conditionally  
13 rescinded.

14 R.C. 4928.08 and 4929.20 allow the  
15 Commission to suspend, rescind, or conditionally  
16 rescind the certification of a supplier if the  
17 Commission determines that the supplier has failed to  
18 comply with certification standards or has engaged in  
19 anticompetitive or unfair, deceptive, or  
20 unconscionable acts or practices in the state. This  
21 is stated in the Staff Report and this is exactly  
22 what this case is about.

23 And also Commission Rules 4901:1-24-13(E)  
24 and 4901:1-27-13(E) provide examples of the reasons  
25 that the Commission has the authority to do these

1 things and, again, that's exactly what the Commission  
2 said that this hearing would be about, and these  
3 items are discussed quite frequently and thoroughly  
4 in the settlement as well as Ms. Scarberry's  
5 testimony; so it's very relevant.

6 MS. BAIR: And, Your Honor, I would renew  
7 my objection. It's not relevant to the settlement.  
8 As stated in the settlement, they're not going to  
9 renew their application, so I don't see how it is  
10 relevant. In fact, that's one of the main terms of  
11 the settlement.

12 EXAMINER SANYAL: I'm going to overrule  
13 your objection.

14 You may continue, Ms. Bojko.

15 MS. BOJKO: Thank you. I apologize, Your  
16 Honor, I don't remember which question was posed.  
17 Could we have that reread?

18 EXAMINER SANYAL: Sure.

19 (Record read.)

20 MS. BOJKO: Your Honor, at this time, I  
21 would like to mark as OCC Exhibit -- could we reserve  
22 OCC Exhibits 1 and 2 for our testimony, Your Honor?  
23 So this would be OCC Exhibit 3.

24 EXAMINER SANYAL: Okay. And what is it?

25 MS. BOJKO: Oh, my apologies. Your

1 Honor, this is a packet with the docket case  
2 10-0138-GA-CRS that includes the application filed in  
3 the gas certification case as well as the  
4 certificates received and subsequent notices.

5 May I approach?

6 EXAMINER SANYAL: Yes, you may.

7 Sorry, just so I'm clear, this is just  
8 for the gas case, right?

9 MS. BOJKO: Yes, Your Honor.

10 EXAMINER SANYAL: Okay.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MS. BOJKO: At this time, Your Honor, I'd  
13 like to mark as OCC Exhibit 4, a subsequent packet  
14 for the electric certification case. It's  
15 10-139-EL-CRS. We have produced the full docket card  
16 as well as the application, renewal application that  
17 was filed in January 2018, subsequent certificates,  
18 as well as notices of changes.

19 EXAMINER SANYAL: It shall be so marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MS. BOJKO: May I approach?

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

25 MS. BOJKO: Thank you, Your Honor.

1           Q.     (By Ms. Bojko) Ms. Scarberry, do you have  
2     in front of you what's been marked as OCC Exhibit 3?

3           A.     I do.

4           Q.     Does this appear to be the Commission's  
5     docket card as well as public filings made in the  
6     docket on the DIS system?

7           A.     Yes.

8           Q.     And are you familiar, is this the  
9     application and the subsequent filings that you  
10    stated you're familiar with?

11          A.     Yes.

12          Q.     Ms. Scarberry, are you familiar with  
13    PALMco's corporate structure that's provided for in  
14    its applications?

15          A.     I am somewhat familiar with it, yes.

16          Q.     How many -- do you know how many entities  
17    that the PALMco family owns?

18          A.     Not off the top of my head.

19          Q.     There's a -- are you familiar with an  
20    exhibit attached to applications called B-3, which  
21    lists the corporate structure -- excuse me, that's  
22    not it. It's --

23                 MS. BAIR: Which exhibit are you looking  
24    at?

25                 MS. BOJKO: It's Exhibit C-10.

1 MS. BAIR: Of which exhibit?

2 MS. BOJKO: It's both.

3 MS. BAIR: C-10 of OCC Exhibit 3 and C-10  
4 of OCC Exhibit 4?

5 MS. BOJKO: Yes. I was just trying to  
6 ask her about applications that are filed and whether  
7 there's an exhibit called C-10 which depicts the  
8 corporate structure of the Company.

9 Q. (By Ms. Bojko) Are you familiar with  
10 that?

11 A. Yes.

12 Q. Okay. And on the corporate structures  
13 listed for both of the certification applications, it  
14 appears that there are 22 entities in the PALMco  
15 family; is that correct?

16 A. Yes.

17 Q. And --

18 MS. BOJKO: I'm guessing that your guys'  
19 copy is difficult to review?

20 Q. (By Ms. Bojko) Do you know whether the  
21 companies that are listed, all but two are called  
22 PALMco either Power or Energy?

23 MS. BAIR: Your Honor, our copy would not  
24 be legible to that degree.

25 EXAMINER SANYAL: Do you have a more



1 legible copy, Ms. Bojko?

2 MS. BOJKO: I do of mine, Your Honor. I  
3 don't have copies of it. If we could maybe show it  
4 to the witness?

5 EXAMINER SANYAL: Sure.

6 And, Ms. Scarberry, I mean, are you able  
7 to read this one at all?

8 THE WITNESS: Part of it.

9 EXAMINER SANYAL: Okay.

10 MS. BOJKO: My apologies, Your Honor. I  
11 didn't realize the copies were not legible.

12 Q. (By Ms. Bojko) Now that you have a more  
13 legible copy in front of you, is it your  
14 understanding there are 22 PALMco entities in the  
15 PALMco family; two of them are called Columbia  
16 utilities and the others are with the PALMco name,  
17 either PALMco Energy or PALMco Power?

18 A. Yes, that is what it shows.

19 Q. And PALMco Power is it your understanding  
20 is the electric side and PALMco Energy is the gas  
21 side?

22 A. In Ohio, yes.

23 Q. And does it appear there are sister  
24 companies or that's the similar structure in other  
25 states?

1           A.     Maybe.

2           Q.     Well, the other states do list a PALMco  
3 Energy Connecticut, for instance, and a PALMco Power  
4 Connecticut.

5           A.     Yes.

6           Q.     Is that correct?

7           A.     Yes.

8           Q.     And if a prior version of either the  
9 application or financial documents, that the PALMco  
10 company filed with the Commission, had a different  
11 number of entities, you couldn't tell me why that  
12 would be, could you?

13          A.     No. Exhibit C-10 is not part of my  
14 regular review of the applications.

15          Q.     Does the corporate structure explain who  
16 the current owners of the PALMco companies are?

17          A.     Yes.

18          Q.     And who are the owners?

19          A.     It says that Robert Palmese, Christina  
20 Palmese, Ronald Palmese Jr., and Steven Palmese each  
21 own 25 percent of the LLCs listed below, minus  
22 Columbia Utilities, LLC.

23          Q.     And is it your understanding that the  
24 same individuals own the PALMco Ohio entities?

25          A.     Yes.

1 Q. Are you familiar with the PALMco family?

2 A. Only through their applications.

3 Q. And have you had the opportunity to meet  
4 with Robert Palmese?

5 A. I don't -- I don't remember.

6 Q. And is it your understanding that  
7 references to "PALMco" in the settlement are to  
8 PALMco Energy Ohio and PALMco Power Ohio which is the  
9 gas side?

10 A. I'm sorry, "references"?

11 Q. Yeah. References in the settlement --

12 A. In the settlement.

13 Q. -- to "PALMco" are referring to both  
14 PALMco Energy, which is the gas side, and PALMco  
15 Power, which is the electric side.

16 A. Yes.

17 Q. And do you know whether the same officers  
18 and directors are in place for both of the Ohio  
19 companies?

20 A. I would have to verify. I believe they  
21 are.

22 Q. Do you know what Robert Palmese's role,  
23 through his filings, is with the Ohio companies?

24 A. Not without looking back at the filings.

25 Q. You can see that in let's take OCC

1 Exhibit 3 for instance. If you look at Exhibit A-14.

2 EXAMINER SANYAL: I'm sorry, Ms. Bojko,  
3 which? Both? For both of these exhibits?

4 MS. BOJKO: I said let's just look at OCC  
5 Exhibit 3, Your Honor, but I do believe they're the  
6 same for both.

7 THE WITNESS: Which exhibit number? I'm  
8 sorry.

9 MS. BOJKO: A-14.

10 THE WITNESS: Okay.

11 Q. (By Ms. Bojko) Is this a list that the  
12 supplier is required to file of the principal  
13 officers, directors, and partners?

14 A. Yes, it is.

15 Q. And here from this list, do you see that  
16 Robert Palmese is listed as the President/Managing  
17 Member?

18 A. Yes.

19 Q. And then on subsequent notices, if you  
20 look at the last notice in your packet which, I'm  
21 sorry, there are no page numbers but it's the last  
22 two documents -- pages. Last two pages --

23 A. Last two pages.

24 Q. -- of your document.

25 A. Okay.

1           Q.    If you flip over to the second page, it  
2 starts at the bottom of the first page.  It's  
3 providing a new A-14; Principal Officers, Directors  
4 and Partners.  Do you see that?

5           A.    I do.

6           Q.    And isn't it true that since the filing  
7 in January 2018 to the May 1, 2019 notice of change  
8 filing, notice of material change, all of the  
9 principal officers, directors, and partners are  
10 different in PALMco?

11          A.    If this is a complete list, yes, they're  
12 different.

13          Q.    Isn't it true that since the application  
14 was filed in January 2018, seven notices of material  
15 change to the application have been filed?

16          A.    I'm not sure of the exact number.

17          Q.    If you look on the docket card, you can  
18 see "Notice of Material Change" and there are seven  
19 of them listed.

20               EXAMINER SANYAL:  Ms. Bojko, could you  
21 let us know where you're looking on the docket card?

22               MS. BOJKO:  The first page of the docket  
23 card, there are seven notices of material change,  
24 starting after the renewal application was filed.

25               EXAMINER SANYAL:  What page number?

1 MS. BOJKO: Page 1. Starting after the  
2 application was filed January 16, 2018.

3 MS. BAIR: Your Honor, I'd like to object  
4 right now. We're willing to stipulate these two  
5 applications into the record. So far, Ms. Bojko has  
6 simply read everything contained in the filing, and  
7 the document speaks for itself.

8 EXAMINER SANYAL: Ms. Bojko.

9 MS. BOJKO: Well, I haven't actually read  
10 anything into the record. I'm asking the witness's  
11 knowledge.

12 She states that she is responsible in her  
13 role for analyzing competitive providers' compliance  
14 with rules, recommending enforcement actions, and  
15 monitoring the competitive industry, and that part of  
16 her duties include review of certification dockets  
17 and applications for renewals.

18 I'm asking her the extent of her  
19 knowledge, she's the witness in this case, about  
20 PALMco's entities and her extent of the knowledge of  
21 the capability -- managerial capability that's at  
22 issue in this case.

23 MS. BAIR: And I object because the  
24 document speaks for itself. There have been no  
25 questions that have asked those things that you just

1 referred to, and the document has been read into the  
2 record. The document is filed with the Commission.  
3 The document speaks for itself.

4 EXAMINER SANYAL: Your objection is  
5 overruled.

6 Ms. Bojko, I'm going to give you some  
7 brief leeway here to get to your point --

8 MS. BOJKO: Well --

9 EXAMINER SANYAL: -- because I do believe  
10 that, up until now, we have just kind of read the  
11 docket; so get to your point quickly.

12 MS. BOJKO: Thank you, Your Honor.

13 Q. (By Ms. Bojko) Ms. Scarberry, do you --  
14 do you know that the majority of the changes have  
15 been related to management officers or regulatory  
16 contacts changing?

17 A. There are several changes to those  
18 contacts, yes.

19 Q. And Staff routinely works with the  
20 regulatory contacts and managers and officers of  
21 these suppliers; is that correct?

22 A. Primarily the regulatory contact.

23 Q. And your contacts have changed over the  
24 course of a little over a year since the renewal  
25 application has been filed; is that correct?

1           A.     Correct.

2           Q.     And isn't this an unusual amount of  
3 changes to be filed by a CRES or CRNGS supplier  
4 regarding business operation and management changes?

5           MR. WHITT:  Objection.  Relevance.  Lack  
6 of foundation.

7           MS. BOJKO:  In her work in this role  
8 where she reviews applications, she has to deal with  
9 these companies on a daily basis.  Is this an unusual  
10 number of changes that a supplier is requesting the  
11 Commission to approve or they file new notices in  
12 that you have to change your personnel that you're  
13 working with.

14           EXAMINER SANYAL:  The objection is  
15 overruled.  You may answer the question.

16           A.     It varies on companies.  There are  
17 companies that file more material changes than  
18 others.

19           Q.     And obviously there are companies that  
20 file less.

21           A.     Absolutely.

22           Q.     On April 16, 2019, Staff filed a letter  
23 in PALMco's certification docket, requesting that the  
24 Commission open a COI, a Commission Ordered  
25 Investigation; is that correct?



1           A.     Yes, I believe that is the date.

2           MS. BOJKO:   Your Honor, at this time, I  
3 believe I'm moving on from these documents. May I  
4 retrieve my one page?

5           EXAMINER SANYAL:   Yes, you may.

6           MS. BOJKO:   At this time, Your Honor, I'd  
7 like to mark as OCC Exhibit 5, the April 16th letter  
8 that Staff filed in the certification dockets.

9           EXAMINER SANYAL:   It shall be so marked.

10          (EXHIBIT MARKED FOR IDENTIFICATION.)

11          Q.     (By Ms. Bojko) Is this the letter that  
12 was filed on April 16, 2019, in the certification  
13 dockets, regarding requesting the Commission open a  
14 COI into PALMco's activities?

15          A.     Yes.

16          Q.     And is this document signed by Mr. Rob  
17 Fadley?

18          A.     It is.

19          Q.     And Mr. Fadley is the Director of the  
20 Service Monitoring and Enforcement Department?

21          A.     Yes.

22          Q.     And this letter was subsequently filed in  
23 the COI, the instant case, is that correct, on  
24 April 17, 2019?

25          A.     Yes, I believe so.

1           Q.    And the reason this letter was initially  
2   filed by SMED was due to the call center, the  
3   Commission call center, receiving an increase in the  
4   number of customer contacts regarding PALMco,  
5   correct?

6           A.    Yes.

7           Q.    And how many customer complaints were  
8   received between December 2018 and April 15, 2019?

9           A.    According to this letter, there were 486  
10   customer contacts received.

11          Q.    And although the letter and the Staff  
12   Report discuss December 2018 to April 15, 2019, it's  
13   my understanding, from your prior comment, that Staff  
14   began investigating PALMco prior to December '18; is  
15   that correct?

16          A.    We monitor -- monitored complaints prior  
17   to that, but our investigation started in December of  
18   2018.

19          Q.    How was that date, December 2018,  
20   selected?

21          A.    During the regular review of our customer  
22   contacts, we noticed an increase that month for  
23   PALMco.

24          Q.    Well, PALMco was serving customers prior  
25   to December 2018, correct?

1 A. Yes.

2 Q. And do you know how many complaints you  
3 received prior to December 2018?

4 A. Prior to when?

5 Q. December 2018.

6 A. Not offhand, no. I would have to look.

7 Q. You would agree -- you would agree with  
8 me that some customers could have been harmed prior  
9 to that December 2018 cutoff date, correct?

10 MR. WHITT: Objection. Relevance. She's  
11 asking about a date outside the scope of the Staff  
12 Report.

13 MS. BAIR: And I join in the objection.  
14 It calls for speculation on behalf of the witness.

15 MS. BOJKO: Your Honor, actually it's not  
16 beyond the scope of the Staff Report. The Staff  
17 Report goes back to 2016 which is why I'm trying to  
18 understand the selection of the December 2018 date.  
19 I'm not asking for speculation. I'm asking her  
20 involvement in this investigation of PALMco.

21 EXAMINER SANYAL: Your objections are  
22 overruled.

23 Ms. Scarberry, if you have any  
24 information about previous investigations before  
25 December 2018, you may answer if you recall.

1 THE WITNESS: Could you read the question  
2 again, please?

3 Q. (By Ms. Bojko) You would agree with me  
4 that some customers could have been harmed prior to  
5 December 2018, correct?

6 A. I think that they could have been, but  
7 without looking back at the records, I don't have any  
8 information on that with me.

9 Q. Well, the settlement addresses a period  
10 of October 1, 2018 to November 30, 2018, doesn't it?

11 A. In the Stipulation?

12 Q. Yes.

13 EXAMINER SANYAL: Ms. Bojko, could you  
14 tell us what part of the Stipulation you're referring  
15 to?

16 MS. BOJKO: Sure. It's paragraph III.7,  
17 Your Honor.

18 EXAMINER SANYAL: 37?

19 MS. BOJKO: III. III. It's Roman  
20 numeral III.7.

21 MS. BAIR: Are we talking about the  
22 settlement?

23 MS. BOJKO: Yes. Joint Exhibit 1.

24 A. Okay. 7(a) does reference customers and  
25 rules between October 1, 2018 and November 30, 2018,

1 but those were not part of our investigation.

2 Q. Staff agreed to a provision in the  
3 Stipulation that addresses restitution for those  
4 customers that were enrolled between October 1, 2018,  
5 and November 30, 2018, correct?

6 A. It was part of the Stipulation and  
7 agreement to -- for PALMco to provide restitution to  
8 those customers in that category who had not already  
9 complained to the Commission and gotten a re-rate.  
10 These customers were not specifically investigated.  
11 These are customers we did not receive complaints on.

12 Q. And this, of course, this provision is  
13 also contingent on the sale or assignment of the CRES  
14 contracts and CRNGS contracts, correct?

15 MR. WHITT: Objection. The Stipulation  
16 speaks for itself and I believe it was just  
17 mischaracterized.

18 EXAMINER SANYAL: Ms. Bojko.

19 MS. BOJKO: She's the witness testifying,  
20 the only witness testifying --

21 EXAMINER SANYAL: May I actually have the  
22 question reread back to me, please?

23 (Record read.)

24 EXAMINER SANYAL: Do you still  
25 maintain --

1 MR. WHITT: I maintain my objection.

2 EXAMINER SANYAL: Let's rephrase that  
3 question.

4 Q. (By Ms. Bojko) Ms. Scarberry,  
5 paragraph 7(a) is the -- the restitution to the  
6 customers in that category only occurs if PALMco  
7 sells or assigns the customer contracts, correct?

8 A. That is correct because all of the  
9 customers that have complained in that category have  
10 already received restitution.

11 Q. We'll come back to that.

12 On 4/17/2019, the Commission opened a  
13 Commission Ordered Investigation and directed Staff  
14 to investigate alleged unfair, deceptive, or  
15 unconscionable acts or practices in this state by  
16 PALMco, correct?

17 A. Yes.

18 Q. In that same Entry, the Commission  
19 ordered a hearing be held at which PALMco shall,  
20 among other things, have the opportunity to respond  
21 to the findings contained in the Staff Report and  
22 show cause why its certification as a CRES provider  
23 and its certification as a CRNGS supplier should not  
24 be suspended, rescinded, or conditionally rescinded,  
25 correct?

1 MS. BAIR: Your Honor, I object. The  
2 document speaks for itself. Ms. Bojko simply read a  
3 lot of that document.

4 EXAMINER SANYAL: Ms. Bojko.

5 MS. BOJKO: Your Honor, their  
6 investigation was based on this April 17, 2019 Entry.  
7 Her understanding of the Entry and what the  
8 investigation entailed or what they were ordered to  
9 do by the Commission is integral in their  
10 investigation and the Staff Report and the resulting  
11 settlement.

12 MS. BAIR: And I don't believe there was  
13 any question about that.

14 MR. WHITT: The Company will stipulate  
15 that the Staff was directed by the Commission to  
16 investigate, that an investigation was held, and the  
17 investigation has been memorialized in the Staff  
18 Report.

19 EXAMINER SANYAL: Ms. Bojko, does that  
20 suffice? Does that Stipulation suffice?

21 MS. BOJKO: Your Honor, that's not --  
22 that wasn't my question. My question was about the  
23 Show Cause Order in the Commission's Entry; so I  
24 don't think it suffices.

25 And I'm asking the witness, who is

1     testifying to the settlement, the only witness that's  
2     being put on the stand to testify to the settlement,  
3     her understanding of the investigation.

4             MR. WHITT: Your Honor, I object. This  
5     witness's understanding, with all due respect to the  
6     witness, is frankly irrelevant. We have a  
7     Stipulation. We have the documents. We have the  
8     Commission docket. It seems we've spent the past  
9     hour asking the witness, "Doesn't this document say  
10    this? Doesn't this document say that?"

11            I believe Staff is correct insofar as the  
12    record does speak for itself and, if the witness can  
13    clarify something, I'm sure she's happy to do so, but  
14    it doesn't seem that's what she's been asked to do;  
15    so it's cumulative as well as irrelevant.

16            EXAMINER SANYAL: Mr. Whitt, your point  
17    is taken. We will -- I think the record is clear  
18    that the Commission initiated an investigation and a  
19    Staff Report was subsequently filed; so let's move  
20    on.

21            Q.     (By Ms. Bojko) Ms. Scarberry, you are  
22    part of the team that did the investigation, correct?

23            A.     Yes, I am.

24            Q.     And as part of the team, you believe you  
25    and your fellow Staff members did a good and thorough



1 investigation, correct?

2 A. Yes.

3 EXAMINER SANYAL: One moment.

4 Ms. Scarberry, could you actually just  
5 move the mic near your -- just position it near your  
6 face. Thank you.

7 THE WITNESS: Sorry.

8 EXAMINER SANYAL: It's okay.

9 Q. (By Ms. Bojko) At the conclusion of  
10 Staff's investigation, Staff filed a Staff Report and  
11 that was filed on May 10, 2019; is that correct?

12 A. Yes.

13 MS. BOJKO: Your Honor, at this time, I'd  
14 like to mark as OCC Exhibit 6, the Staff Report of  
15 Investigation titled In the Matter of the  
16 Commission's Investigation into PALMco Power Ohio  
17 doing business as Indra Energy and PALMco Energy Ohio  
18 doing business as Indro -- Indra Energy's Compliance  
19 with the Administrative Code and Potential Remedial  
20 -- Remedial Actions for Non-Compliance,  
21 19-957-GE-COI, filed on May 10, 2019.

22 EXAMINER SANYAL: It shall be so marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. (By Ms. Bojko) Does this appear to be the  
25 Staff Report of Investigation that was filed with the

1 Commission?

2 A. It does.

3 Q. Generally speaking -- I'm not going to  
4 read the document. Generally speaking, the Staff  
5 Report explains, in great detail, what the Staff  
6 reviewed, it then lists applicable rules, and then it  
7 provides examples of how the rules were violated, and  
8 then the Staff Report states conclusions from its  
9 investigation and makes recommendations to the  
10 Commission based on those conclusions; is that fair?

11 MS. BAIR: Your Honor, I object to  
12 questions going into detail about the Staff Report.  
13 As stated in the Attorney Examiner's Entry, the focus  
14 is the settlement agreement.

15 EXAMINER SANYAL: So are you objecting to  
16 any and all questions?

17 MS. BAIR: Yes. The focus is the  
18 three-prong test in the settlement agreement.

19 EXAMINER SANYAL: Okay.

20 MR. WHITT: I would object at least to  
21 the form of that question insofar as I don't believe  
22 the Staff Report could be fairly characterized by any  
23 one single question of a summary nature. We have the  
24 Staff Report here.

25 EXAMINER SANYAL: And it speaks for

1     itself --

2                   MR. WHITT:  It does.

3                   EXAMINER SANYAL:  -- Mr. Whitt.

4                   Okay.  Ms. Bojko -- I'm going to overrule  
5     this objection, but let's see what other questions  
6     Ms. Bojko has.

7                   Ms. Bojko, if you could break up your  
8     question so it's not cumulative.

9                   MS. BOJKO:  Okay.  Thank you, Your Honor.

10                  Q.     (By Ms. Bojko) The structure of the Staff  
11     Report -- I'll break it up.

12                   The structure of the Staff Report  
13     explains what the Staff reviewed; is that correct?

14                  A.     It gives examples of what Staff reviewed,  
15     yes.

16                  Q.     Well, it explains that it reviewed the  
17     486 complaints; isn't that correct?

18                   MR. WHITT:  Objection.  Mischaracterizes  
19     the Staff Report.  A customer contact is not a  
20     complaint.

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

22                   EXAMINER SANYAL:  Okay.

23                  Q.     The Staff Report explains that it  
24     reviewed 486 customer contacts, correct?

25                  A.     It explains that there were a total of

1 486 contacts received.

2 Q. How many of those contacts would you  
3 characterize as complaints?

4 A. I don't have that information available  
5 right now.

6 Q. And then the Staff Report, as you stated  
7 before, actually provides examples of how the rules  
8 were violated per Staff; is that correct?

9 A. Yes.

10 Q. And then the Staff Report states  
11 conclusions from its investigation, correct?

12 A. Yes; Staff conclusions.

13 Q. And then it makes recommendations to the  
14 Commission based on those conclusions from its  
15 investigation, correct?

16 A. Yes.

17 Q. And do you believe the Staff Report is  
18 true and accurate to the best of your knowledge?

19 MR. WHITT: Objection.

20 EXAMINER SANYAL: Basis?

21 MR. WHITT: The -- well, the Staff Report  
22 is the work product of Staff and it doesn't appear  
23 that Staff has produced a single witness that is  
24 capable, nor purports to be capable, of vouching for  
25 everything that's in the report. She can certainly

1     testify about what she has personal knowledge of and  
2     what she worked on. But unless a foundation is laid  
3     that she personally was involved in every aspect of  
4     the investigation and confirmed every factual  
5     representation stated in it, I'm not sure she's  
6     capable of, or qualified to, answer that question.

7             EXAMINER SANYAL: Ms. Bair, did you have  
8     any thoughts?

9             MS. BAIR: What was the question?

10            MS. BOJKO: Your Honor, that's completely  
11     inaccurate and actually --

12            EXAMINER SANYAL: Well, let's have the  
13     question reread --

14            MS. BAIR: Thank you, Your Honor.

15            EXAMINER SANYAL: -- so Ms. Bair is on  
16     the same page, and then we'll go with your response,  
17     Ms. Bojko.

18            (Record read.)

19            EXAMINER SANYAL: Okay. I am going to  
20     sustain your objection and I'm going to give  
21     Ms. Scarberry some instruction.

22            Ms. Scarberry, were you -- or, I have  
23     some questions for you.

24            Ms. Scarberry, were you involved in the  
25     preparation of the Staff Report?

1 THE WITNESS: I was involved, yes.

2 EXAMINER SANYAL: Okay. So to the extent  
3 you were involved and to the extent you have  
4 knowledge, you may answer Ms. Bojko's question, okay?

5 THE WITNESS: Okay.

6 MS. BOJKO: Your Honor, may I note  
7 something for the record? May I respond to the  
8 objection that you just sustained?

9 EXAMINER SANYAL: I've already sustained  
10 it, so I suggest you move on --

11 MS. BOJKO: Well, Your Honor --

12 EXAMINER SANYAL: -- since I've given the  
13 witness a limiting instruction.

14 MS. BOJKO: I think it's important --  
15 with all due respect, I think it's important to note  
16 on the record that Ms. Bair filed a motion to quash  
17 that actually said this is the witness that is going  
18 to be on the stand and she can and is capable of  
19 testifying to the Staff Report and that she will  
20 testify to the Staff Report.

21 EXAMINER SANYAL: Ms. Bojko, I believe  
22 you have what you need. I just -- I mean  
23 Ms. Scarberry just said she was involved with the  
24 Staff Report, so let her answer your question and  
25 then we can get to more questions.

1 MS. BOJKO: Thank you.

2 THE WITNESS: Can I have the question one  
3 more time, please?

4 EXAMINER SANYAL: Yes.

5 (Record read.)

6 A. Yes.

7 Q. Ms. Scarberry, you just explained that  
8 you were actually involved in the investigation. Did  
9 you review the 486 contacts that were made?

10 A. I know I reviewed a lot of them. I do  
11 not know the exact number.

12 MS. BOJKO: May I have one minute, Your  
13 Honor?

14 EXAMINER SANYAL: Yes, you may. Why  
15 don't we go off the record.

16 (Recess taken.)

17 EXAMINER SANYAL: Let's go back on the  
18 record and you may continue, Ms. Bojko.

19 MS. BOJKO: Thank you, Your Honor.

20 At this time, OCC would like to mark the  
21 486 contacts that were received by the Commission.  
22 Off the record we had -- excuse me. OCC Exhibit --

23 MR. ETTER: 7.

24 MS. BOJKO: -- 7. Off the record we had  
25 a discussion. A version of this that I received was

1 not deemed confidential. I received another version  
2 that appeared to have customer accounts redacted. I  
3 can appreciate that. Unfortunately, I did not  
4 receive that until 4:30 last night. We could not go  
5 back and redact all those for today's purpose.

6 So we ask that this document be marked  
7 and we ask that we be allowed to do like a late-filed  
8 exhibit with the appropriate redactions.  
9 Unfortunately, it might be hard to actually file  
10 that, so I'm not sure what the preference of the  
11 Bench is. It's two banker's boxes worth of  
12 documents.

13 EXAMINER SANYAL: Okay. Well, will you  
14 have -- I mean, when you question the witness, will  
15 you have copies for us for the limited purpose of  
16 being in this hearing for us to follow along --

17 MS. BOJKO: Of certain --

18 EXAMINER SANYAL: -- like redacted or --

19 MS. BOJKO: Of certain customer  
20 complaints, yes, Your Honor.

21 EXAMINER SANYAL: Okay.

22 MS. BOJKO: They're not redacted either.  
23 Again, we can handle that.

24 EXAMINER SANYAL: So you're suggesting we  
25 go into confidential session?



1 MS. BOJKO: No. I'm suggesting that we  
2 utilize the documents. I'm not going to say the  
3 confidential information in the record. Anything we  
4 talk about will be nonconfidential and then, for  
5 those exhibits, I would suggest that we just do  
6 late-filed exhibits that are later redacted.

7 EXAMINER SANYAL: Okay. For purposes of  
8 the docket, let's redact only the portions that you  
9 are going to rely on for purposes of this hearing and  
10 we will docket those as Exhibit 7, if that is okay  
11 with everyone.

12 MS. BOJKO: Your Honor, I intend to mark  
13 those separately as I use them with the different  
14 witnesses. What I'm asking to mark as OCC Exhibit 7  
15 is the entire, for completion purposes, the entire  
16 486 customer contacts and responses by the Company.

17 EXAMINER SANYAL: Okay. Let's mark it  
18 and then we will, at some later point today, figure  
19 out how we're going to deal with them for docketing  
20 purposes and redaction purposes --

21 MS. BOJKO: Thank you, Your Honor.

22 EXAMINER SANYAL: -- because I'm not sure  
23 how Docketing will handle two boxes.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MS. BOJKO: Thank you, Your Honor.

1 EXAMINER SANYAL: We will -- I will chat  
2 with Docketing.

3 MS. BOJKO: I was just going to give them  
4 to the court reporter today, but not realizing the  
5 redaction problem.

6 EXAMINER SANYAL: Yes.

7 Q. (By Ms. Bojko) Ms. Scarberry, are you  
8 familiar with the customer contacts that come into  
9 the Commission and the form that they come into the  
10 Commission?

11 A. Yes.

12 Q. And that form would be a customer call  
13 to -- likely would be a customer call to the PUCO  
14 hotline?

15 A. That is one of the methods, yes.

16 Q. And another method might be to submit an  
17 e-mail through the Commission's website?

18 A. Yes.

19 Q. Are there any other informal avenues that  
20 a customer can complain or call the Commission for  
21 questions?

22 A. Maybe. I'm not a hundred percent sure.

23 Q. And the document would have -- it's  
24 called an "Initial Submission of a Consumer  
25 Complaint" and have the PUCO emblem on it; is that

1 correct?

2 A. Which document?

3 Q. That the investigator would put into the  
4 system.

5 MS. BAIR: Your Honor, if Counsel has a  
6 document that she would like to ask questions on, it  
7 should be presented to the witness.

8 MS. BOJKO: I was trying to do it  
9 generally, but I can do that, sure.

10 Your Honor, at this time, I would like to  
11 mark as OCC Exhibit 8, which would be an e-mail  
12 discussion and response between the Commission and  
13 Indra Energy about a customer complaint that was to  
14 the PUCO customer call center, from William Schaaf,  
15 dated Monday, March, 25th, 2019, is the beginning  
16 e-mail correspondence.

17 And, Your Honor, these also have not been  
18 redacted for the customer account number --

19 EXAMINER SANYAL: Okay.

20 MS. BOJKO: -- but we will follow up and  
21 provide those.

22 EXAMINER SANYAL: Do you have a copy?

23 MS. BOJKO: I believe that the case  
24 number at the Commission would not be considered  
25 confidential; is that correct?

1 MS. BAIR: That's correct.

2 MS. BOJKO: Okay. So for purposes of  
3 identifying this complaint or customer contact, it's  
4 Case No. 00256893.

5 EXAMINER SANYAL: And it shall be so  
6 marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MR. WHITT: Your Honor, may I have a  
9 moment to review it?

10 EXAMINER SANYAL: Absolutely.

11 (Pause in proceedings.)

12 EXAMINER SANYAL: Mr. Whitt, just let me  
13 know when you're done reviewing.

14 MR. WHITT: I am done.

15 Q. (By Ms. Bojko) Ms. Scarberry, do you have  
16 in front of you the document that I just described?

17 A. Yes.

18 Q. Could you turn to page 6 of the document.  
19 Page 6 of the document is titled "Initial Submission  
20 of a Consumer Complaint, Provider of Electric, Please  
21 Respond Within 3 Business Days," correct?

22 A. Yes.

23 Q. And then it has a Case ID on it?

24 A. Yes.

25 Q. And then it has a company name, a

1 customer, an address, a service address, the AIQ, is  
2 that the supplier?

3 A. That is the name of the supplier, yes,  
4 that the customer is complaining about. AIQ is  
5 Account in Question.

6 Q. Okay. So it would be, if it was a  
7 utility, the utility's name would be there. It's not  
8 necessarily a supplier; it's the entity that the  
9 customer is calling to complain about it.

10 A. Yes.

11 Q. Okay. And then there's a service account  
12 number and an NIQ number. What is an NIQ?

13 A. I'm not a hundred percent sure on that  
14 one.

15 Q. So are you familiar with this type of  
16 document that's -- well, let me back up.

17 Is this type of document produced by  
18 Staff?

19 A. Yes.

20 Q. Okay. Are you familiar with this type of  
21 document?

22 A. Yes.

23 Q. And in the document there's a note to the  
24 supplier and a description of the issue; is that  
25 correct?

1 A. Yes.

2 Q. And do you know -- and then the second  
3 page of that document, page 7 of the total packet,  
4 there's questions that are posed to a supplier; is  
5 that correct?

6 A. Yes.

7 Q. And then there's a signature block by  
8 Cindi Mack from the SMED department; is that correct?

9 A. Yes.

10 Q. And you know Cindi Mack?

11 A. Yes, I know Cindi.

12 Q. And this is typical of the record that  
13 would be created by the customer call center, or  
14 SMED, whoever is taking the customer complaint?

15 MS. BAIR: Objection. Foundation for the  
16 witness to know what you referred to as "typical."

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

18 EXAMINER SANYAL: Thank you.

19 Q. Is this document, the record that is  
20 created, the regular practice of the Commission to  
21 create this record after a customer calls in and  
22 complains?

23 A. I believe so.

24 Q. And then this record is then forwarded to  
25 the supplier to answer the questions that the

1 investigator has contained in the document, correct?

2 A. That is my understanding.

3 Q. And then the pages, prior to the  
4 complaint, demonstrate the e-mail back and forth  
5 between the PUCO call center, or SMED, and the  
6 responding party, which in this case it's Indra or  
7 PALMco; is that correct?

8 A. Yes.

9 Q. In this instance, after a formal  
10 complaint, Indra, the Company, agreed to re-rate the  
11 customer for various periods of time for a total  
12 credit of \$2,006.75, correct? It's on page 2.

13 A. Yes.

14 Q. And this kind of re-rating to resolve an  
15 informal complaint at the Commission is the type of  
16 re-rating that's addressed in the settlement; is that  
17 correct?

18 A. Yes.

19 Q. And would it be Staff's practice to  
20 verify the re-rates that the Company, the supplier,  
21 is doing, in order to verify the customer credit that  
22 is to be issued to the customer?

23 MS. BAIR: I do believe that was a  
24 compound question. Could you break that down into  
25 one? Or, objection, compound question, Your Honor.

1 Sorry.

2 EXAMINER SANYAL: Could you break that up  
3 into two questions?

4 Q. (By Ms. Bojko) Is the -- first of all,  
5 does the Staff verify the re-rating that occurs in  
6 these type of correspondence between the Staff and  
7 the supplier?

8 A. Verify how?

9 Q. Sure. Does the Staff calculate the usage  
10 times the re-rate to get a credit amount that goes to  
11 the customer?

12 A. The call center are the ones typically  
13 that look at the re-rating and do any type of  
14 calculation to verify the numbers.

15 Q. So the PUCO call center would do that  
16 verification?

17 A. That is my understanding. It's the same  
18 department but a different division.

19 Q. I'm sorry, do you mean that the call  
20 center is under SMED but a different division of  
21 SMED?

22 A. Correct.

23 Q. Did you personally investigate the  
24 customer complaints identified in the Staff Report?

25 A. Which -- which ones in the Staff Report?



1     There are a lot of them referenced.

2             Q.     Okay. Fair enough. Let's -- well, did  
3     you -- let's start with did you investigate any of  
4     the customer contacts or customer complaints, the 486  
5     that are identified in the Staff Report?

6             EXAMINER SANYAL: And just for the record  
7     in case we get an objection, these are customer  
8     contacts as Mr. Whitt earlier referenced.

9             MS. BOJKO: I'm sorry, Your Honor, yes, I  
10    thought my question said 486 customer contacts or  
11    complaints.

12            Q.     (By Ms. Bojko) I think they're both; is  
13    that right?

14            A.     Not necessarily. We can -- well, it's a  
15    different division, of course, but it's my  
16    understanding that not all contacts are complaints.

17            Q.     Right, but some complaints are considered  
18    a contact, correct?

19            A.     Correct.

20            Q.     Okay. So, with that understanding, did  
21    you review and investigate any of the 486 contacts or  
22    complaints that were made to the Commission?

23            A.     Yes, I did.

24            Q.     And then from your prior question to me,  
25    it's fair to assume that some of those 486 contacts

1 or complaints that you reviewed were actually the  
2 ones that were identified in the Staff Report?

3 A. Yes.

4 Q. When reviewing those contacts or  
5 complaints, did you conclude that PALMco violated the  
6 Commission rules as identified in the Staff Report?

7 MR. WHITT: Objection. Relevance.

8 EXAMINER SANYAL: May I have the question  
9 read back again?

10 (Record read.)

11 EXAMINER SANYAL: I'm going to overrule  
12 the objection. You may answer.

13 THE WITNESS: I'm sorry, can you read  
14 that again?

15 (Record read.)

16 A. Yes, for the ones that they -- the ones  
17 identified in the Staff Report as Staff violations.

18 Q. Did you draft any sections of the Staff  
19 Report?

20 A. I did not individually draft any sections  
21 of the Staff Report. I did help review it.

22 Q. Okay. I think that there are four  
23 categories in the Staff Report. Three categories  
24 that are termed "Discussion of Violations," an A, B,  
25 and C, and then a separate category called

1 "Aggravating Factors Regarding Managerial  
2 Capability." Do you agree with that?

3 A. Yes, those four categories are here.

4 Q. Okay. I want to look at which ones that  
5 you had a part in reviewing and you participated in  
6 the drafting of, okay?

7 MS. BAIR: Your Honor, excuse me. I  
8 again renew my objection to going through the Staff  
9 Report, page by page. The focus of this is intended  
10 to be the settlement.

11 EXAMINER SANYAL: Ms. Bojko, are you just  
12 intending to ask what kind of role Ms. Scarberry had  
13 with regard to each of these sections?

14 MS. BOJKO: Yes. I was going -- I wasn't  
15 going page by page. I was going through four  
16 categories and asking her who was responsible for  
17 each section and what her role in that section was,  
18 yes.

19 EXAMINER SANYAL: I'm going to overrule  
20 your objection but, Ms. Bojko, let's not go into  
21 reading and affirming pages of the Staff Report which  
22 I think is Staff's objection.

23 Q. (By Ms. Bojko) On page 3, I believe, is  
24 where category 1 starts. "A. Unfair, Misleading,  
25 Deceptive, or Unconscionable Activities." Were you

1 responsible for this section?

2 A. I was not individually responsible for  
3 any of the sections.

4 Q. Okay. Thank you. Fair enough. So did  
5 you review this section?

6 A. I was one of the ones reviewing, yes.

7 Q. And did you participate, did you have  
8 input into this section?

9 A. I can't recall specifically what sections  
10 I had comments.

11 Q. Who was responsible for this section?

12 A. I don't remember that answer.

13 Q. So the category 1, I'm calling it  
14 category 1, it provides examples of sales calls. Did  
15 you review those sales calls identified in the Staff  
16 Report?

17 EXAMINER SANYAL: Ms. Bojko, a page  
18 reference?

19 MS. BOJKO: Thank you, Your Honor. 6,  
20 please.

21 Q. (By Ms. Bojko) I'm sorry. So 3 through 6  
22 lists applicable Administrative Code rules, correct?

23 A. Yes.

24 Q. Okay. And then on page 6, it actually  
25 provides, starting at the bottom, it provides samples

1 of sales calls; is that correct?

2 A. Yes.

3 Q. And so this provided one, two, three,  
4 four, four examples, but is it your understanding  
5 that more examples were identified to have a pattern  
6 of unfair, misleading, and deceptive statements but  
7 these are just examples that the Staff provided?

8 A. Yes, these are examples.

9 Q. Okay. And then on the following pages,  
10 on 7, 8, and 9, I believe, the Staff actually  
11 concluded, after listening to these examples, Staff  
12 concluded that PALMco violated various rules, I don't  
13 want to read them into the record, but it concluded  
14 they violated various rules; is that correct?

15 MR. WHITT: Objection. Relevance.

16 EXAMINER SANYAL: Ms. Bojko.

17 MS. BOJKO: Your Honor, again, this is  
18 very relevant. The Commission Entry ordered an  
19 investigation to look at the misleading, unfair, and  
20 deceptive practices of the Company.

21 We are asking the witness, who  
22 participated in the Staff Report and who is here to  
23 testify about the Staff Report, if these violations  
24 were found by the Staff. And then, if you give me a  
25 minute, this is a foundation, we'll bring this into

1 the settlement in a minute and the reasonableness of  
2 the settlement.

3 MR. WHITT: Your Honor, I think it could  
4 be fairly presumed that Staff exercised good faith  
5 and applied judgment to what it believed happened and  
6 was making a recommendation to the Commission, but no  
7 violations were found in the sense of a Commission  
8 adjudication that a violation, in fact, had been  
9 committed. Certainly, violations have been alleged.

10 By entering the Stipulation, my client  
11 can't challenge the Staff Report now, as we might if  
12 it were a litigated proceeding. So my problem is  
13 with the characterization of, quote/unquote, Staff's  
14 findings. Staff's job isn't to find. Staff  
15 recommends, it provides input, but the Commission is  
16 the finder of fact and makes conclusions of law and  
17 that has not happened here with respect to any  
18 violations. We appreciate the witness's opinion, but  
19 it's not relevant here.

20 EXAMINER SANYAL: Mr. Whitt, I'm inclined  
21 to agree with you.

22 So, Ms. Bojko, let's rephrase your  
23 question accordingly, or I can do that for you if you  
24 wish.

25 MS. BOJKO: No, Your Honor. I would note

1 the Commission itself, in its Entry, called them  
2 Staff findings of investigation, and I used the words  
3 "Staff found." I didn't use the words "Commission  
4 found." But I can rephrase and say that the Staff  
5 Report indicates that it recommends that the  
6 Commission find PALMco violated various rules in this  
7 category 1 section, correct?

8 THE WITNESS: Yes, Staff made  
9 recommendations that the Commission find.

10 Q. (By Ms. Bojko) And I believe if we switch  
11 to page 9, we will see what I'm calling category 2,  
12 which is titled "Failure to Respond to Staff Record  
13 Requests." Is that your understanding of the next  
14 category?

15 A. Yes.

16 Q. And in this category the Staff  
17 investigated, provided the applicable rules that it  
18 thought were applicable; is that correct?

19 A. Yes.

20 Q. And then Staff made a recommendation to  
21 the Commission to find, and its belief was, that  
22 PALMco violated these certain rules; is that correct?

23 MS. BAIR: Could you please give a  
24 reference to where you say Staff believes?

25 EXAMINER SANYAL: I believe she's on

1 page 12.

2 MS. BOJKO: Yes. Thank you, Your Honor.

3 THE WITNESS: Could you restate her -- or  
4 ask that question again? I'm sorry.

5 (Record read.)

6 A. I believe so, yes.

7 Q. And then if we turn to -- oh, I'm sorry,  
8 category 2. Were you responsible -- you weren't  
9 responsible for any sections. Do you know who was  
10 responsible for this section?

11 A. I don't know that any one particular  
12 person was, but I know as far as the initial  
13 investigations are handled by the call center.

14 Q. Okay. But the call center didn't draft  
15 this document, did it?

16 A. I don't believe so.

17 Q. Did you review this category 2 in your  
18 review of the Staff Report?

19 A. I don't recall reviewing this category.

20 Q. Okay. Let's turn to category 3, which is  
21 on page 12 of the Staff Report.

22 A. Okay.

23 Q. It's listed as category C. "Failure to  
24 Provide Sufficient Documentation to Customers at  
25 Enrollment." Do you see that?



1           A.    I do.

2           Q.    After its -- again, the Staff Report  
3 lists applicable rules; is that correct?

4           A.    Yes.

5           Q.    And the Staff Report provides examples of  
6 contracts that did not contain clear and  
7 understandable pricing, terms, and conditions of  
8 service, correct?

9           A.    Yes.

10          Q.    And similar to category 1, the Staff  
11 merely listed examples. This wasn't the complete set  
12 of contracts that it believed did not contain clear  
13 and understandable pricing; is that correct?

14               MR. WHITT:  Objection.  Lack of  
15 foundation.

16               EXAMINER SANYAL:  Ms. Bojko.

17               MS. BOJKO:  I'm asking if she knows.  If  
18 she knows.  She said, before, that category 1 was  
19 examples.  I'm asking if she knows that these are  
20 examples as I believe noted in the Staff Report.

21               EXAMINER SANYAL:  Your objection is  
22 overruled, Mr. Whitt.

23           A.    Yes, these are examples.

24           Q.    And after receiving the contracts and the  
25 customer complaints or contacts in this category,

1 Staff concluded that PALMco engaged in unfair,  
2 misleading, or deceptive acts and/or practices,  
3 providing unfair, misleading, deceptive statements,  
4 and/or insufficient information in its marketing  
5 enrollment materials; is that correct?

6 A. Yes.

7 Q. In this section, Staff stated that it  
8 believed that PALMco knowingly charged customers  
9 rates that were six times the introductory rate or  
10 default rate; is that correct?

11 MR. WHITT: I'm going to object at this  
12 point, Your Honor. I thought the ground rule was we  
13 were not going to go through the Staff Report and  
14 just have the witness affirm page by page. That's  
15 all we've done.

16 EXAMINER SANYAL: Mr. Eubanks, do you  
17 have anything for the record?

18 (Laughter all around.)

19 EXAMINER SANYAL: Ms. Bair.

20 MS. BAIR: Yes. I agree the document  
21 speaks for itself. So far we have had Ms. Bojko read  
22 everything and ask the witness if she read it  
23 correctly.

24 EXAMINER SANYAL: Ms. Bojko, I tend to  
25 agree with the objections. The point of letting you

1 give a brief overview of the Staff Report was to  
2 determine to what extent the witness was involved in  
3 the preparation of this document and I believe she's  
4 answered that, so I will give you maybe a couple more  
5 questions to determine, in conclusion, the level of  
6 her involvement, but let's move on from the Staff  
7 Report.

8 MS. BOJKO: Your Honor, that's fair  
9 enough. I just want to note for the record, however,  
10 that we are going to -- this is a prerequisite, I  
11 feel it coming on, that there's going to be an  
12 objection to the admission of the Staff Report based  
13 on lack of foundation; so I am attempting to show  
14 that foundation through this witness, and that's the  
15 purpose of my -- I am not reading. I have  
16 paraphrased or summarized everything. I'm not  
17 reading it from the Staff Report.

18 EXAMINER SANYAL: Thank you for noting  
19 that, Ms. Bojko.

20 MR. WHITT: We've submitted it as Joint  
21 Exhibit 1.

22 MR. EUBANKS: Yeah, it's in the record.

23 MS. BOJKO: No, you didn't.

24 EXAMINER SANYAL: No, it's not.

25 MS. BOJKO: No. This is our exhibit.

1 You have not.

2 MR. WHITT: Where's --

3 MS. BOJKO: Are you agreeing to the  
4 admissibility of this document?

5 MR. WHITT: Well, it depends for what  
6 purpose.

7 EXAMINER SANYAL: Okay. Well, we are not  
8 admitting this document right now. You have two more  
9 questions, so let's move on.

10 MS. BOJKO: Your Honor, so not that  
11 question or a different question? There's a question  
12 pending.

13 EXAMINER SANYAL: I just -- I want -- I  
14 want you to determine, to your heart's extent, how  
15 much this witness was involved in the preparation of  
16 the Staff Report. Let's do that in two questions and  
17 then let's move on from this document.

18 Q. (By Ms. Bojko) Were you involved in  
19 category 3, drafting or providing input to the Staff  
20 Report?

21 MR. WHITT: Objection. Asked and  
22 answered. She said she was not -- didn't have  
23 responsibility for any of it.

24 MS. BOJKO: I didn't ask the  
25 responsibility.

1 EXAMINER SANYAL: Okay. Mr. Whitt, I  
2 actually did not remember the witness's answer, so  
3 I'm going to let her respond.

4 Were you involved in part 3?

5 THE WITNESS: What are we calling part 3  
6 again?

7 MS. BOJKO: Part 3 is on page 12. It's  
8 the investigation into the customer enrollments and  
9 contracts beginning on C, page 12.

10 THE WITNESS: Okay. What was the  
11 question again?

12 Q. (By Ms. Bojko) Did you have -- you told  
13 me you weren't responsible for any of the sections,  
14 so I asked you if you had input into category 3, you  
15 reviewed it, made recommendations?

16 A. Yes, I was part of the review for that  
17 section.

18 Q. Okay. And then for category 4, which is  
19 on page 15, titled "Aggravating Factors Regarding  
20 Managerial Capability," this is the section that  
21 talks about the CRES and CRNGS certificate. Did you  
22 have review and input -- did you have input and  
23 review over this section?

24 A. I don't remember specifically.

25 Q. In this section the report lists two

1 proceedings that the Commission investigated:  
 2 Connecticut and Illinois. Did you have  
 3 responsibility or input with review of those state  
 4 proceedings?

5 MR. WHITT: Objection.

6 EXAMINER SANYAL: Basis?

7 MR. WHITT: By definition, the Ohio Staff  
 8 did not investigate anything in other states, No. 1.

9 No. 2, to the extent that Staff reviewed  
 10 anything that went on in other states, that would all  
 11 be based on hearsay.

12 MS. BOJKO: Your Honor, a review of an  
 13 order of a public agency is not hearsay. It's  
 14 actually an exception to hearsay because it's a  
 15 public record and it's an act of their  
 16 regularly-conducted activity; so those would not be  
 17 hearsay.

18 I asked her if she reviewed the -- I can  
 19 rephrase my question -- if she reviewed the public  
 20 documents associated with the two cases that are  
 21 asserted on page 15 of the Staff Report.

22 EXAMINER SANYAL: Okay. Rephrase your  
 23 question.

24 MS. BOJKO: Sure.

25 EXAMINER SANYAL: Your objection is

1 overruled.

2 And, Ms. Bojko, you're over your  
3 two-question limit, so quick wrap-up, please.

4 Q. (By Ms. Bojko) Did you review the public  
5 documents, that are referenced and discussed in the  
6 Staff Report on page 15, regarding Connecticut and  
7 Illinois?

8 A. I reviewed the documents provided by  
9 PALMco in its certification applications in reference  
10 to those two states.

11 Q. Are you aware of other states that have  
12 similar proceedings, compliance proceedings,  
13 regarding PALMco that were not identified in the  
14 Staff Report?

15 A. Could you say that again?

16 Q. Sure.

17 Are you familiar with other compliance  
18 proceedings in other states regarding PALMco that  
19 were not included or incorporated in the Staff  
20 Report?

21 A. I don't -- I would have to go back and  
22 check. I don't know offhand all of the documents.

23 Q. So in the categories that you told me you  
24 had input or reviewed, did you make recommendations  
25 regarding the enforcement actions that are

1 recommended in the Staff Report?

2 A. The enforcement actions of where?

3 Q. In the recommendations of the Staff  
4 Report.

5 EXAMINER SANYAL: Page 17 for everyone.

6 A. I believe I did. This was back in May.  
7 I have a hard time recalling all the details.

8 Q. So you wouldn't recall specifically which  
9 recommendations you made?

10 A. No. I know we discussed them as a group  
11 with -- when this was being drafted, but I don't  
12 remember the specific recommendations I may have made  
13 or anybody else.

14 Q. I'm going to go back to when PALMco's  
15 questionable acts began and when the Commission  
16 started investigating.

17 Isn't it true that Staff notified PALMco  
18 of its concerns and warned PALMco about its business  
19 practices and noncompliance with the Commission  
20 rules, three years ago, in January 2016?

21 A. Which page are you on? I'm sorry.

22 Q. I'm not on a page. I mean it's cited as  
23 in the Staff Report, page 18, but I was asking more  
24 generally when the Commission started investigating  
25 PALMco.



1 A. Yes.

2 MS. BOJKO: Your Honor, at this time, I'd  
3 like to mark as OCC Exhibit 9, an e-mail from Bill  
4 Haiker to Palmese. Did I say that right?

5 THE WITNESS: Bill "Hi-ker."

6 MS. BOJKO: "Hi-ker." My apologies.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. (By Ms. Bojko) Do you have what's been  
9 marked as OCC Exhibit 9?

10 A. I do.

11 Q. Is this the e-mail that's referenced in  
12 the Staff Report?

13 MS. BAIR: Is there a specific location  
14 in the Staff Report?

15 MS. BOJKO: I think it's page 18.

16 A. Yes.

17 Q. Ms. Scarberry, you're listed, you're  
18 copied on this e-mail; is that correct?

19 A. Yes.

20 Q. And is this an e-mail from Staff,  
21 January 22, 2016, to Mr. Palmese, stating that Staff  
22 is concerned that PALMco may not be following the ORC  
23 and the OAC rules?

24 A. Yes, that's what it says.

25 Q. So from this e-mail and the request to

1 provide documents, Staff was investigating PALMco in  
2 January 2016; is that correct?

3 A. Yes.

4 Q. And then again in February 2016 -- strike  
5 that, Your Honor.

6 MS. BOJKO: May I have marked as OCC  
7 Exhibit 10, a document dated February 12, 2016, from  
8 Staff, Mr. Haiker, to Mr. Metzger?

9 EXAMINER SANYAL: Yes, it shall be so  
10 marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Is this -- the e-mail that I just  
13 referenced that I marked as OCC Exhibit 10, do you  
14 have that in front of you?

15 A. Yes.

16 Q. And you are also Cc'ed on this e-mail,  
17 correct?

18 A. I am.

19 Q. And in this e-mail -- is this another  
20 e-mail where Mr. Haiker is explaining to PALMco that  
21 they believe they are charging large rate increases  
22 that amount to unconscionable and misleading, that  
23 bear no relationship to actual changes in the market?

24 A. Yes, that's -- that's what he wrote.

25 Q. So, in February 2016, they were still

1 explaining to PALMco that they were concerned with  
2 the increases in prices, up to 400 percent, when  
3 there are no market conditions that have noticed any  
4 changes?

5 THE WITNESS: Could you repeat that?

6 EXAMINER SANYAL: I was going to ask. It  
7 was a really long question.

8 MS. BOJKO: How about I rephrase?

9 EXAMINER SANYAL: Yes, thank you.

10 Q. (By Ms. Bojko) In February 2016, it  
11 appears that Staff was still reaching out to PALMco  
12 to explain that they believed their price increases  
13 were not attached to market conditions and they were  
14 unconscionable, correct?

15 A. We -- yeah, we -- Mr. Haiker reached out  
16 to them. I don't know about "still."

17 Q. Well, they reached out, in January 2016,  
18 to talk about their concerns with the unconscionable  
19 prices and then they reached out again in February  
20 2016, correct?

21 A. I believe this is a response to the  
22 original request. I don't think it was a separate  
23 incident.

24 Q. Okay. So it was an ongoing investigation  
25 and discussion about PALMco's unconscionable

1 practices from January 2016 to February 2016.

2 A. Yes.

3 MS. BOJKO: Your Honor, may I mark as OCC  
4 Exhibit 11, an e-mail from Ms. Bossart to Indra,  
5 Palmese, on January 31, 2019?

6 EXAMINER SANYAL: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.).

8 Q. Does this appear to be an e-mail from  
9 Ms. Bossart to Indra -- PALMco companies?

10 MR. WHITT: Objection.

11 EXAMINER SANYAL: Basis?

12 MR. WHITT: There's no foundation. There  
13 needs to be a foundation that this witness is  
14 familiar with this document beyond more than "Isn't  
15 this what the document is."

16 EXAMINER SANYAL: Okay. Mr. Whitt, I  
17 think Ms. Bojko is going to do that right now.

18 MS. BOJKO: I'm sorry, Your Honor. I was  
19 just trying to make sure we were looking at the same  
20 document and identified it as the January 31, 2019  
21 e-mail.

22 Q. (By Ms. Bojko) Do you have that in front  
23 of you?

24 A. I do.

25 Q. And is this January 31, 2019 e-mail, the

1 e-mail listed in the Staff Report to Jennifer  
2 Coleman, on page 18 in the Footnote 39?

3 A. I believe it is.

4 Q. In this e-mail, Staff is explaining to  
5 PALMco that they're again receiving many complaints  
6 about PALMco's high variable rates and it goes on to  
7 talk about that last year they had concerns and now  
8 those complaints are continuing at a high variable  
9 rate; is that correct?

10 MR. WHITT: Objection. Hearsay. It's  
11 actually two levels of hearsay.

12 EXAMINER SANYAL: I'm inclined to sustain  
13 that objection.

14 MS. BOJKO: Your Honor, it's referenced  
15 in the Staff Report. She stated she had knowledge of  
16 the e-mails in the Staff Report.

17 EXAMINER SANYAL: Well, let's ask her.

18 Ms. Scarberry, have you reviewed this  
19 e-mail in the course of collecting your  
20 recommendations for the Staff Report?

21 THE WITNESS: I -- I don't recall this  
22 one. I may have, but I don't remember.

23 EXAMINER SANYAL: Your objection, in case  
24 it wasn't clear, it was sustained.

25 Q. (By Ms. Bojko) Are you -- Ms. Scarberry,

1 are you aware of any other correspondence, that went  
2 from Staff to Palmese, questioning their high  
3 variable rates?

4 A. I don't recall.

5 Q. Are you familiar with responses to the  
6 Staff's inquiries from PALMco regarding the high  
7 variable rates? One of them which is referenced in  
8 the Staff Report on page 18.

9 EXAMINER SANYAL: Which one?

10 THE WITNESS: Yeah.

11 MS. BOJKO: There was -- it's  
12 February 2019. On page 18, the second-to-last  
13 paragraph. There's mention of a response to Staff's  
14 e-mail from PALMco.

15 Your Honor, maybe it would help if I show  
16 the witness the e-mail.

17 EXAMINER SANYAL: Are you marking --

18 MS. BOJKO: Yes.

19 EXAMINER SANYAL: Yes, go ahead.

20 MS. BOJKO: OCC would like to mark as OCC  
21 Exhibit 11.

22 MR. ETTER: 12.

23 MS. BOJKO: Oh, I'm sorry, 12.

24 EXAMINER SANYAL: I believe it's 12.

25 MS. BOJKO: 12, an e-mail from Indra

1 Energy, dated February 21, 2019, to Barb Bossart at  
2 the Commission.

3 EXAMINER SANYAL: It shall be so marked.  
4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. (By Ms. Bojko) Do you recognize this  
6 e-mail as the responsive e-mail that's noted in the  
7 Staff Report on page 18, February 2019?

8 MS. BOJKO: And, Your Honor, for  
9 clarification you have to look at the second block of  
10 the e-mail. The top block, dated June 26, I believe  
11 was probably a Staff forwarding pursuant to a public  
12 records request. So you have to look at the tagline  
13 of the original e-mail, which is below that, to  
14 Briana -- or, from Briana Ashiotes to Barb Bossart,  
15 dated February 21, 2019.

16 EXAMINER SANYAL: Thank you.

17 THE WITNESS: What was the question  
18 again?

19 Q. (By Ms. Bojko) Are you familiar with this  
20 e-mail? Do you recognize it to be the e-mail that's  
21 referenced on page 18 of the Staff Report?

22 A. I'm not positive. I -- it doesn't look  
23 like I was copied on these. I may have seen them,  
24 but I'm not sure.

25 Q. You don't recall whether you reviewed

1 this as part of your investigation in this case?

2 A. Yeah, I don't recall.

3 Q. Are you aware of a meeting that occurred  
4 between Staff and PALMco on February 26, 2019?

5 A. Yes.

6 Q. Were you at that meeting?

7 A. I was.

8 Q. And at this meeting, PALMco again  
9 explained that it was a business decision to raise  
10 variable prices; is that correct?

11 A. Yes, that is what they indicated to us at  
12 the time.

13 Q. And that meeting and discussion was also  
14 relayed in the Staff investigation; is that correct?

15 A. I don't see it, but I thought it was in  
16 here.

17 Q. Me too.

18 If you look at the top of page 17.

19 A. Yes.

20 Q. And did you or Staff review PALMco's  
21 financials for 2018 to determine the truthfulness of  
22 the statements it gave you?

23 A. The Application -- the -- I'm sorry,  
24 could you repeat that?

25 Q. Sure. I'm asking if Staff reviewed



1 PALMco's 2018 finances to determine the truthfulness  
2 of PALMco's statements.

3 MS. BAIR: Your Honor, the truthfulness  
4 of PALMco's statements where? Where are we talking  
5 about here?

6 Q. We're talking about on page 17, how the  
7 Staff Report states that it was a business decision  
8 to raise variable prices because of an  
9 underperformance in 2018. It starts on page 16 at  
10 the bottom. Expected financial performance,  
11 lower-than-expected financial performance in 2018.  
12 I'm asking if Staff reviewed the Company's finances  
13 to determine the truthfulness of that statement.

14 A. No, I did not.

15 Q. So through your involvement in your  
16 current role, is it fair to say that, since 2016,  
17 Staff has given PALMco several chances to cure its  
18 rule violations?

19 MR. WHITT: Objection.

20 EXAMINER SANYAL: Basis?

21 MR. WHITT: There's no findings, in 2016  
22 or otherwise, that there have been any rule  
23 violations. And again, the Staff Report speaks for  
24 itself in terms of what Staff did in 2016 and what it  
25 did in 2018 and 2019.

1 MS. BOJKO: Your Honor, there's a  
2 foundation that Staff has informed PALMco, many  
3 times, that Staff believes that PALMco has violated  
4 several rules. They've listed that in the Staff  
5 Report and the e-mails. And I'm asking if Staff has  
6 given the Company an opportunity to cure their rule  
7 violations before they asked the Commission for an  
8 investigation.

9 MS. BAIR: I object, too, because of the  
10 rule violation that Mr. Whitt objected to.

11 EXAMINER SANYAL: Because of the  
12 characterization?

13 MS. BAIR: Characterization as a rule  
14 violation in 2016.

15 EXAMINER SANYAL: I'm going to sustain  
16 Mr. Whitt and Ms. Bair's objections. You may  
17 rephrase the question.

18 MS. BOJKO: Sure.

19 Q. (By Ms. Bojko) Since 2016, is it fair to  
20 say that Staff has given PALMco several chances to  
21 cure the alleged rule violations set forth by Staff?

22 A. Yes. Sorry. Yes, there have been some  
23 communications regarding different practices.

24 Q. And after all those communications, Staff  
25 believes, they state in the report, that PALMco's

1 failed to meaningfully modify its business practices  
2 to bring it into compliance; is that correct?

3 A. I'm sorry, where in the report?

4 Q. 18.

5 A. Yes.

6 Q. Isn't it true that the Staff has stated  
7 that it believed PALMco's management decisions and  
8 marketing behavior have caused extreme harm to  
9 customers in Ohio?

10 MR. WHITT: Your Honor, I object. We  
11 have now spent the entire lunch hour doing what we  
12 set out to say we weren't going to do. The Staff  
13 Report speaks for itself.

14 MS. BOJKO: Your Honor, there's going to  
15 be an objection that the Staff Report doesn't speak  
16 for itself and that the Staff Report is hearsay and  
17 that we cannot admit the Staff Report and, after that  
18 time, the witness will not be on the stand and I  
19 cannot bring the information from her investigation  
20 and her review.

21 These are the findings that the Staff has  
22 made and that the Staff has alleged and recommended  
23 that the Commission find, and these are the items I'm  
24 asking if it's her understanding, through the  
25 investigation, that this is what the Staff concluded.

1 MR. WHITT: The --

2 EXAMINER SANYAL: Go ahead.

3 MR. WHITT: If I may respond, Your Honor?

4 EXAMINER SANYAL: Yes, you may.

5 MR. WHITT: The Staff Report is part of  
6 the record in this case whether it's moved into  
7 evidence or not. If the case were appealed, this is  
8 part of the record that the Supreme Court of Ohio  
9 would receive.

10 The report has not been offered into  
11 evidence by anyone, so whether -- and there can't be  
12 an objection to it until it's offered for some  
13 purpose so we know whether it would be admitted or  
14 not, but I don't -- the Company is not taking the  
15 position that under no scenario would the Commission  
16 be allowed to look at or consider its own Staff's  
17 report. Nobody has taken that position.

18 So, again, I'm not sure why it's  
19 necessary for the witness to merely validate the  
20 report whose ultimate consideration by the  
21 Commission, I don't think, is in question.

22 EXAMINER SANYAL: Okay. Thank you,  
23 Mr. Whitt.

24 Ms. Bair, there was some conversation  
25 going on. Do you have anything further?

1 MS. BAIR: Oh, no, I agree that it is.  
2 It is, according to the rule, admitted into this case  
3 record under 4901:1-28.

4 EXAMINER SANYAL: Ms. Bojko, I think the  
5 record is clear that Staff had previous  
6 communications with PALMco about alleged potential  
7 rule violations, so I think you've made your point.  
8 And based on the characterizations by Ms. Bair and  
9 Mr. Whitt, do you feel comfortable moving on, because  
10 I think we have covered all you intended to cover  
11 with the Staff Report.

12 MS. BOJKO: Actually, I don't believe we  
13 have, Your Honor, but if they're willing to agree and  
14 not challenge the admission of the Staff Report, then  
15 I will move on from those questions, but I still have  
16 additional questions, but I'll move on from those  
17 type of questions.

18 MR. WHITT: I don't know what there is to  
19 challenge. Nobody has moved it. I don't know if  
20 anybody is going to move it.

21 MS. BOJKO: We will move the admission of  
22 the Staff Report. And your prior pleadings filed do  
23 challenge the Staff Report, so that is the purpose of  
24 this.

25 MR. WHITT: It challenges -- it

1 challenges your witness's testimony which is  
2 different than challenging the Staff Report. I have  
3 no problem if Staff has no objection. Do you want to  
4 stipulate --

5 EXAMINER SANYAL: Let's stipulate to  
6 that.

7 MR. WHITT: -- to the admission of the  
8 Staff Report?

9 MS. BAIR: Yes.

10 EXAMINER SANYAL: -- and I think that  
11 will make it --

12 MS. BOJKO: Thank you.

13 MR. WHITT: -- not for the truth of its  
14 contents necessarily, but for the fact that it is  
15 what Staff wrote and we have all referred to it as  
16 the Staff Report.

17 EXAMINER SANYAL: Okay. We're all in  
18 agreement?

19 MS. BOJKO: Well, Your Honor, I think  
20 that it can be offered for the truth of its contents  
21 because Staff has made an investigation and it is an  
22 exception to hearsay. This is the exact issue I was  
23 talking about that was referred to by Counsel in  
24 prior pleadings that he's going to challenge.

25 The Staff Report is truthful. We've

1 asked the witness if she believed the findings were  
2 truthful when made. We've asked if she believed it  
3 was true and accurate. It can be used for the  
4 truthfulness of the assertions made therein and that  
5 is the point of going through this with the witness  
6 who actually investigated and had a part in drafting  
7 the Staff Report, input into the Staff Report.

8 EXAMINER SANYAL: Mr. Whitt and Staff?

9 MR. WHITT: You know what, we'll  
10 stipulate to its admission. You can argue whatever  
11 you want to argue about how you think it's relevant  
12 and we'll fight that battle later. I'd rather do  
13 that and go get something to eat.

14 EXAMINER SANYAL: I do -- I do think this  
15 issue will be more pertinent when it comes to OCC's  
16 witness and how we rule on the pending motions. So I  
17 do think everyone agrees that this will be admitted  
18 into the record.

19 MS. BOJKO: Thank you, Your Honor.

20 EXAMINER SANYAL: And so, let's move on  
21 from the Staff Report. I think Mr. Whitt also makes  
22 a point about lunchtime, so let's, for a moment,  
23 let's go off the record.

24 (Discussion off the record.)

25 EXAMINER SANYAL: Let's get back on the

1 record. We had a brief discussion off the record.  
2 We will be taking a break until 2:00.

3 I believe Staff and Mr. Whitt have  
4 stipulated that the Staff Report will be admitted  
5 into evidence and that they have no objections to  
6 that.

7 Ms. Bojko still has additional questions  
8 related to the Staff Report, correct?

9 MS. BOJKO: Yes, Your Honor.

10 EXAMINER SANYAL: I guess my preference  
11 would be then, at 2:00 p.m., we take those questions,  
12 one by one, and get those objections noted. How many  
13 questions do you have left with regard to the Staff  
14 Report? Like a ballpark.

15 MS. BOJKO: Well, I mean, Your Honor,  
16 it's intertwined into my cross-examination. I'm not  
17 going page by page. I'm actually trying to ask  
18 relevant questions and the subject matter. I have  
19 several questions left. I don't have a number with  
20 regard to those that might be addressed in the Staff  
21 Report because, remember, the settlement also  
22 addresses the Staff Report, so we need to ask those  
23 questions together so they might be combination  
24 questions.

25 EXAMINER SANYAL: Well, I guess we will



1 be taking them question by question, if that is okay  
2 with everyone.

3 MS. BOJKO: That would be great. Thank  
4 you, Your Honor.

5 EXAMINER SANYAL: Okay. So let's recess  
6 until 2:00. I don't know if that will give us enough  
7 time to review -- I do see the two memo contras have  
8 been filed, so we will try our best to review those  
9 as well, and hopefully have a ruling for you.

10 I'm not entirely sure when my  
11 co-examiner, I'm hoping he'll be here this afternoon,  
12 but we're not entirely sure.

13 So let's recess until 2:00. Thank you.

14 (At 1:09 p.m. a lunch recess was taken  
15 until 2:00 p.m.)

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Thursday Afternoon Session,  
September 19, 2019.

- - -

EXAMINER SANYAL: We do have rulings on  
the two pending motions.

With regard to PALMco's motion to strike  
testimony for the OCC witnesses, that motion is  
denied.

And with regard to Staff's motion to  
quash the subpoenas, we are denying it in part and  
granting it in part in that we have a limitation with  
regard to Staff Witness Bossart. She will be  
available to answer any questions about the Staff  
Report that Ms. Scarberry is not able to answer. And  
then, with regard to Staff Witness Fadley, he will be  
able to answer -- he is available to answer questions  
that Ms. Bossart cannot answer.

So I understand that's confusing. Are  
there any questions, Mr. Whitt?

MR. WHITT: I don't think so.

EXAMINER SANYAL: Okay. You just had a  
quizzical look, so.

EXAMINER PRICE: And only questions on  
the Staff Report. The three-prong test will be off  
limits for those two witnesses.

1 EXAMINER SANYAL: I'm sorry, one more  
2 time.

3 EXAMINER PRICE: Only for the Staff  
4 Report. The questions for the three-prong test will  
5 be off limits.

6 EXAMINER SANYAL: Got it. I didn't quite  
7 hear you.

8 EXAMINER PRICE: The other thing  
9 outstanding, the other ruling, motion outstanding, is  
10 Mr. Whitt's motion to quash the subpoenas of the  
11 PALMco witnesses, and we are going to grant the  
12 motion to quash.

13 I believe that Mr. Whitt, in his motion,  
14 has outlined a safe path, within the confines of the  
15 Civil Rules, to obtain the testimony of the  
16 witnesses. It may not be the only path. In some  
17 future case, somebody may want to present a different  
18 path that will be within the rules.

19 This all gets back to my observation at  
20 the prehearing conference. This is not a typical  
21 Commission practice case where the company comes in  
22 with an application and it's an in-state utility and  
23 the company is seeking some sort of relief, whether  
24 it's a rate increase or a tariff change, from the  
25 Commission.

1 PALMco is certified by the Commission,  
2 but they certainly did not initiate this proceeding.  
3 Therefore, we do agree that the subpoenas are unable  
4 to bring in an out-of-state witness to testify  
5 against as well.

6 Mr. Whitt also outlined in his memo, and  
7 the court cases he cites to, illustrate that these  
8 witnesses can be deposed and their depositions can be  
9 entered into the record. The only obstacle is the  
10 Commission requirement that depositions be filed  
11 before the hearing and we're happy to waive that  
12 requirement.

13 So we will also, along those lines, grant  
14 the deferred motion to compel the testimony of  
15 Mr. Palmese in a deposition. That deposition will  
16 take place on a schedule to be determined between the  
17 examiners and counsel for PALMco and OCC. I would  
18 expect it would take place early next week. And  
19 then, after the deposition, Ms. Bojko can file the  
20 testimony of the deposition and that will take place  
21 in lieu of Mr. Palmese's testimony here at the  
22 Commission.

23 I do want to caution the parties, in  
24 light that we're operating along these lines,  
25 Mr. Whitt should be granted an opportunity, during

1 the deposition, for I guess it will be the equivalent  
2 of redirect and then Ms. Bojko will have the  
3 equivalent of recross again, in case you have any  
4 questions for your witness that you want to put on  
5 the record since this will take the place of his  
6 testimony.

7 We do agree the cases you cited were  
8 analogous and lay out a pathway to get this witness's  
9 testimony before the Commission and not in a  
10 burdensome manner.

11 Any questions?

12 EXAMINER SANYAL: Just as an  
13 administrative matter, may we have another copy of  
14 the Staff Report for Examiner Price? Please and  
15 thank you. Actually, I do have another copy up here.

16 MS. BOJKO: Oh, I did leave one up there,  
17 yes, Your Honor.

18 EXAMINER PRICE: Thank you.

19 MS. BOJKO: You're welcome.

20 EXAMINER PRICE: Thinking ahead.

21 So everybody is clear on the three  
22 rulings?

23 EXAMINER SANYAL: Okay. Well, Ms. Bojko,  
24 if you want to continue with Ms. Scarberry whenever  
25 you are ready.

1 MS. BOJKO: I'm sorry, Your Honor. It  
2 took me a minute to process. I do have a question.

3 EXAMINER SANYAL: Sure.

4 MS. BOJKO: For the admission of  
5 Ms. Joseph's deposition transcript, do we just file  
6 that or do we make that a -- is your preference to  
7 actually move that to be an OCC Exhibit today?

8 EXAMINER PRICE: Well, I guess the  
9 question is for Counsel. Do you intend to put on --  
10 do you intend to allow Ms. Joseph to proceed today or  
11 are you content with the deposition transcript?

12 MR. WHITT: I haven't seen the  
13 transcript. I don't -- when I do see it, we may want  
14 to object to portions of it being entered.

15 EXAMINER PRICE: Well, I guess that  
16 raises a very good point. Obviously these deposition  
17 transcripts are being entered in, subject to  
18 objections that you make in the -- during the  
19 deposition. We will rule on them and, if we sustain  
20 an objection and she's relying upon a piece of  
21 testimony, then it will be disregarded. We're not  
22 going to catalog our rulings over this 400-page  
23 deposition but it is taken subject to deposition --  
24 subject to your objections. If you want to brief any  
25 of those objections, that will be fine.

1 MR. WHITT: I think I'm okay with just  
2 the transcript comes in, we'll see what it's being  
3 cited for, and if we have a problem with what is  
4 being cited, we can make that issue known.

5 MS. BOJKO: I don't understand that  
6 process because that would be after the briefing is  
7 done because we would only cite it in a brief, right?

8 EXAMINER PRICE: You can move to strike  
9 it. You can move to reply. If you -- if you  
10 include reference -- a reference to testimony that  
11 he's objected to, he's certainly entitled to say that  
12 should be ignored because of my objection which  
13 stated X, Y, Z.

14 MS. BOJKO: Okay. I just didn't know the  
15 process you envisioned.

16 EXAMINER PRICE: Well, I mean, we're out  
17 of normal Commission practice. We're all trying to  
18 figure this out together.

19 MR. WHITT: And I don't want to get too  
20 far ahead of ourselves about briefing schedules or  
21 potential rebuttal or anything like that, but I know  
22 that post-hearing briefs are the ordinary practice.  
23 We would certainly be willing to entertain an  
24 alternative by way of oral argument or something  
25 else. I guess we don't feel strongly about it other

1 than signaling our willingness to consider  
2 alternatives to keep the process moving along.

3 EXAMINER PRICE: I think that makes sense  
4 for parties to think about.

5 Ms. Bojko, what's the status of  
6 Ms. Joseph's deposition transcript

7 MS. BOJKO: Your Honor, I got it at  
8 4:35 last night. I have it with me here today.

9 EXAMINER PRICE: Can you give a copy of  
10 it to Mr. Whitt?

11 MS. BOJKO: Of course.

12 Just Mr. Whitt?

13 EXAMINER PRICE: Just Mr. Whitt for now.

14 So why don't you review that, I'm not  
15 asking in the next ten minutes, but review that this  
16 evening and then you can make a decision whether you  
17 want to stand on that transcript or allow Ms. Joseph  
18 to testify tomorrow.

19 MR. WHITT: I appreciate that. Thank  
20 you, Your Honor.

21 EXAMINER PRICE: Mr. Adkins, it looks  
22 like you're getting closer and closer to going today.

23 MR. ADKINS: It's at your pleasure, Your  
24 Honor.

25 EXAMINER SANYAL: Okay. Well, Ms. Bojko,



1 any other questions?

2 MS. BOJKO: No. Thank you very much,  
3 Your Honor.

4 EXAMINER SANYAL: Okay. You may proceed  
5 whenever you're ready.

6 MS. BOJKO: Thank you, Your Honor.

7 - - -

8 MELISSA SCARBERRY  
9 being previously duly sworn, as prescribed by law,  
10 was examined and further testified as follows:

11 CROSS-EXAMINATION (Continued)

12 By Ms. Bojko:

13 Q. Could we turn to page 17 of the Staff  
14 Report, please. There are no line numbers so I'm  
15 going to do my best, because I don't want to read  
16 anything into the record, so I'm going to try to  
17 refer you to a spot.

18 In the Recommendations, the Staff Report  
19 referred to all customers. It's the one, two, third  
20 bullet point under Recommendations. The Staff Report  
21 referred to all customers or, excuse me, just  
22 "customers enrolled during the above noted  
23 timeframes...." Do you see that?

24 A. Yes.

25 Q. Focusing on the "during the above noted

1     timeframes," there were several timeframes discussed  
2     in the Staff Report that go back to January 2016. Do  
3     you know which timeframes the recommendation is  
4     referencing?

5             A.     I believe it is the timeframe of  
6     December 1st through -- 2018 through April 15th, I  
7     believe.

8             Q.     With that in mind, do you know how many  
9     customers were affected or received the benefit of  
10    Staff's recommendation to a refund?

11            A.     Not off the top of my head.

12            Q.     And do you know how many dollars should  
13    have been refunded under this recommendation?

14            A.     No.

15            Q.     For the restitution provision, the Staff  
16    recommended that customers be refunded the difference  
17    between the utility's default rate and the rate  
18    PALMco actually charged them. Do you know if that  
19    was to be done, per the recommendation, at the  
20    customer's actual usage?

21            A.     Yes, I believe all of our restitution was  
22    done at the customer's actual usage.

23            Q.     And you believe that the Stipulation  
24    resolves the Staff Report and provides redress for  
25    these customers that Staff found were harmed that

1 were referenced in the Staff Report, correct?

2 A. Say that one more time.

3 Q. You believe that the Stipulation resolves  
4 the Staff Report and provides redress for these  
5 consumers that Staff found were harmed in the Staff  
6 Report?

7 EXAMINER PRICE: It's compound,  
8 Ms. Bojko. There's two questions in there. Could  
9 you split them up?

10 MS. BOJKO: Yes, Your Honor. Your fellow  
11 Honor gave me a couple questions earlier, so I tried  
12 to combine them.

13 Q. You believe that the Stipulation resolves  
14 the Staff Report; is that fair?

15 A. I believe that the Stipulation, as a  
16 package, resolves and addresses the issues in the  
17 Staff Report.

18 Q. Okay. And you believe that the  
19 Stipulation provides redress for the consumers that  
20 Staff found were harmed as referenced in the Staff  
21 Report, correct?

22 A. One more time, please.

23 Q. You believe that the Stipulation provides  
24 redress for the consumers that Staff found were  
25 harmed as referenced in the Staff Report.

1           A.    I believe that the Stipulation, as a  
2 package, benefits customers, yes.

3           Q.    And you believe that the Stipulation --  
4 strike that.

5                   Do you have the Stipulation, Joint  
6 Exhibit 1, in front of you?

7           A.    Uh-huh.

8           Q.    Okay. Paragraph 31 of the Stipulation,  
9 if we could turn there.

10                   EXAMINER SANYAL: May we have another  
11 copy of that?

12                   MS. BOJKO: Of the Joint Exhibit 1?

13                   EXAMINER SANYAL: Uh-huh.

14                   MS. BOJKO: That was their exhibit.

15                   MS. BAIR: Just one?

16                   EXAMINER SANYAL: Just one. Thank you so  
17 much.

18                   MS. BAIR: No problem.

19           A.    Which number was that again?

20           Q.    It's paragraph -- it's Roman numeral  
21 III.1. It's paragraph No. 1 under Roman numeral III.  
22 Are you there? I believe it's page 4.

23           A.    Yes.

24           Q.    This paragraph of the Stipulation  
25 guarantees that only customers who enrolled with

1 PALMco, between December 1, 2018 and April 15, 2018,  
2 received an adjustment to the rate charged by PALMco,  
3 correct?

4 A. This paragraph states that all customers  
5 enrolled between 12/1/18 and 4/15/19, that were  
6 charged a variable rate, have received restitution  
7 already.

8 Q. So you believe that the Stipulation  
9 guaranteed that those customers enrolled with PALMco  
10 between those dates -- and I apologize, I think I  
11 said 4/15/18, 4/15/19, received -- they have been  
12 re-rated so they would have already received an  
13 adjustment.

14 A. Yes, that is my understanding.

15 Q. So if a customer signed up with a  
16 two-month introductory rate on September 30, 2018,  
17 and their rate drastically increased to the four or  
18 six times level listed in the Staff Report on  
19 December 1, those customers would not be guaranteed a  
20 refund, correct?

21 A. If they contacted the Commission with a  
22 complaint, they received a refund.

23 Q. If they affirmatively reached out, they  
24 may receive, not under that provision but a different  
25 provision, correct?

1           A.    If they filed a complaint with the  
2 Commission, they have been re-rated.

3           Q.    But that would be, under my  
4 understanding, would be under Stipulation Section  
5 III.2; is that correct? Paragraph 2?

6           A.    Yes.

7           Q.    Okay. So I'm focusing on paragraph 1.  
8 As far as paragraph 1, only the customers that  
9 enrolled between December 1, 2018 and April 15, 2019  
10 would receive a re-rate and a refund, correct?

11           MS. BAIR: Objection. I believe she  
12 answered the question.

13           EXAMINER SANYAL: Overruled.

14           A.    Yes, the customers enrolled during that  
15 timeframe have received a re-rate.

16           Q.    So again, I'm going to go back to my  
17 hypothetical. Under paragraph 1, a customer that was  
18 enrolled prior to December, would not be able to be  
19 re-rated and take advantage -- wouldn't be guaranteed  
20 to be re-rated and take advantage of this provision,  
21 paragraph 1, correct?

22           A.    No, not under paragraph 1. They would  
23 fall under the next one.

24           Q.    And the dates referenced in paragraph 1,  
25 those dates came from the Staff Report; is that

1 correct?

2 A. Yes.

3 Q. And in this paragraph the Stipulation  
4 estimates a total cost of refunds to be \$385,000; is  
5 that correct?

6 A. Yes.

7 Q. How many customers received a refund  
8 under this provision?

9 A. I don't have that information with me  
10 right now.

11 Q. Did you verify the refund amounts that  
12 were provided to customers under this provision, or  
13 Staff?

14 A. Some of them would have been verified by  
15 customers within their complaints.

16 Q. But this paragraph, as I understood it,  
17 was not those people that complained, or could it  
18 have been?

19 A. It could have been --

20 Q. Okay.

21 A. -- customers who complained.

22 Q. So customers outside, customers that had  
23 not complained but were enrolled during that period,  
24 did Staff verify their refunds?

25 A. If they enrolled during these timeframes

1 but did not have a complaint with the Commission, we  
2 did not verify those. But the Company did provide  
3 information with the amounts, customers, all of their  
4 detail.

5 MS. BOJKO: Your Honor, at this time, I  
6 would like to have marked as OCC Exhibit 13 --

7 MR. ETTER: 13.

8 MS. BOJKO: -- 13, Interrogatory-2-16.  
9 It has a related RPD-2-16 and then an attachment.

10 EXAMINER SANYAL: It shall be so marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MS. BOJKO: May we go off the record for  
13 one minute?

14 EXAMINER SANYAL: Yes, we may.

15 (Discussion off the record.)

16 EXAMINER SANYAL: Let's get back on the  
17 record.

18 With regard to what has been marked as  
19 Exhibit 13, OCC will file a late-filed exhibit with  
20 regard to this document so it can appropriately  
21 redact relevant customer information

22 MS. BOJKO: Account numbers, yes. Thank  
23 you, Your Honor.

24 Q. (By Ms. Bojko) Do you have in front of  
25 you what's been marked RPD -- or, I'm sorry, OCC



1 Exhibit 13?

2 A. I do.

3 Q. And does this appear to be the  
4 information you just referenced that was provided to  
5 Staff, to the Company, about re-rating?

6 A. I believe so.

7 Q. Could you look at the last page of the  
8 column titled "Total Refund"?

9 MS. BAIR: Objection, Your Honor. This  
10 is -- lack of foundation. Is this from the Company  
11 to OCC?

12 MS. BOJKO: This, I believe, is  
13 correspondence between Staff and the Company that,  
14 yes, was provided to us by PALMco pursuant to a  
15 discovery request to ask for communications between  
16 Staff about the re-rating.

17 MS. BAIR: I'm not sure that this witness  
18 has ever seen this. It appears to be --

19 EXAMINER PRICE: She said -- she said she  
20 was familiar with it.

21 MS. BAIR: Okay. I didn't get that  
22 because it's marked as an interrogatory --

23 EXAMINER SANYAL: Let's ask --

24 MS. BAIR: -- and we don't mark  
25 interrogatories.

1 EXAMINER SANYAL: Let's ask the question  
2 again.

3 Ms. Scarberry, have you seen this  
4 document before?

5 THE WITNESS: I believe I have.

6 MR. WHITT: If I may ask for a  
7 clarification. There actually are a couple of  
8 different documents here.

9 MS. BOJKO: Oh. My apologies.

10 MR. WHITT: The first two pages are  
11 interrogatory responses and then there are  
12 attachments.

13 EXAMINER SANYAL: So was this attachment  
14 not associated with this interrogatory?

15 MR. WHITT: Well, I believe it is.

16 MS. BOJKO: Yeah, I'm sorry, I thought I  
17 stated that this -- first we have the foundation of  
18 the interrogatory that was marked INT-2-16. Then the  
19 second page is a corresponding RPD because it refers  
20 to an RPD in the response, so then these are two  
21 attachments that were produced in response to  
22 RPD-2-16.

23 EXAMINER PRICE: And just to be clear  
24 because now I think the record is confused. When you  
25 asked her if she was familiar with the documents,

1 what documents were you referring to?

2 MS. BOJKO: I was referring to the two  
3 documents attached as attachments that I believe were  
4 in response to her comment that the Company provided,  
5 to Staff, a listing of the customers and the refund  
6 amounts.

7 EXAMINER PRICE: Just to be clear,  
8 Ms. Scarberry, the two attachments that look kind of  
9 like spreadsheets, have you seen those documents  
10 before?

11 THE WITNESS: I believe they are the  
12 documents that were -- I was copied on as a response  
13 to OCC's record request.

14 Q. (By Ms. Bojko) Okay. So if we look at  
15 the first document attached and if you go to, it's  
16 going to be difficult, these pages aren't marked, I  
17 apologize, if you go to the middle of the first  
18 document, there's an end page with a dollar amount.  
19 That was the question I asked you. It's about this  
20 far in. It's the end of the second page.

21 A. I think I'm there.

22 Q. Do you see an end to the total refund  
23 column for the first document? There's no other way  
24 to copy all of these without --

25 A. Yes, I think.

1 Q. Okay. So this is listing -- one document  
2 lists the refund amounts and it has a total at the  
3 bottom, a grand total. Do you see that?

4 A. Yes.

5 Q. And that grand total is how much?

6 A. The one I'm looking at says \$85,585.20.

7 Q. Okay. And then if we go to the second  
8 document and does this appear to be a similar-type  
9 document which is a list of account, an account  
10 number, customer name, a territory code and notes,  
11 and then a total refund amount?

12 A. Yes.

13 Q. And if you go to the very last page of  
14 the whole packet, that total refund amount is how  
15 much?

16 A. \$355,772.24.

17 Q. So in response to RPD-2-16, the question  
18 was please provide a list of all customers who have  
19 received refunds, as of August 2, 2019, because of  
20 the re-rating of the customer accounts and the amount  
21 refunded to each customer, correct? And then it  
22 lists two documents responding to that?

23 A. I'm sorry, what was the -- where are you  
24 looking again?

25 Q. I'm looking at the second page of the

1 packet which is the response to RPD-2-1.

2 EXAMINER PRICE: You haven't established  
3 foundation on the INT -- on the interrogatories.  
4 You've only -- that's why I asked the clarification  
5 earlier. You've only established foundation for the  
6 two attachments. You haven't established foundation  
7 for the interrogatory itself.

8 MS. BOJKO: Thank you.

9 Q. (By Ms. Bojko) You -- okay, let's back  
10 up.

11 You referenced receiving documents from  
12 the Company that demonstrated a refund, and we just  
13 looked at one packet and that equaled a  
14 355,000-dollar refund. Do you believe that that  
15 Excel spreadsheet, do you know, was related to the  
16 Stipulation paragraph provision III.1?

17 A. I'm not sure.

18 Q. And you said you recognized the second  
19 document, which is the first attachment in the  
20 packet, and the total refund amount there was  
21 55,000; is that correct? I'm sorry, 85,585. Do you  
22 know whether -- do you believe that is associated  
23 with paragraph III.2 on page 4 of the Stipulation?

24 A. Maybe. I would -- I mean I would have to  
25 go back and look at all the numbers and the document

1 titles probably to know for sure.

2 EXAMINER PRICE: Ms. Scarberry, don't  
3 guess. Tell us what your present recollection is.

4 THE WITNESS: I believe I've seen the  
5 documents, but I'm not a hundred percent sure.

6 Q. (By Ms. Bojko) Do you believe the  
7 documents stand for or were in response to Staff's  
8 request of the customers listed and the total refund  
9 or credit they received from a re-rate under your  
10 agreement with them?

11 A. I'm not sure. I was copied on an e-mail  
12 with responses.

13 Q. Okay. Well, you mentioned earlier to me,  
14 when I asked the question, you mentioned that -- when  
15 I asked about verification, you mentioned that you  
16 did receive Excel spreadsheets from PALMco that were  
17 listing customers' names and refunds; is that  
18 correct?

19 A. Yes, that they had provided documents,  
20 but we did not individually verify the customers and  
21 information within.

22 Q. Okay. So are these the type of documents  
23 that you believe that the Company provided to Staff?

24 A. Yes.

25 Q. Going back to the Stipulation on that

1 paragraph 4 -- or, page 4, paragraph III.2. In this  
2 provision, a customer who registers an informal  
3 complaint can receive a refund and those were  
4 estimated to be \$55,000; is that correct?

5 A. Yes.

6 Q. And that 55,000 was as of July 26, 2019?

7 A. Yes. An estimate of 55,000.

8 Q. And are the amounts cumulative or would  
9 some of the 55,000 also be included in the 385,000  
10 depending on when the customer enrolled? And I guess  
11 whether they filed an informal complaint per your  
12 last statement.

13 EXAMINER PRICE: Could I have that  
14 question back again, please?

15 (Record read.)

16 MS. BAIR: Objection. Compound question.

17 MS. BOJKO: It's not compound as in the  
18 fact that there's two contingencies. So I'll  
19 rephrase.

20 MS. BAIR: It is two questions and it is  
21 a compound question.

22 EXAMINER SANYAL: She's rephrasing,  
23 Ms. Bair.

24 MS. BOJKO: I'm rephrasing. Sorry.

25 Q. (By Ms. Bojko) You explained to me

1 earlier that if a customer filed an informal  
2 complaint and they were enrolled between 12/1/18 and  
3 4/15/19, they may fall into that first bucket in  
4 paragraph 1, correct?

5 A. Yes.

6 Q. Okay. So the answer -- my original  
7 question was: Was the 385, stated in paragraph 1,  
8 cumulative with the 55,000 in paragraph 2?

9 A. I'm not sure.

10 Q. So if a customer was in paragraph 2  
11 because they filed an informal complaint, they could  
12 also be in paragraph 1, in bucket 1, because they  
13 were enrolled between December 1, 2018 and April 15,  
14 2019, correct?

15 A. They could be.

16 Q. Do you know how many customers received a  
17 refund under paragraph 2 on page 4?

18 A. No, I don't have that information with  
19 me.

20 Q. So, per the Stipulation, if we look at  
21 the first two paragraphs, paragraph 1 and 2 on  
22 page 4, PALMco is only required to issue mandatory  
23 refunds in the amount around 400,000, maybe 440,000  
24 if you add up the numbers, depending on when the  
25 customers, who have filed an informal complaint,



1 enrolled with PALMco, correct?

2 A. Yes, those customers have already  
3 received refunds.

4 Q. Okay. And the stip, if we look at  
5 paragraph 7 which starts on page 5, there's another  
6 group of customers that were harmed and received a  
7 re-rating on 7(a) and that amount is 800,000; is that  
8 correct? Estimated.

9 A. You said No. 7, right?

10 Q. 7(a), yes.

11 A. Yes, this is where customers enrolled  
12 between October 1, 2018 and November 30, 2018, who  
13 have not previously received a re-rate, will receive  
14 a re-rate and the cost will be approximately  
15 \$800,000. These are a group of customers, outside of  
16 our investigation, who have not previously received a  
17 re-rate; so they have not complained to the  
18 Commission.

19 Q. Okay. But this provision is contingent  
20 on -- this provision is contingent on PALMco  
21 realizing funds from assigning its customer contracts  
22 to another supplier, correct?

23 A. Yes, that was the agreement.

24 Q. These customers were enrolled between  
25 October -- it's "enrolled" in this paragraph, right?

1 These customers were enrolled between October 1, 2018  
2 and November 30, 2018?

3 A. Yes.

4 Q. So, in a two-month period, the  
5 Stipulation recognizes there are a group of customers  
6 that were overcharged and should be re-rated by the  
7 tune of 800,000?

8 MR. WHITT: Objection. The witness  
9 testified this group of customers is outside the  
10 scope of the Staff Report.

11 EXAMINER SANYAL: Sustained.

12 MS. BOJKO: I'm sorry if there was  
13 confusion. I didn't mention anything about the Staff  
14 Report or I didn't mean to.

15 I'm saying that within a two-month  
16 period, the Stipulation, not the Staff Report, the  
17 Stipulation recognizes there's a group of customers  
18 that have been overcharged and are going to be  
19 re-rated if there's a sale in the amount of \$800,000  
20 for two months.

21 EXAMINER SANYAL: Ms. Bojko --

22 MR. WHITT: Objection. Lack of  
23 foundation.

24 EXAMINER SANYAL: Your earlier objection  
25 was sustained.

1 I think the witness has stated there's a  
2 different group of customers with regard to the  
3 Stipulation.

4 MS. BOJKO: Right. I'm not talking about  
5 the Staff Report. I'm talking about the Stipulation.

6 EXAMINER SANYAL: I'm talking about the  
7 Stipulation as well.

8 Q. (By Ms. Bojko) Okay. The Stipulation  
9 allows a different group of customers, that have been  
10 enrolled for two months, to be re-rated in an amount  
11 of \$800,000, correct?

12 A. Yes, that was part of the Stipulation as  
13 a package.

14 Q. And if PALMco does not sell its contracts  
15 or if PALMco sells its book of business for a dollar,  
16 customers that were overcharged between October 1,  
17 2018 and November --

18 EXAMINER PRICE: Ms. Bojko, your question  
19 assumes a fact not in evidence. That's where you're  
20 stumbling and why you're getting objections. The  
21 fact not in evidence is they were overcharged. Staff  
22 did not investigate those two months, as  
23 Ms. Scarberry said, so that's why your question is  
24 getting objected to.

25 MS. BOJKO: I thought, this morning,

1 she --

2 EXAMINER PRICE: I wasn't here.

3 MS. BOJKO: -- did testify that they  
4 investigated a period before December 2018, just not  
5 the specific complaints that were listed in the Staff  
6 Report.

7 MR. WHITT: That was the --

8 MS. BOJKO: Is that the correct --

9 MR. WHITT: -- January-February 2016  
10 correspondence.

11 EXAMINER SANYAL: I agree.

12 MS. BOJKO: I'll ask her that question.

13 Q. (By Ms. Bojko) Did the Staff investigate  
14 the months leading up to the customer contacts  
15 identified in the December 1, 2018 through April 15,  
16 2019 timeframe?

17 A. Our investigation was the complaints  
18 received from December 1, 2018 to April 15, 2019.

19 Q. Nothing before that except for the 2016  
20 items that we talked about?

21 A. Well, we do have Staff that investigates  
22 customer complaints, but that was not part of this  
23 investigation.

24 Q. Okay. So I'll rephrase my question to  
25 the Bench's point.

1           If PALMco does not sell its contracts or  
2 PALMco sells its book of business for a dollar, then  
3 the customers that enrolled between October 1, 2018  
4 and November 30, 2018, will not receive any refunds  
5 beyond that dollar; is that correct?

6           A.    Unless they have filed a complaint with  
7 the Commission.

8           Q.    So anybody that's enrolled during this  
9 period, if they file an informal complaint, they  
10 would fall in bucket No. 2, paragraph 2, on page 4,  
11 correct?

12          A.    Yes, if they filed a complaint with the  
13 Commission, they have already been re-rated and  
14 received refunds.

15          Q.    Do you know how many customers would fall  
16 into this category where they would be re-rated if  
17 the contingency is met?

18          A.    No, I don't know the number of customers.

19          Q.    And did you refund, did Staff refund the  
20 amounts that would be applicable to this provision?

21               MS. BAIR:  Objection.  Staff refund?  
22 Mischaracterizes what's referred to in the  
23 settlement.

24               EXAMINER SANYAL:  Rephrase the question.

25               MS. BOJKO:  Oh.  I'm sorry.

1 Q. Did Staff verify the refunds that would  
2 be subject to this provision?

3 A. Which provision again?

4 Q. 7. We're talking about paragraph 7.

5 A. We're back in 7? I'm sorry, did Staff  
6 verify?

7 Q. Verify the refund amounts, the  
8 projections. There was a projection, is that  
9 correct, of \$800,000? Did Staff look at those  
10 accounts and verify the refunds that would be  
11 provided under this provision?

12 A. No, we did not.

13 Q. Are you familiar with PALMco providing  
14 Staff with an Excel spreadsheet that gave estimations  
15 of the refunds that would occur under this provision?

16 A. I know the approximate amount was  
17 provided. I believe further documentation was also  
18 provided. I just don't remember exactly what it was.

19 Q. Do you recall seeing a document? Would  
20 it help if I were to refresh your recollection or you  
21 don't even recall seeing the document?

22 A. I would have to check my records. I have  
23 hundreds of e-mails on this case.

24 Q. If PALMco sells its contracts for  
25 something less than \$800,000, will refunds be issued

1 to some customers?

2 A. That is my understanding, yes.

3 Q. So how would those refunds be issued?  
4 Will only certain customers receive a refund?

5 A. I don't know that that's been decided.

6 Q. Would the refunds be prorated so that all  
7 customers in this group receive a partial refund or  
8 you don't know?

9 MS. BAIR: Asked and answered. She just  
10 said that she does not know. It's the same question.

11 EXAMINER SANYAL: Ms. Scarberry, I will  
12 let you answer the question to the extent you know  
13 there's any prorated amount. If you know.

14 THE WITNESS: I -- I don't know. I don't  
15 know that that's been decided yet.

16 Q. (By Ms. Bojko) But the Stipulation  
17 doesn't say how that would occur; is that correct?

18 A. That is correct.

19 Q. Is there something significant to the  
20 October-November time period referenced in this  
21 provision?

22 A. It was just part of our negotiation.

23 Q. Sticking with paragraph 7 on page 5,  
24 under III, isn't it true that any forfeitures  
25 assessed to PALMco are also contingent upon PALMco

1 realizing funds from selling its customer contracts  
2 and assigning them to another supplier?

3 A. I'm sorry, can you repeat that?

4 Q. Referring to paragraph 7, Roman numeral  
5 III, specifically 7(b), isn't it true that any  
6 forfeitures assessed to PALMco are also contingent  
7 upon PALMco realizing funds from selling its customer  
8 contracts and assigning them to another supplier?

9 A. Paragraph 7(b)?

10 EXAMINER SANYAL: I think you're  
11 referring to paragraph 7(c).

12 MS. BOJKO: My apologies. So paragraph  
13 7, the first two sentences. The first sentence of  
14 paragraph 7 and then 7(c). Thank you.

15 EXAMINER SANYAL: And she'll probably  
16 need the question again.

17 MS. BOJKO: Sure.

18 THE WITNESS: Please.

19 Q. (By Ms. Bojko) Referring to paragraph  
20 7(c) under Roman numeral III, isn't it true that any  
21 forfeitures assessed to PALMco are also contingent  
22 upon PALMco realizing funds from selling its customer  
23 contracts and assigning them to another supplier?

24 A. Yes, that is true.

25 Q. And the sale of the contracts would have



1 to be greater than \$800,000 in order for any  
2 forfeiture to be provided, correct?

3 A. Yes, that is what was negotiated.

4 Q. So if the sale of the contracts is  
5 greater than \$800,000, the Company has to provide a  
6 forfeiture in the amount of 50 percent of the  
7 remaining funds, correct?

8 A. Correct.

9 Q. And then PALMco gets to keep 50 percent  
10 of those remaining funds as profit, correct?

11 MR. WHITT: I'll object to the  
12 characterization of profit. What the Company keeps  
13 is money; it may or may not be profit at that point.

14 EXAMINER SANYAL: Rephrase, Ms. Bojko.

15 Q. PALMco gets to keep 50 percent of the  
16 proceeds of the sale; is that correct?

17 A. 50 percent after the \$800,000 in refunds,  
18 yes.

19 Q. And anything over \$750,000, PALMco gets  
20 to keep all of the proceeds from the sale of the  
21 customer contracts, correct? There's a cap of  
22 \$750,000 on the forfeiture, correct?

23 A. Yes. After the 800,000, there's a cap of  
24 750,000 on the portion paid as a forfeiture to the  
25 State.

1 Q. And anything over the 750,000-dollar cap,  
2 PALMco gets to keep those proceeds, correct?

3 A. Yes.

4 EXAMINER PRICE: If my math is correct,  
5 which is highly suspect, PALMco, in order to keep all  
6 -- to hit the threshold of getting all the proceeds,  
7 would have to sell the contracts for \$2.3 million.

8 THE WITNESS: Yes.

9 EXAMINER PRICE: And these provisions  
10 serve to incentivize PALMco to maximize the value  
11 that it could obtain from the sale of the contracts  
12 in order to -- which would result in customers  
13 getting \$800,000 in reimbursement and \$750,000 in  
14 civil forfeiture. And I admit I just asked a  
15 compound question, but I can.

16 MR. WHITT: But you forgot the 430.

17 EXAMINER PRICE: And the 430. Is that  
18 correct?

19 THE WITNESS: Yes, that is our  
20 understanding.

21 EXAMINER SANYAL: I think Ms. Bojko is  
22 doing the math. She may not -- she may not agree.

23 MS. BOJKO: 800,000 plus 750,000 is  
24 1.5 million.

25 EXAMINER PRICE: But they have to split

1 it, so you have to double 750,000 because they're  
2 splitting it 50/50, right?

3 MS. BOJKO: To get --

4 EXAMINER PRICE: That's 1.5 million, plus  
5 the original 800,000, would be 2.3 million.

6 MS. BOJKO: Okay.

7 Q. (By Ms. Bojko) So if they don't sell the  
8 contract for 2.2 million --

9 EXAMINER PRICE: 2.3 million.

10 Q. -- if they do not sell the contract for  
11 2.3 million, then they will not have to pay the full  
12 forfeiture or may not even pay any forfeiture to the  
13 State of Ohio, correct?

14 A. Yes, they would need, what was it,  
15 2.3 million for the State to get the full forfeiture.

16 Q. Okay. Let's go back to page 4 of the  
17 Stipulation, paragraph 3. I'm sorry, it's Roman  
18 numeral III, paragraph 3 on page 4. Under this  
19 paragraph, PALMco may continue to renew terms of its  
20 current Ohio customers; is that correct?

21 A. Correct.

22 Q. At what rate may they continue to renew  
23 the terms of their current customers?

24 A. The terms would be stated in the  
25 contracts.

1           Q.    The Staff has -- or, excuse me.

2                    The Stipulation does not set forth a rate  
3 that they have to charge; is that correct?

4           A.    That is correct.

5           Q.    And so, PALMco's free to charge whatever  
6 rate that they want, correct?

7           A.    Along with the terms of their contracts,  
8 yes.

9           Q.    And the -- well, and the Staff is not  
10 required by this to review those terms of the  
11 contract that they're going to renew their current  
12 customers at, correct?

13          A.    No, this does not require our review of  
14 those terms.

15          Q.    And are they able to charge/renew per  
16 terms of the contract at a variable or fixed price?

17          A.    Depending on what the individual contract  
18 states.

19          Q.    So it's whatever PALMco chooses, correct?

20          A.    Potentially. That's the way suppliers  
21 can charge. Staff doesn't regulate rates for  
22 suppliers.

23          Q.    And the Stipulation, settling this case,  
24 doesn't set forth any restrictions on those rates  
25 either, correct?

1           A.     That is correct.

2           Q.     And how many current customers does  
3 PALMco have?

4           A.     I do not know that answer.

5           Q.     You stated you did receive discovery  
6 responses in this case?

7           A.     I was copied on e-mails. I did not read  
8 them all.

9                   MS. BOJKO: Okay. Your Honor, at this  
10 time I'd like to mark as OCC Exhibit 14, a PALMco  
11 response to INT-2-12.

12                   EXAMINER SANYAL: So marked.

13                   (EXHIBIT MARKED FOR IDENTIFICATION.)

14                   MS. BOJKO: Your Honor, this document is  
15 a bit different. It was labeled confidential but,  
16 since the labeling of this as confidential, PALMco  
17 has agreed to release some information at least as it  
18 relates to customer numbers.

19                   He did not send me a new -- they did not  
20 send me a redacted version, so I'm assuming that some  
21 of the rating -- rates might still be confidential.  
22 We only asked about the customer amount.

23                   MR. WHITT: I think our discussion was in  
24 the context of Mr. Adkins's testimony and I think he  
25 had some customer account information that we've

1 waived confidentiality to.

2 EXAMINER SANYAL: Why don't you review  
3 this document and let us know if this needs to be  
4 redacted or not.

5 MR. WHITT: I think ordinarily this would  
6 probably be confidential, but given the client's  
7 representation that it's not renewing its  
8 certificates and it intends to leave the market, I  
9 don't believe we will be asserting confidentiality  
10 over this information.

11 EXAMINER SANYAL: Okay. Thank you.

12 MS. BOJKO: Thank you, Your Honor.

13 EXAMINER SANYAL: You may proceed.

14 Q. (By Ms. Bojko) Do you have in front of  
15 you a response to INT-2-12, Ms. Scarberry?

16 A. Yes.

17 Q. Does this appear to be a discovery  
18 response to PALMco from the Consumers' Counsel?

19 A. It does.

20 Q. And is this one of the discovery  
21 responses that you're familiar with?

22 A. No.

23 Q. Okay. Fair enough.

24 Isn't it true there's nothing in the  
25 Stipulation that would prevent PALMco from renewing

1 its current customer contracts at high variable  
2 rates?

3 MR. WHITT: Objection. Calls for  
4 speculation, and asked and answered. She said Staff  
5 doesn't regulate the rate.

6 EXAMINER SANYAL: Sustained. I do  
7 believe Ms. Scarberry answered your question,  
8 Ms. Bojko, previously.

9 Q. (By Ms. Bojko) In the Stipulation in the  
10 paragraphs 1, 2, and 7, what was the reason for  
11 re-rating the customer accounts?

12 MS. BAIR: Objection. Calls for  
13 settlement discussions that are confidential.

14 EXAMINER PRICE: Can I have the question  
15 back again, please?

16 (Record read.)

17 EXAMINER SANYAL: Can I have the question  
18 read back again?

19 (Record read.)

20 EXAMINER SANYAL: The objection --

21 MR. WHITT: For clarification, is OCC  
22 objecting to the provisions that -- are they  
23 objecting that customers are getting re-rates? I'm  
24 not sure the point of the question.

25 EXAMINER SANYAL: Your objection is

1       sustained.

2                   MS. BAIR:   Thank you.

3                   EXAMINER SANYAL:   You may move on or try  
4       to ask another question that does not go into  
5       settlement negotiations.

6                   MS. BOJKO:   Could I have one minute,  
7       please, Your Honor?

8                   EXAMINER SANYAL:   Sure.   Let's go off the  
9       record.

10                   (Off the record.)

11                   EXAMINER SANYAL:   Let's go back on the  
12       record.   We're back on the record.

13                   Q.     (By Ms. Bojko) Let's turn to page 4 of  
14       your testimony, Ms. Scarberry.

15                   EXAMINER SANYAL:   Are we on the  
16       Stipulation?

17                   MS. BOJKO:   No.   Testimony.

18                   EXAMINER SANYAL:   I mean her testimony.  
19       Thank you.

20                   Q.     (By Ms. Bojko) On page 4, starting on  
21       line 10, you begin to list why you think the  
22       Stipulation is in the public interest; is that  
23       correct?

24                   A.     Yes.

25                   Q.     And isn't it true that Staff considers



1 the managerial capabilities of a CRES or CRNGS  
2 certificate applicant?

3 A. Yes.

4 Q. And as we discussed this morning, but as  
5 a foundation and a refresh, you believe that the  
6 managerial capabilities of a CRES and CRNGS  
7 certificate are addressed in the Staff Report  
8 beginning at page 5, correct?

9 A. Can you repeat that, please?

10 Q. Sure.

11 The issue of the managerial capabilities  
12 begins on page 15 of the Staff Report, correct?

13 A. Page 15?

14 EXAMINER SANYAL: I believe you said "5"  
15 previously.

16 Q. Oh, I'm sorry, 15.

17 A. Okay. Yes, that's where we discuss  
18 managerial capability in the Staff Report.

19 Q. Okay. This morning we talked about the  
20 last renewal certification was filed in January 2018  
21 and that the certificates were issued in March 2018.  
22 Is that your recollection of our discussion this  
23 morning?

24 A. I know they were filed in January 2018,  
25 so they were issued shortly thereafter.

1 Q. Okay. Isn't it true that when those were  
2 renewed, PALMco had identified disciplinary action  
3 against them in other states in the certificate  
4 applications themselves?

5 A. Yes, they listed issues in other states  
6 with its affiliates, with PALMco's affiliates.

7 Q. So do you still have those certification  
8 applications up there that we discussed this morning?

9 A. Somewhere. Yes.

10 EXAMINER SANYAL: And they're OCC  
11 Exhibits 3 and 4, Ms. Bojko?

12 MS. BOJKO: If you say so.

13 EXAMINER SANYAL: I believe they are.

14 Q. Let's look at OCC Exhibit 3 for an  
15 example, which is the gas certification. You're  
16 familiar, in your review of certification  
17 applications, that Exhibit B-3 is where an applicant  
18 is required to list disciplinary action or  
19 liabilities against them; is that correct?

20 A. Yes.

21 Q. Okay. If we could turn to B-3 which is  
22 on page 11 of the application itself.

23 EXAMINER SANYAL: It's B-4.

24 Q. I'm sorry. It's B-4.

25 A. Okay.

1           Q.    B-4.  B-4 is titled "Disclosure of  
2   Liabilities and Investigations"; is that correct?

3           A.    Yes.

4           Q.    Okay.  Proceedings were listed to be  
5   brought in Illinois, Connecticut, New Jersey, and  
6   Pennsylvania for rule violations; is that correct?

7           A.    I have Illinois, Connecticut, and New  
8   Jersey.

9           Q.    Let's turn to Exhibit B-4 on the electric  
10  certification application.  Are you there on B-4?

11           MS. BAIR:  If we're talking -- we're  
12  talking about OCC Exhibit 3?

13           MS. BOJKO:  No.  Now we're talking about  
14  OCC Exhibit 4.

15           MS. BAIR:  Yeah.  I think it's B-3 on OCC  
16  Exhibit 4.  It's B-4 on the other one.

17           MS. BOJKO:  Thank you.  Thank you for  
18  that clarification.  That's why I cited B-3.

19           Q.    (By Ms. Bojko) So it appears that the  
20  Commission's applications have B-3 on the electric  
21  side for the list of disclosure of liabilities, and  
22  B-4 on the gas side for disclosure of liabilities.

23                   So now looking at B-3 on the electric  
24  side, PALMco listed that there were investigations or  
25  proceedings brought in Illinois, Connecticut, New

1 Jersey, and Pennsylvania for rule violations?

2 A. Yes.

3 Q. And the Staff Report listed two of these,  
4 the Illinois and Connecticut, but they did not list  
5 the other ones; is that correct?

6 EXAMINER SANYAL: Can you let me know  
7 which page in the Staff Report again?

8 MS. BOJKO: 15 and 16, Your Honor.

9 EXAMINER SANYAL: Thank you.

10 A. Yes, it looks like we provided  
11 information on Connecticut and Illinois as examples.

12 Q. And that's because it states the facts  
13 were similar in the Ohio investigation, correct?

14 A. I don't recall why those two specific  
15 ones were included.

16 Q. Okay. I asked you about whether you  
17 reviewed them in the context of the Staff Report and  
18 in your work reviewing certification applications.  
19 Did you review the Illinois, Connecticut, New Jersey  
20 and PA for electric, or the Illinois, Connecticut,  
21 and New Jersey for the gas certification  
22 applications? Were you involved in that review?

23 Would you like me to break it up?

24 A. Please.

25 Q. In your review of the certification

1 applications before the Commission, did you have an  
2 opportunity to review the Illinois, Connecticut, and  
3 New Jersey investigations or proceedings that were  
4 going on for the gas side of PALMco?

5 A. At the time of filing, I did not review  
6 the gas application. I reviewed the electric  
7 application.

8 Q. Okay. So for the electric application,  
9 did you review the proceedings/investigations in  
10 Illinois, Connecticut, and New Jersey, and PA?

11 A. I didn't review the full proceedings. I  
12 reviewed the information provided by PALMco in  
13 relation to its application.

14 Q. And did Staff consider those disciplinary  
15 actions when deciding whether to recommend approval  
16 of PALMco's certificate renewals?

17 A. Yes, it is one of the exhibits we're  
18 required to review.

19 Q. But the renewals were approved anyway,  
20 correct?

21 A. They were. They were affiliates of  
22 PALMco Ohio and, at the time, we didn't have a large  
23 number of complaints for PALMco so we believed that,  
24 based on their information, they had made management  
25 changes that we could recommend approval of the

1 renewal.

2 Q. So you recommended approval based on  
3 their assertion there had been managerial changes and  
4 they had modified their business practices to bring  
5 themselves into compliance?

6 A. Along with their numbers of contacts and  
7 complaints in Ohio at the time.

8 Q. In the Staff Report, though, at page 18,  
9 Staff stated that although they made these promises,  
10 they were unaware of any independent, meaningful  
11 steps taken by PALMco to take corrective action,  
12 correct?

13 MS. BAIR: Can I hear the reference to  
14 the Staff Report again, please?

15 EXAMINER SANYAL: It's page 18.

16 A. I'm sorry, where on page 18?

17 Q. It's at the bottom paragraph that we were  
18 reviewing this morning. It's the last sentence of  
19 the "Furthermore" paragraph.

20 A. Yes. We had concerns in 2016 and their  
21 numbers went down again so, at the time of renewal in  
22 2018, I don't believe we had the same concerns.

23 Q. But in the Staff Report when it was filed  
24 in April, I'm sorry, May 10, 2019, the Staff again  
25 then had concerns, correct?

1           A.    Yes, based on our investigation starting  
2   in December.

3           Q.    You are here today supporting the  
4   Stipulation, correct?

5           EXAMINER PRICE:  I'm sorry, are you done  
6   with OCC Exhibits 3 and 4?

7           MS. BOJKO:  Yes, Your Honor.

8           EXAMINER PRICE:  Are you moving on?

9           MS. BOJKO:  Yes, Your Honor.

10          EXAMINER PRICE:  I just had a follow-up.

11          If you could turn to OCC Exhibit 3,  
12   please.  And if we covered this this morning, I'm  
13   sorry, I was detained and I was -- if we're  
14   duplicative, it's my fault.

15          OCC Exhibit 3, the first three pages are  
16   the docket card for this case; is that correct?

17          THE WITNESS:  Yes.

18          EXAMINER PRICE:  Could you show me, on  
19   the docket card, where OCC intervened in 2017 in the  
20   certification proceeding?

21          THE WITNESS:  They did not.

22          EXAMINER PRICE:  Can you show me, on the  
23   docket card, where OCC filed correspondence objecting  
24   to the certification of PALMco?

25          THE WITNESS:  No.

1 EXAMINER PRICE: Thank you.

2 If you could turn to OCC Exhibit 4.  
3 Again, the first three pages are the docket card; is  
4 that correct?

5 THE WITNESS: Correct.

6 EXAMINER PRICE: Can you show me where  
7 OCC objected to the renewal certification of PALMco  
8 in 2017 by intervening in the case?

9 THE WITNESS: There is no such entry.

10 EXAMINER PRICE: Again, can you show --  
11 another -- second question. Can you show me where  
12 OCC filed correspondence objecting to the  
13 certification of PALMco in 2017?

14 THE WITNESS: No.

15 EXAMINER PRICE: Thank you.

16 Q. (By Ms. Bojko) Also on the docket are  
17 there any reports, Staff Reports filed by Staff,  
18 noting their concerns with PALMco's managerial  
19 activities?

20 A. No.

21 MR. WHITT: I'm going to object. We  
22 spent an hour, this morning, talking about  
23 correspondence in 2016 and what the Company did, so  
24 it's cumulative. Asked and answered, and irrelevant  
25 at this point.



1 EXAMINER SANYAL: I'm going to allow that  
2 question because I think Ms. Bojko is specifically  
3 asking about the docket, so I'll let you ask that  
4 question.

5 MS. BOJKO: Thank you.

6 THE WITNESS: Could you repeat that,  
7 please?

8 MS. BOJKO: I cannot, but Carolyn might.

9 THE WITNESS: Can somebody repeat it,  
10 please?

11 (Record read.)

12 A. We have the Staff letter filed as a  
13 result of this investigation.

14 Q. Right. So from the renewal application  
15 in 2018, until April 16, 2019, there was nothing  
16 filed in the public domain expressing Staff's  
17 concerns, correct?

18 A. Correct.

19 Q. I don't -- I don't remember if you  
20 answered this question, I'm sorry, I thought I moved  
21 on, but you are supporting the Stipulation today; is  
22 that correct?

23 A. Yes.

24 Q. And you believe the Stipulation satisfies  
25 the Commission's three-part test, correct?

1           A.    I'm sorry, I didn't hear the end.

2           Q.    Satisfies the Commission's -- you believe  
3 the Stipulation satisfies the Commission's three-part  
4 test?

5           A.    I do.

6           Q.    And the Stipulation was signed by Staff  
7 and PALMco, correct?

8           A.    Yes, that is correct.

9           Q.    No consumers or consumer groups signed  
10 the Stipulation, correct?

11          A.    That is correct.

12          Q.    And did any consumers, that were harmed  
13 by PALMco's actions, sign the Stipulation?

14               MR. WHITT:  Objection.  Assumes facts.  
15 And the docket of this case will reflect, in the  
16 public comment section, zero public comments.  
17 Although we have heard from a witness this morning, I  
18 will acknowledge that.

19               MS. BOJKO:  Your Honor, there are  
20 numerous customer complaints that we've marked into  
21 the record wherein they did allege harm, and the  
22 Commission has required them to be re-rated, so I  
23 think it's a fair question whether any of those  
24 consumers, that were harmed, signed the Stipulation.

25               MR. WHITT:  The Commission hasn't ordered

1 anybody to do anything yet.

2 MS. BOJKO: The Commission Staff did,  
3 Your Honor.

4 MS. BAIR: I believe the question is who  
5 signed the document and that has been answered.

6 MS. BOJKO: My question is did any  
7 consumers, that were harmed by PALMco's actions, sign  
8 the Stipulation.

9 MR. WHITT: I object to the  
10 characterization of "harmed by PALMco's actions."

11 EXAMINER PRICE: Ms. Scarberry, did any  
12 individual consumers sign the Stipulation?

13 THE WITNESS: No.

14 EXAMINER PRICE: Thank you.

15 Q. (By Ms. Bojko) You believe that the  
16 Stipulation is a comprehensive resolution of the  
17 Staff Report?

18 A. I do. The Stipulation, as a package, I  
19 think resolves all the issues.

20 Q. And the Staff Report summarizes the  
21 investigation -- strike that. You answered that.

22 Let's turn back to page 17, the  
23 Recommendations section of the Staff Report.

24 EXAMINER SANYAL: I'm sorry, the  
25 reference again?

1 MS. BOJKO: 17.

2 EXAMINER SANYAL: 17.

3 MS. BOJKO: Leave your page open to 17.  
4 Before we go there, I want to mark another document  
5 at this time.

6 Your Honor, at this time, I'd like to  
7 mark as OCC Exhibit --

8 EXAMINER SANYAL: 15.

9 MS. BOJKO: -- 15, thank you, this is a  
10 consumer complaint, similar to the one we discussed  
11 earlier today, from Staff and to PALMco with regard  
12 to an informal complaint. It's dated April 10, 2019.

13 EXAMINER SANYAL: It is so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 EXAMINER PRICE: We don't get two?

16 MS. BOJKO: I --

17 EXAMINER SANYAL: Tomorrow we get two.

18 EXAMINER PRICE: Tomorrow we get two.

19 MS. BOJKO: I apologize, Your Honor. I  
20 forgot the witness when I was counting last night.

21 Q. (By Ms. Bojko) Do you have in front of  
22 you what's been marked as OCC Exhibit 15?

23 A. I do.

24 Q. And is this similar to the customer  
25 complaint and PALMco-Indra response that we discussed

1 earlier today, meaning, trying to shortcut, but if  
 2 you turn to the second page you'll see the Public  
 3 Utilities Commission header saying it's a second  
 4 request for information about an initial submission  
 5 of a consumer complaint and it has the Case ID number  
 6 and a customer name and address?

7 A. Uh-huh.

8 Q. And this is the typical record, again,  
 9 that is created by the Staff of the Commission?

10 EXAMINER PRICE: Once again, the Service  
 11 Account Number is on the --

12 THE WITNESS: Uh-huh.

13 EXAMINER SANYAL: We'll make a note that  
 14 it needs to be redacted.

15 EXAMINER PRICE: And a new exhibit  
 16 submitted.

17 MS. BOJKO: Thank you.

18 MR. WHITT: Don't worry, I'm objecting to  
 19 it anyway.

20 (Laughter all around.)

21 EXAMINER PRICE: Even if you object to  
 22 it, we still need the redacted copy so the Court can  
 23 review the objection you're about to make.

24 Q. (By Ms. Bojko) I'm sorry, I don't know if  
 25 you answered that. This is the typical record

1 created by the Staff of the Commission when they  
2 receive an informal complaint?

3 A. The call -- yeah, the call center, the  
4 investigators submit the information or request for  
5 information to the Company.

6 Q. Okay. And again, I think you said this  
7 this morning but so we have our foundation laid,  
8 you're familiar with these types of customer  
9 complaints and the record that's created by the  
10 Commission and the paperwork associated with it?

11 A. I have reviewed numerous complaints, yes.

12 Q. Okay. And in this complaint, the  
13 complainant is talking -- is complaining about the  
14 rates charged by PALMco; is that correct?

15 MR. WHITT: Objection.

16 MS. BAIR: Objection.

17 EXAMINER SANYAL: Okay. We'll take  
18 Mr. Whitt first.

19 MR. WHITT: Hearsay.

20 MS. BAIR: Lack of foundation for this  
21 particular complaint.

22 MS. BOJKO: May I respond, Your Honor?

23 EXAMINER SANYAL: Sure.

24 MS. BOJKO: As for hearsay, it's not. I  
25 just clearly established it's an exception to the

1 hearsay rule because it's a public record that's kept  
2 in the normal, regular, regulatory business activity  
3 of the Commission Staff and it is, therefore, an  
4 exception to the hearsay.

5 This witness -- I think the next one was  
6 foundation. This witness stated that she is  
7 regularly familiar with these customer complaints and  
8 she has reviewed many associated with this case.  
9 This is one of those associated with the case, and I  
10 think that, as the Staff witness supporting the Staff  
11 Report today and the Stipulation, she can speak to  
12 it.

13 EXAMINER SANYAL: Mr. Whitt, I feel like  
14 you have a response.

15 MR. WHITT: Yes, Your Honor.

16 When Counsel says the witness is familiar  
17 with this document, there are about four or five  
18 different types of documents cobbled together in this  
19 one exhibit.

20 The testimony earlier was with respect to  
21 page 2 of Exhibit 15. There was a similar  
22 exhibit showing basically the Commission's standard  
23 form of inquiry to companies, and the business record  
24 exception would apply to allow the admission of that  
25 evidence for that purpose that this is the sort of

1 form the Commission uses.

2 But there's -- notwithstanding the first  
3 page of Exhibit 15 purports to come from the  
4 Commission's records -- we don't really know that but  
5 let's assume that it did -- there still needs to be  
6 an independent basis for the hearsay contained within  
7 the document, in particular what this customer is  
8 supposedly complaining about, and that goes to the  
9 very purpose of the hearsay rule. We're deprived of  
10 the right to cross-examine the person making this  
11 complaint.

12 So even though the document, you know, as  
13 to its form, may satisfy some hearsay exception,  
14 there's another level of hearsay that's a problem for  
15 which there is no exception that applies.

16 EXAMINER SANYAL: Ms. Bair.

17 MS. BAIR: And, Your Honor, also part of  
18 laying the proper foundation would be authentication.  
19 I don't know who Sariah Brinker is, and I don't know  
20 if the witness has even seen this document before or  
21 is familiar with it.

22 EXAMINER SANYAL: Okay. Well,  
23 Ms. Scarberry, have you reviewed this particular  
24 document, including all the attachments, as a result  
25 of your investigation in this case?



1 THE WITNESS: I honestly have no clue.

2 EXAMINER SANYAL: Well, Ms. Bojko, I  
3 think you have your answer.

4 MS. BOJKO: Well, Your Honor, may I ask a  
5 follow-up question?

6 EXAMINER SANYAL: Sure.

7 MS. BOJKO: Have you reviewed the terms  
8 and conditions that are attached to this document,  
9 with regard to PALMco's terms and conditions  
10 requested from Staff, to receive the terms and  
11 conditions of the contract? Are you stating here  
12 today that Staff has not reviewed the Ohio terms and  
13 conditions that PALMco attaches to the contract?

14 MR. WHITT: Your Honor, I'm going to  
15 object. Again, it's very unfair to point out part of  
16 this collection and say, "Well, aren't you familiar  
17 with this?" Well, it's not the terms and conditions  
18 that's necessarily the problem.

19 MS. BOJKO: Well, I haven't been allowed  
20 to finish any of my questions. I'm trying to lay it  
21 for each document, Your Honor.

22 EXAMINER SANYAL: Mr. Eubanks, are you --  
23 did you have --

24 MS. BAIR: No, I'll speak for Staff.  
25 There's only one document, so to pick that part out

1 of it and it's not the entire document. It is being  
2 introduced as one document --

3 EXAMINER SANYAL: I agree.

4 MS. BAIR: -- that she is not familiar  
5 with it.

6 EXAMINER SANYAL: I agree.

7 Ms. Bojko, if you want to -- let's  
8 separate this out. If you have a question about the  
9 terms and conditions document, that should be a  
10 separate exhibit.

11 MS. BOJKO: Okay. If I may explain, Your  
12 Honor.

13 EXAMINER SANYAL: Let me finish. Because  
14 Ms. Scarberry has said she does not -- she is not  
15 familiar with this entire document.

16 MS. BOJKO: Okay.

17 EXAMINER SANYAL: She just said it.

18 MS. BOJKO: Just to explain, this is -- I  
19 can't separate the document. I know everybody is  
20 trying to argue it's a different document. Well, let  
21 me explain how we received these documents.

22 It is a folder of a customer complaint.  
23 This is the Staff's entire document. It's a public  
24 record. It's in one folder. It's not separate  
25 documents that I collated together. It's actually

1 what is sent from the Public Utilities Commission's  
2 Staff to the utility company.

3 EXAMINER SANYAL: Sure.

4 MS. BOJKO: So I cannot separate the  
5 document as it was given to me as a single document.

6 EXAMINER SANYAL: And, in that case,  
7 Ms. Scarberry has indicated she has no knowledge of  
8 the entire packet of information.

9 Correct, Ms. Scarberry?

10 THE WITNESS: Yes, I have no clue if I've  
11 reviewed this before or not.

12 EXAMINER SANYAL: Okay. I think we will  
13 move on.

14 MS. BOJKO: Thank you, Your Honor. I  
15 didn't want to get accused of not giving a complete  
16 record because that's what we are required to do.

17 Q. (By Ms. Bojko) Ms. Scarberry, does the  
18 Ohio Consumers' Counsel have access to the informal  
19 complaints submitted by customers without doing a  
20 public records request?

21 A. The OCC is copied weekly on all  
22 complaints received by the Commission.

23 Q. All the complaints or --

24 A. All the contacts.

25 Q. Right. OCC is not privy or provided with

1 the actual complaints, correct?

2 EXAMINER SANYAL: Mr. Whitt, do you have  
3 an objection?

4 MR. WHITT: I don't know so much of an  
5 objection or observation. I thought I heard, just  
6 two minutes ago, that OCC got a bunch of records from  
7 Staff about customer complaints and now is  
8 representing to the witness that OCC doesn't have  
9 access to information about customer complaints.

10 EXAMINER SANYAL: I didn't quite -- one  
11 more time.

12 MR. WHITT: I could very well may be the  
13 one confused here.

14 EXAMINER SANYAL: Okay. Not an  
15 objection.

16 EXAMINER PRICE: Could we have the  
17 question back, please?

18 EXAMINER SANYAL: Yes.

19 (Record read.)

20 MS. BOJKO: I'll rephrase it. Out of  
21 context that sounded really bad.

22 Q. (By Ms. Bojko) Ms. Scarberry, on a  
23 regular basis, OCC is not copied or Cc'ed on the  
24 actual customer complaint as it comes into the  
25 Commission; is that correct?

1           A.    I believe the information pulled from our  
2 system that is sent to OCC is the same format that I  
3 generally see the complaints. When we pull the  
4 information and review it, I review it in a table,  
5 Excel format.

6           Q.    Right, you review it in Excel format, but  
7 the document, the actual complaint form is not  
8 simultaneously served on OCC, correct?

9           A.    I'm not sure what you mean by "complaint  
10 form."

11          Q.    So the actual --

12               EXAMINER PRICE: Let me ask the question.

13               Ms. Scarberry, when a complaint is filed  
14 with the PUCO, does the OCC simultaneously get a copy  
15 of that same complaint?

16               THE WITNESS: Not simultaneously. They  
17 get it on a weekly basis.

18               EXAMINER PRICE: By the end of the week  
19 they get all complaints the Commission receives?

20               THE WITNESS: Yes, all contacts.

21               EXAMINER PRICE: In what format?

22               THE WITNESS: From my understanding and  
23 from what I've seen, it's an Excel spreadsheet.

24               MS. BOJKO: Okay. Well, let's just ask.  
25 Sorry, Your Honor, a few more based on some rulings

1 that were made. We will -- I'd like to go through a  
2 couple more. I think it's most efficient if I mark  
3 them and ask her if she's familiar with them.

4 EXAMINER SANYAL: Sure.

5 MS. BOJKO: So I think we're on No. 16.

6 EXAMINER SANYAL: Yes.

7 MS. BOJKO: So, at this time, I'm going  
8 to mark as Exhibit 16, the entire customer record  
9 provided to OCC through discovery. We'll mark as OCC  
10 Exhibit 16 is an e-mail from Ms. Joseph, a party in  
11 this case, sent May 1st, 2019.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. (By Ms. Bojko) Do you have in front of  
14 you what's been marked as OCC Exhibit 16?

15 A. Yes, although mine is not marked.

16 Q. Oh, I'm sorry. Is it an e-mail from  
17 Ms. Joseph, dated May 1st -- at what time is that one  
18 dated?

19 A. The very first page says 8:20 p.m.

20 Q. Thank you.

21 So if we turn to page 2 of this document,  
22 this is the initial submission of a customer  
23 complaint to the Commission's call center; is that  
24 correct?

25 MS. BAIR: Objection. Same objection as

1 with Exhibit 15. There's no foundation laid. Again,  
2 it has Sariah Brinker at the top. We don't know if  
3 the witness has ever seen this document.

4 MS. BOJKO: For the record, Your Honor,  
5 Sariah Brinker is my assistant that had to print off  
6 all these e-mails that were provided in discovery.

7 MS. BAIR: It doesn't mean the witness  
8 has seen the document.

9 MS. BOJKO: I haven't even gotten there,  
10 Your Honor, yet.

11 EXAMINER SANYAL: Okay.

12 EXAMINER PRICE: First, can you promise  
13 to give us redacted copies so the service account  
14 number is not on it?

15 MS. BOJKO: Yes, Your Honor. We received  
16 these and they weren't redacted, so we didn't  
17 understand there was a confidentiality attached.

18 EXAMINER PRICE: OCC didn't understand  
19 that account numbers were confidential?

20 MS. BOJKO: I'm sorry, Your Honor, I did  
21 not. In my attempt to review 464 complaints or  
22 contacts provided to us a week ago, so no, I did not.

23 EXAMINER PRICE: Fair enough.

24 Q. (By Ms. Bojko) I think I asked you if you  
25 recognized this as a document that was a record

1 created by the Staff of the Commission.

2 A. It looks to be one, yes.

3 Q. So this one is a complaint against  
4 PALMco. Is this one that you investigated in your  
5 investigation of the matters before the Commission in  
6 this case?

7 A. I don't know. I reviewed a lot. I would  
8 have to go back and look at all my notes and know for  
9 sure exactly which ones.

10 EXAMINER PRICE: You reviewed some  
11 portion of 464, correct?

12 THE WITNESS: Correct.

13 Q. Do you recognize that the e-mail is from  
14 PALMco that's responding to the customer complaint?

15 A. Which e-mail?

16 Q. The first page of this document.

17 A. First page?

18 Q. Yes.

19 A. Yeah, it says it's from Keenia Joseph.

20 Q. And she's with Indra or PALMco?

21 A. Yes.

22 Q. Okay. And so, in this e-mail, she's  
23 talking about re-rating due to a customer complaint?

24 MS. BAIR: Objection.

25 EXAMINER SANYAL: I feel like there's an



1 objection coming on. I think the witness has already  
2 mentioned that she has no recollection of this  
3 document, so I think we're getting into the same  
4 issue of you just reading the document and asking the  
5 witness to confirm, so.

6 MS. BOJKO: Well, Your Honor I have a  
7 different response this time if I may proceed? This  
8 is not --

9 MS. BAIR: I object. She doesn't know  
10 it. She said she doesn't know it. She's never seen  
11 it. There's no foundation upon which to ask her  
12 questions.

13 MS. BOJKO: Well, Your Honor, if the  
14 objection is hearsay, which I think is coming, it's  
15 not hearsay. It's an admission by a party-opponent.  
16 It's a party of this case, so there's no hearsay  
17 objection. I think that's a public record also, so  
18 it's an exception to hearsay. This witness is the  
19 witness put on the stand to talk about the customer  
20 complaints and the Staff Report. All the foundation  
21 is laid that she is the person the Staff has chosen  
22 to talk about the customer complaints in the Staff  
23 Report.

24 MS. BAIR: She is not Keenia Joseph and  
25 she isn't familiar with this document.

1 MR. WHITT: And I guess it would be  
2 helpful to know what point we're trying to get at to  
3 understand why the document is being introduced. I  
4 don't think there's a dispute that complaints were  
5 made and complaints were investigated. This witness  
6 was involved in the investigation, but shouldn't  
7 reasonably be expected to have a lot of detail or any  
8 detail about complaint files plucked at random. I  
9 just don't know where we're going with it.

10 EXAMINER PRICE: Ms. Bojko, a response?

11 MS. BOJKO: I don't know what the  
12 objection was. I guess he doesn't understand the  
13 point I'm trying to make is not a proper objection  
14 before this Commission.

15 MR. WHITT: I have to --

16 MS. BOJKO: I'm not entitled to tell my  
17 legal strategy.

18 MR. WHITT: I have to understand the  
19 reason for the offering of the evidence because the  
20 purpose for which it is offered affects its  
21 admissibility.

22 EXAMINER SANYAL: Okay. Ms. Bojko, the  
23 witness has already indicated she has no recollection  
24 of this document and, to be consistent with how we've  
25 treated other such pieces of evidence, we're going to

1 move on because she has already told you she has  
2 never seen this document.

3 MS. BOJKO: Thank you, Your Honor. I  
4 will try another one. OCC Exhibit 17, I would like  
5 to have marked, Your Honor, an e-mail from Indra,  
6 Ms. Joseph, that was deposed in this case and did not  
7 appear today pursuant to the subpoena.

8 MR. WHITT: I will move to strike that  
9 commentary --

10 EXAMINER SANYAL: Yes, sustained.

11 MR. WHITT: -- because the motion to  
12 quash was granted.

13 EXAMINER SANYAL: Mr. Whitt, I sustained  
14 your objection.

15 Let's remove that last commentary about  
16 Ms. Joseph not being here today.

17 Ms. Bojko, if you will continue. I  
18 marked your exhibit. What's the date on your e-mail?

19 MS. BOJKO: It's May 1, 2019 at 1:29 p.m.

20 EXAMINER SANYAL: Okay.

21 MS. BOJKO: May I approach?

22 EXAMINER SANYAL: Yes.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 EXAMINER PRICE: Okay. Now I'll ask  
25 about the relevance of this document. How is this

1 document relevant to our -- the Commission's  
2 consideration?

3 MS. BOJKO: Your Honor, all of the  
4 complaints are very relevant to the Commission's  
5 consideration.

6 EXAMINER PRICE: Well, that's just  
7 summarizing what I just said. I didn't understand so  
8 you have to do better than that. Why is this  
9 relevant? The Staff is purported to address all  
10 these issues. Is this -- can you show this is a  
11 person who was not on the list of people who were  
12 re-rated? I mean we know there were complaints, 464  
13 according to your count, so I don't want to be  
14 getting up to OCC Exhibit 490; so I'm asking what is  
15 the relevancy of this complaint packet to the  
16 Commission's consideration.

17 MS. BOJKO: Sure, Your Honor. There's  
18 multiple relevancies and, I apologize, I was trying  
19 to rephrase your question and then answer it. The  
20 relevancy, there's numerous.

21 One, there was a discussion, at the  
22 prehearing conference, that questioned what the  
23 Stipulation did and how the Stipulation applied to  
24 the Staff Report.

25 You were not here this morning but there

1 were many objections on the record to the Staff  
2 Report. There were objections and objections  
3 sustained that foreclosed my ability to ask certain  
4 questions about the Staff Report, including questions  
5 about customer contacts or customer complaints and  
6 the Staff's investigation of those.

7 We also asked questions about what the  
8 Stipulation addresses and what the Stipulation  
9 doesn't address, and to prove the reasonableness of  
10 the Stipulation we have to show that not all of the  
11 complaints were addressed by the Stipulation or may  
12 not have been addressed by the Stipulation and thus  
13 we believe that the Stipulation is inadequate and  
14 insufficient and not within the public interest.

15 So if you demonstrate that there were  
16 complaints that there were violations of the rules  
17 and that the Staff Report resolved -- excuse me, the  
18 Staff found violations of the rules and then the  
19 Stipulation the Staff entered into believed redressed  
20 or somehow remedied the Staff Report, then we have to  
21 demonstrate that the Staff Report is insufficient or  
22 unreasonable or not in the public interest.

23 EXAMINER SANYAL: We see you.

24 MS. BOJKO: So that is what we believe  
25 that is required to be showed and we are showing that

1 through customer complaints and the Stipulation and  
2 the Staff Report.

3 EXAMINER SANYAL: But what about this  
4 particular one? What is the relevance of this  
5 document?

6 MS. BOJKO: Well, Your Honor, the  
7 relevance of this particular document is that there  
8 was a complaint, there was re-rating done, there was  
9 a complaint of high fixed variables, there's  
10 comparison to other prior rates of the utilities and  
11 then a re-rate was done, and this shows that occurred  
12 and that there was a complaint.

13 We've asked that all 464 contacts  
14 packages that we've received be moved into evidence.  
15 By comments of Counsel moments ago, which is why I  
16 went down this path, he has stated he's going to  
17 object to that. So if Counsel wants to stipulate  
18 that the complaints and customer contacts from the  
19 Staff Report will be admitted to the record and I  
20 don't have to try to establish a foundation for each  
21 and every complaint, then that's fine.

22 MR. WHITT: Let me address a couple of  
23 things there.

24 OCC filed testimony, and unless there's  
25 going to be radical changes when the witnesses take

1 the stand, is that the Staff did a beautiful job in  
2 this investigation, was very thorough, and their  
3 objection is that not all of the recommendations in  
4 the Staff Report are included in the settlement.

5 Now, what we've actually heard today from  
6 this witness is that everybody, during the relevant  
7 time period, has already been re-rated; there will be  
8 additional re-rates for people that aren't covered by  
9 the investigation if the Company is later sold; and  
10 if the Company is sold at a premium, then there will  
11 be more money paid and forfeiture and restitution  
12 than actually is requested in the Staff Report.

13 So the theory that's being proffered now,  
14 that the Staff Report is somehow inadequate or  
15 insufficient, is directly contrary to what their  
16 prefilled testimony says.

17 With regard to the 400-and-however-many  
18 customer contacts, we are not disputing the fact of  
19 the contacts, okay? The problem is that OCC wants to  
20 move in each complaint file and claim that, since the  
21 file is in evidence, that proves the validity of the  
22 complaint somehow, which it doesn't.

23 Moving all of those complaint files into  
24 evidence doesn't advance their case any further than  
25 it already is. It still leaves us with the fact that

1     allegations have been presented and the Company and  
2     Staff have tried to resolve them. That underlying  
3     fact doesn't change from any of these complaint  
4     files.

5             We've already looked at, I don't know,  
6     three or four or five of these now. I don't know  
7     what Exhibit 17 accomplishes that 16, 15, or 14 don't  
8     accomplish.

9             If there's a way I can help, I want to be  
10    helpful here. Is there some kind of stipulation  
11    somebody wants that Staff believed what it said when  
12    it wrote the Staff Report? I mean I would stipulate  
13    to that but, again, the litigation process was sort  
14    of cut short here to enter into a Stipulation so we  
15    don't have adjudications of anything. All we had was  
16    a dispute and a resolution and, you know, frankly, to  
17    the extent OCC believes it knows better than  
18    everybody else what is fair, then it has an  
19    obligation to independently develop some record and  
20    evidence for that assertion, rather than trying to  
21    pick up the work product of somebody else and carry  
22    the ball down the field.

23             EXAMINER SANYAL: Staff?

24             MS. BAIR: The Staff Report, earlier  
25    today, it's agreed that it's admitted into the



1 record. Where the complaints are noted, I do  
2 disagree with putting those 464 in there. I agree  
3 with your characterization of those. To pick up one  
4 of these and I mean just on the basis of it,  
5 foundation, she doesn't know anything about it to  
6 question her.

7 The testimony was due weeks ago in this  
8 case. OCC is trying to make their case right now  
9 with my witness because they failed to make it when  
10 they filed their prefiled testimony.

11 MS. BOJKO: May I respond, Your Honor?

12 First of all, I never in my comments said  
13 we thought the Staff did a bad job and that the Staff  
14 Report was inadequate. I said the Stipulation was  
15 inadequate or unreasonable and that we have the  
16 ability and I think we have to prove that the  
17 Stipulation filed is somehow insufficient, unjust,  
18 unreasonable, and contrary to the public interest and  
19 that's what we're trying to do.

20 Earlier today I was not allowed to ask  
21 questions about the specific examples put forth in  
22 the Staff Report. I was not allowed to ask questions  
23 about what the Staff did or didn't do during those  
24 examples.

25 Mr. Whitt just made my argument for me.

1 He said that I am required, now, to put on my own  
2 case and to sustain some kind of burden which I  
3 disagree the burden shifts, but he said exactly what  
4 I knew he would say and why now I'm trying to get the  
5 complaints into the record because they somehow are  
6 saying that we have the burden.

7 The Staff Report was filed. The Staff  
8 Report is findings of the Staff, and OCC is allowed  
9 to intervene and participate in this case and  
10 determine whether the Stipulation, resolving those  
11 Staff findings, are sufficient and reasonable, and  
12 that's what we're doing. If we have --

13 EXAMINER SANYAL: Ms. Bojko --

14 MS. BOJKO: -- to meet our burden, then  
15 that's different --

16 EXAMINER SANYAL: -- I'm going to  
17 interrupt you for a moment and clarify for the record  
18 that any objections that were sustained with regard  
19 to the Staff Report and this witness were because  
20 that particular witness did not have personal  
21 knowledge of questions that you asked, and we can  
22 review the transcript again if that is your  
23 contention.

24 Mr. Whitt.

25 MR. WHITT: The last thing I'll say about

1 it is OCC, yes, they do have to have evidence, but  
 2 they have to have a witness with knowledge. They  
 3 can't force this witness to have knowledge of  
 4 something she doesn't have and that's their problem  
 5 fundamentally that they haven't had anybody review  
 6 these complaints that could come in and say I  
 7 reviewed all these, this is what I found. They're  
 8 just trying to force it on a witness who said she  
 9 can't do it for them.

10 MS. BOJKO: Your Honor, for the --

11 EXAMINER PRICE: Since --

12 MS. BOJKO: -- record, that's factually  
 13 incorrect. We do have witnesses that have reviewed  
 14 the complaints and they will testify to that, and  
 15 they have made their own conclusions about the  
 16 complaints and about the Staff Report and they will  
 17 testify to that. That is the point.

18 EXAMINER PRICE: But since this morning's  
 19 rulings, we've made it clear that the Staff's motion  
 20 to quash your subpoena for Ms. Bossart and Mr. Fadley  
 21 was denied. You can ask Ms. Bossart the questions  
 22 that you are trying to circuitously get to with this  
 23 particular witness. Why don't we ask this witness  
 24 whether she has knowledge of the example in 17 and,  
 25 after that, I think we will certainly get to a

1 needlessly-cumulative point of the proceeding and we  
2 can move on to another topic, but take your shot on  
3 17, maybe you hit the lottery.

4 MS. BOJKO: I don't even know where we  
5 were on 17, Your Honor. Did I ask her any questions  
6 about 17?

7 EXAMINER SANYAL: I don't think we --

8 EXAMINER PRICE: I don't think you've  
9 asked a single one.

10 EXAMINER SANYAL: Because AE Price asked  
11 you about the relevance of 17.

12 MS. BOJKO: I'm sorry, which one is 17?

13 Q. (By Ms. Bojko) May 1st, the date is  
14 May 1, 2019, 1:29 p.m. I'm sorry, I didn't write the  
15 number. Let's start with page 2, which I think is  
16 the Staff document that you might recognize. Do you  
17 recognize this complaint, informal complaint, I think  
18 it's cut off but this is the consumer services  
19 division memo portraying a customer complaint. Do  
20 you recognize that?

21 A. I recognize that it's the format that the  
22 investigators use when they're sending a complaint to  
23 a company, but I -- I don't recognize the complaint.

24 Q. Okay. Thank you.

25 EXAMINER SANYAL: Ms. Bojko, I'm just

1     trying to estimate. How much time do you think you  
2     have left for Ms. Scarberry? I could use a small  
3     break personally. Like a five-minute --

4                 MS. BOJKO: Okay.

5                 EXAMINER PRICE: I prefer to know what  
6     the answer is and then --

7                 MS. BOJKO: I wouldn't think that much  
8     longer. And I apologize, we're not trying to be  
9     cumulative, we're actually trying to not have to  
10    bring other Staff witnesses to the stand, so I would  
11    say 20 minutes.

12                EXAMINER SANYAL: Okay.

13                MS. BOJKO: 30 minutes.

14                EXAMINER SANYAL: Okay. We're going to  
15    take a five-minute break.

16                MS. BOJKO: Okay.

17                (Recess taken.)

18                EXAMINER SANYAL: We're back on the  
19    record.

20                Ms. Bojko.

21                MS. BOJKO: Thank you, Your Honor.

22                Q. (By Ms. Bojko) Ms. Scarberry, let's now  
23    turn or go back to page 17 of the Staff Report, the  
24    list of recommendations.

25                A. Uh-huh.

1           Q.    The first bullet point, so the first  
2    recommendation recommends that the Commission  
3    suspend, conditionally rescind, or rescind PALMco's  
4    certification; is that correct?

5           A.    Yes, that's correct.

6           Q.    And the rationale behind that  
7    recommendation is that the Staff believes the  
8    evidence shows they violated each of the rules cited  
9    on pages 19 through 20, correct?

10           EXAMINER PRICE:   May I have that question  
11   back again?

12                   (Record read.)

13           A.    Yes.

14           Q.    And despite this recommendation, the  
15   Stipulation allows PALMco to continue to serve its  
16   15,000 customers through February 22, 2020 for gas  
17   and March 8, 2020 for electric, correct?

18           MR. WHITT:   Objection.

19           EXAMINER SANYAL:   Basis?

20           MR. WHITT:   I don't know that there's  
21   been any foundation, A, for the number of customers.

22                   B, it's a misrepresentation of the  
23   Stipulation which requires the Company to stop  
24   marketing; it can't do new enrollments; it may only  
25   renew existing consumers.   Effectively it agreed to

1 suspend itself.

2 MS. BOJKO: I move to strike Counsel's  
3 testimony. I asked her whether the Stipulation  
4 allows PALMco to continue to serve its 15,000  
5 customers through February 22, 2020.

6 EXAMINER SANYAL: Okay. Ms. Bojko, let's  
7 lay some foundation for that 15,000 number.

8 MS. BOJKO: I apologize, I'll rephrase.  
9 I agree she said she didn't know the number of  
10 customers.

11 Q. (By Ms. Bojko) So despite the  
12 recommendation in the Staff Report, the Stipulation  
13 allows PALMco to continue to serve its existing  
14 customers through February 2020 for gas, and March 8,  
15 2020 for electric, correct?

16 A. Yes, that's part of the negotiation.

17 Q. And after those dates, PALMco's owners  
18 and operators can come back to Ohio and operate after  
19 five years under the Stipulation, correct?

20 A. Not necessarily. It says that they won't  
21 operate in Ohio for five years.

22 Q. Right. So there's only a prohibition for  
23 five years. After five years, the owners and  
24 operators of PALMco can come back and operate in  
25 Ohio, correct?

1           A.    They can apply again.  At that time the  
2 application would be reviewed and a determination  
3 would be made whether it would be approved or not.

4           Q.    And those certification applications are  
5 an automatic renewal -- automatic approval process;  
6 is that correct?

7           A.    They are on an automatic timeframe;  
8 although, there is a process in place to stop that  
9 automatic clock.

10           EXAMINER PRICE:  I have a question.  It  
11 gets back to the point Mr. Whitt made.  If the  
12 Commission had decided to suspend PALMco, what would  
13 the effect have been?

14           THE WITNESS:  That they would have no  
15 longer been allowed to enroll new customers.

16           EXAMINER PRICE:  And they would continue  
17 to serve their existing customers.

18           THE WITNESS:  That is my understanding.

19           EXAMINER PRICE:  And suspend was one of  
20 your recommendations.

21           THE WITNESS:  Correct.

22           Q.    (By Ms. Bojko) The Commission can also  
23 choose to immediately suspend and return all  
24 customers to the standard service offer and default  
25 service of each local utility company, correct?



1 MR. WHITT: I'll object. That calls for  
2 a legal conclusion about whether the Commission, on  
3 an ex-parte basis and without notice, could take the  
4 actions suggested in that question.

5 EXAMINER SANYAL: Sustained.

6 Q. (By Ms. Bojko) So it's your understanding  
7 that the Stipulation only suspends the licenses of  
8 the owners for that five-year period, correct?

9 MR. WHITT: Objection. The license is to  
10 the Company, not the owners.

11 EXAMINER SANYAL: Rephrase.

12 MS. BOJKO: I'll rephrase.

13 Q. (By Ms. Bojko) The Stipulation only  
14 suspends the owners for participating for those five  
15 years.

16 EXAMINER PRICE: Can you use a different  
17 word than "suspend." "Suspend" is a term of art in  
18 this proceeding. I don't think it's really  
19 applicable to the five-year ban. If you want to say  
20 there's a five-year ban or a stay-out or whatever  
21 other word you want to use, but "suspend" has a  
22 particular meaning in this proceeding.

23 MS. BOJKO: Well, I guess maybe we need  
24 to explore that.

25 Q. (By Ms. Bojko) So the Staff

1 recommendation to suspend, conditionally rescind, or  
2 rescind, rescind could be immediately revoke; is that  
3 correct?

4 MR. WHITT: Objection. Same point I made  
5 earlier.

6 EXAMINER SANYAL: Could you refresh my  
7 memory as to the basis?

8 MR. WHITT: The question asked -- it  
9 asked the witness for a legal conclusion about  
10 whether the Commission, without notice, without any  
11 process and at the stroke of a pen, could immediately  
12 put the Company out of business and revert all the  
13 contracts to the default utility.

14 EXAMINER PRICE: Let's just ask her a  
15 simpler question.

16 What is your understanding of the meaning  
17 of "rescind"?

18 THE WITNESS: That the certification for  
19 the Company would basically be cancelled.

20 EXAMINER PRICE: And all the customers  
21 then returned to the standard service offer.

22 THE WITNESS: Yes, if the Commission  
23 rescinded the certificate.

24 EXAMINER PRICE: As opposed to suspend,  
25 where they can continue to serve their existing

1 customers but not enroll new customers.

2 THE WITNESS: Correct.

3 Q. (By Ms. Bojko) Just so I'm clear, this is  
4 a Staff recommendation. The Commission, from your  
5 experience on Staff, the Commission would have to  
6 issue an order directing one of Staff's  
7 recommendations; is that correct?

8 A. One of these recommendations?

9 Q. Right.

10 A. Yes, that's my understanding.

11 Q. Okay. So it would be done by an official  
12 Commission Order, correct?

13 A. Yes.

14 Q. And if we look at the second  
15 recommendation in the Staff Report, it's that the  
16 Commission, you're recommending the Commission order  
17 PALMco to pay a forfeiture of \$1.4 million, correct?

18 A. Correct.

19 Q. And this is a mandatory forfeiture in  
20 your recommendation, correct?

21 A. In our initial recommendation, yes.

22 Q. And unlike the Staff Report, the  
23 Stipulation provision regarding a forfeiture is  
24 contingent on the sale of customer contracts and the  
25 assignment, correct?

1           A.    Yes, the forfeiture is contingent on a  
2   sale that was -- that was part of the negotiations.

3           Q.    And unlike the Staff Report, a forfeiture  
4   could only occur if the sale is greater than  
5   \$800,000, correct?

6                   EXAMINER PRICE:  I think we've covered --

7           A.    Yes.

8                   EXAMINER PRICE:  -- this material.

9                   MS. BOJKO:  My apology.

10          Q.    Okay.  So let's go to the third  
11   recommendation.  The third recommendation in the  
12   Staff Report is that PALMco provide restitution to  
13   customers enrolled in the above noted timeframes,  
14   correct?

15          A.    Correct.

16          Q.    But the Stipulation only provides  
17   restitution to some customers; is that correct?

18                   MR. WHITT:  Objection.  Mischaracterizes  
19   the witness's testimony and the plain language of the  
20   Stipulation.

21                   MS. BOJKO:  Your Honor, I don't think so  
22   and I think that the customer -- the witness can  
23   clarify if that's what she believes.  The Stipulation  
24   clearly only provides restitution to different  
25   categories of customers that we discussed previously.

1 MR. WHITT: You have to consider each of  
2 the three categories in total. You can't just say  
3 category 1 doesn't include category 2 so, therefore,  
4 somebody is excluded. And, moreover, there can't be  
5 parol evidence as to the meaning of the plain  
6 language of the Stipulation.

7 EXAMINER SANYAL: Okay. Thank you,  
8 Mr. Whitt. I feel like we've already covered our  
9 three buckets of customers previously in questioning,  
10 so I will have you move on.

11 MS. BOJKO: I wasn't trying to get into  
12 the buckets, Your Honor. I'm trying to ask her if  
13 the Stipulation provides restitution to some  
14 customers; whereas, the Staff Report provides  
15 restitution to all customers. I have not asked that  
16 question.

17 EXAMINER SANYAL: Ms. Scarberry, if you  
18 can answer that question, you may.

19 THE WITNESS: Can you repeat the  
20 question, again?

21 MS. BOJKO: Sure.

22 Q. (By Ms. Bojko) Does the Staff Report  
23 provide restitution to all customers enrolled during  
24 the above timeframes, which you told me earlier was  
25 December 1, 2018 to April 15, 2019; whereas, the

1 Stipulation only provides restitution to some  
2 customers in that timeframe?

3 MR. WHITT: Same objection. The  
4 Stipulation includes a greater timeframe than  
5 recommended in the Staff Report.

6 EXAMINER SANYAL: Ms. Scarberry --  
7 overruled.

8 Ms. Scarberry, if you can answer, go  
9 ahead.

10 A. Our initial recommendation to the  
11 Commission was that the customers get restitution,  
12 enrolled from the December to April timeframe; and  
13 the negotiated Stipulation gives restitution to a  
14 group of customers enrolled during those timeframes  
15 and also extends restitution to customers enrolled  
16 prior to those timeframes.

17 Q. And only provides --

18 EXAMINER PRICE: Okay, okay. Now we're  
19 back to the buckets unfortunately. Which customers,  
20 enrolled between December 2018 and April 2019, do not  
21 get re-rated?

22 THE WITNESS: The initial recommendation  
23 was that all customers enrolled during that timeframe  
24 get re-rated. The negotiated Stipulation is -- no,  
25 I'm sorry, it is all.

1 EXAMINER PRICE: One more time so the  
2 record is clear.

3 THE WITNESS: Yes.

4 EXAMINER PRICE: The phrase "during the  
5 above noted timeframes" is the same timeframe as  
6 provided that all customers get restitution under the  
7 Stipulation.

8 MS. BOJKO: Objection.

9 EXAMINER PRICE: Overruled. Don't  
10 testify. Let her answer then you can ask her  
11 follow-up.

12 THE WITNESS: Yes, they both say -- well,  
13 I'm sorry, I'm looking at my testimony. Let me go  
14 back to the Stipulation.

15 Yes, they both say that all customers  
16 enrolled between those timeframes -- wait a minute.

17 Okay. The original recommendation of  
18 Staff is that all customers enrolled during December  
19 to April be re-rated. The Stipulation has all  
20 customers between December and April, that were  
21 charged a variable rate, be re-rated; so that's the  
22 difference.

23 EXAMINER PRICE: So customers who have  
24 signed a fixed contract do not get re-rated.

25 THE WITNESS: Under the Stipulation, no,

1 unless they complained to the Commission as part of  
2 another bucket.

3 EXAMINER PRICE: Thank you.

4 Q. (By Ms. Bojko) The fourth recommendation  
5 is the Staff Report recommends that there be a  
6 prohibition from PALMco transferring any customer  
7 contracts to another entity; is that correct?

8 A. Yes.

9 Q. And the -- but the Stipulation does not  
10 prohibit the transfer to another entity unless a sale  
11 is not consummated within 30 days of the certificate  
12 expiring, correct?

13 MR. WHITT: Objection. Mischaracterizes  
14 the Stipulation.

15 MS. BOJKO: Your Honor, it doesn't. The  
16 response is it doesn't mischaracterize the  
17 Stipulation. It's what the Stipulation says, but I  
18 think the witness can answer that if she disagrees.

19 EXAMINER SANYAL: Overruled. You may  
20 answer.

21 THE WITNESS: Can I have the question  
22 again, please?

23 (Record read.)

24 A. Yes.

25 Q. And, in fact, the stip actually



1 encourages the transfer of customers to a  
2 nonaffiliated entity as there are provisions in the  
3 stip contingent upon such transfer, correct, and as  
4 you discussed with Mr. Price earlier?

5 A. I'm sorry, can you repeat that?

6 Q. I'll just rephrase.

7 The stip encourages the transfer of  
8 customers to a nonaffiliated entity as there are  
9 provisions in the stip contingent upon such transfer,  
10 correct?

11 A. I don't know that it encourages the  
12 transfer but, as part of the agreement, they are  
13 permitted to sell those customer contracts with the  
14 requirement that it is an unaffiliated third party.

15 MS. BOJKO: May I have just a moment,  
16 Your Honor?

17 EXAMINER SANYAL: Sure.

18 (Pause in proceedings.)

19 Q. So if an entity is a standalone entity  
20 and not an affiliate of PALMco Ohio, the customer  
21 contracts could be sold to them, correct?

22 THE WITNESS: Okay. Can I get the  
23 question again, please?

24 MS. BOJKO: You can, but I'm going to ask  
25 it to be reread.

1 (Record read.)

2 A. Yes, except that III.9 of the Stipulation  
3 does state that the consumer contracts will not be  
4 sold to any current owners, officers, or partners of  
5 PALMco.

6 Q. Good point. Let's look at what's been  
7 marked as OCC Exhibit 13. Let's look at Exhibit B-1  
8 which is page 6 of the Application.

9 EXAMINER SANYAL: I'm sorry, which  
10 exhibit are we on, 3 or 13?

11 MS. BOJKO: B-1. Oh, I'm sorry, OCC  
12 Exhibit 3.

13 EXAMINER SANYAL: Okay.

14 MS. BAIR: OCC Exhibit 3?

15 MS. BOJKO: What did I say?

16 THE WITNESS: You said 13.

17 MS. BOJKO: I'm sorry.

18 EXAMINER SANYAL: Then we're looking at  
19 Attachment B?

20 MS. BOJKO: We're looking at the  
21 application that's in the packet and it's page 6,  
22 Attachment Exhibit B-1.

23 THE WITNESS: B-1, yes.

24 Q. (By Ms. Bojko) So B-1 states that PALMco  
25 Energy Ohio is a standalone entity and it's not a

1 subsidiary of a corporate parent and it's not related  
2 to the other individual members or the other -- it's  
3 a standalone entity so it's not affiliated with the  
4 other PALMco companies, correct?

5 A. Yes, it says it's a standalone entity.

6 Q. So, under the Stipulation, PALMco Energy  
7 Ohio could transfer its customers to PALMco Energy  
8 New York, correct?

9 A. I don't believe so.

10 Q. It's not an affiliated company; why not?

11 A. It still has the same owners and  
12 partners, I believe, and they are not --  
13 PALMco-whatever-state is not currently certified in  
14 Ohio.

15 Q. So they would have to obviously get  
16 certified; correct. Thank you for that  
17 clarification. The Stipulation requires them to be a  
18 certified entity in Ohio.

19 A. Yes, it does.

20 Q. So look at the same OCC Exhibit 3. The  
21 most-recent notice of change of officers and managers  
22 and partners. It's the last two, three pages of the  
23 document. We talked earlier today that all of the  
24 recent officers, managers, and partners had changed  
25 from the filing.

1 MS. BAIR: I'm sorry, have you found your  
2 place yet?

3 I don't know where you're talking about.  
4 The last three pages of this document?

5 MS. BOJKO: She found it.

6 MS. BAIR: Well, I didn't.

7 EXAMINER SANYAL: May 1, 2019, notice of  
8 material change.

9 MS. BOJKO: I'm sorry, are you there?

10 MR. EUBANKS: What page of the document?

11 MS. BOJKO: It doesn't have pages. It's  
12 the last three pages of OCC Exhibit 3.

13 THE WITNESS: They're double-sided pages.

14 MS. BAIR: Oh.

15 MS. BOJKO: Right there.

16 MS. BAIR: Thank you.

17 Q. (By Ms. Bojko) It's a May 1, 2019 letter,  
18 right?

19 A. Correct.

20 Q. And isn't it true that PALMco Energy or  
21 this is PALMco Power, I think. PALMco Energy. Isn't  
22 it true that PALMco Energy has changed its officers,  
23 directors, and partners, so now Mr. Palmese is no  
24 longer listed as an officer, director, or partner?

25 MR. WHITT: I'll object to the extent the

1 question implies, by use of the word "change," that  
2 there are completely different officers, directors,  
3 and owners. That's just a misrepresentation of fact  
4 insofar as the update supplements and adds to  
5 existing information. So it is a change but it's  
6 something that's cumulative, not a replacement of  
7 prior personnel.

8 MS. BOJKO: I mean, I think that  
9 mischaracterizes the record. That's not what the  
10 letter says. It says A-14 and it lists all the  
11 principals and officers and directors and partners,  
12 just like the A-14 did on the Application.

13 EXAMINER SANYAL: One moment.

14 EXAMINER PRICE: So you believe the  
15 Director of Compliance is now in lieu of the  
16 President or CEO?

17 MS. BOJKO: Your Honor, he doesn't list  
18 himself anymore as being a partner, director, or  
19 officer.

20 EXAMINER PRICE: I think this is  
21 pointless speculation. Let's move on.

22 Q. (By Ms. Bojko) The Staff Report requires  
23 or only prohibits current officers, directors, and  
24 partners; is that correct?

25 A. The Staff Report?

1 Q. I'm sorry, the Stipulation.

2 A. Let me get there. And owners.

3 Q. Thank you.

4 And just to refresh my recollection, you  
5 told me that you did not review the financials of  
6 PALMco Ohio, correct?

7 A. Correct. There's a different Staff group  
8 that reviews financial records.

9 Q. Thank you.

10 MS. BOJKO: If I may have one moment,  
11 Your Honor? I may be finished.

12 EXAMINER SANYAL: Sure. Let's go off the  
13 record.

14 (Off the record.)

15 EXAMINER SANYAL: Let's get back on the  
16 record.

17 MS. BOJKO: Thank you, Your Honor. I  
18 have no further questions.

19 EXAMINER SANYAL: Okay. Redirect?

20 MS. BAIR: Could I have a quick minute?

21 EXAMINER SANYAL: Sure.

22 MS. BAIR: It won't take long.

23 EXAMINER SANYAL: We'll go off the record  
24 again.

25 (Off the record.)

1 EXAMINER SANYAL: Let's go back on the  
2 record.

3 Ms. Bair, whenever you're ready.

4 MS. BAIR: Thank you, Your Honor. I have  
5 brief redirect.

6 - - -

7 REDIRECT EXAMINATION

8 By Ms. Bair:

9 Q. Ms. Scarberry, I would like to ask you to  
10 take a look at the Stipulation and Recommendation,  
11 Joint Exhibit 1, on page 4, up at the top,  
12 paragraph 1, and there was some reference earlier to  
13 the \$385,000. Do you recall that questioning?

14 A. Yes.

15 Q. And is that a fixed number, the 385?

16 A. No, it is an approximate number.

17 Q. So, in your opinion, the refunds would go  
18 to all customers who enrolled between 12/1/18 and  
19 4/15 that were charged a variable rate?

20 A. Yes.

21 Q. And in the next paragraph, there was some  
22 questioning and you were presented with some  
23 documentation I believe regarding that number which  
24 was shown to be \$85,000. Do you recall that  
25 questioning?

1 A. I recall the questioning, yes.

2 Q. And as you read paragraph 2, is that  
3 \$55,000 a cap on the re-rate?

4 A. No, it is not a cap. It is an  
5 approximate number at the time of the Stipulation.

6 Q. And so, it would be your understanding  
7 that people continue to get refunds --

8 A. Correct.

9 Q. -- under that paragraph?

10 A. Yes.

11 Q. And that total would not be included in  
12 that.

13 A. No, not in the Stipulation.

14 MS. BAIR: Thank you. I have nothing  
15 further.

16 EXAMINER SANYAL: I actually had some  
17 follow-up -- one follow-up question that I failed to  
18 ask earlier.

19 If you'll go back to No. 2 on that same  
20 page which is III.2. Is there a time limit on the  
21 informal complaints or can they continue up to the  
22 February 2020 date and the March 2020 date for gas  
23 and electric?

24 THE WITNESS: There's no time limit  
25 placed on that.



1 EXAMINER SANYAL: Okay. Thank you.

2 Ms. Bojko, any brief recross?

3 MS. BOJKO: I'm sorry, did Mr. Whitt?

4 EXAMINER SANYAL: Sorry.

5 MR. WHITT: I have no questions, Your  
6 Honor.

7 MS. BOJKO: No, Your Honor, I have no  
8 questions.

9 EXAMINER SANYAL: Okay. Ms. Scarberry,  
10 you may step down. Thank you for your testimony.

11 At this time, we will end the hearing for  
12 the day.

13 Ms. Bair?

14 MS. BAIR: May I move Joint Exhibit 1 and  
15 Staff Exhibit 1 into evidence?

16 EXAMINER SANYAL: Sure. Good call.

17 MS. BAIR: Thank you.

18 EXAMINER SANYAL: Joint Exhibit 1, any  
19 objection to that being admitted? No? Hearing none,  
20 it is admitted.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 EXAMINER SANYAL: And Staff Exhibit 1,  
23 any objections? Hearing none, it is admitted.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 EXAMINER SANYAL: OCC, we have tons of

1 exhibits for you. How would you like to handle  
2 those? I do know that some of these need to be  
3 redacted and some of them the witness was unable  
4 to -- did not have independent knowledge of those  
5 documents. We can take it up later or now.

6 MS. BOJKO: Your Honor, I will -- I will  
7 delay moving OCC 15, 16, and 17, for the comment that  
8 you just made.

9 EXAMINER SANYAL: Okay.

10 MS. BOJKO: I believe that the witness  
11 did speak to and had knowledge, so I will move OCC 3  
12 through 10.

13 EXAMINER SANYAL: Okay. Noting that 7 is  
14 all 484 contacts that are not yet redacted. So let's  
15 do 3 through 6, first.

16 Any objections to OCC Exhibits 3, 4, 5,  
17 and 6 being admitted?

18 MR. WHITT: No objections to those.

19 EXAMINER SANYAL: Okay. Staff?

20 MS. BAIR: No objections.

21 EXAMINER SANYAL: All right. So 3, 4, 5,  
22 and 6 are admitted.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 EXAMINER SANYAL: And 1 and 2 are  
25 reserved for later.

1           So 7 is the entire customer contact file,  
2       which has yet to be redacted and we haven't quite  
3       decided what to do with it, so I would prefer that we  
4       take that up later. Is that okay, Ms. Bojko?

5           MS. BOJKO: Sure. Yeah, that's fine.

6           EXAMINER SANYAL: Okay. So then we have  
7       8, 9, and 10. Any objections to 8, 9, and 10 being  
8       admitted, and I believe all of these are e-mails that  
9       Ms. Scarberry had independent knowledge of.

10          MR. WHITT: We do have an objection to 8.

11          EXAMINER SANYAL: Okay. Let me just grab  
12       it real quick. Okay, go ahead.

13          MR. WHITT: 8, I believe, has the same  
14       issues that 15, 16, and 17 have in terms of an  
15       individual complaint file and, again, we have  
16       portions of it that may be a business record, a  
17       public record, but there's hearsay within the  
18       document that -- that we object to.

19          EXAMINER SANYAL: And, Staff, you may  
20       have to refresh my memory as to whether Ms. Scarberry  
21       had independent knowledge.

22          MS. BOJKO: Nobody objected to this one  
23       at the time, Your Honor.

24          MR. WHITT: I don't think the questions  
25       got into any detail, right, about the exhibit, which

1 is why I didn't object at the time, but now that it's  
2 being proffered into the record, I'm objecting.

3 EXAMINER SANYAL: I'm just waiting on a  
4 response from Staff.

5 MS. BAIR: No. 8, we object to the  
6 admission of that. Ms. Scarberry's name is not on  
7 that. She didn't have knowledge of that document.

8 MS. BOJKO: May I respond, Your Honor?

9 EXAMINER SANYAL: Yes.

10 MS. BOJKO: She didn't say she didn't  
11 have knowledge. She testified to it. There were  
12 numerous questions that were posed. She testified to  
13 every one of them, nobody objected, and now she's off  
14 the stand and there's nothing I can do to try to cure  
15 their objection.

16 MR. WHITT: We can -- she testified, for  
17 example, I'm on page --

18 EXAMINER SANYAL: Okay. We're gonna --  
19 hang on. So with regard to this exhibit, I'm going  
20 to -- let's hold off admitting it. I'm going to need  
21 Staff to review the transcript and let me know, I  
22 mean all of you can review the transcript and let me  
23 know whether -- we will note the objection and we  
24 will take it under advisement after we review the  
25 transcript because it's not expedited. So we will

1 note the objection and then dispense of it in our  
2 ruling.

3 Okay. So --

4 MR. WHITT: I believe, Your Honor,  
5 Exhibits 9 and 10 were identified as e-mails that are  
6 referenced in the Staff Report.

7 MS. BOJKO: She's actually on 9 and 10.

8 MR. WHITT: Yeah, so those were okay.

9 EXAMINER SANYAL: Okay. So those are  
10 admitted.

11 (EXHIBITS ADMITTED INTO EVIDENCE.)

12 EXAMINER SANYAL: 11, I have written down  
13 that it is another e-mail that maybe needs to be  
14 redacted and that the Staff did not have independent  
15 knowledge of that particular exhibit.

16 MS. BOJKO: Your Honor, 11 and 12 were  
17 referenced in the Staff Report and they were cited in  
18 the Staff Report.

19 EXAMINER SANYAL: But I believe 11,  
20 Ms. Scarberry did not have independent knowledge, so  
21 you may have Ms. Bossart review this when you have  
22 time tomorrow.

23 MS. BOJKO: Okay. That's fine. I mean,  
24 our position is she supports the Staff Report, so  
25 it's referenced and cited in the Staff Report.

1 MS. BAIR: And we're not objecting to the  
2 admission of that.

3 EXAMINER SANYAL: Okay.

4 MS. BAIR: That's 11, right?

5 MS. BOJKO: Yes.

6 EXAMINER SANYAL: Admitted.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 EXAMINER SANYAL: No. 12, any objections?  
9 It's an e-mail again.

10 MR. WHITT: No objection.

11 EXAMINER SANYAL: Staff?

12 MS. BAIR: Let me locate 12 for a minute.

13 EXAMINER SANYAL: Sure. It's an e-mail  
14 dated February 21, 2019.

15 MS. BAIR: No objection.

16 EXAMINER SANYAL: Okay.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER SANYAL: Okay. And then I have  
19 13 and 14. 13 needs to be redacted.

20 MS. BAIR: 14, we objected to. I had  
21 written down here that she had no knowledge of that.  
22 I can dig it out, but I thought that was with 14, 15,  
23 16, and 17.

24 EXAMINER PRICE: I have no foundation on  
25 14.

1 MS. BAIR: Yeah, I have written down "no  
2 foundation."

3 MS. BOJKO: I thought we were talking  
4 about 13. I'm sorry.

5 EXAMINER PRICE: I think they're talking  
6 about 14.

7 MS. BOJKO: We will delay 14, 15, 16, and  
8 17.

9 EXAMINER SANYAL: Okay. What about 13?

10 MS. BOJKO: That was the exhibit that she  
11 believed she saw the Excel spreadsheets before.

12 MR. WHITT: We have no objection to 13.  
13 It does need redacted.

14 EXAMINER SANYAL: Okay. Sorry. 13 is  
15 admitted? Yes? No objections? Other than with the  
16 stipulation that it will be late-filed, a redacted  
17 copy will be late-filed which we addressed earlier,  
18 correct?

19 MS. BOJKO: That's correct.

20 MR. WHITT: We don't object to its --

21 EXAMINER SANYAL: I feel like not  
22 everyone is on the same page. I'm sorry?

23 So that one is admitted and you will be  
24 filing a redacted copy.

25 MS. BOJKO: Yes, Your Honor.

1 EXAMINER SANYAL: Okay.

2 EXAMINER PRICE: A lot of those.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 EXAMINER SANYAL: Okay. So we will start  
5 tomorrow. We will reconvene tomorrow at 9:00 a.m.

6 Any other questions that we need to  
7 discuss before we go off the record?

8 MS. BAIR: What's the witness order  
9 tomorrow? Have we --

10 EXAMINER PRICE: We'll talk about it off  
11 the record.

12 MS. BAIR: Okay.

13 EXAMINER SANYAL: Okay. Well, let's go  
14 off the record.

15 (Thereupon, the proceedings concluded at  
16 4:59 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, September 19, 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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**Case No(s). 19-0957-GE-COI**

Summary: Transcript Volume I - 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 19th, 2019. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Burke, Carolyn