BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Investigation into PALMco Power OH, LLC d/b/a Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance.	))))))	Case No. 19-0957-GE-COI

REPLY BRIEF FOR THE PROTECTION OF CONSUMERS FROM PALMCO'S FALSE, MISLEADING, DECEPTIVE, AND UNCONSCIONABLE PRACTICES BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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I. INTRODUCTION

PALMco[1] is an energy marketer that the PUCO Staff found to be "managerially unfit" to provide service to Ohio customers.[2] PALMco has charged some customers four to six times more for electricity and natural gas than the utilities' standard offers.[3] The PUCO and OCC collectively received hundreds of complaints from Ohio customers about PALMco's misleading and deceptive marketing practices.[4] Ohio policy and law prohibit deceptive marketing to Ohioans.[5] PALMco has got to go, for the good of the public and energy choice.

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[1] "PALMco" refers to PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy.

[2] OCC Ex. 6 (PUCO Staff Report (May 10, 2019)) at 19 ("Staff Report").

[3] Staff Report at 14.

[4] See OCC Ex. 7 (customer contacts regarding PALMco); Staff Report at 3.

[5] *See e.g.* R.C. 4928.02(I), R.C. 4928.10, R.C. 4929.22, R.C. 4929.02(A)(1), R.C. 1345.02, R.C. 4905.72, Ohio Adm. Code 4901:1-21-05(C), Ohio Adm. Code 4901:1-24-13(E)(11), Ohio Adm. Code 4901:1-27-13(E)(11), and Ohio Adm. Code 4901:1-29-05(D).

So, kudos to the PUCO Staff for documenting PALMco's many transgressions against Ohioans and Ohio law. But then inexplicably, the PUCO Staff signed a Settlement that lets PALMco off with too far too little accountability for the bad it has done.

The Settlement[6] between PALMco and the Staff of the Public Utilities Commission of Ohio ("Staff") is woefully inadequate to 1) protect consumers from the marketer's predatory utility practices, 2) redress the approximate 373 unfair, misleading, deceptive, and unconscionable acts and practices of PALMco in its marketing and supplying of electric and natural gas to Ohioans during late 2018 and early 2019, and 3) prevent the unconscionable acts and practices from reoccurring. Indeed, the PUCO has initiated a second investigation into PALMco's marketing practices based on consumer complaints received after the Settlement in this case was filed.[7]

PALMco and the PUCO Staff, as signatories to the Settlement, carry the burden in this case of demonstrating that the Settlement benefits customers and the public interest and does not violate important regulatory principles.[8] And PALMco carries the burden as the subject of the PUCO's show cause ruling. They did not sustain that burden.

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[6] Jt. Ex. 1 (Stipulation and Recommendation July 31,2019) ("Settlement").

[7] *See* OCC Motion to Take Administrative Notice (December 17, 2019). *In the Matter of the Commission's investigation into PALMco Power OH, LLC, dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Action,* electronically filed by Mr. Robert P. Fadley on behalf of Public Utilities Commission of Ohio, Case No. 19-2153-GE-COI (Dec. 16, 2019).

[8] *See, e.g., In re Application Seeking Approval of Ohio Power Co.'s Proposal to Enter into an Affiliate Power Purchase Agmt*., Case No. 14-1693-EL-RDR, Opinion & Order at 18 (March 31, 2016).

The PUCO should find that the Settlement is unjust, unreasonable, inadequate, not in the public interest, and does not benefit consumers because it does not provide that all consumers harmed by PALMco will actually receive the refunds to which they are entitled. The PUCO should also find that the Settlement violates important regulatory principles because it allows PALMco to profit from its unlawful actions by continuing to serve customers that were acquired by deceptive means. PALMco may also profit from the sale of customer contracts. In addition, the Settlement provision that makes payment of any forfeiture contingent on the sale of PALMco's customer contracts leaves open the possibility that PALMco will pay only a partial forfeiture or may not pay any forfeiture at all. Thus, it violates the important regulatory principle that punitive measures should be imposed for rule violations to deter others (and the wrongdoer) from violating the rules in the future.

II. ARGUMENT

As explained in the Office of the Ohio Consumers' Counsel's (OCC) Initial Brief, PALMco is an energy marketer that has been fleecing Ohioans.[9] In its Staff Report, the PUCO Staff found numerous rule violations and found the marketer to be "managerially unfit to provide competitive services in Ohio."[10] This "unfit" marketer charged some consumers four to six times more than the rates charged by the customers' incumbent electric and natural gas utilities, which the PUCO Staff found to be "an unconscionable

[9] Initial Brief for the Protection of Consumers from PALMco's False, Misleading, Deceptive, and Unconscionable Practices by the Office of the Ohio Consumers' Counsel, (Dec. 2, 2019) ("OCC Brief").

[10] Staff Report at 19.

sales practice."[11] PALMco engaged in hundreds of unfair, misleading, deceptive, and unconscionable acts and practices in its marketing and supplying of electricity and natural gas to Ohioans during late 2018 and early 2019.[12] These unscrupulous and unlawful practices were documented in 373 consumer complaints and contacts concerning PALMco to the PUCO.[13]

The Settlement fails the PUCO's criteria for considering settlements.[14] The PUCO should reject the Settlement.

A. Despite PALMco's and Staff's claims to the contrary, the Settlement harms customers and is not in the public interest and should be rejected by the PUCO.

1. The record evidence is overwhelming that the Settlement harms customers and it is not in the public interest despite PALMco's attempts to question the legitimacy of the Staff Report and minimize PALMco's unconscionable behavior.

The Settlement between PALMco and PUCO Staff falls well short of the recommendations in the Staff Report and cannot be reconciled, despite PALMco's and Staff's Briefing efforts. Contrary to Staff's claim, the Settlement does not "address the issues discovered during Staff's investigation into hundreds of consumer complaints leveled against the Company and resolves the underlying issues."[15] The Settlement glosses over or ignores the serious issues identified in the Staff Report of PALMco's bad acts that harmed customers and the violations of the PUCO's rules and Ohio law by

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[11] *Id.* at 14.

[12] *See* OCC Ex. 7 (Customer Contacts regarding PALMco).

[13] *Id.*; *see also* Staff Report at 3.

[14] *See, e.g.*, *Consumers' Counsel v. Pub. Util. Comm'n.*, (1992), 62 Ohio St.3d 123, 126.

[15] Initial Post Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio, (Dec. 2, 2019) ("Staff Brief") at 1.

PALMco, and ignores the recommendations contained therein. The Settlement does not adequately protect PALMco's customers and should be rejected as unjust and unreasonable.

Despite PALMco's attempts to question the legitimacy of the Staff Report and minimize PALMco's behavior and the record before the PUCO,[16] the record is clear. Upon review of the 373 customer contacts,[17] the PUCO Staff specifically found that PALMco engaged in a pattern of probable non-compliance with the Ohio Administrative Code's minimum requirements for marketing electricity and natural gas to Ohio consumers and asked the PUCO to find that violations of the Ohio Administrative Code did in fact occur.[18] More specifically, after reviewing and investigating the 373 customer contacts, Staff identified the following violations of the Ohio Administrative Code by PALMco: Ohio Adm. Code 4901:1-21-03(A), 4901:1-21-04, 4901:1-21-05(A) and (C), 4901:1-21-06(D), 4901:1-21-06(D)(2)(b), 4901:1-21-08(B), 4901:1-21-11(A), 4901:1-24-13(E), 4901:1-27-13(E), 4901:1-29-03(A), 4901:1-29-04, 4901:1-29-05(A) and (D), 4901:1-29-06(D) and (E), and 4901:1-29-08(B).[19] Staff provided specific examples of PALMco's violations of the rules.[20]

The Staff Report contains 20 pages of single-spaced text detailing the PUCO Staff's investigation of PALMco and describing how PALMco violated Ohio law and the PUCO's rules for protecting consumers. The PUCO Staff conducted a thorough

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[16] Initial Post Hearing Brief of PALMco Energy, (Dec. 2, 2019) ("PALMco Brief") at 3, 9, 11-13.

[17] See OCC Ex. 7 (Customer Contacts regarding PALMco).

[18] Staff Report at 3.

[19] *Id*. at 3, 9, 12, 15, and 19-20.

[20] *Id*. at 6-8, 13-14, and 15-17.

investigation into PALMco's failure to comply with Ohio law as the PUCO directed in its April 17, 2019 Entry.

OCC witness Adkins also testified that he and OCC staff reviewed a substantial number of the 373 customer contacts reported to the PUCO and independently identified numerous rule violations by PALMco consistent with those identified in the Staff Report.[21] Specifically, Mr. Adkins explained that OCC reviewed more than 80 customer complaints and OCC found the same pattern of abuse and rule violations.[22] Mr. Adkins further testified that the harm described in the Staff Report extends well beyond those customers who enrolled between December 1, 2018 and April 15, 2019.[23] Moreover, consumers did in fact attend the public hearing and testified to how they had been harmed by PALMco, explaining PALMco's misleading and deceptive marketing, sales, and enrollment practices that affected each of them.[24]

The 373 customer contacts and Staff's investigation of those contacts, as well as OCC's independent review the customer contacts, and the testimony of consumers at the hearing, plainly demonstrates that PALMco continuously and consistently violated numerous Ohio Administrative Code rules and harmed consumers. Therefore, the PUCO should find that PALMco violated the Ohio Administrative Code sections delineated above (as explained further in OCC's Initial Brief), and that PALMco's marketing and enrollment practices are unjust and unreasonable in violation of Ohio law.

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[21] See Tr. Vol. II at 348 (Testimony of OCC witness Adkins).

[22] *Id.*

[23] *Id*. at 322.

[24] See Tr. Vol. II at 256-257 (Testimony of Robert W. Steele); See Tr. Vol. I at 11, 16 (Testimony of Miranda Warner).

In light of the evidence, the PUCO should find that PALMco is unfit to operate in the state of Ohio and should immediately and permanently rescind PALMco's certificates of authority to provide retail electric and natural gas service to Ohio customers. The PUCO should also order that all consumers that were harmed by PALMco to be fully compensated for the difference between what they paid PALMco and what they would have paid under the utility's default rate, refunding to each consumer that difference in full.

Alternatively, OCC believes the recommendations contained in the Staff Report on pages 17- 20 represent a reasonable resolution to the harm that PALMco has caused Ohio customers.

2. For reasons not explained and that could have no explanation, the PUCO Staff/PALMco Settlement leaves certain PALMco's ripped-off customers with no restitution. That alone negates the Staff/PALMco claims that the Settlement benefits the public interest.

As PALMco accurately states in its Initial Brief, the issue before the PUCO is whether the Settlement is reasonable.[25] The PUCO Staff submits that the settlement "satisfies the reasonableness criteria."[26] In fact, because the Settlement between PALMco and the PUCO Staff is inadequate to address the PUCO's rule violations and the harm caused to consumers and violates the criteria that the PUCO uses for evaluating Settlements, it is *per se* not reasonable. Contrary to PALMco's claim,[27] the Settlement is unjust and unreasonable in violation of Ohio law. The Settlement does not satisfy the

[25] PALMco Brief at 9.

[26] Staff Brief at 3.

[27] PALMco Brief at 4-5.

PUCO's three-part test for approving Settlements and is woefully inadequate to redress the wrongs caused by PALMco.

A key criterion from the three-part PUCO evaluation test for Settlements is whether the settlement, as a package, benefits customers and the public interest.[28] The Settlement states that its primary objective is "to provide redress for the consumers that were harmed and to avoid, to the extent possible, the potential for future harm…"[29] However, the Settlement falls short of this objective because it does not provide that all consumers harmed by PALMco will actually receive the refunds they deserve.

The Settlement does not guarantee refunds for all consumers who were harmed by PALMco's deceptive marketing practices. And, neither the Settlement nor the witnesses supporting it can explain why certain customers harmed by PALMco are being protected and others are not. There seems to have been little, if any, reason for providing refunds to some but not all customers harmed by PALMco and for the forfeiture to the state to be contingent upon the sale of PALMco's customer contracts. The record contains no information regarding PALMco's financial situation and the PUCO Staff apparently made no independent evaluation of PALMco's finances. Despite PALMco's claims to the contrary, the testimony supporting the Settlement does not show that PALMco is unable to pay all refunds or all of the forfeiture.[30]

The record also provides no basis to make refunds for some customers harmed by PALMco and the forfeiture contingent upon the sale of PALMco's Ohio business. The

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[28] *See, e.g.*, *Consumers' Counsel v. Pub. Util. Comm'n*, 64 Ohio St.3d 123, 126 (1992).

[29] Settlement at 2.

[30] PALMco Brief at 10.

only testimony supporting the Settlement merely parrots the terms of the agreement, without adding any details as to why payment of some refunds and the forfeiture must wait for the sale of PALMco's Ohio business. When some harmed consumers are deprived of refunds that should rightfully be theirs, that should be explained in the Settlement and supported by evidence, but it is not.

The Settlement leaves open the very real possibility that thousands of customers harmed by PALMco's actions will not be made whole.[31] Refunds for customers who enrolled with PALMco between October 1, 2018 and November 30, 2018 are contingent on the sale of PALMco's Ohio's business,[32] even though those customers were harmed just as much as customers who enrolled between December 1, 2018 and April 15, 2019, who are receiving refunds under the Settlement. Refunds for such customers is estimated to be $800,000. Thus, if PALMco does not sell its customer contracts or does not receive at least $800,000 for the sale of its customer contracts, then potentially thousands of customers will not receive full refunds that they deserve for being harmed by this marketer.

Predatory and unscrupulous energy marketing practices should not be sanctioned by the PUCO. The record demonstrates that PALMco charged variable rate customers (both gas and electric) rates that were four to six times the applicable utility default rate and that this practice financially harmed customers. PALMco was able to deceptively enroll customers in contracts that ended up being four to six times the default rate with promises of "best possible" "competitive" "low" rates. PALMco's outrageously high

[31] OCC Initial Brief at 22-24; *See also* Adkins Testimony at 13-17.

[32] Settlement at 5.

rates were inconsistent with any commonly understood definition of the words it used for selling to customers.

The Staff Report details customer complaints and the harm caused.[33] The PUCO Staff found that when PALMco enrolled customers it knew the high variable rate it would eventually charge them but did not disclose that rate to the customers during marketing or enrollment.[34] Numerous customer contacts to PUCO's Call Center that OCC entered into the record describe the harm caused by PALMco.[35] The PUCO need only review a sampling of these records to get a clear picture of the harm caused by PALMco. Customers who testified at the hearing also described the harm caused to them by PALMco's deceptive actions and false promises, explaining that they did not get the price that they were expecting.[36]

3. The Settlement is not in the public interest and does not benefit consumers because all consumers harmed by PALMco are not receiving the refunds that they deserve despite PALMco's argument that it is unable to pay all refunds or all of the forfeiture.

The Settlement provision that allows PALMco to pay refunds for some but not all customers harmed is reason alone to reject this Settlement as it harms customers and is not in the public interest. Under the Settlement, some customers who were deceived by PALMco's marketing tactics might not be compensated and made whole even though other customers similarly harmed would receive refunds.

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[33] Staff Report at 19.

[34] *Id*. at 9.

[35] *See* OCC Ex. 7 (Customer Contacts regarding PALMco).

[36] *See* Tr. Vol. 1 at 11, 16; Tr. Vol. II at 256-257.

Despite PALMco's claims in its Initial Brief to the contrary,[37] the testimony supporting the Settlement does not support PALMco's new argument made in its Initial Brief that it is unable to pay all refunds or all of the forfeiture. There is no record evidence of this proposition. The PUCO should require that all consumers who were harmed by PALMco are fully compensated for the difference between what they paid PALMco and what they would have paid under their local utility's default rate by refunding to each consumer that difference in full. Full refunds to all consumers that were harmed by PALMco's unlawful acts and practices would be just and reasonable. Partial refunds or refunds to only some consumers harmed is unjust and unreasonable and not in the public interest, particularly in light of the egregious nature of the violations at issue in this case –violations that appear to be continuing.

4. The leniency of the Settlement harms consumers and is not in the public interest and cannot be justified by PALMco's claims that its "voluntary actions" to stop marketing after it got caught demonstrates the reasonableness of the Settlement.

The public interest is served by requiring marketers to comply with the PUCO's competitive electric and natural gas rules and by imposing punitive measures for violation of those rules. It is not in the public interest to simply let PALMco walk away without paying any form of penalty if it sells its customer contracts for $800,000 or less, or a reduced penalty if the sale price is for less than $2.2 million.

The Settlement in this case is seriously deficient to protect consumers. The Settlement here amounts to nothing more than a cost of doing business for PALMco. Making PALMco's forfeiture contingent upon the sale of its Ohio business is not in the

[37] PALMco Brief at 10-11.

public interest or benefits consumers who were harmed by this marketer. The PUCO should reject the Settlement. In its place, it should directly impose the original $1.4 million civil forfeiture that the PUCO Staff recommended in the Staff Report. And it should order PALMco to pay the full amount immediately.

PALMco's claims its voluntary cessation of bad acts AFTER it got caught offers no comfort and should not "count for something."[38] In reality, PALMco's alleged voluntary actions were not exactly voluntary as those actions (providing refunds and not engaging in deceptive marketing) were completed to resolve complaints that were already pending with the PUCO. The record is clear that this is not the first investigation or state wherein PALMco or other companies owned and operated by PALMco's owners have been accused and/or found guilty of unconscionable behavior that has caused harmed to consumers. Evidently, a stronger deterrent is necessary for PALMco and its owners to not engage in the same behavior that led to the excessive charges, numerous complaints, and ultimate investigation. Full restitution to every single consumer harmed and a monetary penalty that is fully punitive could be such a deterrent.

Moreover, PALMco's claimed cessation of bad acts did not last long. The PUCO just initiated a second investigation into PALMco's marketing practices based on consumer complaints received *after* the settlement in this case was filed.[39] PALMco's claim that its "voluntary actions should count for something"[40] not only has no place in

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[38] PALMco Brief at 11.

[39] *See*, *In the Matter of the Commission's investigation into PALMco Power OH, LLC, dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Action,* electronically filed by Mr. Robert P. Fadley on behalf of Public Utilities Commission of Ohio, Case No. 19-2153-GE-COI (Dec. 16, 2019).

[40] PALMco Brief at 11.

evaluating the reasonableness of the Settlement, its claim should be rejected due to PALMco's history in other states and its current, ongoing predatory practices.

The Settlement provision making payment of any forfeiture contingent on the sale of PALMco's customer contracts leaves opens the possibility that PALMco may not pay a forfeiture at all or will pay only a partial forfeiture. This will not deter PALMco's unlawful practices. As such, the Settlement violates the important regulatory principle that punitive measures should be imposed for rule violations and to deter others from violating the rules.

B. The Settlement violates established regulatory principles because it permits PALMco to continue serving current customers in Ohio despite the PUCO Staff's determination that PALMco is "managerially unfit" and unable to provide adequate service to customers. PALMco's certificates to market electric and natural gas service to Ohio customers should be permanently rescinded.

The third criterion the PUCO uses to evaluate settlements is whether the settlement package violates any important regulatory principle or practice. Here, the Settlement violates important regulatory principles because it allows PALMco to profit from its unlawful actions by continuing to serve customers that were acquired through deceptive means and under variable rate contracts with unconstrained pricing. Specifically, the Settlement allows PALMco to continue serving its existing customers and accepting customer contract renewals until it completes the sale of the customers contracts or until its current PUCO certifications expire.[41]

While Staff counsel in its brief seems to be impressed that PALMco is "forbidden to increase its customer base *any further*, preventing any new individuals being harmed

[41] OCC Initial Brief at 30-31; citing Adkins Testimony at 24-25.

by the Company's practices,"[42]the Settlement does not prevent PALMco from renewing its contracts at a higher rate than customers were charged under their previous contract.[43] There are no price protections put in place through the Settlement to prevent PALMco from charging excessive rates and doing exactly what led to the Commission Ordered Investigation in the first place.

Punitive measures in the form of civil forfeitures or some other form of monetary penalty (e.g., treble damages) are fundamental principles for enforcing consumer protection rules. Such measures serve to punish bad actors for violating the rules and bringing harm to consumers. The measures also serve as a deterrent to other potential bad actors by showing that rule-breaking will not be tolerated. Ohio law expressly gives the PUCO authority to assess forfeitures on bad actors for violating the PUCO's rules.[44]

In this case, the Settlement weakens its own forfeiture provision by making PALMco's payment of forfeitures contingent on the sale of its customer contacts and completing restitution for some, but not all, consumers harmed by PALMco. The customer refunds that are contingent on the sale of PALMco's customer contracts are estimated to be $800,000 so PALMco would have to sell its Ohio business for at least that amount before it pays any forfeiture. Even if the sale of customer contracts exceeds $800,000, under the Settlement only half of the additional proceeds would go toward payment of a forfeiture. PALMco would keep the rest.

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[42] Staff Brief at 10-11

[43] *Id.*, citing Palmese Deposition Transcript at 45, lines 5-8.

[44] R.C. 4928.16 (electric) and R.C. 4929.24 (natural gas); *See*, OCC Initial Brief at 27-29.

Thus, depending on the selling price of PALMco's Ohio business, PALMco could pay little or no forfeiture for harming consumers for disregarding the PUCO's consumer protection rules. As witness Adkins observed, if PALMco sells its customer contracts for $800,000 or less, it will pay no forfeiture.[45] And it will pay less than the full $750,000 civil forfeiture provided in the Settlement if it sells the customer contracts for less than $2.2 million ($800,000 restitution + $750,000 forfeiture + $750,000 retained by PALMco).[46]

The pattern of similar deceptive actions against consumers in other states by companies owned and controlled by the same owners as PALMco should require PALMco to make full restitution to customers and pay a meaningful civil forfeiture. The settlements and orders in the other states do not make customer restitution and/or the payment of forfeitures by the PALMco-affiliated companies contingent upon the sale of their customers to another marketer, unlike the Settlement drafted in Ohio.[47] In the other states that have ordered refunds, all consumers who PALMco-affiliated companies harmed will receive full restitution of the amount the companies overcharged them. That is not the case with the Ohio settlement. And in those states where the PALMco-affiliated companies were ordered to pay a forfeiture, the full forfeiture will be paid.[48]

Moreover, efforts to settle with PALMco for a relatively small forfeiture clearly has not achieved the Settlement's desired deterrent as evidenced by Staff's second Commission Ordered Investigation (COI) filed against PALMco yesterday. "Due to the

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[45] OCC Initial Brief at 28; citing Adkins Testimony at 21.

[46] *Id. See also* Palmese Deposition Transcript at 36, line 9.

[47] OCC Initial Brief at 28-30; *See* Palmese Deposition Transcript at 53, line 15 through 55, line 12.

[48] *See*, OCC Initial Brief at 28-29; Alexander Testimony at 2-9.

egregious nature of PALMco's actions and continuing to charge unconscionable rates while they are currently under investigation by the Commission for the same or similar conduct in Commission Case No. 19-0957-GE-COI," Staff recommended an additional Commission Ordered Investigation case be opened.[49] Staff's Report in the second investigation seeks a $10.2 million forfeiture against PALMco for the failures to comply with the requirements found in the Ohio Administrative Code and Ohio Revised Code covering just the period from August 1, 2019 and December 10, 2019; after the Settlement was filed.[50]

Even before the PUCO has an opportunity to consider the Settlement in this case, Staff's docketed letter requesting that the Commission open a COI to investigate PALMco's continuing egregious marketing and unconscionable sales practices[51] demonstrates that the Settlement forfeiture provision is woefully inadequate. Staff's proposal for a forfeiture of up to $10,222,000 demonstrates that the relatively small $750,000 proposed forfeiture in this case that is contingent on the sale of PALMco contracts failed to serve as any deterrent against further customer abuse. This does not serve to deter other marketers (and, as it turns out, including PALMco) from misleading or deceiving Ohioans.

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[49] *In the Matter of the Commission's Investigation into PALMco Power OH, LLC, dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Action*, Letter to Docketing Division opening the case, December 16, 2019.

[50] *Id*. at 1*:* "While that action is ongoing, between August 1, 2019 and December 10, 2019, the Commission's call center received 25 contacts regarding PALMco's gas rates and 26 contacts regarding PALMco's electric rates. During Staff's investigation of those customer contacts, Staff found that customers were concerned about issues related to the high bills that they received due to PALMco's very high rates. Based on Staff's investigations and a review of other available rates for CRES and CRNGS service, Staff believes that PALMco is charging unconscionably high rates."

[51] *Id*.

The Settlement does not require PALMco to pay the full forfeiture. And in fact, under the terms of the Settlement, PALMco might not pay any forfeiture. Actually, this Settlement could encourage continued bad Marketer behavior because it sends a signal that Ohio is tolerant of unscrupulous behavior and that Marketers can continue to profit through that continued shameless behavior.

The Settlement thus fails the PUCO's third criterion for considering settlements. The PUCO should reject the Settlement.

III. CONCLUSION

The PUCO should find that the Settlement is unjust, unreasonable, harms consumers, is contrary to the public interest, violates important regulatory principles and policies, and does not adequately protect all Ohioans who have been harmed by this deceptive and "unfit" marketer.

Here is the fundamental state policy that should be the PUCO's focus in this case: "Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, …."[52] Here is another state requirement for the PUCO's focus in this case: "Rules adopted under this section shall include a prohibition against unfair, deceptive, and unconscionable acts and practices in the marketing, solicitation, and sale of such a competitive retail electric service and in the administration of any contract for service, …"[53] And here is another fundamental requirement for the focus of this case:

[52] R.C. 4928.02(I).

[53] R.C. 4928.10.

"No retail natural gas supplier [] may engage in marketing, solicitation, sales acts, or practices which are unfair, misleading, deceptive, or unconscionable . . ."[54]

As explained above and in OCC's Initial Brief (at 1-5), providing adequate service to customers is an important regulatory principle requiring the PUCO's focus. So is providing honest information to customers so that they can make informed choices.[55] Prohibiting suppliers from engaging in anti-competitive acts is an important regulatory principle too.[56]

There are plenty of law-abiding energy marketers in Ohio with various kinds of offers. But there is no offer category in the state for what PALMco is "selling" to Ohioans. PALMco will not be missed when the PUCO rescinds its certificate to serve customers, as it should.

The Settlement should protect consumers, but it does not. Because it fails the criteria the PUCO uses to evaluate settlements, the PUCO should reject it. The Settlement should not be approved unless it contains the modifications recommended by OCC in its Initial Brief.[57]

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[54] Ohio Adm. Code 4901:1-29-05(D). *See also* R.C. 4929.22, R.C. 1345.02, Ohio Adm. Code 4901:1-21-05(C), Ohio Adm. Code 4901:1-24-13(E)(11), and Ohio Adm. Code 4901:1-27-13(E)(11).

[55] OCC Initial Brief at 112-19.

[56] *Id.*

[57] *See*, OCC Initial Brief at 32-34.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Reply Brief was served via electronic transmission to the persons listed below on this 17th day of December 2019.

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