

THE PUBLIC UTILITIES COMMISSION OF OHIO

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 ACTIONS FOR NON-
COMPLIANCE.

CASE NO. 19-2153-GE-COI

FINDING AND ORDER

Entered in the Journal on October 20, 2021

I. SUMMARY

{¶ 1} In this Finding and Order, the Commission adopts the uncontested joint stipulation and recommendation submitted by the parties to this proceeding.

II. DISCUSSION

{¶ 2} PALMco Power OH, LLC d/b/a Indra Energy (PALMco Power) is an electric services company as defined in R.C. 4928.01; is certified to provide competitive retail electric service (CRES) under R.C. 4928.08; and is subject to the jurisdiction of this Commission pursuant to R.C. 4928.16. Accordingly, PALMco Power is required to comply with the Commission's minimum CRES standards set forth in Ohio Adm.Code Chapter 4901:1-21.

{¶ 3} PALMco Energy OH, LLC d/b/a Indra Energy (PALMco Energy) is a retail natural gas supplier as defined in R.C. 4929.01; is certified to supply competitive retail natural gas service (CRNGS) under R.C. 4929.20; and is subject to the jurisdiction of this Commission pursuant to R.C. 4929.24. Accordingly, PALMco Energy is required to comply with the Commission's minimum CRNGS standards set forth in Ohio Adm.Code Chapter 4901:1-29.

{¶ 4} On March 10, 2010, the Commission granted PALMco Power's application for certification as a CRES provider in this state. *In the Matter of the Application of PALMco Power OH, LLC for Certification as a Competitive Retail Electric Service Provider*, Case No. 10-139-EL-CRS. PALMco Power timely filed renewal applications for certification as a CRES provider

every two years pursuant to Ohio Adm.Code 4901:1-24-09, and each renewal application was automatically approved by the Commission pursuant to R.C. 4928.08. PALMco Power's most recent renewal application was filed on January 18, 2018; this renewal application also was automatically approved by the Commission pursuant to R.C. 4928.08. PALMco's CRES certificate was valid until March 8, 2020.

{¶ 5} Additionally, on March 8, 2010, the Commission granted PALMco Energy's application for certification as a CRNGS supplier in this state. *In the Matter of the Application of PALMco Energy OH, LLC for Certification as a Competitive Retail Natural Gas Supplier*, Case No. 10-138-GA-CRS. PALMco Energy timely filed renewal applications for certification as a CRNGS provider every two years pursuant to Ohio Adm.Code 4901:1-27-09, and each renewal application was automatically approved by the Commission pursuant to R.C. 4929.20. PALMco Energy's most recent renewal application was filed on January 16, 2018; this renewal application also was automatically approved by the Commission pursuant to R.C. 4929.20. PALMco's CRNGS certificate expired on February 14, 2020.

{¶ 6} On April 16, 2019, Staff of the Commission's Service Monitoring and Enforcement Department (Staff) filed a letter in the certification dockets for PALMco Power and PALMco Energy (collectively, PALMco or Company), alleging that PALMco had engaged in misleading and deceptive practices to market and enroll customers as well as violating several requirements of Ohio Adm.Code Chapter 4901:1-21 and 4901:1-29. As a result, by Entry dated April 17, 2019, the Commission opened an investigation into PALMco. *In re PALMco Power OH, LLC dba Indra Energy & PALMco Energy OH, LLC dba Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-957-GE-COI (PALMco I), Entry (Apr. 17, 2019).

{¶ 7} On January 29, 2020, the Commission issued an Opinion and Order in *PALMco I*, adopting the joint stipulation and recommendation (stipulation) entered into by Staff and PALMco.

{¶ 8} On December 16, 2019, while *PALMco I* was still pending before the Commission, Staff filed a notice of probable non-compliance in this case. Staff indicated that, between August 1, 2019, and December 10, 2019, the Commission's call center received 26 contacts regarding PALMco's electric rates and 25 contacts regarding PALMco's gas rates. Based on Staff's investigation and a review of other available rates for CRES and CRNGS, Staff alleged that PALMco was charging unconscionably high rates to consumers in Ohio.

{¶ 9} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies were required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens were urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and was to remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 10} On March 11, 2020, the Commission opened a second investigation into PALMco and directed the attorney examiner to issue a procedural schedule in this matter.

{¶ 11} By Entry dated April 6, 2020, the attorney examiner set a procedural schedule in this matter with a hearing scheduled to begin on August 24, 2020. The attorney examiner also granted the Ohio Consumers' Counsel's (OCC) pending motion to intervene, which OCC had filed on December 27, 2019. Finally, the attorney examiner granted OCC's motions to compel discovery dated February 14, 2020, and March 17, 2020, and directed PALMco to collaborate with OCC and exchange discovery pursuant to Ohio Adm.Code 4901-1-16.

{¶ 12} On April 28, 2020, PALMco filed a complaint in prohibition with the Supreme Court of Ohio in regard to this proceeding, alleging that the Commission does not have jurisdiction to regulate the rates charged by PALMco. On May 20, 2020, the Commission filed a motion to dismiss PALMco's complaint with the Court.

{¶ 13} The attorney examiners held a prehearing conference on July 23, 2020, to address outstanding discovery issues. During the conference, the parties agreed to provide the attorney examiners with an update with regard to the exchange of discovery on July 31, 2020. On July 31, 2020, via email, counsel for PALMco represented to the attorney examiners that the Company had served documents, and responses and objections for the outstanding discovery sought by OCC. On August 4, 2020, counsel for OCC emailed the attorney examiners. OCC represented that it was in the process of reviewing PALMco's discovery responses and production of documents, but OCC expressed concern about the establishment of a revised procedural schedule at that time.

{¶ 14} On August 4, 2020, PALMco filed a motion for a temporary stay of this proceeding, including a stay of discovery, pending the Supreme Court of Ohio's resolution of the complaint in prohibition. On August 18, 2020, and August 19, 2020, OCC filed memoranda contra the motion for a stay.

{¶ 15} In light of the concerns raised by the issuance of the Executive Order, on August 6, 2020, the attorney examiner vacated the procedural schedule set by the April 6, 2020 Entry. The attorney examiner noted PALMco's August 4, 2020 motion to stay this proceeding pending the resolution of the complaint in prohibition at the Supreme Court of Ohio, and the attorney examiner stated that no stay had been issued and that discovery should proceed pursuant to Ohio Adm.Code 4901-1-16 unless a stay is granted in the future.

{¶ 16} On August 19, 2020, the Supreme Court of Ohio dismissed PALMco's complaint in prohibition. *State ex rel. Palmco Energy OH, LLC v. Pub. Util. Comm. of Ohio*, 159 Ohio St.3d 1480, 2020-Ohio-4053, 150 N.E.3d 975.

{¶ 17} Subsequently, on September 21, 2021, PALMco, OCC, and Staff (Signatory Parties) filed an uncontested Joint Stipulation and Recommendation (Joint Stipulation). PALMco also filed a motion for protective order on September 21, 2021.

{¶ 18} Among other terms, the Joint Stipulation provides that:¹

- (1) PALMco agrees to re-rate customers whose rates increased by 50 percent or more as compared to the initial offering rate for those customers during the period between August and December 2019 (“the refund period”), excluding customers that have unpaid bills for PALMco’s service and/or have already received an agreed upon re-rate or flat rate credit due to a complaint resulting from PALMco service. For each month during the refund period when a customer’s rates were at least 50 percent higher than the initial offering rate for the customer, the customer will receive a refund calculated by re-rating PALMco’s charges for service during that month to a charge that is halfway between the rate the customer paid during that month and the initial offer rate for that customer. The total amount of the re-rates shall not exceed \$215,364.93.
- (2) PALMco agrees that its current owners will not serve as an owner, officer, director, or partner for a CRES or CRNGS supplier in Ohio for seven years from the date the Commission approves the Joint Stipulation; provided that after five years from the date of the execution of the stipulation in *PALMco I* (July 31, 2019), PALMco’s current owners may operate as an owner, officer, director, or partner for a CRES or CRNGS supplier if that supplier serves only large commercial and/or industrial customers.

¹ This summary is not intended to replace or supersede the Joint Stipulation.

- (3) Separate and apart from the re-rates described above, PALMco has, in coordination with Staff, re-rated or otherwise resolved the customer complaints that were referenced in Staff's December 16, 2019 notice of probable non-compliance. The refunds identified in the exhibits attached to the Joint Stipulation represent the full extent of PALMco's obligation to re-rate customers resulting from this case.
- (4) PALMco holds approximately \$832,000.00 in aged accounts receivable (A/R) related to its previous Ohio customers. PALMco agrees to release that entire book of A/R. PALMco will not seek collection of the \$832,000 in A/R from customers or assign the A/R to another individual or entity for collection.
- (5) PALMco has provided documentation evidencing its current and recent financial status to Staff and OCC (Financial Information). Staff and OCC agree that the Financial Information is designated confidential and marked and kept as such. Staff and OCC will not disclose the Financial Information or otherwise release or communicate the contents of that Financial Information to any third parties unless required by law.
- (6) PALMco does not anticipate it will retain any cash or assets once it pays its expenses and fulfills the terms of this settlement. If a balance does remain, PALMco agrees to make a donation to a charity of OCC's choice to help low-income customers with payment of their utility bills. PALMco agrees to provide Staff and OCC verification that all proceeds remaining after the payment of PALMco's expenses and the customer refunds were paid to the designated charity and that no proceeds were retained by its owners.

- (7) PALMco agrees to contribute to the same charity chosen above any and all deposits or securities held by and returned to PALMco from all local distribution utilities to the extent these amounts are not applied to PALMco's expenses and/or the proposed settlement. PALMco agrees to provide verification to Staff and OCC of all deposits received and any amounts contributed to the designated charity, including identification of the deposit sources and amounts.
- (8) In consideration for PALMco's commitments above, OCC agrees to file a notice to withdraw its pending application for rehearing in Case No. 19-957-GE-COI after the Joint Stipulation has been approved by the Commission without material modification and no later than 20 business days after OCC receives unredacted copies of exhibits attached to the Joint Stipulation.
- (9) PALMco shall file a letter in the docket indicating its compliance with the terms of the Joint Stipulation. If Staff deems it necessary, it may file a letter in response to PALMco's compliance letter within 30 days of PALMco's compliance letter.

{¶ 19} The Commission notes that R.C. 4928.16 and 4929.24 grant the Commission the authority to order any remedy or forfeiture provided under R.C. 4905.54 to 4905.60 and 4905.64, and to order restitution to customers and rescission of customer contracts.

{¶ 20} Moreover, Ohio Adm.Code 4901:1-23-04(A) and 4901:1-34-05(A) permit the Signatory Parties to enter into a stipulation for the purpose of resolving any alleged violations of the CRES and CRNGS minimum standards and service requirements. We will, therefore, consider the Joint Stipulation pursuant to our enforcement authority under Ohio Adm.Code Chapters 4901:1-23 and 4901:1-34. The issue before the Commission in this case is whether the Joint Stipulation, which embodies considerable time and effort by the Signatory Parties, is reasonable and should be adopted. The Joint Stipulation states that

PALMco has agreed to implement multiple remedial actions in response to the violations alleged in the December 16, 2019 notice of probable non-compliance, including refunds to affected customers. Accordingly, we find that the Joint Stipulation represents a reasonable resolution of this matter and that it should be approved and adopted in its entirety. Further, the Commission finds that it is not necessary to hold a hearing in this matter.

III. ORDER

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That the Joint Stipulation filed in this proceeding be adopted and approved. It is, further,

{¶ 23} ORDERED, That PALMco take all necessary steps to implement the terms of the Joint Stipulation. It is, further,

{¶ 24} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

GAP/hac

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Case No(s). 19-2153-GE-COI

Summary: Finding & Order adopting the uncontested joint stipulation and recommendation submitted by the parties to this proceeding. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio