**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission’s Investigation into PALMco Power OH, LLC, d/b/a Indra Energy and PALMco Energy OH, LLC d/b/a Indra Energy’s Compliance with the Ohio Administrative Code and Potential Remedial Action. | )  )  )  )  )  )  ) | Case No. 19-2153-GE-COI |

**REPLY TO PALMCO’S MEMORANDUM CONTRA OCC’S MOTION TO INTERVENE AND MOTION TO SUSPEND OR RESCIND PALMCO’S CERTIFCATES TO MARKET ENERGY TO OHIOANS**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# INTRODUCTION

PALMco wants the PUCO to silence the state’s voice of the residential consumers that it ripped off, by denying OCC’s motion to intervene. Our consumer intervention is in the PUCO Staff’s request for opening the *second* investigation within a year into “the egregious nature of PALMco’s actions” and its “continuing to charge unconscionable rates while [PALMco is] currently under investigation by the Commission for the same or similar conduct . . .”[[1]](#footnote-2) The PALMco that wants to avoid OCC’s consumer advocacy is the same PALMco that the PUCO Staff said “caused *extreme harm* to consumers in Ohio” and is “managerially unfit to provide competitive services in Ohio.”[[2]](#footnote-3)

PALMco’s arguments against the intervention of the Office of the Ohio Consumers’ Counsel grossly misrepresent Ohio law and ignore controlling Supreme Court of Ohio precedent[[3]](#footnote-4) regarding interventions generally and OCC’s intervention specifically. As can be said in general about PALMco, PALMco is wrong. The PUCO should grant OCC’s intervention in this case. The PUCO should also suspend or rescind PALMco’s authority to market natural gas and electric service to prevent further harm to PALMco’s customers in Ohio.

# II. THE PUCO SHOULD GRANT OCC’S MOTION TO INTERVENE TO GIVE A VOICE TO THE CONSUMERS THAT PALMCO HAS HARMED.

Intervention in PUCO proceedings is governed by R.C. 4903.221. That statute expressly states that “[a]ny other person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding, provided []” that the motion to intervene is timely filed in accordance with R.C. 4903.221(A) and that the PUCO considers the criteria set forth in R.C. 4903.221(B). The Supreme Court of Ohio has held that “intervention ought to be *liberally allowed* so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO.”[[4]](#footnote-5) In the “absence of some evidence in the record calling those claims into doubt or showing that intervention would unduly prolong or delay the proceedings, intervention should [be] granted.”[[5]](#footnote-6)

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. The PUCO Staff found that PALMco has “caused extreme harm to consumers in Ohio” and that a second investigation into PALMco’s conduct is warranted given PALMco’s continued rip-offs of Ohio consumers. There is no doubt that Ohio’s residential consumers “may be adversely affected by a [PUCO] proceeding” in this case. *PALMco and “adversely affected” consumers go hand in hand*. The PUCO should therefore grant OCC’s motion to intervene in the PUCO’s second investigation against PALMco just as OCC was granted intervention in the first investigation.

## A. PALMco grossly misrepresents Ohio law governing intervention in PUCO proceedings, and PALMco’s arguments should be rejected so OCC can participate in this proceeding to protect consumers.

PALMco misstates the law and the intervention standard set forth in R.C. 4903.221 to support its claim that OCC has no right to intervene. PALMco cherry picks language from different sections of R.C. 4903.221 to create a nonexistent legal standard that PALMco claims governs OCC’s intervention in this case. Specifically, PALMco states that “[t]he Commission ‘may, in its discretion, grant motions to intervene’ to a person who ‘may be adversely affected by’ an order in the proceeding. R.C. 4903.221.”[[6]](#footnote-7) R.C. 4903.221 does not stand for that proposition. R.C. 4903.221 states as follows (with PALMco’s quoted language underlined):

Any other person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding, provided:

1. That such other person files a motion to intervene with the commission no later than:
2. Any specific deadline established by order of the commission for purposes of a particular proceeding; or, if no such deadline is established;
3. Five days prior to the scheduled date of hearing.

The public utilities commission may, in its discretion, grant motions to intervene which are filed after the deadline set forth in divisions (A)(1) and (2) of this section for good cause shown.

A plain reading of R.C. 4903.221 demonstrates that the language on which PALMco relies applies to *late-filed* motions to intervene. OCC’s Motion to Intervene was not filed late, and PALMco does not dispute that.

PALMco’s mischaracterization of the intervention standard also directly contradicts the PUCO’s own rule governing intervention (which is subordinate to R.C. 4903.221). Under the PUCO’s rules:

Upon timely motion, any person *shall be permitted to intervene* in a proceeding upon a showing that: . . . The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person’s interest is adequately represented by existing parties.[[7]](#footnote-8)

OCC has made a showing that it has a “real and substantial interest” in being heard in this proceeding where customers have been harmed by PALMco’s manipulative marketing and unconscionable rates. Therefore, the PUCO should grant OCC’s motion to intervene.

## B. PALMco’s claim that OCC has no legal authority to intervene in this proceeding to protect consumers has no merit and should be rejected.

PALMco claims that OCC should be denied intervention because the provisions of R.C. Chapter 4911 do not “provide express or implied authority to intervene in [electric or natural gas] provider enforcement proceedings.”[[8]](#footnote-9) PALMco asserts that OCC’s “powers and duties” with respect to intervention are limited to those set forth in R.C. 4911.02(B), which PALMco claims do not expressly include intervention in enforcement proceedings.[[9]](#footnote-10) PALMco’s is wrong.

The General Assembly wrote right into the law (that PALMco misstates) that the Consumers’ Counsel has rights to protect consumers “Without limitation because of enumeration….” PALMco ignores those most important words and then claims OCC cannot intervene in an enforcement action because it is not enumerated in the law. That makes no sense. PALMco is wrong. PALMco is vexatious. Even what is enumerated in the law, such as R.C. 4911.02(B)(2)(b), allows OCC to intervene. But again, the law has no “limitation because of enumeration.” And the PUCO has found that [t]his language conveys the intent of the legislature that the provisions of Section 4911.02 should be construed *as broadly as possible*.”[[10]](#footnote-11) Under Ohio law, OCC has authority to seek intervention in this case to represent the interests of residential utility consumers.[[11]](#footnote-12)

The PUCO has rejected similar arguments opposing OCC’s intervention. In the *Matter of the Complaint of Jeffrey Pitzer v. Duke Energy Ohio, Inc.*, Case No. 15-298-GE-CSS, an investigation into a utility’s misdeeds, the PUCO granted OCC’s motion to intervene over Duke’s opposition. The PUCO rejected Duke’s argument that OCC was precluded from intervening in matters not specifically enumerated in R.C. 4911.02.[[12]](#footnote-13)

PALMco’s contention that OCC’s authority to intervene is limited only to those matters specifically set forth in R.C. Chapter 4911 also ignores the plain language of R.C. 4903.221, which provides “[a]ny other person who may be adversely affected by a public utilities commission *proceeding* may intervene in such *proceeding* [].” (emphasis added). PALMco attempts to argue that this case is not a proceeding covered under R.C. 4903.221. It alleges that this is “an enforcement proceeding” in which OCC cannot participate.[[13]](#footnote-14) But R.C. 4903.221 makes no such distinction and PALMco cites no authority to support its argument. OCC was granted intervention in the first PALMco investigation. OCC should be granted intervention to protect consumers in this second investigation as well.

## C. OCC satisfies the standards for intervention in this proceeding, and should be allowed to participate to protect consumers.

OCC’s motion to intervene and supporting memorandum in support (which are incorporated herein by reference) fully explained how OCC satisfies the criteria for intervention under R.C. 4903.221 and Ohio Adm. Code 4901-1-11. PALMco claims that OCC does not satisfy the intervention criteria. PALMco is wrong.

First, PALMco claims that OCC “does not explain how it or any residential customers could be adversely affected if intervention is denied.”[[14]](#footnote-15) Again, the PUCO Staff determined that PALMco has “caused *extreme harm*” to Ohio consumers and that PALMco is “managerially unfit” to provide service in Ohio.[[15]](#footnote-16) The PUCO Staff now requests a second investigation because PALMco has continued to rip off customers.[[16]](#footnote-17) Ohio consumers who are being abused by PALMco deserve under Ohio law to have their voices heard. And denying consumers representation and the right to be heard in this case in and of itself would “adversely affect” customers in this proceeding. That’s on top of the abuse that they continue to suffer because PALMco is still allowed to provide natural gas and electricity to consumers at unconscionable rates in this state.

In the American system of justice, people are allowed to be heard. The Ohio General Assembly determined more than 40 years ago that consumers are heard through OCC’s voice.

Second, PALMco claims that the interests of consumers are already being represented by PUCO Staff in this case.[[17]](#footnote-18) OCC commends the PUCO Staff for seeking a second investigation into PALMco’s egregious conduct. But OCC is the organization created by Ohio law to represent the interests of Ohio’s residential utility consumers. Ohio consumers are being exploited by PALMco, and they deserve legal representation as the General Assembly intended.

Third, PALMco claims that OCC’s intervention in this case would unduly prolong or delay the proceedings.[[18]](#footnote-19) That argument should also be rejected. It is PALMco’s conduct – not OCC’s – that prompted the PUCO Staff to request a *second investigation* into PALMco’s ongoing customer abuse. The PUCO Staff has received 51 customer contacts regarding PALMco’s unconscionable electric and natural gas rates despite PALMco already being under investigation by the PUCO. This is additional evidence of what the PUCO Staff found to be a failure by PALMco to take “independent and meaningful steps” to correct its unlawful business practices.[[19]](#footnote-20)

PALMco’s claims that OCC’s intervention should be denied because additional scrutiny will unduly prolong the proceedings are unjustified. If this case goes to hearing or does not get resolved as quickly as PALMco would like, that is not an *undue* delay. It would be time that is necessary to provide due process to the consumers PALMco harms and to unwind the complexity of what PALMco is doing to continually harm Ohio consumers. As OCC explained in its motion to intervene, OCC’s longstanding expertise and experience in PUCO proceedings will duly allow for the efficient processing of the case with consideration of the public interest.[[20]](#footnote-21)

Finally, PALMco disputes that OCC will significantly contribute to the full development and equitable resolution of the factual issues in this case. PALMco argues that all OCC did in the first investigation was “ride Staff’s coattails.”[[21]](#footnote-22) That characterization is false. The PUCO Staff’s investigation was a commendable effort in the first investigation. But, as an example of differences, the PUCO Staff settled with PALMco. OCC did not. And despite the settlement, PALMco’s abuse of Ohio consumers has continued. OCC’s intervention in this case is necessary and justified.

The PUCO should grant OCC’s Motion to Intervene because OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention.

# III. THE PUCO SHOULD SUSPEND OR RESCIND PALMCO’S AUTHORITY TO MARKET NATURAL GAS AND ELECTRICITY TO CONSUMERS.

PALMco’s Memorandum Contra does not address OCC’s request that the PUCO suspend or rescind PALMco’s operating authority except to say that “[n]othing has changed since the last investigation, when OCC made the same request.”[[22]](#footnote-23) Therefore, OCC relies on its recommendations contained in its original motion.[[23]](#footnote-24)

Finally, in PALMco’s December 31, 2019 letter filed in this case responding to the PUCO Staff’s December 16, 2019 letter and Notice of Probable Non-Compliance, PALMco states that the PUCO Staff is attempting through the second investigation to unlawfully to regulate PALMco’s competitive supplier rates.

PALMco’s contention has little merit, and a second PUCO investigation regarding PALMco is appropriate and necessary. The state’s policy regarding competitive energy supply, codified in Ohio law, is to “[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory and *reasonably priced* retail electric service”[[24]](#footnote-25) and to “[p]romote the availability to consumers of adequate, reliable, and *reasonably priced* natural gas services and goods.”[[25]](#footnote-26) Contrary to PALMco’s claims, PALMco’s status as a competitive retail energy marketer does not give it free reign to charge customers unconscionable rates and engage in deceptive business practices.

In sum, permitting a managerially unfit and deceptive marketer like PALMco to continue providing natural gas and electricity to consumers at unconscionable rates harms competition in Ohio. If Ohio consumers cannot trust that their energy suppliers will follow the law, competition in Ohio will suffer. Accordingly, the PUCO should revoke PALMco’s authority to provide electricity and natural gas to Ohioans.

# IV. CONCLUSION

OCC’s motion to intervene should be granted. OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. Our intervention should be rightly granted on behalf of Ohio consumers – including those that PALMco ripped off, among others. The PUCO should also immediately suspend or rescind PALMco’s authority to provide service, to protect Ohioans from further abuse and harm.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply to PALMco’s Memorandum Contra OCC’S Motion to Intervene and Motion to Suspend or Rescind PALMco’s Certificates to Market Energy to Ohioans was served on the persons stated below via electronic transmission, this 21st day of January 2020.

*/s/* *Angela D. O’Brien*

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Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. Case No. 19-2153-GE-COI, PUCO Staff Letter (Dec. 16, 2019). [↑](#footnote-ref-2)
2. *In the Matter of the Commission’s Investigation into PALMco Power OH, LLC d/b/a Indra Energy and PALMco Energy OH, LLC d/b/a Indra Energy’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-957-GE-COI, Staff Report (May 10, 2019) (“Staff Report”), at 17, 19 (emphasis added).

   [↑](#footnote-ref-3)
3. *Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 388 (2006). [↑](#footnote-ref-4)
4. *Ohio Consumers’ Counsel v. Pub. Util. Comm*., 111 Ohio St.3d 384, 388 (2006) (emphasis added). [↑](#footnote-ref-5)
5. *Id*. PALMco claims that OCC’s intervention would unduly prolong and delay the proceedings in this case. Below, OCC explains why PALMco’s argument should be rejected. [↑](#footnote-ref-6)
6. PALMco Memo Contra, at 3. [↑](#footnote-ref-7)
7. Ohio Adm. Code 4901-1-11(A). [↑](#footnote-ref-8)
8. PALMco Memo Contra, at 5-6. PALMco cites *Office of Consumers’ Counsel v. Pub. Util. Comm.*, 56 Ohio St.2d 220, 223 (1978), but nothing in that case stands for the proposition that OCC should be denied intervention in this proceeding. [↑](#footnote-ref-9)
9. PALMco Memo Contra, at 6. [↑](#footnote-ref-10)
10. *In the Matter of the Complaint of the Office of Consumers’ Counsel on Behalf of the Residents of Copley Village Condominium Association I and Copley Village Condominium Association II v. Ohio Edison Company*, Case No. 89-1031-EL-CSS, 1989 Ohio PUC LEXIS 1100, \*5. (emphasis added). [↑](#footnote-ref-11)
11. R.C. 4911.02(B). [↑](#footnote-ref-12)
12. *See In the Matter of the Complaint of Jeffrey Pitzer v. Duke Energy Ohio, Inc.*, Case No. 15-298-GE-CSS, Entry (July 10, 2015). [↑](#footnote-ref-13)
13. PALMco Memo Contra, at 5-6. [↑](#footnote-ref-14)
14. PALMco Memo Contra, at 4. [↑](#footnote-ref-15)
15. Staff Report, at 17, 19 (emphasis added). [↑](#footnote-ref-16)
16. PUCO Staff Letter (Dec. 16, 2019). [↑](#footnote-ref-17)
17. PALMco Memo Contra, at 4. [↑](#footnote-ref-18)
18. PALMco Memo Contra, at 4-5. [↑](#footnote-ref-19)
19. Staff Report, at 18. [↑](#footnote-ref-20)
20. *See* OCC Motion, Memorandum in Support, at 3. [↑](#footnote-ref-21)
21. PALMco Memo Contra, at 5. [↑](#footnote-ref-22)
22. PALMco Memo Contra, at 2. [↑](#footnote-ref-23)
23. OCC Motion, Memorandum in Support, at 4-5. [↑](#footnote-ref-24)
24. R.C. 4928.02(A) (emphasis added). [↑](#footnote-ref-25)
25. R.C. 4929.02(A)(1) (emphasis added). [↑](#footnote-ref-26)