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January 13, 2016

Via FedEx

Public Utilities Commission of Ohio
Docketing Division
180 East Broad Street
Columbus, Ohio 43215-3793

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2016 JAN 14 PM 1:39
PUCO

Re: Case No. 10-138-GA-CRS -- Palmco Energy OH, LLC
Renewal Certification Application, Motion for Protective Order, and
Memorandum in Support

Dear Sir or Madam:

Enclosed for filing on behalf of Palmco Energy OH, LLC ("Palmco") with
the Public Utilities Commission of Ohio ("Commission") are the following
documents:

- (a) Palmco's original notarized Renewal Certification Application as a
Competitive Retail Natural Gas Supplier, signed by a principal officer of
Palmco, together with three copies of the Application, including all
exhibits, affidavits, and other attachments.
- (b) an original and three copies of Palmco's Motion for Protective Order;
- (c) an original and three copies of a Palmco's Memorandum in Support of
Motion for Protective Order; and
- (d) three unredacted sealed copies of the confidential information for
which the Protective Order is sought.

This is to certify that the images appearing are an
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Public Utilities Commission of Ohio
Docketing Division

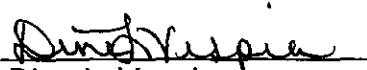
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January 13, 2016

Kindly acknowledge receipt by date-stamping the enclosed copy of this letter and returning it in the self-addressed, stamped envelope provided for your convenience.

Very truly yours,

Palmco Energy OH, LLC

By: 
Dina L. Vespia
PHV-4660-2016

Cullen and Dykman LLP
44 Wall Street
New York, NY 10005
Attorneys for Palmco
Energy OH, LLC



Public Utilities Commission

PUCO USE ONLY - Version 1.07		
Date Received	Renewal Certification Number	ORIGINAL CRS Case Number
		10 - 138 - GA-CRS

RENEWAL CERTIFICATION APPLICATION COMPETITIVE RETAIL NATURAL GAS SUPPLIERS

Please type or print all required information. Identify all attachments with an exhibit label and title (*Example: Exhibit A-16 - Company History*). All attachments should bear the legal name of the Applicant. Applicants should file completed applications and all related correspondence with the Public Utilities Commission of Ohio, Docketing Division, 180 East Broad Street, Columbus, Ohio 43215-3793.

This PDF form is designed so that you may directly input information onto the form. You may also download the form by saving it to your local disk.

SECTION A - APPLICANT INFORMATION AND SERVICES

A-1 Applicant intends to renew its certificate as: (check all that apply)

☐ Retail Natural Gas Aggregator ☐ Retail Natural Gas Broker ☒ Retail Natural Gas Marketer

A-2 Applicant information:

Legal Name Palmco Energy OH, LLC
Address 1350 60th Street, Brooklyn, NY 11219
Telephone No. 718-851-6655 x8 Web site Address www.PalmcoEnergy.com
Current PUCO Certificate No. 10-180G(3) Effective Dates February 14, 2014 through February 14, 2016

A-3 Applicant information under which applicant will do business in Ohio:

Name Palmco Energy OH, LLC
Address 1350 60th Street, Brooklyn, NY 11219
Web site Address www.PalmcoEnergy.com Telephone No. 718-851-6655 x8

A-4 List all names under which the applicant does business in North America:

Palmco Energy OH, LLC
Palmco

A-5 Contact person for regulatory or emergency matters:

Name Robert Palmese Title Managing Member
Business Address 1350 60th Street, Brooklyn, NY 11219
Telephone No. 718-851-6655 x8 Fax No. 718-851-2427 Email Address regulatory@palmcoenergy.com

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A-6 Contact person for Commission Staff use in investigating customer complaints:

Name Laura Salvesen Title Director of Compliance
Business address 1350 60th Street, Brooklyn, NY 11219
Telephone No. 718-851-6655 x8 Fax No. 718-851-2427 Email Address compliance@palmcoenergy.com

A-7 Applicant's address and toll-free number for customer service and complaints

Customer service address 1350 60th Street, Brooklyn, NY 11219
Toll-Free Telephone No. 877-726-5862 Fax No. 718-851-2427 Email Address compliance@palmcoenergy.com

A-8 Provide "Proof of an Ohio Office and Employee," in accordance with Section 4929.22 of the Ohio Revised Code, by listing name, Ohio office address, telephone number, and Web site address of the designated Ohio Employee

Name Jeanne Malley Title Staff
Business address 4807 Rockside Road, Suite 400, Independence, OH 44131
Telephone No. 216-642-8244 Fax No. 718-851-2427 Email Address compliance@palmcoenergy.com

A-9 Applicant's federal employer identification number 32-0274223

A-10 Applicant's form of ownership: (Check one)

- | | |
|--------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Partnership |
| <input type="checkbox"/> Limited Liability Partnership (LLP) | <input checked="" type="checkbox"/> Limited Liability Company (LLC) |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Other |

A-11 (Check all that apply) Identify each natural gas company service area in which the applicant is currently providing service or intends to provide service, including identification of each customer class that the applicant is currently serving or intends to serve, for example: *residential, small commercial, and/or large commercial/industrial (mercantile) customers*. (A mercantile customer, as defined in Section 4929.01(L)(1) of the Ohio Revised Code, means a customer that consumes, other than for residential use, more than 500,000 cubic feet of natural gas per year at a single location within the state or consumes natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside of this state. In accordance with Section 4929.01(L)(2) of the Ohio Revised Code, "Mercantile customer" excludes a not-for-profit customer that consumes, other than for residential use, more than 500,000 cubic feet of natural gas per year at a single location within this state or consumes natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside this state that has filed the necessary declaration with the Public Utilities Commission.)

<input checked="" type="checkbox"/>	Columbia Gas of Ohio	<input checked="" type="checkbox"/>	Residential	<input checked="" type="checkbox"/>	Small Commercial	<input type="checkbox"/>	Large Commercial / Industrial
<input checked="" type="checkbox"/>	Dominion East Ohio	<input checked="" type="checkbox"/>	Residential	<input checked="" type="checkbox"/>	Small Commercial	<input type="checkbox"/>	Large Commercial / Industrial
<input checked="" type="checkbox"/>	Duke Energy Ohio	<input checked="" type="checkbox"/>	Residential	<input checked="" type="checkbox"/>	Small Commercial	<input type="checkbox"/>	Large Commercial / Industrial
<input checked="" type="checkbox"/>	Vectren Energy Delivery of Ohio	<input checked="" type="checkbox"/>	Residential	<input checked="" type="checkbox"/>	Small Commercial	<input type="checkbox"/>	Large Commercial / Industrial

A-12 If applicant or an affiliated interest previously participated in any of Ohio's Natural Gas Choice Programs, for each service area and customer class, provide approximate start date(s) and/or end date(s) that the applicant began delivering and/or ended services.

☒ **Columbia Gas of Ohio**

<input checked="" type="checkbox"/>	Residential	Beginning Date of Service	08/2012	End Date		
<input checked="" type="checkbox"/>	Small Commercial	Beginning Date of Service	10/2012	End Date		
<input type="checkbox"/>	Large Commercial	Beginning Date of Service		End Date		
<input type="checkbox"/>	Industrial	Beginning Date of Service		End Date		

☒ **Dominion East Ohio**

<input checked="" type="checkbox"/>	Residential	Beginning Date of Service	11/2012	End Date		
<input checked="" type="checkbox"/>	Small Commercial	Beginning Date of Service	12/2012	End Date		
<input type="checkbox"/>	Large Commercial	Beginning Date of Service		End Date		
<input type="checkbox"/>	Industrial	Beginning Date of Service		End Date		

☒ **Duke Energy Ohio**

<input checked="" type="checkbox"/>	Residential	Beginning Date of Service	08/2012	End Date		
<input checked="" type="checkbox"/>	Small Commercial	Beginning Date of Service	12/2012	End Date		
<input type="checkbox"/>	Large Commercial	Beginning Date of Service		End Date		
<input type="checkbox"/>	Industrial	Beginning Date of Service		End Date		

☒ **Vectren Energy Delivery of Ohio**

<input checked="" type="checkbox"/>	Residential	Beginning Date of Service	09/2012	End Date		
<input checked="" type="checkbox"/>	Small Commercial	Beginning Date of Service	09/2012	End Date		
<input type="checkbox"/>	Large Commercial	Beginning Date of Service		End Date		
<input type="checkbox"/>	Industrial	Beginning Date of Service		End Date		

A-13 If not currently participating in any of Ohio's four Natural Gas Choice Programs, provide the approximate start date that the applicant proposes to begin delivering services:

<input type="checkbox"/>	Columbia Gas of Ohio	Intended Start Date	N/A
<input type="checkbox"/>	Dominion East Ohio	Intended Start Date	N/A
<input type="checkbox"/>	Duke Energy Ohio	Intended Start Date	N/A
<input type="checkbox"/>	Vectren Energy Delivery of Ohio	Intended Start Date	N/A

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED.

- A-14 **Exhibit A-14 "Principal Officers, Directors & Partners,"** provide the names, titles, addresses and telephone numbers of the applicant's principal officers, directors, partners, or other similar officials.
- A-15 **Exhibit A-15 "Corporate Structure,"** provide a description of the applicant's corporate structure, including a graphical depiction of such structure, and a list of all affiliate and subsidiary companies that supply retail or wholesale natural gas or electricity to customers in North America.
- A-16 **Exhibit A-16 "Company History,"** provide a concise description of the applicant's company history and principal business interests.
- A-17 **Exhibit A-17 "Articles of Incorporation and Bylaws,"** provide the articles of incorporation filed with the state or jurisdiction in which the applicant is incorporated and any amendments thereto, *only if the contents of the originally filed documents changed since the initial application.*
- A-18 **Exhibit A-18 "Secretary of State,"** provide evidence that the applicant is still currently registered with the Ohio Secretary of the State.

SECTION B - APPLICANT MANAGERIAL CAPABILITY AND EXPERIENCE

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED

- B-1 **Exhibit B-1 "Jurisdictions of Operation,"** provide a current list of all jurisdictions in which the applicant or any affiliated interest of the applicant is, at the date of filing the application, certified, licensed, registered, or otherwise authorized to provide retail natural gas service, or retail/wholesale electric services.
- B-2 **Exhibit B-2 "Experience & Plans,"** provide a current description of the applicant's experience and plan for contracting with customers, providing contracted services, providing billing statements, and responding to customer inquiries and complaints in accordance with Commission rules adopted pursuant to Section 4929.22 of the Revised Code and contained in Chapter 4901:1-29 of the Ohio Administrative Code.
- B-3 **Exhibit B-3 "Summary of Experience,"** provide a concise and current summary of the applicant's experience in providing the service(s) for which it is seeking renewed certification (e.g., number and types of customers served, utility service areas, volume of gas supplied, etc.).
- B-4 **Exhibit B-4 "Disclosure of Liabilities and Investigations,"** provide a description of all existing, pending or past rulings, judgments, contingent liabilities, revocations of authority, regulatory investigations, or any other matter that could adversely impact the applicant's financial or operational

status or ability to provide the services for which it is seeking renewed certification since applicant last filed for certification.

- B-5 Exhibit B-5 "Disclosure of Consumer Protection Violations,"** disclose whether the applicant, affiliate, predecessor of the applicant, or any principal officer of the applicant has been convicted or held liable for fraud or for violation of any consumer protection or antitrust laws since applicant last filed for certification.

☐ No ☒ Yes

If Yes, provide a separate attachment labeled as Exhibit B-5 "Disclosure of Consumer Protection Violations," detailing such violation(s) and providing all relevant documents.

- B-6 Exhibit B-6 "Disclosure of Certification Denial, Curtailment, Suspension, or Revocation,"** disclose whether the applicant or a predecessor of the applicant has had any certification, license, or application to provide retail natural gas or retail/wholesale electric service denied, curtailed, suspended, or revoked, or whether the applicant or predecessor has been terminated from any of Ohio's Natural Gas Choice programs, or been in default for failure to deliver natural gas since applicant last filed for certification.

☒ No ☐ Yes

If Yes, provide a separate attachment, labeled as Exhibit B-6 "Disclosure of Certification Denial, Curtailment, Suspension, or Revocation," detailing such action(s) and providing all relevant documents.

SECTION C - APPLICANT FINANCIAL CAPABILITY AND EXPERIENCE

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED

- C-1 Exhibit C-1 "Annual Reports,"** provide the two most recent Annual Reports to Shareholders. If applicant does not have annual reports, the applicant should provide similar information, labeled as Exhibit C-1, or indicate that Exhibit C-1 is not applicable and why.
- C-2 Exhibit C-2 "SEC Filings,"** provide the most recent 10-K/8-K Filings with the SEC. If applicant does not have such filings, it may submit those of its parent company. If the applicant does not have such filings, then the applicant may indicate in Exhibit C-2 whether the applicant is not required to file with the SEC and why.
- C-3 Exhibit C-3 "Financial Statements,"** provide copies of the applicant's two most recent years of audited financial statements (balance sheet, income statement, and cash flow statement). If audited financial statements are not available, provide officer-certified financial statements. If the applicant has not been in business long enough to satisfy this requirement, it shall file audited or officer-certified financial statements covering the life of the business.
- C-4 Exhibit C-4 "Financial Arrangements,"** provide copies of the applicant's current financial arrangements to conduct competitive retail natural gas service (CRNGS) as a business activity (e.g., guarantees, bank commitments, contractual arrangements, credit agreements, etc.)
- C-5 Exhibit C-5 "Forecasted Financial Statements,"** provide two years of forecasted financial statements (balance sheet, income statement, and cash flow statement) for the applicant's CRNGS operation, along with a list of assumptions, and the name, address, email address, and telephone number of the preparer.

- C-6 **Exhibit C-6 "Credit Rating,"** provide a statement disclosing the applicant's current credit rating as reported by two of the following organizations: Duff & Phelps, Dun and Bradstreet Information Services, Fitch IBCA, Moody's Investors Service, Standard & Poors, or a similar organization. In instances where an applicant does not have its own credit ratings, it may substitute the credit ratings of a parent or affiliate organization, provided the applicant submits a statement signed by a principal officer of the applicant's parent or affiliate organization that guarantees the obligations of the applicant.
- C-7 **Exhibit C-7 "Credit Report,"** provide a copy of the applicant's current credit report from Experian, Dun and Bradstreet, or a similar organization.
- C-8 **Exhibit C-8 "Bankruptcy Information,"** provide a list and description of any reorganizations, protection from creditors, or any other form of bankruptcy filings made by the applicant, a parent or affiliate organization that guarantees the obligations of the applicant or any officer of the applicant in the current year or since applicant last filed for certification.
- C-9 **Exhibit C-9 "Merger Information,"** provide a statement describing any dissolution or merger or acquisition of the applicant since applicant last filed for certification.

SECTION D – APPLICANT TECHNICAL CAPABILITY

PROVIDE THE FOLLOWING AS SEPARATE ATTACHMENTS AND LABEL AS INDICATED.

- D-1 **Exhibit D-1 "Operations,"** provide a current written description of the operational nature of the applicant's business. Please include whether the applicant's operations will include the contracting of natural gas purchases for retail sales, the nomination and scheduling of retail natural gas for delivery, and the provision of retail ancillary services, as well as other services used to supply natural gas to the natural gas company city gate for retail customers.
- D-2 **Exhibit D-2 "Operations Expertise,"** given the operational nature of the applicant's business, provide evidence of the applicant's current experience and technical expertise in performing such operations.
- D-3 **Exhibit D-3 "Key Technical Personnel,"** provide the names, titles, email addresses, telephone numbers, and background of key personnel involved in the operational aspects of the applicant's current business.

Applicant Signature and Title

Rlt Palmer Managing Member

Sworn and subscribed before me this *12TH* day of *JANUARY* Month *2016* Year

Signature of official administering oath

Stephen Moser

Print Name and Title

STEPHEN MOSER

My commission expires on

7/8/2018

Stephen Moser
Notary Public State of New York
No. 01MO6077436
Qualified in Richmond County
Commission Expires 07/08/2018



The Public Utilities Commission of Ohio

Competitive Retail Natural Gas Service
Affidavit Form
(Version 1.07)

In the Matter of the Application of)

Palmco Energy OH, LLC)

for a Certificate or Renewal Certificate to Provide)
Competitive Retail Natural Gas Service in Ohio.)

Case No. 10 - 138 -GA-CRS

County of Kings

State of New York

Robert Palmese

[Affiant], being duly sworn/affirmed, hereby states that:

- (1) The information provided within the certification or certification renewal application and supporting information is complete, true, and accurate to the best knowledge of affiant.
- (2) The applicant will timely file an annual report of its intrastate gross receipts and sales of hundred cubic feet of natural gas pursuant to Sections 4905.10(A), 4911.18(A), and 4929.23(B), Ohio Revised Code.
- (3) The applicant will timely pay any assessment made pursuant to Section 4905.10 or Section 4911.18(A), Ohio Revised Code.
- (4) Applicant will comply with all applicable rules and orders adopted by the Public Utilities Commission of Ohio pursuant to Title 49, Ohio Revised Code.
- (5) Applicant will cooperate with the Public Utilities Commission of Ohio and its staff in the investigation of any consumer complaint regarding any service offered or provided by the applicant.
- (6) Applicant will comply with Section 4929.21, Ohio Revised Code, regarding consent to the jurisdiction of the Ohio courts and the service of process.
- (7) Applicant will inform the Public Utilities Commission of Ohio of any material change to the information supplied in the certification or certification renewal application within 30 days of such material change, including any change in contact person for regulatory or emergency purposes or contact person for Staff use in investigating customer complaints.
- (8) Affiant further sayeth naught.

Affiant Signature & Title

Robert Palmese Managing Member

Sworn and subscribed before me this

12TH

day of

JANUARY

Month

2016

Year

Stephen Moser

Signature of Official Administering Oath

STEPHEN MOSER - NOTARY

Print Name and Title

Stephen Moser
Notary Public State of New York
No. 01MO6077436
Qualified in Richmond County
Commission Expires 07/08/2018

My commission expires on

7/8/18

(CRNGS Supplier Renewal)

Page 7 of 7

EXHIBIT A-14

Principal Officers, Directors & Partners

Robert Palmese
President/Managing Member
Palmco Energy OH, LLC
1350 60th Street
Brooklyn, NY 11219
Tel: (718) 851-6655 ext. 8

Laura Salvesen
Director of Compliance – Compliance
1350 60th Street
Brooklyn, NY 11219
Tel: (877) 726-5862 ext. 8

Connie Fuente
Resolution Supervisor – Customer Service
1350 60th Street
Brooklyn, NY 11219
Tel: (877) 726-5862 ext. 8

Joe Gilbride
Controller – Accounting
1350 60th Street
Brooklyn, NY 11219
Tel: (877) 726-5862 ext. 8

EXHIBIT A-15

Corporate Structure

Applicant has the following affiliates that currently sell gas or electricity at retail in other states:

Retail Gas Affiliates

Palmco Energy MD, LLC
Palmco Energy NJ, LLC
Palmco Energy PA, LLC
Columbia Utilities, LLC

Retail Electric Affiliates

Palmco Power CT, LLC
Palmco Power IL, LLC
Palmco Power MD, LLC
Palmco Power MA, LLC
Palmco Power NJ, LLC
Palmco Power OH, LLC
Palmco Power PA, LLC
Columbia Utilities Power, LLC

Palmco Energy OH, LLC and its Operating Affiliates

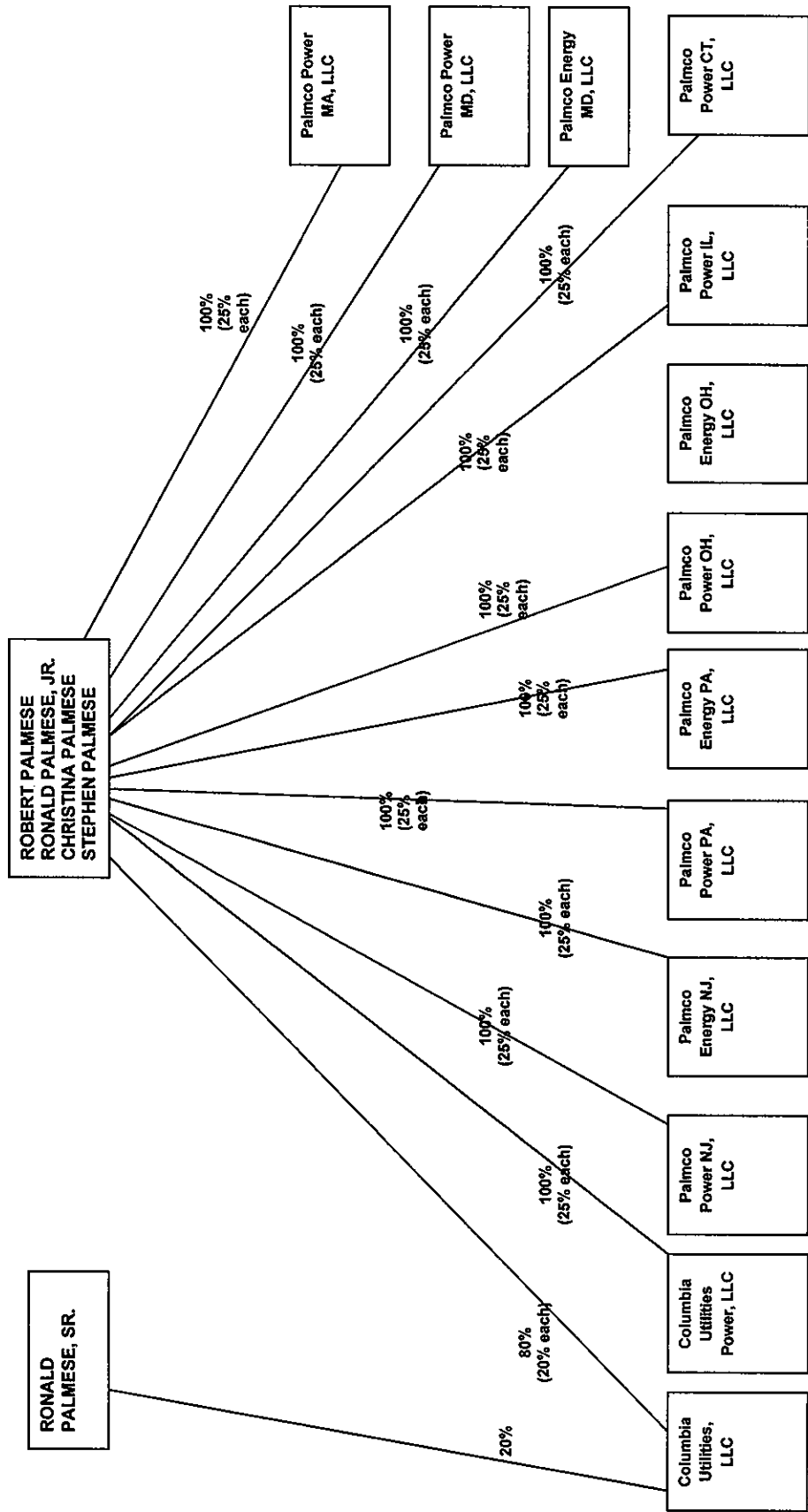


EXHIBIT A-16

Company History

Applicant was formed as an Ohio limited liability company in January 2009. It was first licensed as an Ohio natural gas supplier in 2010. It began selling natural gas at retail in Ohio in 2012. As of December 31, 2015, Applicant had about 1,373 retail residential customers and about 26 retail small commercial customers. Applicant sells gas at retail in the service territories of Columbia Gas of Ohio, Dominion East Ohio, Duke Energy Ohio, and Vectren Energy Delivery of Ohio.

PALMCO ENERGY OH, LLC

EXHIBIT A-17

Articles of Formation and Bylaws

No Change.

Secretary of State

UNITED STATES OF AMERICA
STATE OF OHIO
OFFICE OF THE SECRETARY OF STATE

I, Jon Husted, do hereby certify that I am the duly elected, qualified and present acting Secretary of State for the State of Ohio, and as such have custody of the records of Ohio and Foreign business entities; that said records show PALMCO ENERGY OH LLC, an Ohio For Profit Limited Liability Company, Registration Number 1832534, was organized within the State of Ohio on January 28, 2009, is currently in FULL FORCE AND EFFECT upon the records of this office.



*Witness my hand and the seal of the
Secretary of State at Columbus, Ohio
this 4th day of January, A.D. 2016.*

Jon Husted

Ohio Secretary of State

Validation Number: 201600401304

EXHIBIT B-1

Jurisdictions of Operation

As of the date of this filing:

- Applicant is certified, licensed, registered or otherwise authorized to provide retail natural gas service only in Ohio.
- Applicant's affiliates are certified, licensed, registered or otherwise authorized to provide retail natural gas service in the following states: Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New York, and Pennsylvania.
- Applicant's affiliates are certified, licensed, registered or otherwise authorized to provide retail electric service in the following states: California, Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New York, Ohio, and Pennsylvania.
- Neither Applicant nor its affiliates are certified, licensed, registered or otherwise authorized to provide wholesale electric service.

EXHIBIT B-2

EXPERIENCE AND PLANS

Robert Palmese is Managing Member of Applicant and its various gas and electric affiliates. Mr. Palmese has been involved in the gas and electricity retail business since 2001, and currently serves as Managing Member for Applicant and 11 affiliates selling natural gas and/or electricity in Ohio, Pennsylvania, New York, New Jersey, Maryland, Massachusetts, Connecticut, and Illinois. In addition, Ronald Palmese has been in the energy business since 1978, and has been working with Applicant and its affiliates in the retail gas and electric business since inception. Applicant also has a contract with Quantum Gas & Power Services, Ltd. ("Quantum Gas") of Texas. Quantum Gas is an outside energy consultant that provides gas purchasing, nomination, scheduling, and agency services on behalf of Applicant. Applicant also has engaged the law firm of Cullen and Dykman LLP, of New York City to assist in the legal and regulatory arenas of various states. Each of these outside contractors has numerous years of experience working in the natural gas industry. The primary Cullen and Dykman lawyer working with Applicant has over 30 years' legal experience in the energy industry area.

Working in close consultation with its law firm, Cullen and Dykman, Applicant has developed its retail gas customer agreement in accordance with all applicable regulatory and other requirements of the Ohio Revised Code and Ohio Administrative Code. Applicant does not do its own billing. Instead, it has opted to have local gas utilities provide consolidated billing services on its behalf and on behalf of its customers. Applicant also has contracted with Energy Services Group for its EDI and customer account billing. Energy Services Group has years of experience in this area, working both with utilities and gas suppliers. Applicant also has an experienced Customer Service Department and Call Center area comprised of 1 Resolution Supervisor, 2 Floor Supervisors, 3 Senior Representatives, and 11 additional employees, all of whom are knowledgeable about relevant customer regulatory requirements and available to respond to customer questions and complaints. Finally, Applicant's Compliance Area oversees compliance with applicable regulatory requirements in conjunction with outside counsel.

EXHIBIT B-3

Summary of Experience

Applicant began selling natural gas at retail in Ohio in 2012. As of December 31, 2015, Applicant had about 1,373 residential retail natural gas customers and about 26 small commercial retail customers in the state. In addition, as of December 31, 2015, Applicant's 4 operating retail gas affiliates served about 17,438 residential natural gas customers and approximately 208 small commercial gas customers in 4 different states. In Ohio, as of December 31, 2015, Applicant's retail gas customers were divided among utility service territories as follows:

- Applicant had about 415 residential retail gas customers and no small commercial gas customers in the service territory of Columbia Gas of Ohio.
- Applicant had about 330 residential retail gas customers and 3 small commercial gas customers in the service territory of Dominion East Ohio.
- Applicant had about 464 residential retail gas customers and 17 small commercial gas customers in the service territory of Duke Energy Ohio.
- Applicant had about 164 residential retail gas customers and 6 small commercial gas customers in the service territory of Vectren Energy Delivery of Ohio.

Through December 31 of calendar year 2015, Applicant had sold about 124,641 dekatherms of gas in the Ohio. In addition, Applicant's affiliates had sold about 1,330,656 dekatherms of gas at retail in 4 different states. As of December 31, Applicant's Ohio retail natural gas retail sales were divided among utility service territories as follows:

- About 34,137 dekatherms in the service territory of Columbia Gas of Ohio.
- About 39,353 dekatherms in the service territory of Dominion East Ohio.
- About 37,311 dekatherms in the service territory of Duke Energy Ohio.
- About 13,840 dekatherms in the service territory of Vectren Energy Delivery of Ohio.

PALMCO ENERGY OH, LLC

EXHIBIT B-4

Disclosure of Liabilities and Investigations

None.

EXHIBIT B-5

Disclosure of Consumer Protection Violations

On January 28, 2014, Applicant's affiliate, Palmco Energy PA, LLC ("Palmco Energy PA") was notified that a formal complaint had been filed against it with the Pennsylvania Public Utility Commission ("Commission") by a former customer, William MacLuckie. The complaint alleged that, notwithstanding the fact that the customer had agreed to pay a variable rate with no ceiling price under his contract, Palmco Energy PA had engaged in false advertising and unethical business practices in connection with therewith.

In a June 16, 2014 Initial Decision ("Initial Decision"), a Commission appointed Administrative Law Judge ("ALJ") found that Palmco Energy PA had not engaged in any fraudulent, deceptive or unlawful behavior in violation of the Commission's regulations, and dismissed the complaint. A copy of the Initial Decision is attached hereto as Attachment 1. In response to filed objections, the Initial Decision was reversed and the complaint was remanded to the Office of Administrative Law Judge for further proceedings.

After a hearing before the ALJ, by an April 30, 2015 Initial Decision on Remand ("Decision on Remand"), a copy of which is attached hereto as Attachment 2, the ALJ found that Palmco Energy PA had violated 52 Pa. Code §§ 62.114 and 111.12, and ordered Palmco Energy PA to pay a civil penalty of \$2,000. Although Palmco Energy PA strongly disagreed with the Decision on Remand, it chose not to file objections or seek an appeal due to the relatively small amount of the fine imposed compared to the additional cost it would have incurred to proceed further in this matter. The Decision on Remand was made final by Final Order dated June 30, 2015. A copy of the Final Order is attached hereto as Attachment 3.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William MacLuckie

v.

Palmco Energy PA, LLC

:
:
:
:
:
:

C-2014-2402558

INITIAL DECISION

Before
Joel H. Cheskis
Administrative Law Judge

INTRODUCTION

This Decision grants a Motion to Dismiss filed by an alternative supplier of natural gas against a customer who filed a formal Complaint averring that the company engaged in false advertising and unethical business practices when increasing its rate for natural gas. The Complaint will be dismissed because, even when accepting as true all well-pleaded material facts raised by the Complainant, as well as every reasonable inference from those facts, and viewing the Complaint in the light most favorable to the Complainant, it is clear and free from doubt that there is no genuine issue of material fact and that the gas supplier is entitled to judgment as a matter of law. Further, the Complaint will be dismissed because the Complainant failed to state a clear and concise statement of the relief sought.

HISTORY OF THE PROCEEDING

On January 13, 2014, William R. MacLuckie filed a formal Complaint against his natural gas supplier, Palmco Energy PA, LLC (Palmco), Docket Number C-2014-2402558. In his Complaint, Mr. MacLuckie averred that Palmco engaged in false advertising and unethical

business practices after he contracted with Palmco to supply natural gas through the distribution system at a variable rate. Mr. MacLuckie averred that the rate he was charged for gas supply increased by over 40% in one month and that Palmco, therefore, was “entrap[ping] their victims with an advertised competitive rate right up until the time when consumption is highest and then put their variable policy pricing in gear, upping their rate as much as 211% over their current advertised rate.” Mr. MacLuckie averred that this practice is an “inexcusable abuse of power” and “false advertising.” Mr. MacLuckie attached several documents to his Complaint in support of his position.

On February 18, 2014, Palmco filed an Answer to Mr. MacLuckie’s Complaint. In its Answer, Palmco denied that it engaged in any false advertising or unethical business practices but admitted that it sold gas to Mr. MacLuckie at a variable rate. Palmco further provided that Palmco’s listed gas rate was an “introductory rate valid for the first 2 months of service.” Palmco further stated that it offers its customers only variable gas rates and expressly advised customers in its contract that there is no ceiling price on that variable rate. Palmco also attached various documents to its Answer in support of its position that Mr. MacLuckie’s Complaint should be dismissed.

By Telephonic Hearing Notice dated February 21, 2014, the Commission scheduled an Initial Telephonic Hearing for this matter for Thursday, April 3, 2014, at 10:00 a.m. and assigned me as the Presiding Officer. On February 24, 2014, a Prehearing Order was issued setting forth various procedural rules that will govern the Hearing.

On March 7, 2014, Steven J. Robinson, Esquire, counsel for Palmco, filed a Motion for Admission *Pro Hac Vice* seeking the admission of Peter Metzger, Esquire to appear before the Commission on behalf of Palmco in this proceeding. No Answer was received in response to the Motion for Admission *Pro Hac Vice*. The Motion was granted via an Order dated March 28, 2014.

Prehearing Order #2 was issued on March 26, 2014 reminding the parties that Commission policy promotes settlement.

On April 2, 2014, Peter Metzger, Esquire, on behalf of Palmco, submitted a letter requesting a continuance of the Hearing scheduled for April 3, 2014 in this proceeding. The request for a continuance was granted because it was reasonable and unopposed. On April 2, 2014, the Commission issued a Hearing Cancellation/Reschedule Notice cancelling the Hearing scheduled for April 3, 2014 and rescheduling it to Thursday, May 15, 2014.

On April 28, 2014, Palmco filed an Amended Answer and Motion to Dismiss.¹ In its Amended Answer, Palmco again denied that it engaged in any false advertising or unethical business practices and admitted that it sold gas to Mr. MacLuckie at a variable rate. Palmco reiterated that its website clearly states that the gas rate listed was “an introductory rate valid for the first two months of service” and that “there is no ceiling price on the variable rate.” Palmco added that, in response to an inquiry from the Commission’s Bureau of Consumer Services, it provided Mr. MacLuckie a courtesy refund of \$31.14 that, according to its bank records, was cashed on January 22, 2014. Palmco added that it has acted in accordance with the terms and conditions of its Sales Contract with Mr. MacLuckie as well as applicable Commission rules and regulations.

Additionally, Palmco argued that Mr. MacLuckie has failed to satisfy the Commission requirements to set forth in his Complaint a clear and concise statement of the relief sought and that Mr. MacLuckie’s Complaint should, therefore, be dismissed. Palmco noted that, on the portion of the Complaint regarding relief requested, Mr. MacLuckie merely stated: “the court should determine this issue.” Palmco averred that this is neither a clear nor concise statement of relief sought and “in fact, it is impossible to determine exactly what relief the Complainant is seeking in this case, which renders a hearing on this matter essentially meaningless,” noting, as well, the numerous attempts Palmco has undertaken to settle this case. Palmco, therefore, requested that the Commission cancel the hearing scheduled for May 15, 2014 and dismiss the Complaint. Palmco attached numerous documents to its Motion in support of its position.

¹ Palmco failed to include a Notice to Plead as required by the Commission’s regulations. 52 Pa.Code § 5.103(b). This failure is moot, however, because Mr. MacLuckie filed a timely Answer to Palmco’s Motion to Dismiss.

On April 30, 2014, Mr. MacLuckie filed an Answer to Palmco's Motion to Dismiss. In his Answer, Mr. MacLuckie stated that simply because the website clearly states that the price is variable and there is no ceiling on the price does not mean that Palmco can act in an unethical way by raising their rate by a factor of 2.76 times. Mr. MacLuckie further reiterated his position that Palmco acted in bad faith. Mr. MacLuckie stated in his Answer that the fact that he did not provide a clear and concise statement of relief sought does not mean that his Complaint should be dismissed because of his belief that "the issue here is broader in scope than just me." Mr. MacLuckie stated that the whole legal basis for the case of alleged deceptive and misleading conduct is being totally ignored. Mr. MacLuckie also attached several documents to his Answer in support of his position that his Complaint should not be dismissed.

On May 7, 2014, the Commission issued a Cancellation Notice formally cancelling the Initial Telephonic Hearing scheduled for Thursday, May 15, 2014, pending disposition of Palmco's Motion to Dismiss.

The record in this case closed on May 22, 2014, the last day to file a response to the Motion to Dismiss. Mr. MacLuckie's Complaint is now ready for disposition. For the reasons discussed further below, Mr. MacLuckie's Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant in this case is William MacLuckie.
2. The Respondent in this case is Palmco Energy PA, LLC.
3. The Service Address is 2019 Canyon Creek Road, Gilbertsville, PA.
4. In June, 2012, Mr. MacLuckie contracted with Palmco through the PAGasSwitch website to supply natural gas through the UGI distribution system at a variable rate with no cancellation fee for termination.

5. The PAGasSwitch website noted that Palmco's introductory rate was valid for the first two months of service and for new customers only.

6. Mr. MacLuckie was charged \$0.49786/ccf on his bill due October 16, 2013.

7. Mr. MacLuckie was charged \$0.49769/ccf on his bill due November 14, 2013.

8. Mr. MacLuckie was charged \$0.72977/ccf on his bill due December 13, 2013.

9. On January 13, 2014, Mr. MacLuckie filed a formal Complaint against Palmco Energy averring that Palmco engaged in false advertising and unethical business practices when increasing his variable rate for gas service after the introductory rate expired.

10. In his Complaint, the relief sought by Mr. MacLuckie stated: "the Court should determine this issue."

11. Mr. MacLuckie was charged \$1.25438/ccf on his bill due January 16, 2014.

12. On February 18, 2014, Palmco filed an Answer to Mr. MacLuckie's Complaint averring that it does not engage in false advertising or unethical business practices but admitting that it sold gas to Mr. MacLuckie at a variable rate.

13. On April 28, 2014, Palmco filed an Amended Answer and Motion to Dismiss again denying that it engaged in any false advertising or unethical business practices and arguing, among other things, that Mr. MacLuckie's Complaint should be dismissed because it fails to set forth a clear and concise statement of relief sought.

14. On April 30, 2014, Mr. MacLuckie filed an Answer to Palmco's Motion to Dismiss reiterating his position that Palmco acted in an unethical manner and stating that he did not provide a clear and concise statement of relief because the issues are broader in scope than just him.

15. Palmco's Sales Contract states that customers receive a variable gas rate from Palmco and that there is no ceiling price on that variable rate.

DISCUSSION

Legal Standard

In this case, Palmco has filed a Motion to Dismiss Mr. MacLuckie's Complaint. A Motion to Dismiss is not specifically provided for in the Commission's regulations but Palmco's filing is more properly considered a Motion for Summary Judgment. A presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties. 52 Pa.Code § 1.2(a). As a result, Palmco's filing will be treated as a Motion for Summary Judgment.

The Commission's Rules of Administrative Practice and Procedure provide for the filing of Motions for Summary Judgment and Judgment on the Pleadings. The Commission's Rules provide in relevant part:

§ 5.102 Motions for summary judgment and judgment on the pleadings.

(a) *Generally.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

* * *

(d) *Decisions on Motions.*

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

52 Pa.Code §§ 5.102(a), (d)(1).

The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. First Mortgage Co. of Pa. v. McCall, 459 A.2d 406 (Pa. Super. 1983); Mertz v. Lakatos, 381 A.2d 497 (Pa. Cmwlth. 1976). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Thomson Coal Co. v. Pike Coal Co., 412 A.2d 466 (Pa. 1979). Summary judgment will be granted only where the right is clear and free from doubt.

The non-moving party in a motion for summary judgment must allege facts showing that an issue for trial exists. First Mortgage Co. of Pa. v. McCall, 459 A.2d 406 (Pa. Super. 1983); Commonwealth v. Diamond Shamrock Chemical Co., 391 A.2d 1333 (Pa. Cmwlth. 1978); Stover v. The United Telephone Co. of Pa., Docket No. C-00923833 (Order entered July 21, 1992). The Commission has interpreted Section 5.102 of its regulations in conformity with Rule 1035 (now Rule 1035.1) of the Pennsylvania Rules of Civil Procedure. South River Power Partners, L.P. v. West Penn Power Company, Docket No. C-00935287, Order (entered November 6, 1996). In civil practice, a non-moving party may not rely solely upon denials in its pleadings, but must submit some materials to establish that a genuine issue of material fact exists. Nicastro v. Cuyler, 467 A.2d 1218 (Pa. Cmwlth. 1983); Pennsylvania Gas & Water Co. v. Nenna & Frain, Inc., 467 A.2d 330 (Pa. Super. 1983); Geriot v. Council of Borough of Darby, 457 A.2d 202 (Pa. Cmwlth. 1983). The provision at 52 Pa.Code § 5.102 serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue

pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa.C.S. § 703(a); Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n, 563 A.2d 557 (Pa. Cmwlth. 1989).

Finally, it is noted that the Commission is vested with the discretion to dismiss a complaint without a hearing under Section 703 of the Public Utility Code. This Section provides:

(b) Notice of hearing.-- The commission shall fix the time and place of hearing, within or without this Commonwealth, if any is required and shall serve notice thereof upon parties in interest. The commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.

66 Pa.C.S. § 703(b); *see also*, 52 Pa.Code § 5.21(d).² A decision to dismiss a complaint without holding hearings will be reversed by the Commonwealth Court only if there was an abuse of discretion. Lehigh Valley Power Committee, et al. v. Pa. Pub. Util. Comm'n, 563 A.2d 548, 552 (Pa. Cmwlth. 1989) (it is well settled that a hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy or discretion); *see also*, United States Steel Corp. v. Pa. Pub. Util. Comm'n, 450 A.2d 1073, 1076 (Pa. Cmwlth. 1982).

Well-Pleaded Facts

Mr. MacLuckie provided a detailed and well-pled Complaint, including numerous attachments in support of his position. He also provided significant detail regarding his Complaint in a package of documents he submitted in advance of the Initial Hearing pursuant to the Prehearing Order issued in this case, as well as in his Answer to Palmco's Motion to Dismiss.

In his Complaint, Mr. MacLuckie stated as the reason for his Complaint:

In short, I am writing you to complain about what I believe to be false advertising and unethical business practices employed by Palmco Energy PA, LLC ... In June of 2012 I contracted with

² Section 5.21(d) of the Commission's regulations provides: "The filing of a formal complaint entitles the complainant to a formal hearing before the Commission except that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest." 52 Pa.Code § 5.21(d).

Palmco Energy PA through the PaGasSwitch web site to supply the natural gas through the UGI distribution system. That contract was to supply gas at a VARIABLE rate with no cancellation fee should I decide to terminate that contract.

(emphasis in original). Mr. MacLuckie then detailed the rate at which he was charged per 100 cubic feet (ccf):

October, 2013	\$0.49786/ccf
November, 2013	\$0.49769/ccf
December, 2013	\$0.72977/ccf
January, 2014	\$1.25438/ccf

Mr. MacLuckie further complained that the rate on the PaGasSwitch website on January 5, 2014 offered by Palmco was \$0.5989/ccf and argued that “Palmco will entrap their victims with an advertised rate right up until the time when consumption is the highest and then put their variable pricing policy in gear, upping their rate as much as 211% of their current advertised rate.” Mr. MacLuckie attached copies of his monthly bills and a print out of the PaGasSwitch website to support his Complaint and wrote for his requested relief “the court should determine this issue.”

In addition, on March 24, 2014, Mr. MacLuckie submitted in anticipation of the Initial Hearing originally scheduled for April 3, 2014, an extensive packet of materials further detailing his case. Although this information was never admitted into the record of this proceeding, it was an additional opportunity for Mr. MacLuckie to state his case in advance of the Hearing and is helpful to consider when addressing Palmco’s Motion to Dismiss. In fact, Mr. MacLuckie introduced this material by stating that he was submitting the material because it was his “intention to ferret out the substantive elements of my complaint.” In the materials, Mr. MacLuckie again recognized that his agreement with Palmco was for a variable rate and reiterated the increases in his monthly bills with comparisons to the rates charged by other natural gas suppliers. Mr. MacLuckie also discussed the Pennsylvania Unfair Trade Practices and Consumer Protection Law, as well as Commission regulations that prohibit deceptive and misleading practices. Mr. MacLuckie included multiple documents in this material that he hoped to have admitted into the record of this proceeding in support of his Complaint, and concluded that he “submits to the authority of the PUC

to take appropriate action regarding the license of Palmco Energy, LLC to protect the consumers in the State of Pennsylvania.”

Finally, on April 30, 2014, Mr. MacLuckie filed an Answer to Palmco’s Motion to Dismiss articulating, for a third time, the details of his Complaint. In his Answer, Mr. MacLuckie recognized that he agreed to a variable rate with no ceiling price but continued to argue that that does not justify an increase in the rate of 2.76 times the introductory rate. Mr. MacLuckie called such actions an “unethical abuse of privilege” and “cheap tuition for a lesson well learned.” Mr. MacLuckie replied to Palmco’s claim that he did not state a clear and concise statement of relief sought by stating that “the issue here is broader in scope than just me” but “possibly hundreds or thousands of people could have been affected negatively.” Mr. MacLuckie called for the Commission to formally investigate Palmco.

As discussed further below, even when accepting as true all well-pleaded material facts raised by Mr. MacLuckie, as well as every reasonable inference from those facts, and viewing the Complaint in the light most favorable to Mr. MacLuckie, it is clear and free from doubt that there is no genuine issue of material fact and that Palmco is entitled to judgment as a matter of law. There are no material facts in dispute and Palmco’s right to prevail is so clear that a hearing would be a fruitless exercise and judgment on the pleadings should be entered. Furthermore, Mr. MacLuckie has failed to state a clear and concise statement of relief sought. As a result, Palmco’s Motion to Dismiss will be granted and Mr. MacLuckie’s Complaint will be dismissed.

Palmco Has Not Engaged In Misleading Or Deceptive Conduct

The gravamen of Mr. MacLuckie’s Complaint is that Palmco’s actions violate the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTP/CPL). Mr. MacLuckie stated in his Answer to Palmco’s Motion to Dismiss, for example, “the whole legal basis for the case, which has been totally ignored, is based upon **Deceptive Conduct** as it pertains to ... [the] Pennsylvania Unfair Trade Practices and Consumer Protection Law.” (emphasis in original). It is well settled, however, that the Commission does not have jurisdiction to enforce the UTP/CPL. *See, Mid-Atlantic Power Supply Assoc. v. PECO Energy*

Co., Docket No. P-00981615, 1999 Pa PUC LEXIS 30 (entered May 19, 1999); *see also*, Pa. Pub. Util. Comm'n, et al. v. The Bell Telephone Co. of Pa., 71 Pa. PUC 338, 341 (1989). The Commission cannot find that an entity has violated the UTP/CPL.

The Commission, however, does have regulations, as Mr. MacLuckie noted in his Answer to the Motion to Dismiss, that prohibit a supplier from engaging in misleading or deceptive conduct or making false or misleading representations. *See e.g.*, 52 Pa.Code § 111.12(d) (Consumer Protection); 52 Pa.Code § 62.114 (Standards of Conduct and Disclosure for Licensees) (“a licensee is responsible for any fraudulent, deceptive or other unlawful marketing or billing acts performed by the licensee, its employees, agents or representatives.”). Yet, even when viewing Mr. MacLuckie’s Complaint in the light most favorable to him, and accepting as true every well-pleaded fact in his Complaint, as well as every reasonable inference from those facts, Mr. MacLuckie has failed to state a claim upon which relief can be granted.

Most notably, Mr. MacLuckie readily recognized in his Complaint that he contracted for gas service at a variable rate. Furthermore, the sales contract specifically stated that the price Mr. MacLuckie will pay will vary from month to month based on various factors and that *there is no ceiling price for the gas supply service*. Palmco provided a copy of its Sales Contract as an attachment to its Answer. The Sales Contract clearly states that the customers receive only a variable gas rate from Palmco and expressly advises that there is no ceiling price on that variable rate. More specifically, the Sales Contract states:

Natural Gas Price: If you receive natural gas supply service from Palmco Energy PA, LLC (“Palmco Energy” or “Palmco”), you will pay a price that will vary from month to month based on the applicable monthly NYMEX closing price for natural gas, applicable interstate transportation costs, any supply and agency functions that Palmco performs for you, and other prevailing market conditions. Your initial price for natural gas supply service will be ____ per (ccf, DTH, Mcf, therms). There is no ceiling price for your gas supply service.

Palmco also attached to its Answer its welcome letter which also notes the starting price for gas service and encourages customers to contact the Company with any questions or inquiries about the

service. Even more so, the page from the PaGasSwitch website Mr. MacLuckie attached to his Complaint states that the rate offered is an “introductory rate valid for the first 2 months of service.”

Palmco has not engaged in any fraudulent, deceptive or unlawful behavior in violation of the Commission’s regulations. Palmco has been clear and unambiguous in the terms of service it offered Mr. MacLuckie. What Mr. MacLuckie believes constitutes false advertising or unethical business practices employed by Palmco is neither false nor unethical. In fact, the PaGasSwitch website, to the Commission’s credit and as noted on the attachment to Mr. MacLuckie’s Complaint, specifically delineates which service offerings are fixed and which are variable, as well as other terms of service such as contract length, whether a cancellation fee applies and the price per ccf. Had Mr. MacLuckie not desired gas service with a price that would vary month to month with no ceiling price, he should not have enrolled with Palmco in the first place.

Mr. MacLuckie has also argued in this case that Palmco was not charging him their currently advertised rate and noted in his Complaint that “On January 5, 2014, I went to the PaGasSwitch website to see what Palmco was advertising as their rate and found that they were supposedly charging \$0.5989/ccf.” Mr. MacLuckie therefore argued that: “It appears to me that Palmco will entrap their victims with an advertised competitive rate right up until the time when consumption is highest and then put their variable pricing policy in gear, upping their rate as much as 211% over their current advertised rate.” Mr. MacLuckie essentially argued that Palmco is pulling a “bait-and-switch” by advertising one rate at the same time as it is charging him another rate.

Yet, even when accepting as true all well-pleaded material facts and every inference from those facts and viewing the Complaint in the light most favorable to Mr. MacLuckie, Mr. MacLuckie’s argument is without merit and should be rejected. As noted above, the rate quoted on the PaGasSwitch website is “valid for new customers only.” Mr. MacLuckie cannot compare the rate he is being charged as an existing customer to the rate being offered as an introductory rate for new customers. Furthermore, it is not unreasonable, nor is it

false advertising or unethical business practices, for Palmco to offer a low introductory rate to entice new customers while charging customers a different rate that had increased following the expiration of the introductory rate.

The Commission has stated that “consumers do bear some responsibility to make choices that are appropriate for their individual circumstances.” William Towne v. Great American Power, LLC, Docket No. C-2012-2307991, Opinion and Order (entered October 18, 2013) at 22. Consumers must be aware of the terms of service they agree to when entering into a contract for energy services, just as they would do for any other contract they would agree to. The Commission has undertaken significant steps to establish consumer protections and codes of conduct while still promoting the competitive market place for energy services. Pa. Pub. Util. Comm’n v. MXEnergy Electric, Inc., Docket No. M-2012-2201861, Order (entered May 3, 2012) (emphasizing the importance of fair and honest sales and marketing practices in safeguarding consumers and preserving the integrity of the electric generation market). In this case, Mr. MacLuckie readily recognized that he was aware at the time he enrolled with Palmco that the rate he would pay for gas service would vary from month to month with no ceiling, and still chose to enter into such a contract.

Mr. MacLuckie has not averred that Palmco has violated the Public Utility Code, any Commission Order or regulation or any Commission-approved tariff that warrants a hearing and justifies denying Palmco’s Motion to Dismiss. Had Mr. MacLuckie made any such averment that would warrant a hearing, Palmco’s Motion to Dismiss would be denied. Mr. MacLuckie has not made any such averment and, therefore, his Complaint should be dismissed.

Mr. MacLuckie Has Failed To State A Clear And Concise Statement Of Relief Sought

In its Motion to Dismiss, Palmco argued that, pursuant to Section 5.22(a)(6) of the Commission’s regulations, a formal complaint must set forth a clear and concise statement of the relief sought. *See*, 52 Pa.Code § 5.22(a)(6). Noting that Mr. MacLuckie stated on his Complaint as his requested relief that “the Court should determine this issue,” Palmco argued that Mr. MacLuckie has not satisfied this requirement and, therefore, his Complaint should be dismissed.

In his Answer to Palmco's Motion to Dismiss, Mr. MacLuckie argued that Palmco's Motion to Dismiss should be denied because the reason why he has not stated a clear and concise statement of relief sought is because "the issue here is broader in scope than just [him]." In particular, Mr. MacLuckie argued that, if Palmco has exercised the same pricing policy as it has exercised with him, and with results similar to his experience, then "possibly hundreds or thousands of people could have been affected negatively." Mr. MacLuckie then stated: "I believe the factual evidence provided represents a justifiable reason for the PUC to formally investigate Palmco Energy and assess Palmco's suitability as a Natural Gas Supplier in Pennsylvania." Mr. MacLuckie's Answer to Palmco's Motion to Dismiss, however, is without merit.

Sections 5.22(a)(5) and (6) of the Commission's Regulations, 52 Pa.Code §§ 5.22(a)(5) and (6), require a formal Complaint to set forth a clear and concise statement of the act or omission being complained of and a clear and concise statement of the relief being sought. The Commission's rule is based on Pennsylvania Rule of Civil Procedure 1019, which requires a plaintiff to plead all the facts that he or she must prove in order to achieve recovery on the alleged cause of action. Steven Higgins v. National Fuel Gas Distribution Corp., Docket No. C-2012-2338926, Initial Decision (Final Order entered April 9, 2013). The purpose of requiring the complaint to contain sufficient material facts is to enable the adverse party to prepare a defense. Landau v. Western Pennsylvania National Bank, 445 Pa. 217, 225, 282 A.2d 335, 339 (1971). The pleading must be sufficiently specific so that the defending party will know how to prepare his defense. Department of Transportation v. Shipley Humble Oil Co., 29 Pa. Commw. 171, 370 A.2d 438 (Pa. Cmwlth. 1977). If a Complainant fails to comply with the foregoing standards, then a Respondent does not know what allegations it is defending itself against nor the sanction that a complainant is requesting – a clear denial of due process of law to the Respondent.

Mr. MacLuckie has stated his position in this case in at least three separate filings. In none of those three filings, however, did Mr. MacLuckie provide "a clear and concise statement of the relief sought." His assertion that "the Court should decide this issue" is

insufficient for Palmco to prepare a defense. This is particularly true given Palmco's assertion in its Motion to Dismiss that it has offered Mr. MacLuckie a full refund of his Palmco gas costs. Despite various settlements attempts, Mr. MacLuckie has continued to pursue his Complaint.

With regard to Mr. MacLuckie's request for a formal investigation of Palmco, the impact of variable rate services on consumers throughout Pennsylvania has been extensively examined by the Commission, the Pennsylvania General Assembly, the Pennsylvania Attorney General and the Pennsylvania Office of Consumer Advocate, among others, especially in light of the dramatic spikes in energy bills caused by the extreme cold temperatures experienced this past winter. As a result of the dramatic spikes in energy bills, the Commission received approximately 10,000 contacts from consumers, the vast majority of whom enrolled in variable rate service similar to Mr. MacLuckie, with concerns about energy supply prices, including approximately 6,000 consumers who filed an informal complaint with the Commission's Bureau of Consumer Services.³ As a result of this flood of Complaints, the Commission conducted an investigation on variable rate contracts for energy services that resulted in the implementation of rule changes regarding, among other things, reducing the time it takes to change alternative suppliers and adopting new requirements for supplier disclosure statements.

As such, Mr. MacLuckie's interest in a formal investigation to protect "possibly hundreds or thousands of people [that] could have been affected negatively" by Palmco's actions has already been addressed by the Commission and others. To the extent that Mr. MacLuckie defers to the Court to determine his relief requested on behalf of the "possibly hundreds or thousands of people" he believes "could have been affected negatively" by Palmco's actions, as he has stated in his Complaint, the significant actions already undertaken by the Commission, the General Assembly and others address such concerns.

Finally, Mr. MacLuckie's interest in protecting other customers that may be affected by Palmco's activities is admirable but he cannot legally represent the interests of any other customer. Mr. MacLuckie's Complaint cannot be brought on behalf of "all others similarly

³ See, PUC Accelerates Switching Times for Electricity Supply, Press Release (dated April 3, 2014), available at: http://www.puc.state.pa.us/about_puc/press_releases.aspx?ShowPR=3332.

situated,” as is possible in proceedings brought before a Court of Common Pleas. Section 701 of the Public Utility Code provides that any person may complain in writing to the Commission regarding the acts or omissions of a public utility. 66 Pa.C.S. § 701. Nothing in that Section 701 or any other section of the Public Utility Code, however, allows for the filing of class action complaints. In the absence of statutory authority, the Commission cannot entertain class action complaints. Furthermore, Commission regulations allow individuals to represent themselves but they cannot be represented by people who are not attorneys. 52 Pa.Code §§ 1.21(a) and 1.22(a).⁴

As a result, Mr. MacLuckie has failed to state a clear and concise statement of his relief sought. This has inhibited Palmco’s ability to properly prepare for the case. In light of the extensive efforts of the Commission and others to investigate variable rate issues, and Mr. MacLuckie’s inability to represent individuals other than himself, Mr. MacLuckie’s Complaint should be dismissed.

Conclusion

In conclusion, Mr. MacLuckie experienced an unfortunate significant increase in his energy costs. Such an increase can, and has, caused substantial hardship to consumers. Yet, such hardships do not equate in this instance to a violation of the Public Utility Code, a Commission Order or regulation or a Commission-approved Company tariff. Mr. MacLuckie may not have liked the rate to which his gas service rose. But, he readily admits that he entered a Sales Contract for gas service at a variable rate with no price ceiling. As such, even when accepting as true all well-pleaded material facts raised by Mr. MacLuckie, as well as every reasonable inference from those facts, and viewing the Complaint in the light most favorable to Mr. MacLuckie, it is clear and free from doubt that there is no genuine issue of material fact and that Palmco is entitled to judgment as a matter of law. Furthermore, Mr. MacLuckie has also failed to state a clear and concise statement of relief sought. As a result, Palmco’s Motion to Dismiss will be granted and Mr. MacLuckie’s Complaint will be dismissed.

⁴ Mr. MacLuckie indicated in his Answer to Palmco’s Motion to Dismiss that he is retired from the Pennsylvania State Police Bureau of Forensics. There is no indication he is a licensed member of the Pennsylvania bar.

CONCLUSIONS OF LAW

1. A presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties. 52 Pa.Code § 1.2(a).

2. After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. 52 Pa.Code § 5.102(a).

3. The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law. 52 Pa.Code § 5.102(a).

4. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. First Mortgage Co. of Pa. v. McCall, 459 A.2d 406 (Pa. Super. 1983); Mertz v. Lakatos, 381 A.2d 497 (Pa. Cmwlth. 1976).

5. All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Thomson Coal Co. v. Pike Coal Co., 412 A.2d 466 (Pa. 1979).

6. The non-moving party in a motion for summary judgment must allege facts showing that an issue for trial exists. First Mortgage Co. of Pa. v. McCall, 459 A.2d 406 (Pa. Super. 1983); Commonwealth v. Diamond Shamrock Chemical Co., 391 A.2d 1333 (Pa.

Cmwlth. 1978); Stover v. The United Telephone Co. of Pa., Docket No. C-00923833 (Order entered July 21, 1992).

7. The Commission has interpreted Section 5.102 of its regulations in conformity with Rule 1035 (now Rule 1035.1) of the Pennsylvania Rules of Civil Procedure. South River Power Partners, L.P. v. West Penn Power Company, Docket No. C-00935287 (Order entered November 6, 1996).

8. In civil practice, a non-moving party may not rely solely upon denials in its pleadings, but must submit some materials to establish that a genuine issue of material fact exists. Nicastro v. Cuyler, 467 A.2d 1218 (Pa. Cmwlth. 1983); Pennsylvania Gas & Water Co. v. Nenna & Frain, Inc., 467 A.2d 330 (Pa. Super. 1983); Geriot v. Council of Borough of Darby, 457 A.2d 202 (Pa. Cmwlth. 1983).

9. The commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b); *see also*, 52 Pa.Code § 5.21(d).

10. A decision to dismiss a complaint without holding hearings will be reversed by the Commonwealth Court only if there was an abuse of discretion. Lehigh Valley Power Committee, et al. v. Pa. Pub. Util. Comm'n, 563 A.2d 548, 552 (Pa. Cmwlth. 1989) (it is well settled that a hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy or discretion); *see also*, United States Steel Corp. v. Pa. Pub. Util. Comm'n, 450 A.2d 1073, 1076 (Pa. Cmwlth. 1982).

11. The Commission does not have jurisdiction to enforce the Unfair Trade Practices and Consumer Protection Law. Mid-Atlantic Power Supply Assoc. v. PECO Energy Co., Docket No. P-00981615, 1999 Pa PUC LEXIS 30 (entered May 19, 1999); *see also*, Pa. Pub. Util. Comm'n, et al. v. The Bell Telephone Co. of Pa., 71 Pa. PUC 338, 341 (1989).

12. A licensee is responsible for any fraudulent, deceptive or other unlawful marketing or billing acts performed by the licensee, its employees, agents or representatives. 52 Pa.Code § 62.114; *see also*, 52 Pa.Code § 111.12(d).

13. Consumers bear some responsibility to make choices that are appropriate for their individual circumstances. William Towne v. Great American Power, LLC, Docket No. C-2012-2307991, Opinion and Order (entered October 18, 2013) at 22.

14. A formal Complaint must set forth a clear and concise statement of the relief being sought. 52 Pa.Code § 5.22(a)(6).

15. A plaintiff must plead all the facts that he or she must prove in order to achieve recovery on the alleged cause of action. Steven Higgins v. National Fuel Gas Distribution Corp., Docket No. C-2012-2338926 (Initial Decision dated February 26, 2013; Final Order entered April 9, 2013).

16. The purpose of requiring the complaint to contain sufficient material facts is to enable the adverse party to prepare a defense. Landau v. Western Pennsylvania National Bank, 445 Pa. 217, 225, 282 A.2d 335, 339 (1971).

17. The pleading must be sufficiently specific so that the defending party will know how to prepare his defense. Department of Transportation v. Shipley Humble Oil Co., 29 Pa. Commw. 171, 370 A.2d 438 (Pa. Cmwlth. 1977).

18. Section 701 of the Public Utility Code provides that any person may complain in writing to the Commission regarding the acts or omissions of a public utility. 66 Pa.C.S. § 701.

19. Commission regulations allow individuals to represent themselves but they cannot be represented by people who are not attorneys. 52 Pa.Code §§ 1.21(a) and 1.22(a).

20. Even when accepting as true all well-pleaded material facts raised by Mr. MacLuckie, as well as every reasonable inference from those facts, and viewing the Complaint in the light most favorable to the Complainant, it is clear and free from doubt that there is no genuine issue of material fact and that Palmco is entitled to judgment as a matter of law and, therefore, the Motion to Dismiss should be granted and the Complaint should be dismissed.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion to Dismiss of Palmco Energy PA, LLC filed on April 28, 2014 against William MacLuckie at Docket Number C-2014-2402558 is hereby granted.
2. That the formal Complaint filed by William MacLuckie against Palmco Energy PA, LLC at Docket Number C-2014-2402558 dated January 13, 2014 is hereby dismissed.
3. That this matter be marked closed.

Date: June 16, 2014

/s/
Joel H. Cheskis
Administrative Law Judge

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William MacLuckie

v.

Palmco Energy PA, LLC

:
:
:
:
:

C-2014-2402558

**INITIAL DECISION
ON REMAND**

Before
Joel H. Cheskis
Administrative Law Judge

INTRODUCTION

This Decision sustains the Complaint of a customer of an alternative supplier of natural gas because the statement of the supplier's representative during the sales call that the rate for natural gas would be "competitive" following the expiration of the guaranteed introductory rate was misleading and deceptive. As a result, the actions of the supplier's representative violate Commission regulations which prohibit deceptive or misleading statements and a civil penalty will be imposed against the supplier.

HISTORY OF THE PROCEEDING

On January 13, 2014, William MacLuckie filed a formal Complaint against his natural gas supplier, Palmco Energy PA, LLC (Palmco), Docket Number C-2014-2402558. In his Complaint, Mr. MacLuckie averred that Palmco engaged in false advertising and unethical business practices after he contracted with Palmco to supply natural gas through the distribution system at a variable rate. Mr. MacLuckie averred that the rate he was charged for gas supply increased by over 40% in one month and that Palmco, therefore, was "entrap[ping] their victims with an advertised

competitive rate right up until the time when consumption is highest and then put their variable pricing policy in gear, upping their rate as much as 211% over their current advertised rate.” Mr. MacLuckie averred that this practice is an “inexcusable abuse of power” and “false advertising.” Mr. MacLuckie attached several documents to his Complaint in support of his position.

On February 18, 2014, Palmco, filed an Answer to Mr. MacLuckie’s Complaint. In its Answer, Palmco denied that it engaged in any false advertising or unethical business practices but admitted that it sold gas to Mr. MacLuckie at a variable rate. Palmco further provided that Palmco’s listed gas rate was an “introductory rate valid for the first 2 months of service.” Palmco further stated that it offers its customers only variable gas rates and expressly advised customers in its contract that there is no ceiling price on that variable rate. Palmco also attached various documents to its Answer in support of its position that Mr. MacLuckie’s Complaint should be dismissed.

By Telephonic Hearing Notice dated February 21, 2014, the Commission scheduled an Initial Telephonic Hearing for this matter for Thursday, April 3, 2014, at 10:00 a.m. and assigned me as the Presiding Officer. On February 24, 2014, a Prehearing Order was issued setting forth various procedural rules that will govern the Hearing. Subsequently, a Motion for Admission *Pro Hac Vice* was granted, a request for continuance was granted, and a Prehearing Order was issued reminding the parties that Commission policy promotes settlement.

On April 28, 2014, Palmco filed an Amended Answer and Motion to Dismiss. In its Amended Answer, Palmco, among other things, again denied that it engaged in any false advertising or unethical business practices and admitted that it sold gas to Mr. MacLuckie at a variable rate. Palmco reiterated that its website clearly states that the gas rate listed was “an introductory rate valid for the first two months of service” and that “there is no ceiling price on the variable rate.” Palmco added that it has acted in accordance with the terms and conditions of its Sales Contract with Mr. MacLuckie as well as applicable Commission rules and regulations.

On April 30, 2014, Mr. MacLuckie filed an Answer to Palmco’s Motion to Dismiss. In his Answer, Mr. MacLuckie stated that simply because the website clearly states that the price is variable and there is no ceiling on the price does not mean that Palmco can act in an unethical way

by raising their rate by a factor of 2.76 times. Mr. MacLuckie further reiterated his position that Palmco acted in bad faith.

On May 7, 2014, the Commission issued a Cancellation Notice formally cancelling the Initial Telephonic Hearing scheduled for Thursday, May 15, 2014, pending disposition of Palmco's Motion to Dismiss.

Palmco's Motion to Dismiss was granted via Initial Decision dated June 16, 2014. Mr. MacLuckie filed Exceptions to the Initial Decision on June 25, 2014. On July 10, 2014, the Office of Consumer Advocate (OCA) filed a Notice of Intervention and Exceptions. On September 17, 2014, Palmco filed Replies to Exceptions in response to Mr. MacLuckie and the OCA.

By Opinion and Order entered December 4, 2014, the Commission granted in part the Exceptions filed by Mr. MacLuckie and the OCA and reversed the Initial Decision dated June 16, 2014. The Commission referred the matter to the Office of Administrative Law Judge for additional proceedings as might be deemed necessary.

As a result, on December 11, 2014, the Commission issued a Telephonic Hearing Notice scheduling an Initial Telephonic Hearing on Remand for Monday, January 12, 2015 at 2:00 p.m. Prehearing Order #3 was issued on December 12, 2014 confirming the establishment of the Initial Telephonic Hearing on Remand and informing the parties that all other aspects of the Prehearing Order dated February 24, 2014 and Prehearing Order #2 dated March 26, 2014 remained in effect. The parties were again reminded that Commission policy promotes settlements. 52 Pa.Code § 5.231(a).

On December 17, 2014, Palmco filed a Motion for Admission *Pro Hac Vice* and, on December 19, 2014, Palmco filed a letter requesting a brief extension of the Hearing. No objections were received in response to either filing. On December 29, 2014, an Order Granting Motion for Admission *Pro Hac Vice* and Second Request for Continuance was entered. A Hearing Cancellation/Reschedule Notice was issued by the Commission on December 29, 2014 cancelling the Hearing scheduled for January 12, 2015 and rescheduling the Hearing for Friday, February 13, 2015.

The Initial Telephonic Hearing convened on February 13, 2015, as scheduled. Mr. MacLuckie appeared *pro se* and presented oral testimony and ten exhibits, nine of which were admitted into the record. Cynthia Okrent, Esquire, Peter Metzger, Esquire, Dina Vespia, Esquire and John Gallagher, Esquire, appeared on behalf of Palmco and presented one witness who sponsored 14 exhibits that were admitted into the record. Barrett Sheridan, Esquire and Hobart Webster, Esquire appeared on behalf of the OCA and presented no witnesses or exhibits. A transcript of 105 pages was created.

The record in this case closed on March 9, 2015, the day the transcript was submitted to the Commission. Mr. MacLuckie's Complaint is ready for disposition. For the reasons discussed below, Mr. MacLuckie's Complaint will be sustained and a civil penalty will be imposed on Palmco.

FINDINGS OF FACT

1. The Complainant in this case is William MacLuckie.
2. The Respondent in this case is Palmco Energy PA, LLC.
3. The Service Address is 2019 Canyon Creek Road, Gilbertsville, PA.
4. MacLuckie Exhibit Number 1 is a copy of Mr. MacLuckie's bill from UGI for the month of September, 2013 showing an amount due of \$2.48 by October 16, 2013. MacLuckie Exh. No. 1; Tr. 14; *see also*, Palmco Exh. No. 8.
5. MacLuckie Exhibit Number 2 is a copy of Mr. MacLuckie's bill from UGI for the month of October, 2013 showing an amount due of \$19.33 by November 14, 2013. MacLuckie Exh. No. 2; Tr. 14; *see also*, Palmco Exh. No. 8.

6. MacLuckie Exhibit Number 3 is a copy of Mr. MacLuckie's bill from UGI for the month of November, 2013 showing an amount due of \$54.27 by December 13, 2013. MacLuckie Exh. No. 3; Tr. 14; *see also*, Palmco Exh. No. 8.

7. MacLuckie Exhibit Number 4 is a copy of Mr. MacLuckie's bill from UGI for the month of December, 2013 showing an amount due of \$147.27 by January 16, 2014. MacLuckie Exh. No. 4; Tr. 14; *see also*, Palmco Exh. No. 8.

8. MacLuckie Exhibit Number 5 is a print out of the PA Gas Switch website from January, 2014. MacLuckie Exh. No. 5; Tr. 15.

9. MacLuckie Exhibit Number 6 is a response from Palmco to discovery served by Mr. MacLuckie that includes as attachments transcripts of the sales call between Mr. MacLuckie and Dexter Mohammed of Palmco on May 24, 2013 and the subsequent third party verification recording. MacLuckie Exh. No. 6; Tr. 15; *see also*, Palmco Exh. No. 2; Tr. 41.

10. MacLuckie Exhibit Number 7 is a response from Palmco to discovery served by Mr. MacLuckie that includes as attachments transcripts and related documents of various communications between Mr. MacLuckie and Palmco on January 6, 2014, May 30, 2014 and June 11, 2014. MacLuckie Exh. No. 7; Tr. 15-16.

11. MacLuckie Exhibit Number 8 is the Palmco Service Agreement. MacLuckie Exh. No. 8; Tr. 16; *see also*, Palmco Exh. No. 3, Tr. 41-42.

12. MacLuckie Exhibit Number 9 is the Palmco Welcome Letter. MacLuckie Exh. No. 9; Tr. 16; *see also*, Palmco Exh. No. 4; Tr. 41.

13. Mr. MacLuckie has a college degree in chemistry from LaSalle College and has worked as an analytical spectroscopy for nearly 40 years which included some sales and marketing experience. Tr. 22-25; Palmco Exh. No. 9.

14. Palmco Exhibit Number 9 is Mr. MacLuckie's curriculum vitae. Palmco Exh. No. 9; Tr. 24-25.

15. Mr. MacLuckie was enrolled with Shipley Energy for about one year before he contracted with Palmco. Tr. 27-28; Palmco Exh. No. 11.

16. Palmco Exhibit Number 11 is a letter from Shipley to Mr. MacLuckie dated September 17, 2012 regarding Mr. MacLuckie's terms of service with Shipley. Tr. 28-29; Palmco Exh. No. 11.

17. Mr. MacLuckie's service with Shipley was for a fixed rate of \$0.6570 per hundred cubic feet (CCF) for a period of 12 months. Palmco Exh. No. 11; Tr. 30.

18. Palmco Exhibit Number 12 is Mr. MacLuckie's bill from UGI for the month of March, 2013 with an amount due of \$88.07 by April 17, 2013. Palmco Exh. No. 12; Tr. 31.

19. The Commission's Pa Gas Switch website indicated that Palmco's rate was an introductory rate for the first two months of service only and was only offered to new customers. Tr. 32.

20. Palmco Exhibit Number 1 is a transcript of the sales call between Mr. MacLuckie and Dexter Mohammed at Palmco on May 24, 2013. Palmco Exh. No. 1; Tr. 33-34.

21. During the phone call between Mr. MacLuckie and Mr. Mohammed on May 24, 2013, Mr. Mohammed guaranteed the Palmco rate offered on the Commission's Gas Switch website for the first two billing cycles and that thereafter the rate would be variable. Palmco Exh. No. 1; Tr. 36-37.

22. Mr. MacLuckie understands that gas prices can be volatile and he intended to monitor the rates he was charged. Tr. 39-40.

23. Mr. MacLuckie contracted with Palmco through a recorded third party verification. Palmco Exh. Nos. 1 and 2; Tr. 40-41.

24. After Mr. MacLuckie enrolled with Palmco he received the Palmco Sales Agreement and Welcome Letter. Palmco Exh. Nos. 3 and 4; Tr. 41-42, 53.

25. The Palmco Sales Agreement states that the price for gas supply would vary from month to month and that there is no ceiling on that price. Palmco Exh. No. 3; Tr. 42.

26. The Palmco Sales Agreement states that savings are not guaranteed. Palmco Exh. No. 3; Tr. 42.

27. For the months of August, September and October, 2013, Palmco charged Mr. MacLuckie 39.8 cents, 49.1 cents and 49.7 cents per CCF respectively. Palmco Exh. No. 8; Tr. 43-44.

28. The rates Palmco charged Mr. MacLuckie for the months of August, September and October, 2013 were approximately 20 cents per CCF less than UGI's rate per CCF. Tr. 44.

29. For the month of November, 2013, Palmco charged Mr. MacLuckie 72.8 cents per CCF. Palmco Exh. No. 8; Tr. 44.

30. The rate Palmco charged Mr. MacLuckie for November, 2013 was approximately 4 cents per CCF higher than UGI's rate per CCF. Tr. 44.

31. Mr. MacLuckie cancelled his service with Palmco on December 11, 2013 and switched to Dominion Energy Solutions who was offering a fixed rate of 65.9 cents per CCF. Tr. 45.

32. Palmco offered Mr. MacLuckie a full refund of all his payments to Palmco of approximately \$800 after Mr. MacLuckie filed a formal complaint with the Commission but Mr. MacLuckie returned the check to Palmco. Tr. 45-46.

33. Palmco Exhibit Number 5 is a transcript of a call between Mr. MacLuckie and Josephine Connors, a Palmco customer service specialist, on May 30, 2014. Palmco Exh. No. 5; Tr. 48.

34. During the May 24, 2013 call between Mr. MacLuckie and Mr. Mohammed, Mr. Mohammed stated that, after the first two billing cycles, Mr. MacLuckie “will continue to enjoy competitive variable rates.” Tr. 51-52, 56.

35. Dexter Mohammed was the director of sales for Palmco Energy PA in 2013 and was responsible for selling gas and electric supply to new customers, as well as recruiting and development of policies. Tr. 65-66.

36. Mr. Mohammed has been employed by Palmco or its affiliates for approximately eight years and is familiar with the procedures followed by Palmco to monitor the conduct of its in-house sales representatives. Tr. 66-67.

37. Palmco’s in-house sales representatives are monitored by checking all recorded Palmco sales calls by the compliance department and conducting independent third party verifications (TPV) that are also reviewed by the compliance department. Tr. 67.

38. Mr. Mohammed reviewed the recordings of the sales calls and TPV with Mr. MacLuckie from the call on May 24, 2013. Tr. 69.

39. The May 24, 2013 phone call was the first call between Mr. MacLuckie and Mr. Mohammed. Tr. 70, 78.

40. Mr. Mohammed was unable to get Mr. MacLuckie all of the information that he requested during the sales call because he believed he would not be able to provide him accurate information. Tr. 71-72, 79.

41. Mr. Mohammed did not provide Mr. MacLuckie information regarding other customers because Palmco's policy is to not disclose customer information to another party because other customers' information is confidential. Tr. 72.

42. Mr. Mohammed explained to Mr. MacLuckie that it would take 30 to 45 days from enrollment for the utility to switch the customer to a new supplier and that Mr. MacLuckie could opt out of service with Palmco at any time if he was not satisfied. Tr. 72-74.

43. Mr. Mohammed expected that Mr. MacLuckie would closely monitor the gas rates Palmco charged him because Mr. MacLuckie mentioned that he was retired and had time to match the rates. Tr. 74.

44. Mr. MacLuckie indicated to Mr. Mohammed that he was ready to sign up for gas supply service with Palmco so Mr. Mohammed connected Mr. MacLuckie to the TPV to complete the enrollment. Tr. 74-75.

45. Mr. Mohammed has enrolled approximately 50,000 customers in his career with Palmco and is unaware of anyone ever complaining about his sales practice. Tr. 76.

46. Palmco is listed in the top three lowest rates for new customers on the Commission's Pa Gas Switch website. Tr. 87.

47. Palmco Exhibit Number 13 is Palmco's log of contacts between the Company and Mr. MacLuckie. Palmco Exh. No. 13; Tr. 88.

48. Palmco Exhibit Number 6 is a DVD of the audio recordings of the sales call and the TPV between Mr. MacLuckie and Palmco employees. Palmco Exh. No. 6; Tr. 90.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Mr. MacLuckie seeks an Order from the Commission directing Palmco to "discontinue their policy of illegal pricing with no ceiling limit." Mr. MacLuckie, therefore, has the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa. Cmwlth 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa. Cmwlth 1982).

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984).

In its Opinion and Order remanding this proceeding for a hearing, the Commission stated:

We also agree with the OCA, however, that Mr. MacLuckie's Complaint raises questions about the adequacy of Palmco's oral disclosures. If, as averred by Mr. MacLuckie, Palmco undermines the clarity of its written communications through the oral information provided in response to telephonic inquiries to its customer service representatives (a fact we believe is reasonably inferred from Mr. MacLuckie's averments), when Palmco encourages prospective customers to make such inquiries, Palmco's disclosure is potentially no less unclear, misleading, or deceptive than those in Towne or Herp.

Palmco's oral representations from its customer representatives are as subject to review for deceptive practices as Palmco's written Sales Contract and Welcome Letter, particularly when those written materials encourage applicants to "call ... and speak to one of our Customer Service Representatives."

While no one could have predicted the extreme cold wrought by last winter's weather, clearly Mr. MacLuckie undertook to investigate directly with Palmco how substantial his exposure may be under Palmco's variable rate practices. Because residential consumers in general are not necessarily experienced in gas procurement and pricing practices, it is all the more important that they be able to rely on all information from their prospective supplier through clear and unequivocal disclosures, whether oral or written. If Mr. MacLuckie were led to believe through oral communications that the possibility of an exorbitant increase was ridiculous because it would be against Palmco's business interests, that may have a bearing on the propriety of Palmco's marketing practices.

William MacLuckie v. Palmco Energy PA, LLC, Docket Number C-2014-2402558, Opinion and Order (entered December 4, 2014) (citations omitted) (December 4th Order) at 20-21. As a result, the February 13, 2015 hearing was held.

During that hearing, Mr. MacLuckie testified that his objective in filing the Complaint was to address what he was told in the conversation he had with Mr. Mohammed on May 24, 2013 when Mr. Mohammed said Mr. MacLuckie would enjoy monthly competitive rates after the introductory rates expired. Tr. 10-11. Mr. MacLuckie referred to the conversation as "a

glaring bit of deception.” Tr. 11. Mr. MacLuckie further testified that “the purpose of my complaint is to ask the PUC to demand Palmco Energy to discontinue their policy of illegal pricing with no ceiling limit marketed in the state of Pennsylvania.” Tr. 12. Mr. MacLuckie specifically referred to the transcript of the sales call on May 24, 2013 which he referred to as “the deceptive sales techniques of the representatives.” Tr. 12.

In Response, Palmco presented the testimony of Mr. Mohammed, the director of sales, who spoke with Mr. MacLuckie at the time of his enrollment. Mr. Mohammed testified regarding Palmco’s procedures and protocol when new customers are enrolled. Tr. 70. Mr. Mohammed also provided extensive testimony regarding the sales call on May 24, 2013 wherein Mr. MacLuckie was enrolled in Palmco’s service, including addressing some of the concerns Mr. MacLuckie raised with regard to that phone conversation. Tr. 71-76. In particular, Mr. Mohammed testified that he did not make any misrepresentation to Mr. MacLuckie during the May 24, 2013 phone call to induce him to enroll with Palmco. Tr. 75-76.

I find Mr. Mohammed’s testimony to be insufficient to refute the persuasive testimony of Mr. MacLuckie regarding misrepresentations. Substantial record evidence in this case demonstrates that Palmco violated the Commission’s regulations governing false or misleading representations regarding rates or savings offered by a supplier when Mr. Mohammed represented to Mr. MacLuckie during the May 24, 2013 sales call that he would enjoy monthly competitive variable rates beyond the first two billing cycles. As such, Mr. MacLuckie’s Complaint will be sustained and Palmco will be assessed a civil penalty.

Commission regulations govern various aspects of service provided by natural gas suppliers (NGSs). For example, the Commission has regulations governing bill format and disclosure statements for residential and small business customers, standards of conduct and disclosure of licensees, Code of Conduct and telemarketing. *See*, 52 Pa.Code §§ 54.4, 54.5, 54.43, 54.122 and 54.110. Most relevant to this case, however, are the Commission’s regulations providing consumer protections. In particular, Section 111.12 provides, in pertinent part, that “a supplier ... may not make false or misleading representations including misrepresenting rates or savings offered by the supplier.” 52 Pa.Code § 111.12(d)(2). Section 111.12 also requires that “a supplier ... shall provide accurate and timely information about service and products being offered

... including rates being offered.” 52 Pa.Code § 111.12(d)(4). Similarly, Section 62.114(e) states that “a licensee is responsible for any fraudulent, deceptive or other unlawful marketing or bill acts performed by the licensee, its employees, agents or representatives.” 52 Pa.Code § 62.114(e). Palmco has violated both Sections 111.12 and 62.114.

The Commission has recently addressed issues pertaining to oral representations made during sales calls. In reversing and remanding a decision granting a Motion for Summary Judgment, the Commission determined that the customer is entitled to a hearing regarding what was represented during a sales call. Yaglidereliler Corporation v. Blue Pilot Energy, LLC, Docket No. C-2014-2413732, Opinion and Order (entered Jan. 16, 2015) (Yaglidereliler). In Yaglidereliler, the Commission noted: “if, as reasonably inferred from the Complainant’s averments, Blue Pilot’s oral representations undermine the clarity of its written communications, Blue Pilot’s disclosure and marketing could be unclear, misleading, or deceptive in contravention of our Regulations.” Id. at 19. The Commission added:

Residential and small business customers, however, are not necessarily well-versed in gas procurement and pricing practices. For this reason, it is all the more important that they be able to rely on all the information provided by their prospective supplier, whether oral or written, and that all disclosures be clear and unequivocal. If the complainant [was] led to believe through oral communications that although variable, his rate would remain competitive and reasonable, that may have a bearing on the propriety of Blue Pilot’s marketing practices.

Id. at 20. Although the decision in Yaglidereliler was not dispositive of that case but instead remanded the complaint for a further proceeding, the Commission’s discussion of the issue applies to the facts presented here. The Commission’s decision makes clear that oral representations made to a consumer at the time of the sale are important. Id. at 22, *quoting*, William Towne v. Great American Power, LLC, Docket No. C-2012-2307991, Order (entered Oct. 18, 2013) (William Towne).

In this case, both parties presented the transcript of the May 24, 2013 sales call between Mr. MacLuckie and Mr. Mohammed on behalf of Palmco. According to the transcript, Mr. Mohammed stated six times during that call that the variable rates Mr. MacLuckie would be

charged after the expiration of the introductory period would be “competitive.” For example, the sales call began:

Mr. MacLuckie: Hello?

Mr. Mohammed: Hello. Hi William. Good morning. It’s Dexter with Palmco Energy calling you back on the rates. You are a customer of UGI correct?

Mr. MacLuckie: That is correct.

Mr. Mohammed: Right. We do carry a very competitive rate of .498 per ccf.

Mr. MacLuckie: That really is quite competitive, versus anybody that ...

Mr. Mohammed: Yes, it is the lowest rate on the market and it’s no contracts, no cancellation fees and we do guarantee our prices to be rates for the first two billing cycles. ***And then beyond that you will continue to enjoy monthly competitive variable rates.*** Any questions?

MacLuckie Exh. No. 6 (emphasis added); *see also*, Palmco Exh. No. 2. As a result, the question in this case becomes whether the rates Palmco provided Mr. MacLuckie after the introductory rates expired were, in fact, “competitive” as Mr. Mohammed indicated during the sales call they would be. I conclude they were not.

Neither the Public Utility Code nor the Commission’s regulations provide a definition of “competitive” or “competitive rate.” *See, e.g.*, 52 Pa.Code § 62.80 (Common natural gas competition terms). Nor is there any record evidence indicating that Mr. Mohammed, or any Palmco representative, ever defined what “competitive” or “competitive rate” meant. Webster’s Dictionary, however, includes as part of the definition of “competitive” the following: “as good as or better than others of the same kind: able to compete successfully with others.”¹ As such, in order for a rate to be competitive, it must be as good as or better (i.e., lower) than the rate offered by other providers of the same or similar service. In this case, that means that when a utility or its representative states that a rate offered for natural gas supply service will be “competitive,” the rate

¹ <http://www.merriam-webster.com/dictionary/competitive> (accessed April 24, 2015).

will be as good as or lower than the rate offered by other providers of natural gas supply service. In addition, Mr. Mohammed also indicated to Mr. MacLuckie that the rate he would be provided following the expiration of the introductory rate would be “the lowest rate on the market.” In fact, however, although Mr. Mohammed stated several times during his interaction with Mr. MacLuckie that the rate following the expiration of the introductory rate would be “competitive,” the rate was not “the lowest rate on the market,” including not even “as good as” the rate offered by Mr. MacLuckie’s default service provider – UGI.

Both Mr. MacLuckie and Palmco sponsored copies of Mr. MacLuckie’s gas bills that were admitted into the record. A review of those bills reveals the following:

<u>Month</u>	<u>UGI Rate</u>	<u>Palmco Rate</u>	<u>Difference²</u>
September, 2013	0.68919	0.49818	-27.7%
October, 2013	0.68919	0.49786	-27.8%
November, 2013	0.68919	0.49769	-27.8%
December, 2013	0.68919	0.72977	+5.9%
January, 2014	0.62045	1.25438	+102.2%
February, 2014	0.62045	1.38687	+123.5%

MacLuckie Exh. Nos. 1-4; Palmco Exh. No. 8; *see also*, Tr. 13, 43-45. As such, Palmco’s rate was not as good as or better than – i.e., competitive – when compared to UGI’s rates for the months of January and February, 2014 when Palmco’s rate was more than double UGI’s rate. The statements made by Mr. Mohammed that Palmco’s rate would be “competitive” were misleading and, therefore, violated Commission regulations that prohibit the use of misleading or deceptive statements. *See*, 52 Pa.Code §§ 62.114 and 111.12.

Furthermore, it is not necessary to compare Palmco’s rates to other NGS rates to find a violation of Commission regulations. A review of the supply rate charged by the natural gas distribution company (NGDC) – in this case UGI – is sufficient to establish that Palmco’s rates were not competitive because the NGDC, as default supplier, is also part of the market. Consumers

² Differences calculated as UGI rate minus Palmco rate divided by UGI rate.

can choose not to select an NGS. When viewed from the customer's perspective when interacting with the NGS representative, it is reasonable to believe that the statement that Palmco's rates would be "competitive" means that the rate would be competitive not only in relation to other NGS's rates but also in relation to the NGDC's rate.³ Although the Company argued that a comparison to UGI's rate is not proper, Tr. 98, from the customer's perspective, the comparison is proper. This determination is further supported by Mr. Mohammed's initial reference during the May 24, 2013 conversation to Mr. MacLuckie being a UGI customer when Mr. Mohammed stated that Palmco carries a competitive rate immediately after Mr. MacLuckie confirmed he is a UGI customer. Had UGI's rate not been a relevant consideration in determining whether Palmco's rate was competitive, Mr. Mohammed would not have asked Mr. MacLuckie if he was a customer of UGI. This is the precise issue and area of confusion raised by Mr. MacLuckie in his Complaint.

During the hearing, Mr. MacLuckie testified that "rates that run from 66 to 76 cents are competitive. But rates that run from 50 cents to \$1.39 are not competitive." Tr. 56. I agree. When Palmco's rate increased to more than double UGI's rate in the months of January and February, 2014, it was no longer competitive, and Mr. Mohammed's assertion to Mr. MacLuckie that the Palmco rate would remain competitive following the expiration of the introductory rate is revealed as misleading and deceptive and in violation of Commission regulations prohibiting such statements.

Palmco's arguments to the contrary are without merit and will be rejected. Mr. MacLuckie readily accepted, for example, that Palmco's offering on the Pa Gas Switch website stated that the rate was introductory for the first two months of service only and was only offered to new customers. Tr. 32, 36-37. Palmco also presented as exhibits the Sales Agreement and Welcome Letter, both of which indicated that the gas supply would vary from month to month, that there is no ceiling price and that savings are not guaranteed. Palmco Exh. Nos. 3 and 4; Tr. 42-43. Again, Mr. MacLuckie readily conceded during the hearing that he agreed to those terms. Tr. 42. Mr. MacLuckie agreed that Palmco sent him a check for over \$800 representing a refund of all the payments he made to Palmco for gas and electricity supply. Tr. 46. Mr. MacLuckie admitted

³ During the Hearing, Mr. MacLuckie sought the admission of an exhibit that included rates charged by other NGSs during the period in question. Tr. 58-61. Counsel for Palmco objected to the admission of the exhibit in part on the basis of hearsay and in part asserting that such information is beyond the scope of the hearing. Tr. 59. As a result, the exhibit was not admitted into the record. Tr. 61.

that there are no cancellation fees. Tr. 52. None of these defenses offered by Palmco negate the misleading or deceptive statements made during the sales call. It is also no defense to Mr. Mohammed's representations made to Mr. MacLuckie that he has facilitated the enrollment of over 50,000 customers for the purchase of energy supplies in his career and none of them, to his knowledge, has ever complained about his sales practice. Tr. 76.

The fact that the website, Sales Agreement and Welcome Letter, for example, stated one thing about the rate charged does not negate the fact that the sales agent made a misleading or deceptive statement during the sales call about the rate charged. The importance of distinguishing between the sales call (oral communications) and other interactions (written communications) between Mr. MacLuckie and Palmco is evident because the Commission has different regulations regarding those different interactions. Had the Commission decided to look at the relationship between the NGS and the customer as a whole it would not have established separate regulations. The Commission created separate regulations regarding the various interactions and one interaction could violate a regulation while other interactions could be in compliance with other Commission regulations. The fact that an NGS violated one regulation is not negated by the fact that the NGS is in compliance with other regulations. Each violation of a Commission regulation is independent. In this case, Palmco's oral communications have undermined the clarity of its written communications. *See, December 4th Order* at 20.

With regard to Mr. MacLuckie's other arguments raised during the hearing, those arguments will be rejected. In particular, there was significant discussion during the hearing about information Mr. MacLuckie requested from Palmco, but never received, regarding an estimated range for the rate Palmco would charge him following the expiration of the introductory rate. Tr. 57. Mr. Mohammed testified that he was unable to provide the requested information because he did not think he could provide an accurate answer since Palmco's rates are subject to change every month and assumptions would have to be made. Tr. 71-72. Mr. Mohammed also stated that he could not provide Mr. MacLuckie with information regarding other customers as Mr. MacLuckie requested because that information is confidential. Tr. 72. Mr. Mohammed's responses are reasonable and Mr. MacLuckie's arguments to the contrary do not demonstrate a violation of the Public Utility Code or any Commission Order or regulation by Palmco. *See also*, Tr. 79.

Other issues arose during the hearing, none of which, however, give rise to any finding of a violation of the Public Utility Code or a Commission Order or regulation. Rather, the focus of this case is whether the representation by Mr. Mohammed to Mr. MacLuckie during the call on May 24, 2013 that Palmco's rates would remain competitive following the expiration of the introductory rate offered was misleading or deceptive. *See, e.g.*, Tr. 10-11, 59. Because record evidence supports a finding that the representation was misleading or deceptive, Palmco has violated Sections 62.114 and 111.12 of the Public Utility Code and a civil penalty is appropriate.

With regard to the specific level of the civil penalty, the Commission has set forth, in a statement of policy, the factors and standards for determining appropriate civil penalty amounts. 52 Pa.Code § 69.1201(c); *see also*, Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company, Docket No. C-0092409, Final Order (entered February 10, 2000). These factors and standards are as follows:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.
- (5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

With regard to the first factor, whether the conduct at issue was of a serious nature, this factor supports a higher penalty. As noted above, residential customers are not well-versed in gas procurement and pricing practices and must be able to rely on all the information provided by their prospective supplier, whether oral or written. Yaglidereliler; William Towne. Mr. MacLuckie was led to believe through the oral communication that his rate would be "competitive" but his rates, following the expiration of the introductory period, were not competitive. This is deceptive and misleading and undermines the integrity of the marketplace for the competitive provision of natural gas supply. In order for the marketplace to be successful, consumers must be able to rely on the oral assertions they are provided by representatives of the entities competing in the market. The actions at issue in this proceeding are not administrative or technical errors as noted in the Commission's Policy Statement that would warrant a lower penalty. As a result, the conduct is of a serious nature and warrants imposing a higher civil penalty.

With regard to the second factor, whether the resulting consequences at issue were of a serious nature, this factor supports a lower penalty. The consequences at issue did not involve personal injury or property damage, as noted in the Commission's Policy Statement would warrant a higher penalty. Although, as noted above, the conduct of the actions at issue in this proceeding is of a serious nature, the resulting consequences are primarily monetarily based. Furthermore, in this

case, Mr. MacLuckie was offered a refund of all amounts he has paid Palmco and he denied the offer. Tr. 45-46. This factor, therefore, warrants imposing a lower civil penalty.

With regard to the third factor, whether the conduct at issue was deemed intentional or negligent, this factor warrants imposing a higher civil penalty. Mr. Mohammed, the Palmco representative who spoke with Mr. MacLuckie during the sales call, readily accepted that he stated the rates would be competitive – a statement he made at least six times. Mr. Mohammed gave no indication during the hearing that such statements were made in error or as a result of negligence. As noted in the Commission's Policy Statement, when conduct has been deemed intentional, the conduct may result in a higher penalty.

With regard to the fourth factor, whether the regulated entity has made efforts to modify internal practices and procedures to address the conduct at issue to prevent similar conduct in the future, this factor also warrants imposing a higher civil penalty. There is no record evidence demonstrating that Palmco has made any efforts to address the conduct at issue. In fact, as noted above, Mr. Mohammed readily acknowledges the statements he made and testified that those statements are not misleading. Therefore, Palmco apparently believes there is no need to modify their internal practices and procedures to address the conduct at issue. This factor warrants imposing a higher civil penalty.

With regard to the fifth factor, the number of customers affected and the duration of the violation, this factor will not be considered as part of this proceeding. This factor is generally considered when addressing issues raised in investigations or cases where multiple consumers can be represented at the same time. This is not one of those cases. In fact, Mr. MacLuckie initially sought to pursue this case on behalf of others but was prohibited from doing so. December 4th Order, at 23. The Commission has the ability to impose additional remedies in its review of this proceeding if it believes additional remedies are necessary. Id. Although it is unlikely that Mr. Mohammed would have intentionally made misrepresentations only to Mr. MacLuckie, Mr. Mohammed testified that he has facilitated the enrollment of over 50,000 customers in his career with Palmco and is unaware of anyone ever complaining about his sales practice. Tr. 76. Overall, this factor will not be considered when establishing the appropriate civil penalty.

With regard to the sixth factor, the compliance history of the regulated entity, this factor warrants imposing a lower civil penalty. There is no record evidence indicating problems with Palmco's compliance history or that this incident is anything other than an isolated incident, noting again that Mr. MacLuckie was prohibited from pursuing his complaint on behalf of others. As a result, this factor warrants imposing a lower civil penalty.

With regard to the seventh factor, whether the regulated entity cooperated with the Commission's investigation, this factor will also not be considered in determining an appropriate civil penalty because this is not a Commission investigation but arises as the result of a formal complaint.

With regard to the eighth factor, the amount of the civil penalty or fine necessary to deter future violations, this factor supports imposing a higher civil penalty. As noted above, in order for the marketplace for the competitive provision of natural gas supply to be successful, consumers must be able to rely on the oral assertions they are provided by representatives of the entities competing in the market. Palmco should be more careful to ensure that the oral representations made by its representatives are not misleading or deceptive. Future actions will likely result in the imposition of additional civil penalties, or other remedies available to the Commission including license revocation. A higher civil penalty is warranted in this case to deter future violations.

With regard to the ninth factor, past Commission decisions in similar situations, this factor supports a higher civil penalty. As noted above, the Commission has recently addressed cases regarding oral representations made by suppliers. In Yaglidereliler, *supra*, as noted above, the Commission reversed a decision to grant a Motion for Summary Judgment and remanded the case for evidentiary hearings. Those hearings have not been held yet and, therefore, this case cannot be considered when establishing a civil penalty in this case. However, in William Towne, *supra*, the Commission imposed a fine of \$10,000 and imposed certain conditions on the license after having found that the electric generation supplier made potentially misleading statements. *Id.* at 25. In Justin Herp v. Respond Power, LLC, Docket No. C-2014-2413756, Initial Decision (dated December 17, 2014), the Administrative Law Judge imposed a \$10,000 civil penalty and directed that a refund be issued after having found violations of Section 111.12, although Exceptions filed by

the Company remain pending. As a result, a review of these past Commission decisions supports imposing a higher civil penalty.

Finally, with regard to the tenth factor, other relevant factors, it is relevant that Palmco has offered Mr. MacLuckie a full refund of all monies he paid to Palmco. Tr. 45-46. This factor is relevant when determining the appropriate level of a civil penalty and supports a lower penalty be imposed. All other relevant factors necessary in establishing an appropriate civil penalty in this proceeding have been addressed in the prior nine factors.

As such, a civil penalty of \$2,000 is appropriate. This amount represents a \$500 civil penalty being imposed four times: 1) a violation of Section 111.12 of the Commission's regulations for January, 2014, 2) a violation of Section 111.12 of the Commission's regulations for February, 2014, 3) a violation of Section 62.114 of the Commission's regulations for January, 2014, and 4) a violation of Section 62.114 of the Commission's regulations for February, 2014.

In conclusion, substantial record evidence in this proceeding demonstrates that the actions of Palmco's representative were misleading and deceptive during the conversation with Mr. MacLuckie on May 24, 2013 when Mr. MacLuckie was told that Palmco's rates would remain "competitive" following the expiration of the introductory rate Mr. MacLuckie was offered. The rate charged to Mr. MacLuckie by Palmco following the expiration of the introductory rate was more than double the NGDC's rate for both January and February, 2014. This is not a "competitive" rate, as was explained to Mr. MacLuckie by the Palmco representative during the sales call. As such, Palmco violated two Commission regulations on two consecutive months that prohibit the use of deceptive or misleading statements. Therefore, Mr. MacLuckie's Complaint will be sustained and a \$2,000 civil penalty will be imposed, representing four \$500 civil penalties for violating two regulations for two consecutive months.

CONCLUSIONS OF LAW

1. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

2. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

4. The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

5. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa. Cmwlth 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa. Cmwlth 1982).

6. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

7. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984).

8. A supplier may not make false or misleading representations including misrepresenting rates or savings offered by the supplier. 52 Pa.Code § 111.12(d)(2).

9. A supplier shall provide accurate and timely information about service and products being offered including rates being offered. 52 Pa.Code § 111.12(d)(4).

10. A licensee is responsible for any fraudulent, deceptive or other unlawful marketing or bill acts performed by the licensee, its employees, agents or representatives. 52 Pa.Code § 62.114(e).

11. If a complainant was led to believe through oral communications that, although variable, his rate would remain competitive and reasonable, that may have a bearing on the propriety of marketing practices. Yaglidereliler Corporation v. Blue Pilot Energy, LLC, Docket No. C-2014-2413732, Opinion and Order (entered Jan. 16, 2015).

12. Section 3301 of the Public Utility Code authorizes the Commission to impose a maximum civil penalty of \$1,000.00 per day for violations of the statute, regulations and orders. 66 Pa.C.S. § 3301.

13. The Commission has adopted certain standards that must be applied when imposing a civil penalty for violations of Commission directives and regulations. *See*, 52 Pa.Code § 69.1201; *see also*, Joseph A. Rosi v. Bell Atlantic- Pa., Inc. and Sprint Communications Company, Docket No. C-00992409, Order (entered February 10, 2000).

14. Mr. MacLuckie has satisfied his burden of demonstrating that Palmco made deceptive or misleading statements to him and Palmco, therefore, violated Section 111.12 and 62.114 of the Commission's regulations.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by William MacLuckie against Palmco Energy PA, LLC at Docket Number C-2014-2402558 dated January 13, 2014 is hereby sustained.

2. That Palmco Energy PA, LLC shall pay a civil penalty of \$2,000 due to the violations of Sections 62.114 and 111.12 of the Commission's regulations.

3. That Palmco Energy PA, LLC shall pay a total of \$2,000 by sending a certified check or money order payable to the Commonwealth of Pennsylvania, within thirty (30) days from the entry of the Final Commission Order to:

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

4. That Palmco Energy PA, LLC shall cease and desist from further violations of the Public Utility Code or any regulations of the Public Utility Commission.

5. That this matter be marked closed.

Date: April 30, 2015

/s/
Joel H. Cheskis
Administrative Law Judge

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

William MacLuckie

v.

Palmco Energy PA, LLC

:
:
:
:
:

C-2014-2402558

FINAL ORDER

In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the Initial Decision on Remand of Administrative Law Judge Joel H. Cheskis dated April 30, 2015, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by William MacLuckie against Palmco Energy PA, LLC at Docket Number C-2014-2402558 dated January 13, 2014 is hereby sustained.

2. That Palmco Energy PA, LLC shall pay a civil penalty of \$2,000 due to the violations of Sections 62.114 and 111.12 of the Commission's regulations.

3. That Palmco Energy PA, LLC shall pay a total of \$2,000 by sending a certified check or money order payable to the Commonwealth of Pennsylvania, within thirty (30) days from the entry of the Final Commission Order to:

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

4. That Palmco Energy PA, LLC shall cease and desist from further violations of the Public Utility Code or any regulations of the Public Utility Commission.
5. That this matter be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta", written over the printed name.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ENTERED: June 30, 2015

EXHIBIT C-1

Annual Reports

Applicant is a privately owned limited liability company. It is not required to prepare annual reports or any similar documents for its shareholders or owners.

EXHIBIT C-2

SEC Filings

Applicant is not required to file with the SEC because it is a privately owned limited liability company.

PALMCO ENERGY OH, LLC

EXHIBIT C-3

Financial Statements

**REDACTED
EXHIBIT C-3 OF SECTION C-3 OF
PALMCO ENERGY OH, LLC
NATURAL GAS
2016 RENEWAL CERTIFICATION APPLICATION**

**EXHIBIT C-3 OF SECTION C-3 OF
PALMCO ENERGY OH, LLC
NATURAL GAS
2016 RENEWAL CERTIFICATION APPLICATION**

**CONFIDENTIAL AND PROPRIETARY INFORMATION
OMITTED**

PALMCO ENERGY OH, LLC

EXHIBIT C-4

Financial Arrangements

**REDACTED
EXHIBIT C-4 OF SECTION C-4 OF
PALMCO ENERGY OH, LLC
NATURAL GAS
2016 RENEWAL CERTIFICATION APPLICATION**

**EXHIBIT C-4 OF SECTION C-4 OF
PALMCO ENERGY OH, LLC
NATURAL GAS
2016 RENEWAL CERTIFICATION APPLICATION**

**CONFIDENTIAL AND PROPRIETARY INFORMATION
OMITTED**

PALMCO ENERGY OH, LLC

EXHIBIT C-5

Forecasted Financial Statements

**REDACTED
EXHIBIT C-5 OF SECTION C-5 OF
PALMCO ENERGY OH, LLC
NATURAL GAS
2016 RENEWAL CERTIFICATION APPLICATION**

**EXHIBIT C-5 OF SECTION C-5 OF
PALMCO ENERGY OH, LLC
NATURAL GAS
2016 RENEWAL CERTIFICATION APPLICATION**

**CONFIDENTIAL AND PROPRIETARY INFORMATION
OMITTED**

EXHIBIT C-6

Credit Rating

Attached is Applicant's Dun and Bradstreet Report. As neither Applicant nor its affiliates are publicly traded, and each is privately owned, they do not have a credit rating from Duff & Phelps, Fitch IBCA, Moody's Investors Service, Standard & Poors, or any similar organization.

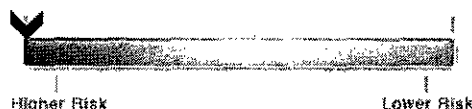
PALMCO ENERGY OH LLC

DUNS: 83-007-7736

Credit Information

Risk Summary

Risk of Late Payment



Risk of late payment is based on the following prioritized factors in addition to other information in D&B's files:

- No factors available

Indications of slowness can be the result of disputes over merchandise, skipped invoices, etc.

Payment Performance Trend

The payment performance trend for this company is Unavailable . Payment Trend currently is Unavailable compared to payments three months ago. The most recent payment information in D&B's files is:

- Payments currently: D&B has not received a sufficient sample of payment experiences to establish a current PAYDEX score. terms
- Industry average: GENERALLY WITHIN terms

*Note: Payments to suppliers are averaged weighted by dollar amounts.

Credit Limit Recommendation

We currently do have any information to be displayed for this business.

Company Profile

Chief Executive: NA

Line of Business:

Type of Business:

Natural gas distribution

DOMESTIC LIMITED LIABILITY CO

Years in Business:

NA

Annual Sales:

NA

Employees Total:

1

Legal Filings and Other Important Information

Bankruptcies:

None

Negative Payment Experience:

None

Judgements:

0

Negative Payment Experience

None

Liens:

0

Amount:

Suits:

None

Payments Placed for Collection:

None

Suits/Judgments/Liens Amounts:

None

The public record items reported may have been paid, terminated, vacated or released prior to the date this data is transmitted. Accounts are sometimes placed for collection even though the existence or amount of the debt is disputed.

Special Events

10/16/2011

PALMCO ENERGY OH, LLC

Source(s) indicate the address shown above may no longer be used by this business.

This report is prepared and provided under contract for the exclusive use of
This report may not be reproduced in whole or in part by any means of reproduction.

Payment Trends

Summary

Address:

1350 60th St
Brooklyn, NY 11219

Primary Industry SIC:

4924

D-U-N-S Number:

83-007-7736

Description:

Natural gas distribution

This is a **single** location.

Payment Activity

**Total payment Experiences in D&Bs
File:**

NA

Payments Within Terms:
(not dollar weighted)

NA

Total Placed For Collection:

NA

Average Highest Credit:

NA

Largest High Credit:

NA

Highest Now Owing:

NA

Highest Past Due:

NA

Indications of slowness can be the result of dispute over merchandise, skipped invoices, etc. Accounts are sometimes placed for collection even though the existence or amount of the debt is disputed.

PAYDEX®

Score Not Available

We are unable to display a PAYDEX® for this company.
Please call 800-333-0505 for more information.

Score Not Available

We are unable to display a PAYDEX® for this company.
Please call 800-333-0505 for more information.

No data is available on this company to build a paydex trend graph.

This Company (0)

Based on payments collected over the last 12 months.

- Current PAYDEX® for this Business is 0

PAYDEX ® Score Comparison - This Company to Primary Industry Comparison, 4 Quarters

No data is available on this company to build a paydex score comparison graph.

- My Company (0)
- Industry Upper Quartile (80)
- Industry Median (80)
- Industry Median (72)

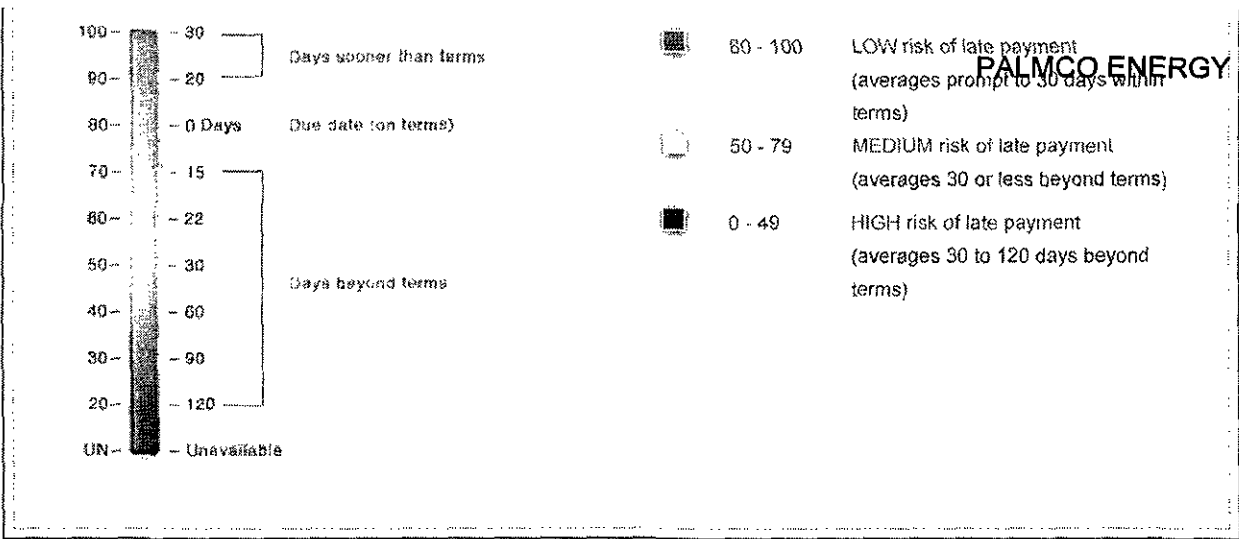
Based on payments collected over the last 4 quarters.

- Current PAYDEX® for this Business is 80 , or equal to GENERALLY WITHIN terms
- Industry upper quartile represents the performance of the payers in the 75th percentile
- Industry lower quartile represents the performance of the payers in the 25th percentile

Business Payment Habit by Amount of Credit Extended, 24 Months ①

We currently do not have enough details of this company to display in this section.

How to Read the D&B PAYDEX ® Score ①



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EXHIBIT C-7

Credit Report

Attached is a copy of Applicant's current credit report from Dun and Bradstreet.

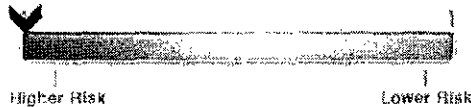
PALMCO ENERGY OH LLC

DUNS: 83-007-7736

Credit Information

Risk Summary

Risk of Late Payment



Risk of late payment is based on the following prioritized factors in addition to other information in D&B's files:

- No factors available

Indications of slowness can be the result of disputes over merchandise, skipped invoices, etc.

Payment Performance Trend

The payment performance trend for this company is Unavailable . Payment Trend currently is Unavailable compared to payments three months ago. The most recent payment information in D&B's files is:

- Payments currently: D&B has not received a sufficient sample of payment experiences to establish a current PAYDEX score. terms
- Industry average: GENERALLY WITHIN terms

*Note: Payments to suppliers are averaged weighted by dollar amounts.

Credit Limit Recommendation

We currently do have any information to be displayed for this business.

Company Profile

Chief Executive: NA

Line of Business:

Type of Business:

Natural gas distribution

DOMESTIC LIMITED LIABILITY CO

Years in Business:

NA

Annual Sales:

NA

Employees Total:

1

Legal Filings and Other Important Information

Bankruptcies:

None

Negative Payment Experience:

None

Judgements:

0

Negative Payment Experience

None

Liens:

0

Amount:

Suits:

None

Payments Placed for Collection:

None

Suits/Judgments/Liens Amounts:

None

The public record items reported may have been paid, terminated, vacated or released prior to the date this data is transmitted. Accounts are sometimes placed for collection even though the existence or amount of the debt is disputed.

Special Events

10/16/2011

PALMCO ENERGY OH, LLC

Source(s) indicate the address shown above may no longer be used by this business.

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Payment Trends

Summary

Address:

1350 60th St
Brooklyn, NY 11219

D-U-N-S Number:

83-007-7736

Primary Industry SIC:

4924

Description:

Natural gas distribution

This is a **single** location.

Payment Activity

**Total payment Experiences in D&Bs
File:**

NA

Payments Within Terms:
(not dollar weighted)

NA

Total Placed For Collection:

NA

Average Highest Credit:

NA

Largest High Credit:

NA

Highest Now Owing:

NA

Highest Past Due:

NA

Indications of slowness can be the result of dispute over merchandise, skipped invoices, etc. Accounts are sometimes placed for collection even though the existence or amount of the debt is disputed.

PAYDEX®

Score Not Available

We are unable to display a PAYDEX® for this company.
Please call 800-333-0505 for more information.

Score Not Available

We are unable to display a PAYDEX® for this company.
Please call 800-333-0505 for more information.

No data is available on this company to build a paydex trend graph.

This Company (0)

Based on payments collected over the last 12 months.

- Current PAYDEX® for this Business is 0

PAYDEX ® Score Comparison - This Company to Primary Industry Comparison, 4 Quarters

No data is available on this company to build a paydex score comparison graph.

- My Company (0)
- Industry Median (80)
- Industry Upper Quartile (80)
- Industry Median (72)

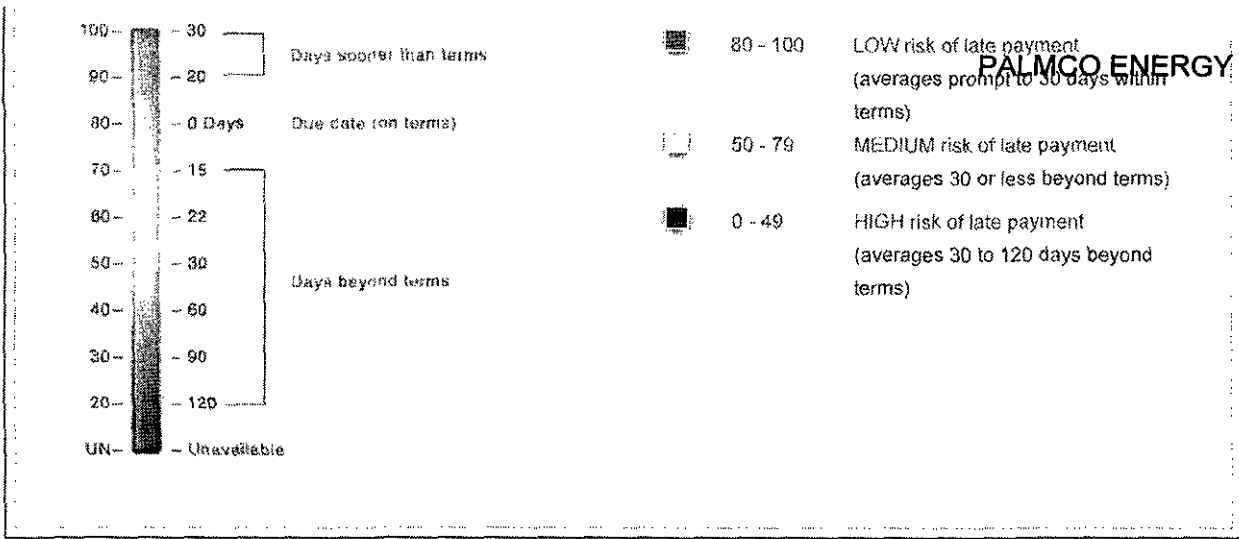
Based on payments collected over the last 4 quarters.

- Current PAYDEX® for this Business is 80 , or equal to GENERALLY WITHIN terms
- Industry upper quartile represents the performance of the payers in the 75th percentile
- Industry lower quartile represents the performance of the payers in the 25th percentile

Business Payment Habit by Amount of Credit Extended, 24 Months ①

We currently do not have enough details of this company to display in this section.

How to Read the D&B PAYDEX ® Score ①



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PALMCO ENERGY OH, LLC

EXHIBIT C-8

Bankruptcy Information

None.

PALMCO ENERGY OH, LLC

EXHIBIT C-9

Merger Information

None.

EXHIBIT D-1

Operations

Applicant only sells natural gas at retail in the State of Ohio; it does not sell natural gas at retail anywhere else or sell natural gas at wholesale. Applicant contracts with Quantum Gas & Power Services, Ltd. ("Quantum") to provide most of its operational gas services (see Technical Services Agreement attached hereto as Attachment 1). Quantum purchases natural gas at wholesale on behalf of Applicant for Applicant's retail Ohio natural gas sales. Quantum also handles the nomination and scheduling of retail natural gas for delivery to Applicant, arranges for delivery of natural gas to the gas companies' city gates, and arranges for delivery of natural gas from the gas companies' city gates to Applicant's Ohio customers.

REDACTED
ATTACHMENT 1 TO EXHIBIT D-1OF
PALMCO ENERGY OH, LLC
NATURAL GAS
2016 RENEWAL CERTIFICATION APPLICATION
CONFIDENTIAL AND PROPRIETARY INFORMATION
OMITTED

EXHIBIT D-2

Operations Expertise

Robert Palmese -- Managing Member of Palmco Energy OH, LLC

Robert Palmese is the Managing Member of Applicant. Mr. Palmese has approximately 14 years' experience selling natural gas. He is in charge of the day-to-day operations of Applicant and its various affiliates that sell natural gas and electric power at retail in the states of Ohio, New York, New Jersey, Pennsylvania, Maryland, Massachusetts, Connecticut, and Illinois. His responsibilities with Applicant and its various affiliates include management and communications with Quantum Gas & Power Services, Ltd. for the purchase, scheduling, nomination, and retail sale of natural gas, work Mr. Palmese has been engaged in since 2002 in connection with Applicant's New York gas marketer affiliate. Mr. Palmese graduated from Georgetown University with a Bachelor of Science degree in Business Administration.

Ronald Palmese -- Manager of Palmco Energy OH, LLC

Ronald Palmese has been working in the energy business for over 30 years. Mr. Palmese has more than 14 years' experience selling natural gas. He also has extensive experience managing the day-to-day operations of a retail oil heating company, where his responsibilities have included primary oversight of purchasing, customer service, financial matters, and other aspects of the business. Mr. Palmese has also been heavily involved in the sales side of Palmco's natural gas and electric supply businesses since 2002, working closely with Robert Palmese in managing the day-to-day retail operations of the various Palmco company retail electric and natural gas affiliates located in New York, Ohio, Pennsylvania, Maryland, Massachusetts, New Jersey, and Illinois. Mr. Palmese holds an MBA from New York University.

Beth Perry Sewell -- Managing Partner of Quantum Gas & Power Services, Ltd.

Beth Perry Sewell is the Managing Partner of Quantum Gas & Power Services, Ltd. (Quantum), a consultant and agent that has contracted with Applicant to provide the services listed in the Technical Services Agreement attached to Exhibit D-1. Ms. Sewell has more than 23 years' experience selling natural gas. At Quantum, Ms. Sewell is responsible for managing all aspects of the company's internal gas scheduling operations and staff; working with clients to ensure they receive maximum value for each dollar spent on natural gas scheduling operations; enhancing the scope and capabilities of Quantum to expand the range of energy management services offerings to the company's client base; and developing and increasing the company's natural gas scheduling client base. Before joining Quantum, Ms. Sewell was the President & CEO of Perry Gas Companies, Inc., where she transitioned sales downstream to burnertip

customers in de-regulated market areas while evolving the business away from wholesale trading and managed an operational staff in the transportation capacity area. Prior to that, Ms. Sewell worked in Supply and Marketing at Hesse Gas Company, where she successfully marketed gas to large utilities in the northeast, mid-continent, gulf coast, and western market regions under the women/minority diversity programs of the various utilities. Ms. Sewell has a BBA in Management and an MBA in Finance from Texas A & M University.

Mary L. Daly – Senior Energy Analyst for Quantum Gas & Power Services, Ltd.

Mary Daly serves as a Senior Energy Analyst for Applicant's consultant and agent, Quantum Gas & Power Services, Ltd. Ms. Daly has more than 6 years' experience handling all aspects of daily gas operations. In her role at Quantum, Ms. Daly is responsible for daily gas nominations; scheduling and maintaining gas to all customers; correspondence with multiple utility companies; and report and flow sheet generation and reimbursement; and is the on call and after hours emergency contact. Before joining Quantum, Ms. Daly served as Natural Gas Operations Manager for CAM Energy, where she was responsible for daily gas nominations; scheduling and maintaining gas to all customers; accounts receivable and accounts payable; correspondence with multiple utility companies; new customer enrollment; contract administration; credit analysis for new customers; report and flow sheet generation and disbursement; and was the on call after hours emergency contact. Ms. Daly has a degree in Business Administration from University of Phoenix.

Lauren S. Henderson – Gas Operations Analyst for Quantum Gas & Power Services, Ltd.

Lauren Henderson is a Gas Operations Analyst for Applicant's consultant and agent, Quantum Gas & Power Services, Ltd. She is responsible for executing client supply strategies; managing client storage assets; executing pipeline releases; scheduling and tracking natural gas deliveries to specific markets on behalf of clients; ensuring deliveries are uninterrupted on various US pipelines across different regions to achieve 100% flow of all gas deliveries; and reconciling and verifying the accuracy of all transportation and commodity invoices prior to presentation to clients for payment. Ms. Henderson has a dual BAA in Finance and Marketing from Texas A & M University.

EXHIBIT D-3

Key Technical Personnel

Robert Palmese -- Managing Member of Palmco Energy OH, LLC

Robert Palmese is the Managing Member of Applicant. Mr. Palmese has approximately 14 years' experience selling natural gas. He is in charge of the day-to-day operations of Applicant. His responsibilities with Applicant include company management of the purchase, scheduling, and retail sale of power, work he first began doing in 2002-3 for Applicant's New York power marketer affiliate. Mr. Palmese also works on the regulatory side of the business with Applicant's outside counsel and Applicant's internal compliance area. Mr. Palmese graduated from Georgetown University with a Bachelor of Science degree in Business Administration. Mr. Palmese's email address is RVPalmese@PalmcoEnergy.com. His telephone number is 718-851-6655 x-8.

Ronald Palmese -- Manager of Palmco Energy OH, LLC

Ronald Palmese has been working in the energy business for over 30 years. Mr. Palmese has more than 14 years' experience selling natural gas. He also has extensive experience managing the day-to-day operations of a retail oil heating company, where his responsibilities have included primary oversight of purchasing, customer service, financial matters, and other aspects of the business. Mr. Palmese has also been involved in the sales side of the electric supply and natural gas industry since 2002, working closely with Robert Palmese in managing the day-to-day retail operations, for the various Palmco company retail electric and natural gas affiliates located in New York, Ohio, Pennsylvania, Maryland, Massachusetts, New Jersey, and Illinois. Mr. Palmese holds an MBA from New York University. Mr. Palmese's email address is RonaldPalmese@ColumbiaUtilities.com. His telephone number is 718-851-6655 x8.

Joseph Gilbride -- Controller of Palmco Energy OH, LLC

Mr. Gilbride joined Palmco in 2012 as Controller of the various Palmco affiliate companies. In that capacity, Mr. Gilbride oversees Palmco's Accounting Department. He is also responsible for working with the companies' vendors, and handling energy purchasing, tax issues, and related financial matters. Prior to joining Palmco, Mr. Gilbride worked for Ernst & Young for 6 years as a Senior Audit Manager; 3 years as Controller at Backer and Spielvogel; 13 years with the Interpublic Group of Companies as Financial Officer and Vice President and Controller; 2 years with MDC and Partners as a Senior Vice President and Director of U.S Operations; 3 years with EuroRSCG New York as Director of Finance/Controller; 2 years with Saatchi and Saatchi as

PALMCO ENERGY OH, LLC

Financial Officer; and 3 years with Protegrity Corporation as Director of Finance/Controller. Mr. Gilbride has an MBA in Finance and a Bachelor of Science Degree from the Stern School of Business at NYU. He is also a New York Certified Public Accountant. His email address is Accounting@PalmcoEnergy.com. His telephone number is 718-851-6655 x8

Alan Klein – Assistant Controller

Mr. Klein joined Palmco in 2014 as Assistant Controller. Mr. Klein works closely with Mr. Gilbride in overseeing Palmco's Accounting Department. He is also responsible for working with the companies' vendors, and handles energy purchasing, tax matters, and related financial matters within the accounting department. Prior to joining Palmco, Mr. Klein spent 15 years working as Controller of a number of New York companies, including Vitalicious Inc. and Fope Jewelry Inc. Mr. Klein has a Bachelor of Business Administration from Bernard M. Baruch College, CUNY.

Laura Salvesen – Director of Compliance of Palmco Energy OH, LLC

Ms. Salvesen has been working in the Palmco businesses since 2005. She currently serves as the Director of Compliance for Applicant and its affiliates, working closely with Robert Palmese and outside counsel. Prior to becoming the Director of Compliance, she served as a Compliance Officer where she prepared regulatory filings, responded to customer complaints and assisted in other regulatory compliance-related matters. Before that, she served as Supervisor of the customer service department, handling customer questions and complaints. Applicant employs 10 persons in the compliance area, including the Director of Compliance, and 17 persons in the customer service area, including the Resolution Supervisor. Ms. Salvesen's email address is Complaine@PalmcoEnergy.com. Her telephone number is 718-851-6655 x8.

John Comegno -- Chief Accountant of Palmco Energy OH, LLC

Mr. Comegno joined the Palmco family in 2009 as Chief Accountant responsible for the companies' accounting group. Mr. Comegno assists Mr. Gilbride in working with the companies vendors, including energy purchasing, tax matters, and related financial matters within the accounting department. Prior to joining Palmco, Mr. Comegno spent 14 years working as an accountant for JP Morgan Chase, The New York State Housing Finance Agency, and Advance Management Services. Mr. Comegno has a Bachelor of Science in Business Administration in Accounting and Economics from Queens College and an MBA from St. John's University. His email address is Accounting@PalmcoEnergy.com. His telephone number is 718-851-6655 x8

Beth Perry Sewell – Managing Partner of Quantum Gas & Power Services, Ltd.

Beth Perry Sewell is the Managing Partner of Quantum Gas & Power Services, Ltd. (Quantum), a consultant and agent that has contracted with Applicant to provide the services listed in the Technical Services Agreement attached to Exhibit D-1. Ms. Sewell has more than 23 years' experience selling natural gas. At Quantum, Ms. Sewell is responsible for managing all aspects of the company's internal gas scheduling operations and staff; working with clients to ensure they receive maximum value for each dollar spent on natural gas scheduling operations; enhancing the scope and capabilities of Quantum to expand the range of energy management services offerings to the company's client base; and developing and increasing the company's natural gas scheduling client base. Before joining Quantum, Ms. Sewell was the President & CEO of Perry Gas Companies, Inc., where she transitioned sales downstream to burnertip customers in de-regulated market areas while evolving the business away from wholesale trading and managed an operational staff in the transportation capacity area. Prior to that, Ms. Sewell worked in Supply and Marketing at Hesse Gas Company, where she successfully marketed gas to large utilities in the northeast, mid-continent, gulf coast, and western market regions under the women/minority diversity programs of the various utilities. Ms. Sewell has a BBA in Management and an MBA in Finance from Texas A & M University.

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Lauren Henderson is a Gas Operations Analyst for Applicant's consultant and agent, Quantum Gas & Power Services, Ltd. She is responsible for executing client supply

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strategies; managing client storage assets; executing pipeline releases; scheduling and tracking natural gas deliveries to specific markets on behalf of clients; ensuring deliveries are uninterrupted on various US pipelines across different regions to achieve 100% flow of all gas deliveries; and reconciling and verifying the accuracy of all transportation and commodity invoices prior to presentation to clients for payment. Ms. Henderson has a dual BAA in Finance and Marketing from Texas A & M University.