

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**REPLY BRIEF**  
SUBMITTED ON BEHALF OF THE STAFF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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**I. The Stipulation Meets the Three-Part Test for Reasonableness.**

The Stipulation presented for the Commission’s consideration is a settlement that includes, as signatory parties, PALMco and Staff. As required by law, the Stipulation meets the necessary criteria for the Commission’s approval of stipulations. It is a product of serious bargaining among capable, knowledgeable parties; the Stipulation benefits ratepayers and is in the public interest; and the Stipulation does not violate any important regulatory principle or practice.

The Stipulation addresses the issues discovered during Staff’s investigation into hundreds of consumer complaints about PALMco’s operations as a CRES and CRNGS provider in Ohio. The Stipulation acknowledges that PALMco will continue to rerate its customers. PALMco’s customers will be transferred in good faith to unaffiliated third-party suppliers and be notified of their opportunity to switch suppliers with no early

termination fee. PALMco will provide the state of Ohio with up to a \$750,000 forfeiture. Finally, the Stipulation also bars PALMco and its executives from operating as a CRES or CRNGS provider in Ohio.

The Stipulation between PALMco and the Staff provides a reasonable outcome for PALMco's customers. OCC argues that the Stipulation is not in the public interest and violates important regulatory principles. However, as explained in this brief, the Stipulation is reasonable and meets the Commission's three-part test for approval of stipulations. It should be adopted by this Commission.

**A. The Stipulation is a Product of Serious Bargaining among Capable, Knowledgeable Parties.**

Though the OCC argued in testimony that the settlement was not a product of serious bargaining among capable parties, the facts of the case demonstrate that the terms of the settlement were discussed and negotiated by capable parties during many meetings. OCC's witness Adkins claimed that OCC was not included in settlement meetings and implied that OCC was left out of the negotiations.<sup>1</sup> However, as shown at hearing, OCC was included in numerous meetings and was present and informed of the negotiations. At the hearing, PALMco presented many emails to OCC's witness Adkins. These emails regarding PALMco's negotiations included OCC in all correspondence and communications. Mr. Adkins may not have been included in every single email, but it is undisputed that OCC counsel was included. All of the parties to this proceeding were

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<sup>1</sup> Dir. Test. Adkins at 11

present at or informed of negotiations that resulted in the Stipulation.<sup>2</sup> Evidence in the hearing demonstrates that OCC was noticed and participated in many settlement emails, discussions, and meetings.<sup>3</sup>

**B. The Stipulation, as a Package, Benefits Ratepayers and the Public Interest.**

The Stipulation requires that PALMco leave the state of Ohio and no longer function as a CRES or CRNGS for five years. PALMco will not renew its Ohio certifications to provide CRES or CRNGS in Ohio. These certifications expire respectively, in March and February of 2020. By removing PALMco from Ohio, there is no risk that PALMco will harm customers in the future. This is a definite benefit brought about by the terms of the Stipulation. OCC fails to acknowledge this public benefit in testimony or briefs, but this benefit cannot be ignored.

OCC complains that the settlement does not benefit the public because it leaves open the possibility that customers harmed by PALMco may not receive a rerate if PALMco does not receive enough money from selling its business in Ohio. OCC ignores the fact that PALMco has already, voluntarily, without a Commission order, rerated over \$400,000.00 to customers.<sup>4</sup> PALMco was not ordered by the Commission to rerate these customers, but because of the Staff's investigation into the practices of the company, PALMco decided to rerate customers before the Commission ordered a rerate. In

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<sup>2</sup> Tr. II at 300 – 310.

<sup>3</sup> See Tr. II. at 300 – 310.

<sup>4</sup> Staff Ex. 1 at 5 – 6.

addition, PALMco has every motivation to sell its business for top dollar, as opposed to, as OCC states, “cut its losses in Ohio and sell its customer contracts for the first offer that comes along for a nominal amount.”<sup>5</sup> The opposite motivation should occur. After PALMco rerates customers, which is expected to cost \$800,000 it then can keep 50% of any amount above the rerate amount. Providing more incentive is the fact that after a \$750,000 forfeiture is paid to the state of Ohio, PALMco keeps 100% of that profit. This sale will benefit customers because those harmed will be rerated through the proceeds of the sale of business.

OCC argues that PALMco may not be required to pay a forfeiture because it may not sell its business for enough money. Thus PALMco “could pay little or no forfeiture.”<sup>6</sup> As stated above and also in OCC’s brief, “PALMco might even profit from”<sup>7</sup> the terms of this Stipulation. As OCC states in its brief, “[i]f the sale amount of its customer contracts exceeds the initial \$800,000 reserved for restitution to customers \*\*\* PALMco could gain proceeds from the sale and potentially profit[.]”<sup>8</sup> As recognized by OCC, PALMco may receive a profit and if PALMco does, then both of OCC’s concerns will be taken care of – customers will be rerated to the full extent and PALMco will pay a forfeiture of \$750,000.

Another complaint lodged by OCC is that the Commission should include a requirement that PALMco’s customers receive notice that PALMco is exiting the Ohio

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<sup>5</sup> Adkins Dir. Test. At 18.

<sup>6</sup> Adkins Dir. Test. at 28.

<sup>7</sup> OCC Brief at 30.

<sup>8</sup> OCC Brief at 30.

market.<sup>9</sup> OCC fails to recognize an important term of the Stipulation that requires PALMco to notify customers of the assignment to a new supplier and this notice shall tell customers that they are under no obligation to remain with the new supplier. Furthermore, the Stipulation mandates that the notice inform the customers that they can terminate their contracts at no cost and either return to the standard service offer or enroll with another supplier of their choosing.<sup>10</sup> OCC also believes that the customer should be able to “weigh their options to stay with the new marketer that PALMco has chosen or return to their utility’s SSO service.”<sup>11</sup> The terms of the agreement provide that if the Commission approves the Stipulation, customers will receive exactly what OCC discusses in its brief – notice that PALMco is leaving and that the customer can stay with the new provider, enroll with a CRES or CRNGS provider of their choice, or return to the SSO.

The Stipulation benefits the public by rerating complaining and noncomplaining customers. The company will not renew its CRES or CRNGS certificates, is leaving the state of Ohio, and paying a penalty that may amount to \$750,000. Staff recommends that the Commission find that the Stipulation benefits the public and approve the Stipulation.

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<sup>9</sup> OCC Brief at 33.

<sup>10</sup> Joint Ex. 1 at 5.

<sup>11</sup> OCC Brief at 33.

**C. The Stipulation Promotes Important Regulatory Principles and Practices.**

OCC argues two opposing positions for finding that the Stipulation violates a regulatory principle. First, OCC claims that because PALMco might profit from the sale of its customer contracts, this violates a regulatory principle. Secondly, OCC claims that if the sale does not provide enough funds, there is the possibility that PALMco may only pay a partial forfeiture.<sup>12</sup> But OCC cites no precedent nor provides any rules or regulations that would be violated if the Commission were to approve this Stipulation. That is because there are no important regulatory principles or practices that would be violated if the Stipulation were adopted. If there were some case precedent of a regulatory principle that would be broken, then OCC could have cited that caselaw, rule or law and they did not.

The Stipulation provides that PALMco will continue to provide customers with restitution, and the Stipulation removes the Company from the Ohio utility marketplace. PALMco has already taken steps to ensure that its consumers are made whole by refunding approximately \$385,000 to customers enrolled from December 1, 2018 to April 15, 2019 and additional refunds for those customers who had filed complaints with the Commission amounting to approximately \$55,000.<sup>13</sup> By selling the customer contracts, PALMco will exit Ohio faster than if it otherwise would. PALMco will not increase its customer base any further, preventing any new individuals being harmed by the

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<sup>12</sup> OCC Brief at 31.

<sup>13</sup> Staff Ex. 1 at 5.

Company's practices.<sup>14</sup> Further, PALMco's owners are barred from working in Ohio for at least five years from the adoption of the settlement and PALMco will not renew its current certifications. This settlement ensures that PALMco will not harm more customers in the future. OCC's arguments should be rejected.

## **II. The Stipulation is a Reasonable Compromise that Benefits Ohioans and the Commission Should Adopt the Stipulation.**

This Stipulation and Recommendation is the product of an open process in which all parties were represented by able counsel and technical experts experienced in regulatory matters before the Commission, and the decisions made were based upon thorough analysis of complex issues.<sup>15</sup> The Stipulation stops PALMco from functioning as a CRES or CRNGS entity in the state, removing the potential for future customer harm.<sup>16</sup> The Stipulation also rerates customers for any harm they suffered. The Stipulation does not violate any important regulatory principle or practice and complies with all relevant and important regulatory principles and practices.<sup>17</sup> The terms of the Stipulation represent a compromise of the Signatory Parties.<sup>18</sup> Staff recommends that the Commission adopt the Stipulation.

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<sup>14</sup> Staff Ex. 1 at 5.

<sup>15</sup> Staff Ex. 1 (Scarberry Direct) at 3-4.

<sup>16</sup> Staff Ex. 1 at 4.

<sup>17</sup> Staff Ex. 1 at 7.

<sup>18</sup> Staff Ex. 1 at 7.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **Reply Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio has been served upon the below-named counsel via electronic mail, this 17<sup>th</sup> day of December, 2019.

*/s/ Jodi J. Bair*

**Jodi J. Bair**

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