

**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	)	Case No. 19-0957-GE-COI
Compliance with the Ohio Administrative	)	
Code and Potential Remedial Actions for	)	
Non-Compliance.	)	

**MEMORANDUM CONTRA OFFICE OF THE OHIO CONSUMERS' COUNSEL'S  
APPLICATION FOR REHEARING**

OCC continues to tilt at windmills. Its application for rehearing should be denied.

The January 29, 2020 Opinion and Order finds that the Joint Stipulation is just and reasonable. Why? Because the Stipulation is more generous to consumers than recommended in the Staff Report. The settlement was structured to also exact a penalty of up to \$750,000, as well as provide an additional \$800,000 in refunds, *provided* PALMco be given the opportunity to sell its business. This last condition was necessary because PALMco cannot will money into existence. But thanks to OCC, a sale never happened. As a consequence, neither the enhanced amount of restitution nor the forfeiture amount were paid. Any blame for the Stipulation not "maximizing consumer benefits" lies squarely at the feet of OCC.

An application for rehearing "must set forth [] the specific ground or grounds upon which the applicant considers the commission order to be unreasonable or unlawful."<sup>1</sup> The Order

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<sup>1</sup> Ohio Admin. Code 4901-1-35.

approving the Stipulation is neither. In the end, OCC does not and cannot dispute that the Stipulation offers greater benefits to more consumers than recommended in the Staff Report.

OCC claims the Commission “erred by [] shifting the burden of proof in this proceeding to OCC while simultaneously restricting and limiting OCC’s ability to prove the violations.”<sup>2</sup> Suppose OCC had proven 1 or 10 or 100 violations. Then what? OCC has never explained why “proof of violations” is in any way relevant to whether the Stipulation is just and reasonable. The Staff Report alleged violations and those allegations were settled. Even if OCC had “proven” violations, OCC has not explained why the remedies offered by the Stipulation are inadequate. An “adequate” remedy need not be the most generous or advantageous remedy possible.

In any event, the Commission never shifted the burden of proof. Initially, Staff bore the burden of proving the allegations in the Staff Report. Once a stipulation was reached, Staff and PALMco assumed the burden of proving that the settlement is just and reasonable. The Commission found that Staff and PALMco met their burden. The Commission did not “shift the burden of proof” by rejecting OCC’s arguments. The Commission weighed the evidence and determined that Staff and PALMco presented better arguments. The Commission was right.

Re-opening this proceeding for rehearing would benefit no one. PALMco has paid every cent of restitution owed under the Stipulation. Its certificates have expired and customers have either chosen other marketers or defaulted to the utility. PALMco cannot reenter the Ohio market for at least five years. What’s done is done. It is time for OCC to move on.

The Commission should deny rehearing and close this case.

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<sup>2</sup> OCC App. for Rehearing at 7 (Feb. 28, 2020).

Date: March 9, 2020

Respectfully submitted,

/s/ Mark A. Whitt

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by electronic mail, to the following on this 9<sup>th</sup> day of March, 2020:

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/s/ Lucas A. Fykes \_\_\_\_\_  
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Summary: Memorandum Contra The Office of Ohio Consumers' Counsel's Application for Rehearing electronically filed by Mr. Lucas A Fykes on behalf of PALMco Power OH, LLC, d/b/a PALMco Energy and PALMco Energy OH, LLC d/b/a PALMco Energy