

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s	)	
Investigation into PALMco Power	)	Case No. 19-2153-GE-COI
OH, LLC dba Indra Energy and	)	
PALMco Energy OH, LLC dba Indra	)	
Energy’s Compliance with the Ohio	)	
Administrative Code and Potential	)	
Remedial Actions for Non-	)	
Compliance.	)	

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**THIRD MOTION TO COMPEL DISCOVERY  
AND RENEWED MOTION FOR SANCTIONS  
BY  
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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This case concerns the Public Utilities Commission of Ohio’s (“PUCO”) *second* investigation into PALMco’s<sup>1</sup> unconscionable and deceptive marketing practices against Ohio consumers. From the beginning of this case almost a year ago, PALMco has done everything it can to prevent the Office of the Ohio Consumers’ Counsel (“OCC”), the statutory legal representative of the Ohio residential consumers that PALMco abused, from participating in the proceeding and obtaining through discovery the information necessary to prepare a case for consumer protection. Despite repeated directives for PALMco to collaborate with OCC and exchange discovery pursuant to Ohio Adm.Code 4901-1-16, PALMco continuous to refuse to respond fully to OCC’s discovery requests and provide relevant documents through discovery.<sup>2</sup> Left with no other option but to seek, again, the PUCO’s intervention into the on-going

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<sup>1</sup> “PALMco” refers to PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy.

<sup>2</sup> Entry at ¶ 19 (Apr. 6, 2020); Entry at ¶ 21 (Aug. 6, 2020).

discovery dispute, OCC, on behalf of residential utility consumers, hereby moves the PUCO for another order compelling PALMco to respond sufficiently to OCC's discovery requests.

Throughout this case, PALMco has attempted to invoke any excuse it can to avoid producing discovery. The Attorney Examiners in this case have repeatedly directed PALMco to comply with the discovery rules. But PALMco has objected to and/or supplied incomplete and insufficient discovery responses. For the reasons set forth in the attached Memorandum in Support, OCC's Third Motion to Compel and Renewed Motion for Sanctions should be granted.

Respectfully submitted,

BRUCE WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

*/s/ Kimberly W. Bojko*  
Kimberly W. Bojko (0069402)  
Carpenter Lipps & Leland LLP  
280 North High Street, Suite 1300  
Columbus, Ohio 43215  
Telephone: (614) 365-4100  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  
(willing to accept service by e-mail)

*Special Counsel for the  
Office of the Ohio Consumers' Counsel*

Angela D. O'Brien (0097579)  
Counsel of Record  
Christopher Healey (0086027)  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
65 East State Street, 7<sup>th</sup> Floor  
Columbus, Ohio 43215-3485  
Telephone [O'Brien]: (614) 466-9531  
Telephone [Healey]: (614) 466-9571  
[angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)  
[christopher.healey@occ.ohio.gov](mailto:christopher.healey@occ.ohio.gov)  
(willing to accept service by e-mail)

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Administrative Code and Potential	)	
Remedial Actions for Non-	)	
Compliance.	)	

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

This case began in late 2019, when the PUCO Staff requested to open a *second* investigation into PALMco’s conduct. Despite already finding itself at the center of an ongoing PUCO investigation regarding “unfair, misleading, deceptive, and unconscionable marketing, solicitation, and sales acts and practices,”<sup>3</sup> PALMco continued to “charge unconscionable rates.”<sup>4</sup>

In order to protect Ohio consumers from such conduct, OCC moved to intervene in this case on December 27, 2019, and subsequently served its first set of discovery to PALMco on January 14, 2020. PALMco failed to respond to this discovery request. On February 14, 2020, OCC filed a motion to compel responses to its first set of discovery, and served PALMco with its second set of discovery. Again, PALMco failed to respond.

On March 9, 2020, OCC contacted PALMco’s counsel via e-mail, and inquired whether PALMco would respond. After PALMco again made it clear that it would not respond, OCC

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<sup>3</sup> See Case No. 19-957, Entry (April 17, 2019) at ¶ 9.

<sup>4</sup> Staff Letter at 2 (Dec. 16, 2019).

filed its Second Motion to Compel responses to discovery on March 17, 2020. The Attorney Examiner granted both motions to compel, stating “OCC’s motions to compel discovery dated February 14, 2020, and March 17, 2020, should also be granted and PALMco should collaborate with OCC to exchange discovery pursuant to Ohio Adm.Code 4901-1-16.”<sup>5</sup> Yet again, PALMco failed to respond, prompting OCC to file a Motion for Sanctions with the PUCO.<sup>6</sup> As discussed further below, the May 7, 2020 Motion for Sanctions is still pending.

As explained in the PUCO’s August 6, 2020 Entry, a telephonic prehearing conference was held on July 23, 2020, wherein counsel for OCC indicated that OCC had still not received the discovery at issue in the February 14, 2020, and March 17, 2020 Motions to Compel and the May 7, 2020 Motion for Sanctions from PALMco.<sup>7</sup> During the prehearing conference, the parties agreed to provide the Attorney Examiners with an update with regard to the exchange of discovery on July 31, 2020.<sup>8</sup> In an e-mail dated July 27, 2020, the Attorney Examiners asked PALMco to report on the status of its compliance with discovery by end of business on Friday, July 31, 2020. After the close of business on Friday, July 31, 2020, PALMco served incomplete and insufficient responses to OCC’s discovery requests, along with baseless objections. Despite failing to fully comply as directed, PALMco’s subsequent conduct made it clear it had no further intentions of complying.

On July 31, 2020, counsel for PALMco represented to the Attorney Examiners that the Company had served documents, and responses, and objections for the outstanding discovery sought by OCC, but noted that, due to the COVID-19 pandemic, it does not have access to its

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<sup>5</sup> Entry (April 6, 2020) at ¶¶ 19, 23.

<sup>6</sup> Motion for Sanctions and Forfeitures (May 7, 2020).

<sup>7</sup> Entry (August 6, 2020) at ¶ 16.

<sup>8</sup> *Id.*

physical office building in Brooklyn, New York. PALMco assured the Attorney Examiners that it would supplement the discovery responses to the extent relevant, non-privileged, and otherwise non-objectionable documents are obtained.<sup>9</sup>

Furthermore, on August 4, 2020, PALMco claimed “there is no reason for the parties to expend additional resources on discovery” while waiting for the Supreme Court to rule on a potential stay in the case.<sup>10</sup> Just two days later, the Attorney Examiner refuted PALMco’s assertion, noting that the Supreme Court had not, in fact, issued any stay in this case.<sup>11</sup> Once again, the Attorney Examiner directed PALMco to comply with discovery.<sup>12</sup> The Attorney Examiner deferred a ruling on OCC’s Motion for Sanctions, but stated “that failure to comply with the April 6, 2020 Entry regarding discovery” would subject PALMco “to the provisions of Ohio Adm.Code 4901-1-23(F).” Shortly thereafter, the Supreme Court granted the PUCO’s motion to dismiss, making it very clear no stay would be issued.<sup>13</sup>

To date, PALMco has not adequately responded to all of OCC’s discovery, has failed to supply complete responses to OCC’s interrogatories, and has failed to produce relevant documents located in its Brooklyn office as promised. Because PALMco refuses to respond to discovery or resolve the dispute with OCC regarding discovery in this case, it is necessary for OCC to file this Third Motion to Compel PALMco to respond to OCC’s first and second sets of discovery.

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<sup>9</sup> *Id.* at ¶ 17.

<sup>10</sup> Motion to Stay Proceedings at 1 (August 4, 2020).

<sup>11</sup> Entry (August 6, 2020) at ¶ 21.

<sup>12</sup> *Id.*

<sup>13</sup> See 08/19/2020 Case Announcements, 2020-Ohio-4053.

## II. ARGUMENT

### A. The Motion to Compel should be granted and OCC should be afforded ample rights to discovery.

R.C. 4903.082 provides “[a]ll parties and intervenors” with “ample rights of discovery” and directs the PUCO to ensure that parties are allowed “full and reasonable discovery” under its rules. Discovery rights have been liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.<sup>14</sup>

Ohio Adm. Code 4901-1-23 authorizes the PUCO to compel a party to respond to discovery requests when the party has failed to do so upon a motion to compel of the requesting party. OCC’s present filing meets the requirements of a motion to compel outlined in Ohio Adm. Code 4901-1-23(C).

A motion to compel is to be accompanied by a memorandum in support setting forth the basis of the motion and authorities relied upon, a brief explanation of how the information sought is relevant, and responses to objections raised by the party from whom the discovery is sought.<sup>15</sup> Copies of the discovery requests and the responses are to be attached.<sup>16</sup> Finally, Ohio Adm. Code 4901-1-23(C) also requires the party seeking discovery to file an affidavit explaining how it has exhausted all other reasonable means of resolving the differences with the party from whom the discovery is sought.

OCC has detailed in the attached affidavit, consistent with Ohio Adm. Code 4901-1-23(C)(3), the reasonable efforts which it undertook to resolve differences between it and

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<sup>14</sup> *Ohio Consumers’ Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, ¶83, citing to *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661; *Disciplinary Counsel v. O’Neill* (1996), 75 Ohio St. 3d 1479.

<sup>15</sup> See Ohio Adm. Code 4901-1-23(C)(1).

<sup>16</sup> Ohio Adm. Code 4901-1-23(C)(2).

PALMco.<sup>17</sup> At this point, it is clear PALMco will not respond sufficiently and completely to OCC's valid discovery requests without being compelled to do so.

**B. The information OCC seeks from PALMco is relevant and reasonably calculated to lead to the discovery of admissible evidence.**

OCC's first and second sets of discovery requests are reasonably calculated to lead to the discovery of admissible evidence regarding the issues in this case.<sup>18</sup> Ohio law provides for a broad scope of discovery in PUCO proceedings. The Ohio Administrative Code provides that "any party to a commission proceeding may obtain discovery on any matter, not privileged, which is relevant to the subject matter of the proceeding."<sup>19</sup> It likewise provides that "it is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."<sup>20</sup>

Here, all of the information that OCC requests is within the scope of the investigation. OCC's first set of discovery seeks information regarding variable rates charged from April 2019 until January 14, 2020; a count of customers served under fixed and variable rates; a list of the fixed rates PALMco charged; information regarding PALMco's methods of determining rates; and a list of customers who were renewed from a fixed rate to a variable rate.<sup>21</sup> PALMco objected to these requests, stating that information before August 1, 2019, and after December 10, 2019 is outside the scope of the investigation; that fixed rate contracts are not relevant; that non-residential rates are not relevant, and that PALMco could not produce certain documents as

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<sup>17</sup> See Exhibit C, Affidavit of Kimberly W. Bojko.

<sup>18</sup> Ohio Adm. Code 4901-1-16(B).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> See Exhibit A, PALMco's First Responses and Objections to OCC's First and Second Discovery Requests at 4-20.

it could not enter its offices due to COVID-19<sup>22</sup> or PALMco has not yet received authorization to disclose customer information.<sup>23</sup> Contrary to PALMco's claims, information predating August 2019 and postdating December 2019 is very relevant to the proceeding as it will help demonstrate PALMco's "pattern of high customer charges that may be unconscionable and in violation of the Commission's regulations,"<sup>24</sup> and the extent of the violations. The fact that the PUCO Staff did not select a longer period of review or did not include complaints received prior to or after the selected period is not evidence that PALMco did not commit additional violations during this period, especially given the ongoing and repeated nature of PALMco's alleged violations. But, more importantly, OCC will not know until it is able to review the information. That is why discovery rights have been liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.<sup>25</sup> The information requested is reasonably calculated to lead to the discovery of admissible evidence, and therefore, PALMco is required to produce it.

OCC's second set of discovery seeks specific information related to the rates that PALMco charged its electric and natural gas customers, and PALMco's use of introductory or "teaser" rates.<sup>26</sup> PALMco objected to this request, again stating that information before August 1, 2019, and after December 10, 2019 is outside the scope of the investigation; that fixed rate contracts are not relevant; that non-residential rates are not relevant, and that PALMco could not

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<sup>22</sup> *Id.*

<sup>23</sup> Exhibit B, PALMco's Supplemental Responses and Objections to OCC's First and Second Sets of Discovery Requests at 5, 7, 9-10, 12, 14, 16, 18, 20, 22 (specifically regarding OCC's first set of discovery: in response to OCC INT-01-003, OCC INT-01-005, OCC INT-01-006, OCC INT-01-012, OCC INT-01-013, and OCC RPD-01-006).

<sup>24</sup> Entry at ¶ 13 (Mar. 11, 2020).

<sup>25</sup> *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, ¶83, citing to *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661; *Disciplinary Counsel v. O'Neill* (1996), 75 Ohio St. 3d 1479.

<sup>26</sup> See Exhibit A, PALMco's First Responses and Objections to OCC's First and Second Sets of Discovery Requests at 21-29.

produce certain documents as it could not enter its offices due to COVID-19<sup>27</sup> or PALMco has not yet received authorization to disclose customer information.<sup>28</sup> But, contrary to PALMco's claims, information on fixed rates will be used, through comparison, to demonstrate the unconscionability of PALMco's variable rates, as well as the misleading sales tactics PALMco used in order to enroll customers under variable rate plans. Again, the information requested is reasonably calculated to lead to the discovery of admissible evidence, and therefore, PALMco is required to produce it.

**C. PALMco's objections are without basis.**

Throughout this proceeding, PALMco has attempted to raise a variety of tenuous arguments as to why it should not have to comply with OCC's lawful and reasonable discovery requests. The Attorney Examiners in this case have repeatedly rejected PALMco's arguments and directed PALMco to comply with discovery. However, in its July 31, 2020 discovery responses, PALMco provided deficient answers and baseless objections instead of responsive answers. Ohio law treats evasive or incomplete discovery answers to discovery requests as a failure to answer.<sup>29</sup> Therefore, PALMco's nominal replies to OCC's lawful discovery requests constitutes a violation of both Ohio law and PUCO directives in this case. PALMco's replies are deficient in primarily four respects.

First, PALMco unreasonably provided a variety of incomplete or incorrect data and records in response to several of OCC's discovery requests. In response to Interrogatory Nos. 3, 5, and 6 of OCC's First Set of Discovery and Interrogatory Nos. 1 and 2 of OCC's Second Set of

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<sup>27</sup> *Id.* at 21.

<sup>28</sup> Exhibit B, PALMco's Supplemental Responses and Objections to OCC's First and Second Sets of Discovery Requests at 5, 7, 9-10, 12, 14, 16, 18, 20, 22 (specifically regarding OCC's second set of discovery: in response to OCC INT-02-001, OCC INT-02-002, OCC INT-02-003, and OCC INT-02-005).

<sup>29</sup> Ohio Adm. Code 4901-1-23(B).

Discovery, PALMco furnished data and records covering different date ranges than those requested by OCC. For example, where OCC requested variable rates covering the period of April 2019 until January 2020, PALMco provided variable rates from August 2019 until December 2019;<sup>30</sup> where OCC requested a list of customers served as of December 31, 2019, PALMco provided a list of customers served as of February 7, 2020—at the very end of its CRES certification.<sup>31</sup> PALMco falsely claims that the information OCC requests falls outside the scope of the investigation.

Although PALMco may have furnished some data in response to OCC’s requests, PALMco clearly did not respond to OCC’s actual requests and/or did not respond completely. Instead of providing the information OCC sought in its discovery requests, PALMco provided similar information over incomplete or incorrect time frames.<sup>32</sup> By furnishing such incomplete and evasive responses, PALMco has failed to respond to these interrogatories pursuant to Ohio Adm. Code 4901-1-23(B) and the Attorney Examiner’s repeated directives.<sup>33</sup> At no point in this case has the PUCO or Attorney Examiner limited the scope of the case to the dates that PALMco claims.<sup>34</sup> Instead, those dates merely reflect the dates for which Staff received specific complaints against PALMco. Additionally, absence of evidence is not evidence of absence, and given the “pattern of high customer charges that may be unconscionable and in violation of the

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<sup>30</sup> See OCC-INT-1-003.

<sup>31</sup> See OCC-INT-1-005, OCC-INT-1-006.

<sup>32</sup> See Exhibit A, PALMco’s First Responses and Objections to OCC’s First and Second Sets of Discovery Requests at 6-37 (specifically, in response to OCC INT-01-004, OCC INT-01-005, OCC INT-01-006, OCC INT-01-007, OCC INT-01-008, OCC INT-01-013, OCC INT-01-014, OCC INT-02-001, OCC INT-02-002, OCC INT-02-003, OCC INT-02-005, OCC RPD-01-005, OCC RPD-01-007).

<sup>33</sup> See Entry (April 6, 2020) at ¶¶ 19, 23; (August 6, 2020) Entry at ¶ 21.

<sup>34</sup> See generally, Entry (Mar. 11, 2020); Entry (Mar. 9, 2020); Staff Letter (Dec. 16, 2019).

Commission's regulations,"<sup>35</sup> it is reasonably likely that discovery of further information beyond those dates will lead to discoverable evidence concerning additional violations by PALMco.

Second, PALMco refuses to provide relevant information by falsely claiming the information is beyond the scope of discovery.<sup>36</sup> However, the Ohio Administrative Code provides for a broad scope of discovery extending to any unprivileged matter relevant to the subject matter of the proceeding.<sup>37</sup> Moreover, Ohio Adm. Code 4901-1-16 enables the discovery of information beyond the immediate issue when that information is relevant to evaluating that issue.

In *Ohio Consumers' Counsel v. Pub. Util. Comm.*, the Ohio Supreme Court ruled that information regarding undisclosed side agreements was relevant to addressing whether a written stipulation was the product of serious bargaining. 111 Ohio St.3d 300, 2006-Ohio-5789, ¶¶ 77-86. Appellees argued that the information was irrelevant, because the case concerned the reasonableness of the written stipulation, rather than any unwritten side agreements. *Id.* at ¶ 86. The Court disagreed, noting that even though only the written stipulation faced review for reasonableness, any unwritten agreements could demonstrate unfair advantage, and therefore a lack of serious bargaining in the written agreement. *Id.* at ¶¶ 84-86. The Court found this information discoverable. *Id.*

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<sup>35</sup> Entry (Mar. 11, 2020) at ¶ 13.

<sup>36</sup> See Exhibit A, PALMco's First Responses and Objections to OCC's First and Second Sets of Discovery Requests at 4-30 (specifically, in response to OCC INT-01-003, OCC INT-01-004, OCC INT-01-005, OCC INT-01-006, OCC INT-01-007, OCC INT-01-014, OCC INT-02-001, OCC INT-02-002, OCC INT-02-003, OCC INT-02-005, OCC INT-02-006, OCC RPD-01-001).

<sup>37</sup> *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, ¶83, citing to *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661; *Disciplinary Counsel v. O'Neill* (1996), 75 Ohio St. 3d 1479.

The present case raises a similar issue. PALMco is correct in noting that its variable rates, rather than its fixed rates, face review for unconscionability.<sup>38</sup> PALMco is incorrect, however, in asserting that its fixed rates are therefore irrelevant. Much like side agreements are relevant for context in determining the fairness of a stipulation, other rates are relevant for context in determining the fairness of a variable rate. Information about PALMco's fixed rates will likely help demonstrate just how unconscionable PALMco's variable rates were. Additionally, PALMco renewed fixed-rate customers at significantly higher variable rates. The direct comparison of variable and fixed rates will demonstrate the amount or level of harm PALMco's actions caused consumers.

Third, PALMco has refused to provide certain responsive information, and has repeatedly blamed its failure to do so on the COVID-19 pandemic.<sup>39</sup> However, PALMco's failure to provide responsive information started long before and has continued long after COVID-19 presented any practical barrier to discovery. PALMco merely is using COVID-19 as an excuse for its own stalling. It should not be permitted to do so.

PALMco's responses to OCC's Second Discovery Requests were due March 5, 2020, more than two weeks before New York City entered lockdown.<sup>40</sup> PALMco cannot perpetually blame the pandemic for its own willing failure to provide responsive documents and answers for more than two weeks preceding any relevant health orders. At any rate, to the point any

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<sup>38</sup> See Staff Letter (Dec. 16, 2019) at 3 (“Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities’ standard offer and other variable rates available to customers.”).

<sup>39</sup> See Exhibit A, PALMco's First Responses and Objections to OCC's First and Second Sets of Discovery Requests at 17, 21-23, 25, 28, 35 (In response to OCC INT-01-013, OCC INT-02-001, OCC INT-02-002, OCC INT-02-005, OCC RPD-01-006); see also Exhibit B, PALMco's Supplemental Responses and Objections to OCC's First and Second Sets of Discovery Requests at 11, 13-15, 18, 20-21.

<sup>40</sup> See Paulina Firozi and Antonia Noori Farzan, *New York City's Shutdown Reduced Spread of Coronavirus by 70 Percent, Study Finds*, WASH POST., Sept. 15, 2020, <https://www.washingtonpost.com/health/2020/09/15/virus-nyclockdown/> (“The city began closing public schools the week of March 15 and imposed stay-at-home orders for everyone except essential workers the following week.”).

emergency might have previously made discovery difficult, that emergency has now passed. New York City began reopening on June 8, 2020, with all offices permitted to open by June 22, 2020, more than three months ago.<sup>41</sup> Currently, New York City is in Phase 4 of reopening, including gyms, bars, and hair salons.<sup>42</sup> A trip to the office in New York to pick up files is no more dangerous than a trip to the grocery store in Ohio.

Lastly, PALMco has outright refused to respond to certain interrogatories and requests for production of documents due to Ohio Adm. Code 4901:1-21-10 and 4901:1-29-02.<sup>43</sup> Throughout its supplemental discovery responses, PALMco merely states it “will supplement its answer...after the Attorney Examiner issues an order waiving the rules governing disclosure of customer information.”<sup>44</sup> But, the PUCO rules cited by PALMco only prevent a CRNGS or CRES from disclosing customer account numbers or social security numbers without a PUCO order.<sup>45</sup> The Attorney Examiners and the PUCO have issued multiple orders in this case, directing PALMco to respond to discovery. The PUCO opened this investigation in December 2019, and the Attorney Examiner has repeatedly directed PALMco to comply with OCC’s discovery requests in Entries dated August 4, 2020 and April 6, 2020.<sup>46</sup> The Attorney Examiners

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<sup>41</sup> Michael Gold and Matt Stevens, *What Restrictions on Reopening Remain in New York?*, N.Y. TIMES, Sept. 14, 2020, <https://www.nytimes.com/article/new-york-phase-reopening.html>.

<sup>42</sup> *Id.*

<sup>43</sup> *See* Motion for Waiver of Rules Governing Disclosure of Customer Information (July 31, 2020).

<sup>44</sup> Exhibit B, PALMco’s Supplemental Responses and Objections to OCC’s First and Second Sets of Discovery Requests at 5, 7, 9-10, 12, 14, 16, 18, 20, 22 (specifically, in response to OCC INT-01-003, OCC INT-01-005, OCC INT-01-006, OCC INT-01-012, OCC INT-01-013, OCC INT-02-001, OCC INT-02-002, OCC INT-02-003, OCC INT-02-005, OCC RPD-01-006).

<sup>45</sup> Ohio Adm. Code 4901:1-21-10(B) (“CRES providers shall not disclose a customer’s account number without ... appropriate order.”); Ohio Adm. Code 4901:1-29-09(A)(1) (A CRNGS shall “not disclose or use a customer’s account number or any customer information...or use a customer’s social security number for any purpose other than a to perform a credit check, without...a court or commission order.”).

<sup>46</sup> Entry (Aug. 6, 2020) at ¶ 21 (“[D]iscovery should proceed pursuant to Ohio Adm. Code 4901-1-16 unless a stay is granted in the future. Though a ruling on OCC’s May 7, 2020 motion for sanctions continues to be deferred, the attorney examiner also notes that failure to comply with the April 6, 2020 Entry regarding discovery will subject any party to the provisions of Ohio Adm. Code 4901-1-23(F).”); Entry (April 6, 2020) at ¶ 19 (“Consequently, OCC’s

were aware of the contents of OCC's discovery requests when it ordered PALMco to respond in April, and was aware of PALMco's objections when it again ordered PALMco to respond in August. It is clear that the PUCO has authorized disclosure.

PALMco's Motion for Waiver is nothing more than a delay tactic. PALMco waited for eight months, two motions to compel, and an Entry ordering it to respond before it even decided to file its Motion for Waiver. PALMco never filed a similar motion in its previous Commission Ordered Investigation.<sup>47</sup> Again, it is clear that the PCUO has ordered disclosure, and PALMco's failure to do so is completely self-serving.

Nonetheless, to any degree that the PUCO has not authorized disclosure and a granting of the motion is necessary, PALMco is still able to respond to the remainder of the discovery requests. Ohio Adm. Code 4901:1-21-10 and 4901:1-29-02 only prohibit disclosure of a narrow class of information, namely customer account numbers and social security numbers. PALMco could furnish responsive information to OCC's requests in redacted form so as to not disclose this information. The fact that PALMco has failed to do so indicates the self-serving nature of its refusal.

**D. OCC undertook reasonable efforts to resolve the discovery dispute.**

Throughout the discovery process, OCC has made continuous efforts to resolve the discovery dispute, only to be met with repeated refusals from PALMco. Since issuing discovery requests to PALMco on January 14, 2020, and February 14, 2020, OCC has sent multiple communications to PALMco requesting that PALMco cure its non-existent, unresponsive,

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motions to compel discovery dated February 14, 2020, and March 17, 2020, should also be granted and PALMco should collaborate with OCC to exchange discovery pursuant to Ohio Adm.Code 4901-1-16.”).

<sup>47</sup> See generally, *In the Matter of the Commission's Investigation into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy's Compliance*, Case Nos. 19-957-GE-COI, et al.

incomplete, and/or insufficient discovery responses and production of documents. OCC has filed two previous motions to compel, both of which the Attorney Examiners granted. In addition, OCC has detailed in the attached affidavit, consistent with Ohio Adm. Code 4901-1-23(C)(3), the reasonable efforts which it undertook to resolve differences between it and PALMco.<sup>48</sup> Over the past nine months, OCC has attempted to communicate its concerns to PALMco regarding PALMco's non-existent, unresponsive, incomplete, and/or insufficient discovery responses and production of documents, only to be met with meritless objections, stalling, and procedural delay tactics that have made it impossible for OCC to fully participate in this case.<sup>49</sup>

Despite this, and unlawfully, as discussed above, PALMco outright refuses to respond. OCC's best efforts to resolve this dispute have made no progress over the last year, and PALMco has made it clear that they do not intend to comply at any point. The continued delay interposed by PALMco in refusing to respond to OCC's discovery prevents OCC from diligently pursuing this case against PALMco. It would be patently unfair to unlawfully hinder OCC's efforts to expeditiously conduct discovery in this second PALMco investigation case and proceed with PALMco's recently proposed procedural schedule<sup>50</sup> that would not afford OCC the opportunity to receive discoverable data and documents and properly prepare for and present its case.

### **III. MOTION FOR SANCTIONS**

In addition to the issues addressed above regarding OCC's Third Motion to Compel, OCC renews the concerns raised in its May 7, 2020 Motion for Sanctions and renews its Motion for Sanctions here. Since OCC first asked the PUCO to take action under R.C. 4905.54 to

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<sup>48</sup> See Exhibit C, Affidavit of Kimberly W. Bojko.

<sup>49</sup> See *id.*

<sup>50</sup> Motion of PALMco Power OH, LLC and PALMco Energy OH, LLC to Establish Procedural Schedule (Oct. 13, 2020) ("Motion for Procedural Schedule").

enforce the April 6 Entry, PALMco has continued to flaunt the PUCO's authority by refusing to respond to OCC's discovery requests. On August 6, 2020, the Attorney Examiners once again directed PALMco to comply with discovery or else stated it would be subject "to the provisions of Ohio Adm.Code 4901-1-23(F)."<sup>51</sup> Despite this warning, PALMco has only tendered unresponsive, incomplete, and/or insufficient discovery responses and production of documents to OCC's requests, while relying on the same meritless and unlawful objections.

At this point, it is clear that PALMco has no intention of fully complying with discovery or the PUCO's directives. OCC issued its first and second sets of requests for discovery in January and February, respectively.<sup>52</sup> The Attorney Examiners directed PALMco to comply with OCC's discovery requests in April and August.<sup>53</sup> PALMco has taken great efforts to supply unresponsive, incomplete, and/or insufficient information and/or documents to OCC.<sup>54</sup> PALMco has also attempted to use procedural filings in a bad-faith effort to avoid its discovery obligations, first by filing a meritless extraordinary writ with the Supreme Court of Ohio,<sup>55</sup> and then by asking the Commission to establish an accelerated procedural schedule that makes further resolution of the ongoing discovery dispute practically impossible.<sup>56</sup>

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<sup>51</sup> Entry (Aug. 6, 2020) at ¶ 21.

<sup>52</sup> See Exhibit C, Affidavit of Kimberly W. Bojko at ¶¶ 2, 5.

<sup>53</sup> Entry (Aug. 6, 2020) at ¶ 21 ("[D]iscovery should proceed pursuant to Ohio Adm. Code 4901-1-16 unless a stay is granted in the future. Though a ruling on OCC's May 7, 2020 motion for sanctions continues to be deferred, the attorney examiner also notes that failure to comply with the April 6, 2020 Entry regarding discovery will subject any party to the provisions of Ohio Adm. Code 4901-1-23(F)."); Entry (April 6, 2020) at ¶ 19 ("Consequently, OCC's motions to compel discovery dated February 14, 2020, and March 17, 2020, should also be granted and PALMco should collaborate with OCC to exchange discovery pursuant to Ohio Adm.Code 4901-1-16.").

<sup>54</sup> See Exhibit C, Affidavit of Kimberly W. Bojko at ¶¶ 15-25.

<sup>55</sup> *State ex rel. PALMco Energy OH, LLC and PALMco Power OH, LLC v. Public Utilities Commission of Ohio*, Case No. 20-0564, Complaint in Prohibition (Apr. 28, 2020).

<sup>56</sup> See Motion for Procedural Schedule (Oct. 13, 2020).

Ohio law grants “all parties and intervenors” in PUCO proceedings “ample rights of discovery” and instructs the PUCO to maintain rules that “aid full and reasonable discovery by all parties.”<sup>57</sup> Pursuant to this statutory authority, the PUCO’s rules state that when a party fails to comply with an order compelling discovery, the PUCO may, among other things, take such action as the PUCO deems appropriate.<sup>58</sup> This includes its statutory authority to impose substantial forfeitures, of up to \$10,000 per day, for failure to “comply with every order, direction, and requirement of the [PUCO] made under authority of... [Chapter] 4903.”<sup>59</sup> Each day that a party fails to comply constitutes a new offense, subject to a new fine.<sup>60</sup>

For the reasons explained above, the PUCO should take any and all necessary actions to enforce lawful discovery, including directing PALMco to immediately produce responsive and complete information, and imposing a forfeiture on PALMco in the maximum amount permitted by law: \$10,000 for each day after April 6, 2020 that PALMco has refused to comply with the Attorney Examiner’s Entry for each set of discovery that PALMco has failed to fully and completely answer as directed, equating to a total amount of approximately \$4,080,000.<sup>61</sup> The

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<sup>57</sup> R.C. 4903.082.

<sup>58</sup> Ohio Adm. Code 4901-1-23(F)(5).

<sup>59</sup> See R.C. 4905.54 (“[T]he public utilities commission may assess a forfeiture of not more than ten thousand dollars for each violation or failure against a public utility or railroad that violates a provision of those chapters or that after due notice fails to comply with an order, direction, or requirement of the commission that was officially promulgated. Each day's continuance of the violation or failure is a separate offense.”); Ohio Adm. Code 4901:1-10-30(A)(1) (“Any CRES provider that fails to comply with...any commission order, direction, or requirement promulgated thereunder, may be subject to any and all remedies under the law, including...[f]orfeiture to the state of not more than ten thousand dollars for each such offense, with each day’s continuance of the violation being a separate offense.”)

<sup>60</sup> *Id.*

<sup>61</sup> PALMco has failed to comply with both sets of discovery for 204 days since the Attorney Examiner’s first Entry (April 6, 2020), at a rate of \$10,000 per day for each set of discovery. OCC notes that this is a conservative calculation of the allowable forfeiture given that PALMco had refused to comply with discovery for nearly three months by the time the Attorney Examiner first compelled it to, and that PALMco forced the Attorney Examiner to issue an Entry on August 4, 2020, directing PALMco to comply a second time. If the PUCO calculates the forfeiture based upon when each set of discovery was originally due per the PUCO rules, the forfeiture would total approximately \$5,030,000, as PALMco has failed to comply with OCC’s two sets of discovery for 267 and 236 days, respectively, at \$10,000 per day.

PUCO should now sanction PALMco for violating multiple PUCO orders to provide the state consumer advocate with information about malignant actions against Ohio consumers.

## V. CONCLUSION

PALMco continues to refuse to respond to OCC's discovery in direct violation of the PUCO's rules and orders of the PUCO. OCC's discovery is relevant and reasonably calculated to lead to the discovery of admissible evidence. The PUCO should expeditiously grant OCC's Third Motion to Compel and Renewed Motion for Sanctions. PALMco should be required to completely and responsively answer both sets of OCC's discovery immediately and provide all relevant documents.

Respectfully submitted,

BRUCE WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

*/s/ Kimberly W. Bojko*  
Kimberly W. Bojko (0069402)  
Carpenter Lipps & Leland LLP  
280 North High Street, Suite 1300  
Columbus, Ohio 43215  
Telephone: (614) 365-4100  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  
(willing to accept service by e-mail)

*Special Counsel for the  
Office of the Ohio Consumers' Counsel*

Angela D. O'Brien (0097579)  
Counsel of Record  
Christopher Healey (0086027)  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
65 East State Street, 7<sup>th</sup> Floor  
Columbus, Ohio 43215-3485  
Telephone [O'Brien]: (614) 466-9531  
Telephone [Healey]: (614) 466-9571  
[angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)  
[christopher.healey@occ.ohio.gov](mailto:christopher.healey@occ.ohio.gov)  
(willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

The Public Utilities Commission of Ohio’s e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on October 28, 2020 upon the parties of record.

/s/ Kimberly W. Bojko  
Kimberly W. Bojko

**SERVICE LIST**

[jodi.bair@ohioattorneygeneral.gov](mailto:jodi.bair@ohioattorneygeneral.gov)

Attorney Examiners:

[Gregory.price@puco.ohio.gov](mailto:Gregory.price@puco.ohio.gov)

[Anna.sanyal@puco.ohio.gov](mailto:Anna.sanyal@puco.ohio.gov)

[mmcguire@HuntonAK.com](mailto:mmcguire@HuntonAK.com)

[cpardo@HuntonAK.com](mailto:cpardo@HuntonAK.com)

[egallon@porterwright.com](mailto:egallon@porterwright.com)

[acarter@porterwright.com](mailto:acarter@porterwright.com)



**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

IN THE MATTER OF THE COMMISSION’S )  
INVESTIGATION INTO PALMCO POWER ) Case No. 19-2153-GE-COI  
OH, LLC D/B/A/ INDRA ENERGY AND )  
PALMCO ENERGY OH, LLC D/B/A/ )  
INDRA ENERGY’S COMPLIANCE WITH )  
THE OHIO ADMINISTRATIVE CODE AND )  
POTENTIAL REMEDIAL ACTIONS FOR )  
NON-COMPLIANCE. )

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**PALMCO ENERGY OH, LLC’S AND PALMCO POWER OH, LLC’S RESPONSES  
AND OBJECTIONS TO THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL’S  
FIRST AND SECOND SET OF INTERROGATORIES AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS**

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In accordance with Ohio Administrative Code 4901-1-19 and 4901-1-20, Palmco Power OH, LLC and Palmco Energy OH, LLC (collectively, “Palmco”) hereby provide their Responses and Objections to the Office of the Ohio Consumers’ Counsel’s First and Second Set of Interrogatories and Requests for Production of Documents.

**GENERAL OBJECTIONS**

1. Palmco objects to the Instructions for Answering to the extent such instructions purport to impose discovery obligations that are inconsistent with or go beyond the Commission’s rules for discovery.
2. Palmco objects to each interrogatory or request for production to the extent such discovery requests seek the disclosure of information subject to attorney-client privilege or that constitutes attorney work product.

## **RESPONSES AND SPECIFIC OBJECTIONS**

### **INTERROGATORY**

INT-01-001            Pursuant to Ohio Administrative Code 4901-1-16(C), please identify each expert witness that PALMco expects to testify at any hearing in this proceeding.

### **RESPONSE**

PALMco does not presently expect to present any expert witnesses to testify on its behalf at any hearing in this proceeding. PALMco does not know whether Commission Staff or OCC intends to present expert witnesses to testify on its behalf at any hearing in this proceeding.

INTERROGATORY

INT-01-002            For each expert witness identified in your response to INT-1-001, please state the subject matter in this case on which the expert is expected to testify.

RESPONSE

*See Response to INT-1-001.*

## INTERROGATORY

INT-01-003                    Please provide the monthly variable rates that PALMco charges or has charged to electric and natural gas customers from April 2019 to present.

## RESPONSE

PALMco objects to this interrogatory on the grounds that it is overbroad. In its motion to intervene, OCC acknowledged that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco’s monthly variable rates before August 1, 2019, and after December 10, 2019, are outside that scope.

PALMco also objects that the monthly variable rates that PALMco charged to customers who have since been re-rated, pursuant to the approved stipulation in Case No. 19-957-GE-COI, are irrelevant to this proceeding. PALMco “voluntarily re-rated all customers who enrolled between December 1, 2018, and April 15, 2019, and were charged a variable rate \* \* \* .” *In re the Commission’s Investigation into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-957-GE-COI, Opinion and Order, ¶ 17 (Jan. 29, 2020). The Commission has found that “customers who were potentially harmed” during that period were “made whole through refunds \* \* \* .” *Id.* ¶ 48. “PALMco has also reviewed and re-rated accounts in response to informal complaints brought to its attention by Staff” relating to customers who enrolled either before December 1, 2018, or after April 15, 2019. *Id.* ¶ 18. By September 17, 2019, PALMco had also “reimbursed up to \* \* \* \$85,00[0]” to customers who enrolled before December 1, 2018, or after April 15, 2019, and “made informal complaints \* \* \* .” *Id.* ¶ 49; *see also id.* ¶ 32. “Because the Stipulation provides redress for [these] customers,” *id.* ¶ 50, the monthly variable rates originally charged to those re-rated customers are irrelevant.

Additionally, PALMco objects to this interrogatory to the extent that it seeks the monthly variable rates PALMco charged to non-residential customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Admin. Code 4901-1-11. PALMco’s monthly variable rates for industrial or commercial customers are irrelevant to OCC’s interests and beyond the scope of its intervention in this proceeding.

Subject to the first objection and notwithstanding the second and third objections, please see the document titled “OH Var Rates Billed Customer List 20190801 to 20191206.pdf,” which PALMco produced to OCC on July 31, 2020, pursuant to the parties’ protective agreement. *See also* Case No. 19-957-GE-COI, PALMco Energy OH, LLC’S Responses and Objections to The Office of The Ohio Consumers’ Counsel’s Second Set of Interrogatories and Requests for Production of Documents (Aug. 9, 2019), confidential PDF file named “19-957-GE-COI OCC

INT-2-012 Confidential)", Response to INT-2-012(f) and (g) (weighted average variable rates by service area for August 2019).

## INTERROGATORY

INT-01-004                    Please explain how PALMco provides notice to electric and natural gas customers on fixed rate contracts that their contracts will renew to variable rate contracts when their fixed rate contracts expire.

## RESPONSE

PALMco objects to this interrogatory on the grounds that it is not relevant to the scope of this proceeding. In its motion to intervene, OCC expressed to the Commission that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco’s renewal notices are beyond the scope of this proceeding.

Additionally, PALMco objects to this interrogatory to the extent that it seeks information regarding PALMco’s renewal notices to small commercial customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Admin. Code 4901-1-11. PALMco’s renewal notifications for small commercial customers are irrelevant to OCC’s interests and beyond the scope of its intervention in this proceeding.

Subject to the first objection and notwithstanding the second objection, please see the standard contracts referenced in PALMco’s response to OCC RPD-01-007. *See also* Case No. 19-957-GE-COI, PALMco Energy OH, LLC’S Responses and Objections to The Office of The Ohio Consumers’ Counsel’s Fourth Set of Interrogatories and Requests for Production of Documents (Sept. 12, 2019), Response to RPD-4-020 and zip file named “19-957-GE-COI OCC RPD-4-020 Response” (renewal notices).

## INTERROGATORY

- INT-01-005                      How many electric customers in Ohio was PALMco serving on December 31, 2019?
- A.    Of the total electric customers identified, how many were served under fixed rate contracts?
- B.    Of the total electric customers identified, how many were served under variable rate contracts?

## RESPONSE

PALMco objects to this interrogatory on the grounds that it is overbroad. In its motion to intervene, OCC expressed to the Commission that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. The number of customers PALMco was serving on December 31, 2019, is outside the scope of this proceeding.

PALMco also objects that the total number of electric customers that PALMco was serving as of December 31, 2019, and the total number of customers served under fixed rate or variable rate contracts, are not relevant to the scope of this proceeding. PALMco has been accused of only “51 \* \* \* instances of charging residential consumers unconscionable rates.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco customers are not entitled to re-rates simply by virtue of being PALMco customers. *See In re the Commission’s Investigation into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-957-GE-COI, Opinion and Order, ¶ 50 (Jan. 29, 2020).

PALMco also objects that PALMco’s fixed rate contracts are not relevant to the scope of this proceeding. Staff’s Notice of Probable Non-Compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that “Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities’ standard offer and other variable rates available to customers.” It goes on to propose, as corrective actions, that PALMco “immediately cease charging customers variable rates in excess of the default service offer in Ohio”; “immediately re-rate all customers that were charged a variable rate from August 1, 2019 to [December 16, 2019]”; and “send a written notice to all customers on a variable rate contract that they will be re-rated and why.” *Id.* at p. 3. Neither the description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s fixed rate contracts.

Additionally, PALMco objects to this interrogatory to the extent that the totals it seeks include non-residential customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Admin. Code 4901-1-11. PALMco’s small commercial and mercantile

customers are irrelevant to OCC's interests and beyond the scope of its intervention in this proceeding.

Notwithstanding these objections:

- For an answer to the primary part of the interrogatory, see the document titled "Indra Energy Response 02 07 2020of.pdf," which lists the number of PALMco customers returning to electric utility default service as of February 7, 2020, and which PALMco produced to OCC on July 31, 2020, and
- For an answer to subpart B, see the document titled "Indra Energy- 12.6.19 DR response.pdf," which lists the number of PALMco electric customers on a variable rate as of December 5, 2019, and which PALMco produced to OCC on July 31, 2020.

*See also* Case No. 19-957-GE-COI, PALMco Energy OH, LLC'S Responses and Objections to The Office of The Ohio Consumers' Counsel's Second Set of Interrogatories and Requests for Production of Documents (Aug. 9, 2019), confidential PDF file named "19-957-GE-COI OCC INT-2-012 Confidential)", Response to INT-2-012.b., c., e. (providing the numbers of PALMco's electric accounts, joint electric and natural gas accounts, and electric accounts with fixed rate contracts in Ohio as of August 2019). *See also* Case No. 19-957-GE-COI, PALMco Energy OH, LLC'S Responses and Objections to The Office of The Ohio Consumers' Counsel's Fourth Set of Interrogatories and Requests for Production of Documents (Sept. 12, 2019), Response to INT-4-048, Excel file named "19-957-GE-COI OCC INT-4-047 Response," sheet "Served" (identifying the number of residential electric customers served by PALMco as of September 2019).

## INTERROGATORY

- INT-01-006                      How many natural gas customers in Ohio was PALMco serving on December 31, 2019?
- A.    Of the total natural gas customers identified, how many were served under fixed rate contracts?
- B.    Of the total natural gas customers identified, how many were served under variable rate contracts?

## RESPONSE

PALMco objects to this interrogatory on the grounds that it is overbroad. In its motion to intervene, OCC acknowledged that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. The number of customers PALMco was serving on December 31, 2019, is outside the scope of this proceeding.

PALMco also objects that the total number of natural gas customers that PALMco was serving as of December 31, 2019, and the total number of customers served under fixed rate or variable rate contracts, are not relevant to the scope of this proceeding. PALMco has been accused of only “51 \* \* \* instances of charging residential consumers unconscionable rates.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco customers are not entitled to re-rates simply by virtue of being PALMco customers. *See In re the Commission’s Investigation into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-957-GE-COI, Opinion and Order, ¶ 50 (Jan. 29, 2020).

PALMco also objects that PALMco’s fixed rate contracts are not relevant to the scope of this proceeding. Staff’s Notice of Probable Non-Compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that “Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities’ standard offer and other variable rates available to customers.” It goes on to propose, as corrective actions, that PALMco “immediately cease charging customers variable rates in excess of the default service offer in Ohio”; “immediately re-rate all customers that were charged a variable rate from August 1, 2019 to [December 16, 2019]”; and “send a written notice to all customers on a variable rate contract that they will be re-rated and why.” *Id.* at p. 3. Neither the description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s fixed rate contracts.

Additionally, PALMco objects to this interrogatory to the extent that the numbers it seeks include non-residential customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Admin. Code 4901-1-11. PALMco’s small commercial and mercantile

customers are irrelevant to OCC's interests and beyond the scope of its intervention in this proceeding.

Notwithstanding these objections:

- For an answer to the primary part of the interrogatory, see the document titled "Indra Energy Response 02 07 2020Of.pdf," which lists the number of PALMco customers returning to natural gas utility default service as of February 7, 2020, and which PALMco produced to OCC on July 31, 2020, and
- For an answer to subpart B, see the document titled "Indra Energy- 12.6.19 DR response.pdf," which lists the number of PALMco natural gas customers on a variable rate as of December 5, 2019, and which PALMco produced to OCC on July 31, 2020.

*See also* Case No. 19-957-GE-COI, PALMco Energy OH, LLC'S Responses and Objections to The Office of The Ohio Consumers' Counsel's Second Set of Interrogatories and Requests for Production of Documents (Aug. 9, 2019), confidential PDF file named "19-957-GE-COI OCC INT-2-012 Confidential)", Response to INT-2-012.a., c., d. (providing the numbers of PALMco's natural gas accounts, joint electric and natural gas accounts, and natural gas accounts with fixed rate contracts in Ohio as of August 2019). *See also* Case No. 19-957-GE-COI, PALMco Energy OH, LLC'S Responses and Objections to The Office of The Ohio Consumers' Counsel's Fourth Set of Interrogatories and Requests for Production of Documents (Sept. 12, 2019), Response to INT-4-048, Excel file named "19-957-GE-COI OCC INT-4-047 Response," sheet "Served" (identifying the number of residential natural gas customers served by PALMco as of September 2019).

## INTERROGATORY

INT-01-007                    Please provide the fixed rates that PALMco charges or has charged to electric and natural gas customers from April 2019 to present.

## RESPONSE

PALMco objects to this interrogatory on the grounds that it is overbroad. In its motion to intervene, OCC acknowledged that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. The fixed rates PALMco was charging before August 1, 2019, and after December 10, 2019, are outside the scope of this proceeding.

Additionally, PALMco objects to this interrogatory to the extent that the fixed rates about which it seeks information include rates charged to non-residential customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Admin. Code 4901-1-11. PALMco’s small commercial and mercantile customers are irrelevant to OCC’s interests and beyond the scope of its intervention in this proceeding.

PALMco also objects that PALMco’s fixed rates are not relevant to the scope of this proceeding. Staff’s Notice of Probable Non-compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that “Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities’ standard offer and other variable rates available to customers.” It goes on to propose, as corrective actions, that PALMco “immediately cease charging customers variable rates in excess of the default service offer in Ohio”; “immediately re-rate all customers that were charged a variable rate from August 1, 2019 to [December 16, 2019]”; and “send a written notice to all customers on a variable rate contract that they will be re-rated and why.” *Id.* at p. 3. Neither the description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s fixed rates.

## INTERROGATORY

INT-01-008                    Please explain how PALMco determines the electric and natural gas rates it charges (or will charge) to residential customers on fixed rate contracts.

## RESPONSE

PALMco objects to this interrogatory to the extent that the fixed rates about which it seeks information include rates charged to non-residential customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Adm.Code 4901-1-11. PALMCo’s small commercial and mercantile customers are irrelevant to OCC’s interests and beyond the scope of its intervention in this proceeding.

PALMco also objects that PALMco’s fixed rates are not relevant to the scope of this proceeding. Staff’s Notice of Probable Non-compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that “Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities’ standard offer and other variable rates available to customers.” It goes on to propose, as corrective actions, that PALMco “immediately cease charging customers variable rates in excess of the default service offer in Ohio”; “immediately re-rate all customers that were charged a variable rate from August 1, 2019 to [December 16, 2019]”; and “send a written notice to all customers on a variable rate contract that they will be re-rated and why.” *Id.* at p. 3. Neither the description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s fixed rates.

## INTERROGATORY

INT-01-009            Please explain how PALMco determines the electric and natural gas rates it charges (or will charge) to residential customers on variable rate contracts.

## RESPONSE

PALMco currently does not have any residential customers on variable rate contracts in Ohio. For a description of the factors PALMco considered when determining the electric and natural gas rates it charged to residential customers on variable rate contracts before its certificates expired, see the document titled “OH PRICING 12 10 19pmF.pdf,” which PALMco produced to OCC on July 31, 2020, and Exhibit B to PALMco’s Complaint in Prohibition, Supreme Court of Ohio Case No. 2020-0564, Ohio Terms and Conditions, “Natural Gas Variable Price (when applicable)” and “Electric Variable Price (when applicable).”

INTERROGATORY

INT-01-010            How can residential customers on variable rate contracts obtain the variable rate that PALMco will be charging for the next month?

RESPONSE

PALMco currently does not have any residential customers on variable rate contracts in Ohio. Before PALMco's certificates expired, residential customers on variable rate contracts could obtain the variable rate that PALMco would be charging for the next month by calling (888) 504-6372.

## INTERROGATORY

INT-01-011

The PUCO Staff's December 16, 2019 Notice of Probable Non-Compliance to the Company states that the Company's website where customers should be able to obtain variable rate pricing has not been updated since March 2019. Please explain why this website has not been updated to provide variable rate pricing and whether the Company intends to update this website to provide variable rate pricing.

## RESPONSE

PALMco stopped updating its website with new variable rate pricing information in April 2019 because it stopped enrolling new Ohio customers in April 2019, at the request of Commission Staff. The remainder of this interrogatory is moot.

## INTERROGATORY

INT-01-012

The PUCO Staff's December 16, 2019 Notice of Probable Non-Compliance references 25 call center contacts regarding PALMco's gas rates and 26 call center contacts regarding PALMco's electric rates. Were any customers who made these contacts customers who were automatically renewed by PALMco to a monthly variable rate contract from a fixed rate contract?

## RESPONSE

PALMco objects to this interrogatory because it is not aware of all 51 customer contacts referenced in PUCO Staff's December 16, 2019 Notice of Probable Non-Compliance, nor does PALMco know that there were 25 contacts related to gas rates and 26 contacts related to electric rates. Subject to that objection, PALMco is investigating whether the known contacts were automatically renewed to a monthly variable rate contract from a fixed rate contract and will supplement this interrogatory.

## INTERROGATORY

- INT-01-013            If the response to INT-01-012 is affirmative, for each customer who was renewed from a fixed rate to a variable rate, please identify and/or provide the following:
- A.     the date the customer was renewed from the fixed rate to the variable rate contract;
  - B.     the customer's rate under the fixed rate contract;
  - C.     the variable rate charged to the customer for each month after the renewal from the fixed rate contract to present, or until the time the customer was no longer served by PALMco;
  - D.     copies of all contract renewal documents or notices sent to the customer prior to the contract renewal informing the customer of the fixed rate contract expiration and automatic renewal to a variable rate contract.

## RESPONSE

PALMco objects to this interrogatory because responding to it is unduly burdensome at this time due to the ongoing COVID-19 pandemic. Obtaining the responsive information would require visiting PALMco's offices in Brooklyn, New York City. PALMco's employees have not visited its Brooklyn office since March 2020, due to COVID-19, and PALMco is extremely wary of requiring any employee to risk his or her health, or the health of his or her family, to commute to the office to obtain documents at this point in time when the information has no obvious relevance to an investigation proceeding that the Supreme Court of Ohio may ultimately prevent from moving forward. PALMco will supplement this interrogatory with relevant, non-objectionable information when it is safe for the company to do so.

Additionally, PALMco objects to producing any document containing customer account numbers (for electric or natural gas customers) or any other "customer information" (for natural gas customers) without the customers' consent or an order from the Commission to do so. *See* Ohio Admin. Code 4901:1-21-10(B) (electric); Ohio Admin. Code 4901:1-29-09(A)(1) (gas). PALMco will work cooperatively with OCC to obtain a Commission order allowing such information to be produced.

- A.     *See* objections to part C of this interrogatory, *infra*.
- B.     PALMco objects to this portion of the interrogatory on the grounds that PALMco's fixed rates are not relevant to the scope of this proceeding. Staff's Notice of Probable Non-compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that "Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities' standard offer and other variable rates available to customers." It

goes on to propose, as corrective actions, that PALMco “immediately cease charging customers variable rates in excess of the default service offer in Ohio”; “immediately re-rate all customers that were charged a variable rate from August 1, 2019 to [December 16, 2019]”; and “send a written notice to all customers on a variable rate contract that they will be re-rated and why.” *Id.* at p. 3. Neither the description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s fixed rates.

- C. PALMco objects to this portion of the interrogatory on the grounds that it is not relevant to the scope of this proceeding. The Commission has asserted to the Supreme Court of Ohio that this proceeding “is not about regulating Relators variable prices; it is about enforcing Commission rules on marketing, solicitation, and sales practices that apply to certified CRES and CRNGS providers, like Relators.” *State ex rel. PALMco Energy OH, LLC and PALMco Power OH, LLC v. Pub. Util. Comm. of Ohio*, Case No. 20-0564, Motion to Dismiss Submitted on Behalf of Respondent, Public Utilities Commission of Ohio, at 10 (May 21, 2020).
- D. PALMco objects to this portion of the interrogatory on the grounds that it is not relevant to the scope of this proceeding. In its motion to intervene, OCC expressed to the Commission that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco’s renewal notices are beyond the scope of this proceeding.

Additionally, PALMco objects to this interrogatory to the extent that it seeks copies of PALMco’s renewal notices to small commercial customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Admin. Code 4901-1-11. PALMco’s renewal notifications for small commercial customers are irrelevant to OCC’s interests and beyond the scope of its intervention in this proceeding.

Subject to these objections, *see* Case No. 19-957-GE-COI, PALMco Energy OH, LLC’S Responses and Objections to The Office of The Ohio Consumers’ Counsel’s Fourth Set of Interrogatories and Requests for Production of Documents (Sept. 12, 2019), Response to RPD-4-020 and zip file named “19-957-GE-COI OCC RPD-4-020 Response” (form renewal notices for 2018 and 2019).

## INTERROGATORY

INT-01-014            Were PALMco customers on variable rate contracts between May 1, 2019 and the present charged the same monthly variable rate for the same month? If the response is affirmative, please provide the rate that was charged variable rate customers for each month from May 1, 2019 to the present.

## RESPONSE

PALMco objects to this interrogatory on the grounds that it is overbroad. In its motion to intervene, OCC expressed to the Commission that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco’s monthly variable rates before August 1, 2019, and after December 10, 2019, are outside that scope.

Subject to the foregoing objection, PALMco responds: No.

INTERROGATORY

INT-01-015

If the response to INT-01-015 is negative, please provide the following:

- A. the rates charged variable rate customers in each month for the period May 1, 2019 to the present;
- B. an explanation why customers were charged different variable rates;
- C. a detailed explanation of how each of the different rates was determined;
- D. the number of customers served under each variable rate identified.

RESPONSE

This *is* the response to INT-01-015, and it is neither negative nor positive.

## INTERROGATORY

INT-02-001 Please identify the following monthly information pertaining to the time period of May 2019 to present:

All customers (electric and natural gas) of PALMco residing in Ohio (identified by account number) together with the following monthly information:

- a. Customer Account Rate code;
- b. Volumes of commodity billed to each customer account ;
- c. Distribution utility that serves the customer; and,
- d. Type of customer (residential or non-residential).

## RESPONSE

PALMco objects to this interrogatory on the grounds that it is overbroad. In its motion to intervene, OCC acknowledged that “[t]his investigation [proceeding] involves PALMCo’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco’s customers before August 1, 2019, and after December 10, 2019, are outside that scope.

PALMco also objects that PALMco’s fixed rate contracts are not relevant to the scope of this proceeding. Staff’s Notice of Probable Non-Compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that “Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities’ standard offer and other variable rates available to customers.” It goes on to propose, as corrective actions, that PALMco “immediately cease charging customers variable rates in excess of the default service offer in Ohio”; “immediately re-rate all customers that were charged a variable rate from August 1, 2019 to [December 16, 2019]”; and “send a written notice to all customers on a variable rate contract that they will be re-rated and why.” *Id.* at p. 3. Neither the description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s fixed rate contracts.

PALMco also objects to this interrogatory to the extent that it seeks information regarding rates charged to non-residential customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Admin. Code 4901-1-11. PALMco’s small commercial and mercantile customers are irrelevant to OCC’s interests and beyond the scope of its intervention in this proceeding.

Finally, PALMco objects to this request for production of documents because responding to it is unduly burdensome at this time due to the ongoing COVID-19 pandemic. Obtaining the responsive documents would require visiting PALMco’s offices in Brooklyn, New York City.

PALMco's employees have not visited its Brooklyn office since March 2020, due to COVID-19, and PALMco is extremely wary of requiring any employee to risk his or her health, or the health of his or her family, to commute to the office to obtain documents at this point in time when the information has no obvious relevance to an investigation proceeding that the Supreme Court of Ohio may ultimately prevent from moving forward.

Subject to these objections, please see the confidential document titled "OH Var Rates Billed Customer List 20190801 to 20191206.pdf," which PALMco produced to OCC on July 31, 2020, pursuant to the parties' confidentiality agreement. PALMco will supplement that confidential document with the additional information requested in this interrogatory and interrogatory INT-2-002 once it is able to access its Brooklyn office safely and only after the legal prerequisites have been met for producing PALMco's customer information.

## INTERROGATORY

INT-02-002                    Please identify the rate codes (by distribution utility) for PALMco customers residing in Ohio, along with the number of residential customers billed at each rate code and the total volume of Mcf/ccf commodity billed from May 2019 to present.

## RESPONSE

PALMco objects to this interrogatory on the grounds that it is overbroad. In its motion to intervene, OCC expressed to the Commission that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco’s customers before August 1, 2019, and after December 10, 2019, are outside that scope.

PALMco also objects that PALMco’s fixed rate contracts are not relevant to the scope of this proceeding. Staff’s Notice of Probable Non-Compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that “Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities’ standard offer and other variable rates available to customers.” It goes on to propose, as corrective actions, that PALMco “immediately cease charging customers variable rates in excess of the default service offer in Ohio”; “immediately re-rate all customers that were charged a variable rate from August 1, 2019 to [December 16, 2019]”; and “send a written notice to all customers on a variable rate contract that they will be re-rated and why.” *Id.* at p. 3. Neither the description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s fixed rate contracts.

Finally, PALMco objects to this request for production of documents because responding to it is unduly burdensome at this time due to the ongoing COVID-19 pandemic. Obtaining the responsive documents would require visiting PALMco’s offices in Brooklyn, New York City. PALMco’s employees have not visited its Brooklyn office since March 2020, due to COVID-19, and PALMco is extremely wary of requiring any employee to risk his or her health, or the health of his or her family, to commute to the office to obtain documents at this point in time when the information has no obvious relevance to an investigation proceeding that the Supreme Court of Ohio may ultimately prevent from moving forward.

Subject to these objections, please see the confidential document titled “OH Var Rates Billed Customer List 20190801 to 20191206.pdf,” which PALMco produced to OCC on July 31, 2020, pursuant to the parties’ confidentiality agreement. PALMco will supplement that confidential document with the additional information requested in this interrogatory and interrogatory INT-2-001 once it is able to access its Brooklyn office safely and only after the legal prerequisites have been met for producing PALMco’s customer information.

## INTERROGATORY

INT-02-003            With respect to each natural gas customer account identified in response to INT-2-001, did PALMco charge an introductory rate to the customer that was at or below the utility Standard Choice Offer or Gas Cost Recovery and then increase the rate at the end of the introductory period?

## RESPONSE

PALMco objects to this interrogatory on the grounds that it is overbroad. In its motion to intervene, OCC expressed to the Commission that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco’s customers before August 1, 2019, and after December 10, 2019, are outside that scope.

PALMco also objects that PALMco’s fixed rate contracts are not relevant to the scope of this proceeding. Staff’s Notice of Probable Non-Compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that “Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities’ standard offer and other variable rates available to customers.” It goes on to propose, as corrective actions, that PALMco “immediately cease charging customers variable rates in excess of the default service offer in Ohio”; “immediately re-rate all customers that were charged a variable rate from August 1, 2019 to [December 16, 2019]”; and “send a written notice to all customers on a variable rate contract that they will be re-rated and why.” *Id.* at p. 3. Neither the description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s fixed rate contracts.

For the same reason, PALMco’s introductory rates, and how those rates compared to the utility Standard Choice Offer or Gas Cost Recovery and the rates in place after the introductory period, is not relevant to the scope of this proceeding. Neither Staff’s description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s introductory rates.

PALMco also objects to this interrogatory to the extent that it seeks information regarding rates charged to non-residential customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Adm.Code 4901-1-11. PALMco’s small commercial and mercantile customers are irrelevant to OCC’s interests and beyond the scope of its intervention in this proceeding.

PALMco also objects that the contracts for customers whom PALMco has since re-rated, pursuant to the approved stipulation in Case No. 19-957-GE-COI, are irrelevant to this proceeding. PALMco “voluntarily re-rated all customers who enrolled between December 1, 2018, and April 15, 2019, and were charged a variable rate \* \* \* .” *In re the Commission’s Investigation into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC*

*dba Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-957-GE-COI, Opinion and Order, ¶ 17 (Jan. 29, 2020). The Commission has found that “customers who were potentially harmed” during that period were “made whole through refunds \* \* \* .” *Id.* ¶ 48. “PALMco has also reviewed and re-rated accounts in response to informal complaints brought to its attention by Staff” relating to customers who enrolled either before December 1, 2018, or after April 15, 2019. *Id.* ¶ 18. By September 17, 2019, PALMco had also “reimbursed up to \* \* \* \$85,00[0]” to customers who enrolled before December 1, 2018, or after April 15, 2019, and “made informal complaints \* \* \* .” *Id.* ¶ 49; *see also id.* ¶ 32. “Because the Stipulation provides redress for [these] customers,” *id.* ¶ 50, those customers’ contracts are irrelevant.

PALMco also objects that this interrogatory is unduly burdensome. Determining the introductory rate for each of its thousands of natural gas customers who had contracts with introductory rates; determining the Standard Choice Offer or Gas Cost Recovery rate for each natural gas utility for the months in question; comparing those two rates; and comparing the introductory rates to the initial rates in place after the end of the introductory period would take months in a normal time. And this is not a normal time. Obtaining responsive information would require visiting PALMco’s offices in Brooklyn, New York City. PALMco’s employees have not visited its Brooklyn office since March 2020, due to the COVID-19 pandemic. And PALMco is extremely wary of requiring any employee to risk his or her health, or the health of his or her family, to commute to the office to obtain documents with no obvious relevance to an investigation proceeding that the Supreme Court of Ohio may ultimately prevent from moving forward.

INTERROGATORY

INT-02-004

If the response to INT-2-003 is in the affirmative, please provide the following:

- a. The introductory rate charged to each of PALMco's Ohio customers;
- b. The length of time the introductory rate was charged; and,
- c. The rate charged to customers at the end of the introductory period.

RESPONSE

*See objections to INT-2-003.*

## INTERROGATORY

INT-02-005                    With respect to each electric customer account identified in response to INT-2-001, did PALMco charge an introductory rate to the customer that was at or below the utility Standard Service Offer and then increase the rate at the end of the introductory period?

## RESPONSE

PALMco objects to this interrogatory on the grounds that it is overbroad. In its motion to intervene, OCC acknowledged that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco’s customers before August 1, 2019, and after December 10, 2019, are outside that scope.

PALMco also objects that PALMco’s fixed rate contracts are not relevant to the scope of this proceeding. Staff’s Notice of Probable Non-Compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that “Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities’ standard offer and other variable rates available to customers.” It goes on to propose, as corrective actions, that PALMco “immediately cease charging customers variable rates in excess of the default service offer in Ohio”; “immediately re-rate all customers that were charged a variable rate from August 1, 2019 to [December 16, 2019]”; and “send a written notice to all customers on a variable rate contract that they will be re-rated and why.” *Id.* at p. 3. Neither the description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s fixed rate contracts.

For the same reason, PALMco’s introductory rates, and how those rates compared to the utility Standard Service Offer and the rates in place after the introductory period, is not relevant to the scope of this proceeding. Neither Staff’s description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s introductory rates.

PALMco also objects to this interrogatory to the extent that it seeks information regarding rates charged to non-residential customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Adm.Code 4901-1-11. PALMco’s small commercial and mercantile customers are irrelevant to OCC’s interests and beyond the scope of its intervention in this proceeding.

PALMco also objects that the contracts for customers whom PALMco has since re-rated, pursuant to the approved stipulation in Case No. 19-957-GE-COI, are irrelevant to this proceeding. PALMco “voluntarily re-rated all customers who enrolled between December 1, 2018, and April 15, 2019, and were charged a variable rate \* \* \*.” *In re the Commission’s Investigation into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-957-GE-COI, Opinion and Order, ¶ 17 (Jan. 29,

2020). The Commission has found that “customers who were potentially harmed” during that period were “made whole through refunds \* \* \* .” *Id.* ¶ 48. “PALMco has also reviewed and re-rated accounts in response to informal complaints brought to its attention by Staff” relating to customers who enrolled either before December 1, 2018, or after April 15, 2019. *Id.* ¶ 18. By September 17, 2019, PALMco had also “reimbursed up to \* \* \* \$85,00[0]” to customers who enrolled before December 1, 2018, or after April 15, 2019, and “made informal complaints \* \* \* .” *Id.* ¶ 49; *see also id.* ¶ 32. “Because the Stipulation provides redress for [these] customers,” *id.* ¶ 50, those customers’ contracts are irrelevant.

PALMco also objects that this interrogatory is unduly burdensome. Determining the introductory rate for each of its thousands of electric customers who had contracts with introductory rates; determining the Standard Service Offer rate for each electric utility for the months in question; comparing those two rates; and comparing the introductory rates to the initial rates in place after the end of the introductory period would take months in a normal time. And this is not a normal time. Obtaining responsive information would require visiting PALMco’s offices in Brooklyn, New York City. PALMco’s employees have not visited its Brooklyn office since March 2020, due to the COVID-19 pandemic. And PALMco is extremely wary of requiring any employee to risk his or her health, or the health of his or her family, to commute to the office to obtain documents with no obvious relevance to an investigation proceeding that the Supreme Court of Ohio may ultimately prevent from moving forward.

INTERROGATORY

INT-02-006

If the response to INT-2-005 is in the affirmative, please provide the following:

- a. The introductory rate charged to each of PALMco's Ohio customers;
- b. The length of time the introductory rate was charged; and,
- c. The rate charged to customers at the end of the introductory period.

RESPONSE

*See objections to INT-2-005.*

## REQUEST FOR PRODUCTION OF DOCUMENTS

RPD-01-001            Please provide copies of all formal and informal requests (e.g., interrogatories, data requests) made to the Company by the Commission, the PUCO Staff, and/or the PUCO's Attorneys General related to this proceeding from April 2019 to present, and the Company's responses to those requests. This request should be interpreted to include all data requests and responses referenced in the PUCO Staff's December 16, 2019 Notice of Probable Non-Compliance to the Company.

## RESPONSE

PALMco objects to this Request for Production of Documents on the grounds that it is ambiguous. OCC requests formal and informal data requests "related to this proceeding" (Case No. 19-2153-GE-COI). Commission Staff initiated this proceeding on December 16, 2019. However, OCC also requests documents dating as far back as April 2019 – eight months before this proceeding began.

Subject to this objection, PALMco is producing the documents that it previously provided to Commission Staff in this proceeding.

## REQUEST FOR PRODUCTION OF DOCUMENTS

RPD-01-002            Please provide copies of all documents and workpapers provided to the Commission, the PUCO Staff, and/or the PUCO's Attorneys General related to this proceeding from April 2019 to present, including schedules in Excel format. This request should be interpreted to include all documents and workpapers provided by the Company in response to the data requests referenced in the PUCO Staff's December 16, 2019 Notice of Probable Non-Compliance to the Company.

## RESPONSE

PALMco objects to this Request for Production of Documents on the grounds that it is ambiguous. OCC requests formal and informal data requests "related to this proceeding" (Case No. 19-2153-GE-COI). Commission Staff initiated this proceeding on December 16, 2019. However, OCC also requests documents dating as far back as April 2019 – eight months before this proceeding began.

Subject to this objection, PALMco is producing the documents that it previously provided to Commission Staff in this proceeding.

REQUEST FOR PRODUCTION OF DOCUMENTS

RPD-01-003            Please provide copies of all discovery received by the Company from other parties in this proceeding and the Company's responses to that discovery.

RESPONSE

There are no other parties to this proceeding, other than OCC and Staff.

## REQUEST FOR PRODUCTION OF DOCUMENTS

RPD-01-004            Please provide copies of all communications related to this proceeding between the Company and the Commission, the PUCO Staff, and/or the PUCO's Attorneys General from April 2019 to present.

## RESPONSE

PALMco objects to this Request for Production of Documents on the grounds that it is ambiguous. OCC requests communications between PALMco and the Commission "related to this proceeding" (Case No. 19-2153-GE-COI). Commission Staff initiated this proceeding on December 16, 2019. However, OCC also requests communications dating as far back as April 2019 – eight months before this proceeding began.

Subject to this objection, PALMco is producing the documents that it previously provided to Commission Staff in this proceeding.

## REQUEST FOR PRODUCTION OF DOCUMENTS

RPD-01-005            To the extent not provided in response to other requests, please provide all documents related to the Company's response to INT-01-004, including copies of the notices PALMco sends to residential customers on fixed rate contracts that their contracts will renew to variable rate contracts when their fixed rate contracts expire.

## RESPONSE

PALMco objects to this request for production of documents on the ground that its request for "all documents" related to PALMco's renewal notices is ambiguous, overly broad, unduly burdensome, and not relevant to the scope of this proceeding. Subject to this objection, *see* response and objections to INT-01-004.

## REQUEST FOR PRODUCTION OF DOCUMENTS

RPD-01-006            Please provide copies of the signed contracts, Internet enrollment customer consent forms, and/or third-party verification (“TPV”) recordings for each of the electric and natural gas customer accounts associated with the customer contacts referenced in the PUCO Staff’s December 16, 2019 Notice of Probable Non-Compliance to the Company.

## RESPONSE

PALMco objects to this interrogatory because it is not aware of 51 customer contacts, as referenced in PUCO Staff’s December 16, 2019 Notice of Probable Non-Compliance.

PALMco also objects to this request for production of documents on the grounds that it is not relevant to the scope of this proceeding. Staff’s Notice of Probable Non-Compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that “Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities’ standard offer and other variable rates available to customers.” Staff has not alleged that any PALMco customer was switched without the customer’s authorization (“slammed”), so PALMco’s signed contracts and TPV recordings (it has no Internet enrollment customer consent forms) are not relevant.

PALMco further objects to this request for production of documents to the extent that it seeks information regarding PALMco’s contracts with commercial customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Admin. Code 4901-1-11. PALMco’s commercial contracts are irrelevant to OCC’s interests and beyond the scope of its intervention in this proceeding.

Additionally, PALMco objects to producing any document containing customer account numbers (for electric or natural gas customers) or any other “customer information” (for natural gas customers) without the customers’ consent or an order from the Commission to do so. *See* Ohio Admin. Code 4901:1-21-10(B) (electric); Ohio Admin. Code 4901:1-29-09(A)(1) (gas). PALMco will work cooperatively with OCC to obtain an order allowing such relevant, non-objectionable information to be produced.

Finally, PALMco objects to this request for production of documents because responding to it is unduly burdensome at this time due to the ongoing COVID-19 pandemic. Obtaining the responsive documents would require visiting PALMco’s offices in Brooklyn, New York City. PALMco’s employees have not visited its Brooklyn office since March 2020, due to COVID-19, and PALMco is extremely wary of requiring any employee to risk his or her health, or the health of his or her family, to commute to the office to obtain documents at this point in time when the information has no obvious relevance to an investigation proceeding that the Supreme Court of

Ohio may ultimately prevent from moving forward. PALMco will produce relevant, non-objectionable documents when it is safe for the company to do so.

## REQUEST FOR PRODUCTION OF DOCUMENTS

RPD-01-007            Please provide representative sample copies of all fixed and variable rate CRES and CRNGS contracts that are/were in effect with PALMco's residential customers in Ohio from May 1, 2019 to the present.

## RESPONSE

PALMco objects to this interrogatory on the grounds that it is overbroad. In its motion to intervene, OCC acknowledged that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco’s contracts in effect before August 1, 2019, and after December 10, 2019, are outside that scope.

PALMco also objects that PALMco’s fixed rate contracts are not relevant to the scope of this proceeding. Staff’s Notice of Probable Non-Compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that “Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities’ standard offer and other variable rates available to customers.” It goes on to propose, as corrective actions, that PALMco “immediately cease charging customers variable rates in excess of the default service offer in Ohio”; “immediately re-rate all customers that were charged a variable rate from August 1, 2019 to [December 16, 2019]”; and “send a written notice to all customers on a variable rate contract that they will be re-rated and why.” *Id.* at p. 3. Neither the description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s fixed rate contracts.

Subject to these objections, *see* Case No. 19-957-GE-COI, PALMco Energy OH, LLC’S Responses and Objections to The Office of The Ohio Consumers’ Counsel’s First Set of Interrogatories and Requests for Production of Documents (May 16, 2019), Response to RPD-1-007, zip file named “19-957-GE-COI OCC RPD-1-007” (standard CRES and CRNGS contracts offered to Ohio residential customers in May 2019). *See also* Exhibit B to PALMco’s Complaint in Prohibition, Supreme Court of Ohio Case No. 2020-0564, Ohio Terms and Conditions (standard contracts as of September 2019).

Objections by,

By: /s/ Matthew R. McGuire

Matthew R. McGuire

(PHV-22113-2020)

HUNTON ANDREWS KURTH LLP

951 E. Byrd Street

Richmond, VA 23219

Tel: (804) 344-8821

mmcguire@huntonak.com

Christopher M. Pardo (98629)

HUNTON ANDREWS KURTH LLP

60 State Street, Suite 2400

Boston, MA 02109

Tel: (617) 648-2759

Fax: (617) 433-5022

cpardo@HuntonAK.com

*Counsel for PALMco Energy OH, LLC and  
PALMco Power Ohio, LLC*

## **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Palmco Energy OH, LLC'S and Palmco Power OH, LLC's Responses and Objections to the Office of the Consumers' Counsel's First and Second Set of Interrogatories and Requests for Production of Documents was served by electronic mail on the 31st of July, 2020, to the following.

Angela.obrien@occ.ohio.gov  
Christopher.healey@occ.ohio.gov  
bojko@carpenterlipps.com  
jodi.bair@ohioattorneygeneral.gov

*/s/ Matthew R. McGuire* \_\_\_\_\_

Matthew R. McGuire  
(PHV-22113-2020)



BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission’s )  
Investigation into Palmco Power OH, ) Case No. 19-2153-GE-COI  
LLC d/b/a/ Indra Energy and Palmco )  
Energy OH, LLC d/b/a/ Indra )  
Energy’s Compliance with the Ohio )  
Administrative Code and Potential )  
remedial Actions for Non- )  
Compliance. )

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**PALMCO ENERGY OH, LLC’S AND PALMCO POWER OH, LLC’S FIRST  
SUPPLEMENTAL RESPONSES AND OBJECTIONS TO THE OFFICE OF THE OHIO  
CONSUMERS’ COUNSEL’S FIRST AND SECOND SET OF INTERROGATORIES  
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

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In accordance with Ohio Administrative Code 4901-1-19 and 4901-1-20, Palmco Power OH, LLC and Palmco Energy OH, LLC (collectively, “PALMco”) hereby provide their First Supplemental Responses and Objections to the Office of the Ohio Consumers’ Counsel’s First and Second Set of Interrogatories and Requests for Production of Documents.

**GENERAL OBJECTIONS**

1. PALMco objects to the entirety of this proceeding (“the Second Investigation”). The Second Investigation covers the same alleged actions and violations investigated and resolved by agreement during Case No. 19-957-GE-COI (“the First Investigation”), and PALMco’s participation in the Second Investigation shall not be construed as recognizing or conceding the Commission’s jurisdiction or authority to conduct the Second Investigation. By providing these responses, PALMco preserves, and does not waive, any and all rights available to it under all applicable agreements, statutes, regulations, rules, policies, and

common law, including its right through the appeals process to dispute the Commission's authority to conduct the Second Investigation. Nonetheless, PALMco responds and will continue to cooperate with the Second Investigation in good faith.

2. PALMco objects to the extent that any request seeks data, information, or documents that pre-date August 1, 2019. The Staff's December 16, 2019 Notice of Probable Non-Compliance specifically identifies alleged actions by PALMco between August 1, 2019, and December 16, 2019, and the Staff's proposed corrective actions related only to customer charges occurring after August 1, 2019. As such, PALMco's responses are limited to the period between August 1, 2019, and December 16, 2019.

3. PALMco objects to any and all requests that seek information regarding the fixed rates PALMco charged to customers in Ohio. The Notice of Probable Non-compliance identifies alleged actions related only to PALMco's variable rate practices. The Notice contains a dozen references to the variable rates PALMco charged customers, but does not contain a single reference to the fixed rates. The Staff's Proposed Corrective Actions have no relation to fixed rates, and distinguish PALMco's alleged variable rates practices from its fixed rate practices: "1. Staff strongly recommends that PALMco immediately cease charging customers variable rates in excess of the default service offer in Ohio. . . . 2. PALMco should immediately re-rate all customers that were charged a variable rate from August 1, 2019, to present. . . . 3. PALMco should send written notice to all customers on a variable rate contract that they will be re-rated and why." As such, fixed rates are irrelevant, and discovery related to those rates could not be reasonably calculated to lead to the discovery of admissible evidence.

4. PALMco objects to the Instructions for Answering to the extent such instructions purport to impose discovery obligations that are inconsistent with or go beyond the Commission's rules for discovery.

5. PALMco objects to each interrogatory or request for production to the extent such discovery requests seek the disclosure of information subject to attorney-client privilege or that constitutes attorney work product.

## FIRST SUPPLEMENTAL RESPONSES AND SPECIFIC OBJECTIONS

### INTERROGATORY

INT-01-003                      Please provide the monthly variable rates that PALMco charges or has charged to electric and natural gas customers from April 2019 to present.

### RESPONSE

PALMco objects to this interrogatory on the grounds that it is overbroad. In its motion to intervene, OCC acknowledged that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco’s monthly variable rates before August 1, 2019, and after December 10, 2019, are outside that scope.

PALMco also objects that the monthly variable rates that PALMco charged to customers who have since been re-rated, pursuant to the approved stipulation in Case No. 19-957-GE-COI, are irrelevant to this proceeding. PALMco “voluntarily re-rated all customers who enrolled between December 1, 2018, and April 15, 2019, and were charged a variable rate \* \* \* .” *In re the Commission’s Investigation into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-957-GE-COI, Opinion and Order, ¶ 17 (Jan. 29, 2020). The Commission has found that “customers who were potentially harmed” during that period were “made whole through refunds \* \* \* .” *Id.* ¶ 48. “PALMco has also reviewed and re-rated accounts in response to informal complaints brought to its attention by Staff” relating to customers who enrolled either before December 1, 2018, or after April 15, 2019. *Id.* ¶ 18. By September 17, 2019, PALMco had also “reimbursed up to \* \* \* \$85,00[0]” to customers who enrolled before December 1, 2018, or after April 15, 2019, and “made informal complaints \* \* \* .” *Id.* ¶ 49; *see also id.* ¶ 32. “Because the Stipulation provides redress for [these] customers,” *id.* ¶ 50, the monthly variable rates originally charged to those re-rated customers are irrelevant.

Additionally, PALMco objects to this interrogatory to the extent that it seeks the monthly variable rates PALMco charged to non-residential customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Admin. Code 4901-1-11. PALMco’s monthly variable rates for industrial or commercial customers are irrelevant to OCC’s interests and beyond the scope of its intervention in this proceeding.

Subject to the first objection and notwithstanding the second and third objections, please see the document titled “OH Var Rates Billed Customer List 20190801 to 20191206.pdf,” which PALMco produced to OCC on July 31, 2020, pursuant to the parties’ protective agreement. *See also* Case No. 19-957-GE-COI, PALMco Energy OH, LLC’S Responses and Objections to The Office of The Ohio Consumers’ Counsel’s Second Set of Interrogatories and Requests for Production of Documents (Aug. 9, 2019), confidential PDF file named “19-957-GE-COI OCC INT-2-012

Confidential)", Response to INT-2-012(f) and (g) (weighted average variable rates by service area for August 2019).

SUPPLEMENTAL RESPONSE

Subject to and without waiving any of the General Objections or the specific objections raised in the original response to this Interrogatory, for PALMco's weighted average variable rates for its electric and natural gas customers for each month between August and December 2019, see the document titled "Indra Energy-12.6.2019 DR response.pdf," which PALMco produced to OCC on July 31, 2020, pursuant to the parties' protective agreement.

## INTERROGATORY

- INT-01-005                      How many electric customers in Ohio was PALMco serving on December 31, 2019?
- A.    Of the total electric customers identified, how many were served under fixed rate contracts?
- B.    Of the total electric customers identified, how many were served under variable rate contracts?

## RESPONSE

PALMco objects to this interrogatory on the grounds that it is overbroad. In its motion to intervene, OCC expressed to the Commission that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. The number of customers PALMco was serving on December 31, 2019, is outside the scope of this proceeding.

PALMco also objects that the total number of electric customers that PALMco was serving as of December 31, 2019, and the total number of customers served under fixed rate or variable rate contracts, are not relevant to the scope of this proceeding. PALMco has been accused of only “51 \* \* \* instances of charging residential consumers unconscionable rates.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco customers are not entitled to re-rates simply by virtue of being PALMco customers. *See In re the Commission’s Investigation into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-957-GE-COI, Opinion and Order, ¶ 50 (Jan. 29, 2020).

PALMco also objects that PALMco’s fixed rate contracts are not relevant to the scope of this proceeding. Staff’s Notice of Probable Non-Compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that “Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities’ standard offer and other variable rates available to customers.” It goes on to propose, as corrective actions, that PALMco “immediately cease charging customers variable rates in excess of the default service offer in Ohio”; “immediately re-rate all customers that were charged a variable rate from August 1, 2019 to [December 16, 2019]”; and “send a written notice to all customers on a variable rate contract that they will be re-rated and why.” *Id.* at p. 3. Neither the description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s fixed rate contracts.

Additionally, PALMco objects to this interrogatory to the extent that the totals it seeks include non-residential customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Admin. Code 4901-1-11. PALMco’s small commercial and mercantile customers are irrelevant to OCC’s interests and beyond the scope of its intervention in this proceeding.

Notwithstanding these objections:

- For an answer to the primary part of the interrogatory, see the document titled “Indra Energy Response 02 07 2020of.pdf,” which lists the number of PALMco customers returning to electric utility default service as of February 7, 2020, and which PALMco produced to OCC on July 31, 2020, and
- For an answer to subpart B, see the document titled “Indra Energy- 12.6.19 DR response.pdf,” which lists the number of PALMco electric customers on a variable rate as of December 5, 2019, and which PALMco produced to OCC on July 31, 2020.

*See also* Case No. 19-957-GE-COI, PALMco Energy OH, LLC’S Responses and Objections to The Office of The Ohio Consumers’ Counsel’s Second Set of Interrogatories and Requests for Production of Documents (Aug. 9, 2019), confidential PDF file named “19-957-GE-COI OCC INT-2-012 Confidential), Response to INT-2-012.b., c., e. (providing the numbers of PALMco’s electric accounts, joint electric and natural gas accounts, and electric accounts with fixed rate contracts in Ohio as of August 2019). *See also* Case No. 19-957-GE-COI, PALMco Energy OH, LLC’S Responses and Objections to The Office of The Ohio Consumers’ Counsel’s Fourth Set of Interrogatories and Requests for Production of Documents (Sept. 12, 2019), Response to INT-4-048, Excel file named “19-957-GE-COI OCC INT-4-047 Response,” sheet “Served” (identifying the number of residential electric customers served by PALMco as of September 2019).

#### SUPPLEMENTAL RESPONSE

Subject to and without waiving any of the General Objections or the specific objections raised in the original response to this Interrogatory, as of December 31, 2019, PALMco had 1,058 electric customers on fixed-rate contracts and 2,882 electric customers on variable-rate contracts.

## INTERROGATORY

- INT-01-006                      How many natural gas customers in Ohio was PALMco serving on December 31, 2019?
- A.    Of the total natural gas customers identified, how many were served under fixed rate contracts?
- B.    Of the total natural gas customers identified, how many were served under variable rate contracts?

## RESPONSE

PALMco objects to this interrogatory on the grounds that it is overbroad. In its motion to intervene, OCC acknowledged that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. The number of customers PALMco was serving on December 31, 2019, is outside the scope of this proceeding.

PALMco also objects that the total number of natural gas customers that PALMco was serving as of December 31, 2019, and the total number of customers served under fixed rate or variable rate contracts, are not relevant to the scope of this proceeding. PALMco has been accused of only “51 \* \* \* instances of charging residential consumers unconscionable rates.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco customers are not entitled to re-rates simply by virtue of being PALMco customers. *See In re the Commission’s Investigation into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-957-GE-COI, Opinion and Order, ¶ 50 (Jan. 29, 2020).

PALMco also objects that PALMco’s fixed rate contracts are not relevant to the scope of this proceeding. Staff’s Notice of Probable Non-Compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that “Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities’ standard offer and other variable rates available to customers.” It goes on to propose, as corrective actions, that PALMco “immediately cease charging customers variable rates in excess of the default service offer in Ohio”; “immediately re-rate all customers that were charged a variable rate from August 1, 2019 to [December 16, 2019]”; and “send a written notice to all customers on a variable rate contract that they will be re-rated and why.” *Id.* at p. 3. Neither the description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s fixed rate contracts.

Additionally, PALMco objects to this interrogatory to the extent that the numbers it seeks include non-residential customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Admin. Code 4901-1-11. PALMco’s small commercial and mercantile customers are irrelevant to OCC’s interests and beyond the scope of its intervention in this proceeding.

Notwithstanding these objections:

- For an answer to the primary part of the interrogatory, see the document titled “Indra Energy Response 02 07 2020Of.pdf,” which lists the number of PALMco customers returning to natural gas utility default service as of February 7, 2020, and which PALMco produced to OCC on July 31, 2020, and
- For an answer to subpart B, see the document titled “Indra Energy- 12.6.19 DR response.pdf,” which lists the number of PALMco natural gas customers on a variable rate as of December 5, 2019, and which PALMco produced to OCC on July 31, 2020.

*See also* Case No. 19-957-GE-COI, PALMco Energy OH, LLC’S Responses and Objections to The Office of The Ohio Consumers’ Counsel’s Second Set of Interrogatories and Requests for Production of Documents (Aug. 9, 2019), confidential PDF file named “19-957-GE-COI OCC INT-2-012 Confidential)”, Response to INT-2-012.a., c., d. (providing the numbers of PALMco’s natural gas accounts, joint electric and natural gas accounts, and natural gas accounts with fixed rate contracts in Ohio as of August 2019). *See also* Case No. 19-957-GE-COI, PALMco Energy OH, LLC’S Responses and Objections to The Office of The Ohio Consumers’ Counsel’s Fourth Set of Interrogatories and Requests for Production of Documents (Sept. 12, 2019), Response to INT-4-048, Excel file named “19-957-GE-COI OCC INT-4-047 Response,” sheet “Served” (identifying the number of residential natural gas customers served by PALMco as of September 2019).

#### SUPPLEMENTAL RESPONSE

Subject to and without waiving any of the General Objections or the specific objections raised in the original response to this Interrogatory, as of December 31, 2019, PALMco had 481 natural gas customers on fixed-rate contracts and 5,020 natural gas customers on variable-rate contracts.

## INTERROGATORY

INT-01-012                    The PUCO Staff's December 16, 2019 Notice of Probable Non-Compliance references 25 call center contacts regarding PALMco's gas rates and 26 call center contacts regarding PALMco's electric rates. Were any customers who made these contacts customers who were automatically renewed by PALMco to a monthly variable rate contract from a fixed rate contract?

## RESPONSE

PALMco objects to this interrogatory because it is not aware of all 51 customer contacts referenced in PUCO Staff's December 16, 2019 Notice of Probable Non-Compliance, nor does PALMco know that there were 25 contacts related to gas rates and 26 contacts related to electric rates. Subject to that objection, PALMco is investigating whether the known contacts were automatically renewed to a monthly variable rate contract from a fixed rate contract and will supplement this interrogatory.

## SUPPLEMENTAL RESPONSE

Subject to and without waiving any of the General Objections or the specific objections raised in the original response to this Interrogatory, at least one of the customers who made the contacts referenced in INT-01-012 was a customer who was automatically renewed to a monthly variable rate contract from a fixed rate contract.

## INTERROGATORY

INT-01-013

If the response to INT-01-012 is affirmative, for each customer who was renewed from a fixed rate to a variable rate, please identify and/or provide the following:

- A. the date the customer was renewed from the fixed rate to the variable rate contract;
- B. the customer's rate under the fixed rate contract;
- C. the variable rate charged to the customer for each month after the renewal from the fixed rate contract to present, or until the time the customer was no longer served by PALMco;
- D. copies of all contract renewal documents or notices sent to the customer prior to the contract renewal informing the customer of the fixed rate contract expiration and automatic renewal to a variable rate contract.

## RESPONSE

PALMco objects to this interrogatory because responding to it is unduly burdensome at this time due to the ongoing COVID-19 pandemic. Obtaining the responsive information would require visiting PALMco's offices in Brooklyn, New York City. PALMco's employees have not visited its Brooklyn office since March 2020, due to COVID-19, and PALMco is extremely wary of requiring any employee to risk his or her health, or the health of his or her family, to commute to the office to obtain documents at this point in time when the information has no obvious relevance to an investigation proceeding that the Supreme Court of Ohio may ultimately prevent from moving forward. PALMco will supplement this interrogatory with relevant, non-objectionable information when it is safe for the company to do so.

Additionally, PALMco objects to producing any document containing customer account numbers (for electric or natural gas customers) or any other "customer information" (for natural gas customers) without the customers' consent or an order from the Commission to do so. *See* Ohio Admin. Code 4901:1-21-10(B) (electric); Ohio Admin. Code 4901:1-29-09(A)(1) (gas). PALMco will work cooperatively with OCC to obtain a Commission order allowing such information to be produced.

- A. *See* objections to part C of this interrogatory, *infra*.
- B. PALMco objects to this portion of the interrogatory on the grounds that PALMco's fixed rates are not relevant to the scope of this proceeding. Staff's Notice of Probable Non-compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that "Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities' standard offer and other variable rates available to customers." It goes on

to propose, as corrective actions, that PALMco “immediately cease charging customers variable rates in excess of the default service offer in Ohio”; “immediately re-rate all customers that were charged a variable rate from August 1, 2019 to [December 16, 2019]”; and “send a written notice to all customers on a variable rate contract that they will be re-rated and why.” *Id.* at p. 3. Neither the description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s fixed rates.

- C. PALMco objects to this portion of the interrogatory on the grounds that it is not relevant to the scope of this proceeding. The Commission has asserted to the Supreme Court of Ohio that this proceeding “is not about regulating Relators variable prices; it is about enforcing Commission rules on marketing, solicitation, and sales practices that apply to certified CRES and CRNGS providers, like Relators.” *State ex rel. PALMco Energy OH, LLC and PALMco Power OH, LLC v. Pub. Util. Comm. of Ohio*, Case No. 20-0564, Motion to Dismiss Submitted on Behalf of Respondent, Public Utilities Commission of Ohio, at 10 (May 21, 2020).
- D. PALMco objects to this portion of the interrogatory on the grounds that it is not relevant to the scope of this proceeding. In its motion to intervene, OCC expressed to the Commission that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco’s renewal notices are beyond the scope of this proceeding.

Additionally, PALMco objects to this interrogatory to the extent that it seeks copies of PALMco’s renewal notices to small commercial customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Admin. Code 4901-1-11. PALMco’s renewal notifications for small commercial customers are irrelevant to OCC’s interests and beyond the scope of its intervention in this proceeding.

Subject to these objections, *see* Case No. 19-957-GE-COI, PALMco Energy OH, LLC’S Responses and Objections to The Office of The Ohio Consumers’ Counsel’s Fourth Set of Interrogatories and Requests for Production of Documents (Sept. 12, 2019), Response to RPD-4-020 and zip file named “19-957-GE-COI OCC RPD-4-020 Response” (form renewal notices for 2018 and 2019).

#### SUPPLEMENTAL RESPONSE

Subject to and without waiving any of the General Objections or the specific objections raised in the original response to this Interrogatory, PALMco will supplement its answer with the data and documents that may be available to it and responsive, if any, after the Attorney Examiner issues an order waiving the rules governing disclosure of customer information.

## INTERROGATORY

INT-02-001

Please identify the following monthly information pertaining to the time period of May 2019 to present:

All customers (electric and natural gas) of PALMco residing in Ohio (identified by account number) together with the following monthly information:

- a. Customer Account Rate code;
- b. Volumes of commodity billed to each customer account ;
- c. Distribution utility that serves the customer; and,
- d. Type of customer (residential or non-residential).

## RESPONSE

PALMco objects to this interrogatory on the grounds that it is overbroad. In its motion to intervene, OCC acknowledged that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco’s customers before August 1, 2019, and after December 10, 2019, are outside that scope.

PALMco also objects that PALMco’s fixed rate contracts are not relevant to the scope of this proceeding. Staff’s Notice of Probable Non-Compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that “Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities’ standard offer and other variable rates available to customers.” It goes on to propose, as corrective actions, that PALMco “immediately cease charging customers variable rates in excess of the default service offer in Ohio”; “immediately re-rate all customers that were charged a variable rate from August 1, 2019 to [December 16, 2019]”; and “send a written notice to all customers on a variable rate contract that they will be re-rated and why.” *Id.* at p. 3. Neither the description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s fixed rate contracts.

PALMco also objects to this interrogatory to the extent that it seeks information regarding rates charged to non-residential customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Admin. Code 4901-1-11. PALMco’s small commercial and mercantile customers are irrelevant to OCC’s interests and beyond the scope of its intervention in this proceeding.

Finally, PALMco objects to this request for production of documents because responding to it is unduly burdensome at this time due to the ongoing COVID-19 pandemic. Obtaining the responsive documents would require visiting PALMco’s offices in Brooklyn, New York City. PALMco’s

employees have not visited its Brooklyn office since March 2020, due to COVID-19, and PALMco is extremely wary of requiring any employee to risk his or her health, or the health of his or her family, to commute to the office to obtain documents at this point in time when the information has no obvious relevance to an investigation proceeding that the Supreme Court of Ohio may ultimately prevent from moving forward.

Subject to these objections, please see the confidential document titled “OH Var Rates Billed Customer List 20190801 to 20191206.pdf,” which PALMco produced to OCC on July 31, 2020, pursuant to the parties’ confidentiality agreement. PALMco will supplement that confidential document with the additional information requested in this interrogatory and interrogatory INT-2-002 once it is able to access its Brooklyn office safely and only after the legal prerequisites have been met for producing PALMco’s customer information.

#### SUPPLEMENTAL RESPONSE

Subject to the General Objections and its original objections, PALMco will provide responsive residential customer information, if any, for the period between August 1, 2019, and December 16, 2020, after the Attorney Examiner issues an order waiving the rules governing disclosure of customer information.

## INTERROGATORY

INT-02-002                    Please identify the rate codes (by distribution utility) for PALMco customers residing in Ohio, along with the number of residential customers billed at each rate code and the total volume of Mcf/ccf commodity billed from May 2019 to present.

## RESPONSE

PALMco objects to this interrogatory on the grounds that it is overbroad. In its motion to intervene, OCC expressed to the Commission that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco’s customers before August 1, 2019, and after December 10, 2019, are outside that scope.

PALMco also objects that PALMco’s fixed rate contracts are not relevant to the scope of this proceeding. Staff’s Notice of Probable Non-Compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that “Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities’ standard offer and other variable rates available to customers.” It goes on to propose, as corrective actions, that PALMco “immediately cease charging customers variable rates in excess of the default service offer in Ohio”; “immediately re-rate all customers that were charged a variable rate from August 1, 2019 to [December 16, 2019]”; and “send a written notice to all customers on a variable rate contract that they will be re-rated and why.” *Id.* at p. 3. Neither the description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s fixed rate contracts.

Finally, PALMco objects to this request for production of documents because responding to it is unduly burdensome at this time due to the ongoing COVID-19 pandemic. Obtaining the responsive documents would require visiting PALMco’s offices in Brooklyn, New York City. PALMco’s employees have not visited its Brooklyn office since March 2020, due to COVID-19, and PALMco is extremely wary of requiring any employee to risk his or her health, or the health of his or her family, to commute to the office to obtain documents at this point in time when the information has no obvious relevance to an investigation proceeding that the Supreme Court of Ohio may ultimately prevent from moving forward.

Subject to these objections, please see the confidential document titled “OH Var Rates Billed Customer List 20190801 to 20191206.pdf,” which PALMco produced to OCC on July 31, 2020, pursuant to the parties’ confidentiality agreement. PALMco will supplement that confidential document with the additional information requested in this interrogatory and interrogatory INT-2-001 once it is able to access its Brooklyn office safely and only after the legal prerequisites have been met for producing PALMco’s customer information.

## SUPPLEMENTAL RESPONSE

Subject to the General Objections and its original objections, PALMco will provide responsive residential customer information, if any, for the period between August 1, 2019, and December 16, 2020, after the Attorney Examiner issues an order waiving the rules governing disclosure of customer information.

## INTERROGATORY

INT-02-003                    With respect to each natural gas customer account identified in response to INT-2-001, did PALMco charge an introductory rate to the customer that was at or below the utility Standard Choice Offer or Gas Cost Recovery and then increase the rate at the end of the introductory period?

## RESPONSE

PALMco objects to this interrogatory on the grounds that it is overbroad. In its motion to intervene, OCC expressed to the Commission that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco’s customers before August 1, 2019, and after December 10, 2019, are outside that scope.

PALMco also objects that PALMco’s fixed rate contracts are not relevant to the scope of this proceeding. Staff’s Notice of Probable Non-Compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that “Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities’ standard offer and other variable rates available to customers.” It goes on to propose, as corrective actions, that PALMco “immediately cease charging customers variable rates in excess of the default service offer in Ohio”; “immediately re-rate all customers that were charged a variable rate from August 1, 2019 to [December 16, 2019]”; and “send a written notice to all customers on a variable rate contract that they will be re-rated and why.” *Id.* at p. 3. Neither the description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s fixed rate contracts.

For the same reason, PALMco’s introductory rates, and how those rates compared to the utility Standard Choice Offer or Gas Cost Recovery and the rates in place after the introductory period, is not relevant to the scope of this proceeding. Neither Staff’s description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s introductory rates.

PALMco also objects to this interrogatory to the extent that it seeks information regarding rates charged to non-residential customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Adm. Code 4901-1-11. PALMco’s small commercial and mercantile customers are irrelevant to OCC’s interests and beyond the scope of its intervention in this proceeding.

PALMco also objects that the contracts for customers whom PALMco has since re-rated, pursuant to the approved stipulation in Case No. 19-957-GE-COI, are irrelevant to this proceeding. PALMco “voluntarily re-rated all customers who enrolled between December 1, 2018, and April 15, 2019, and were charged a variable rate \* \* \* .” *In re the Commission’s Investigation into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-*

*Compliance*, Case No. 19-957-GE-COI, Opinion and Order, ¶ 17 (Jan. 29, 2020). The Commission has found that “customers who were potentially harmed” during that period were “made whole through refunds \* \* \* .” *Id.* ¶ 48. “PALMco has also reviewed and re-rated accounts in response to informal complaints brought to its attention by Staff” relating to customers who enrolled either before December 1, 2018, or after April 15, 2019. *Id.* ¶ 18. By September 17, 2019, PALMco had also “reimbursed up to \* \* \* \$85,00[0]” to customers who enrolled before December 1, 2018, or after April 15, 2019, and “made informal complaints \* \* \* .” *Id.* ¶ 49; *see also id.* ¶ 32. “Because the Stipulation provides redress for [these] customers,” *id.* ¶ 50, those customers’ contracts are irrelevant.

PALMco also objects that this interrogatory is unduly burdensome. Determining the introductory rate for each of its thousands of natural gas customers who had contracts with introductory rates; determining the Standard Choice Offer or Gas Cost Recovery rate for each natural gas utility for the months in question; comparing those two rates; and comparing the introductory rates to the initial rates in place after the end of the introductory period would take months in a normal time. And this is not a normal time. Obtaining responsive information would require visiting PALMco’s offices in Brooklyn, New York City. PALMco’s employees have not visited its Brooklyn office since March 2020, due to the COVID-19 pandemic. And PALMco is extremely wary of requiring any employee to risk his or her health, or the health of his or her family, to commute to the office to obtain documents with no obvious relevance to an investigation proceeding that the Supreme Court of Ohio may ultimately prevent from moving forward.

#### SUPPLEMENTAL RESPONSE

Subject to the General Objections and its original objections, PALMco will provide responsive residential customer information, if any, for the period between August 1, 2019, and December 16, 2020, after the Attorney Examiner issues an order waiving the rules governing disclosure of customer information.

## INTERROGATORY

INT-02-005                      With respect to each electric customer account identified in response to INT-2-001, did PALMco charge an introductory rate to the customer that was at or below the utility Standard Service Offer and then increase the rate at the end of the introductory period?

## RESPONSE

PALMco objects to this interrogatory on the grounds that it is overbroad. In its motion to intervene, OCC acknowledged that “[t]his investigation [proceeding] involves PALMco’s . . . practices in marketing electric and natural gas service to Ohioans from August 1, 2019 to December 10, 2019.” OCC Motion to Intervene, Memorandum in Support at 1. PALMco’s customers before August 1, 2019, and after December 10, 2019, are outside that scope.

PALMco also objects that PALMco’s fixed rate contracts are not relevant to the scope of this proceeding. Staff’s Notice of Probable Non-Compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that “Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities’ standard offer and other variable rates available to customers.” It goes on to propose, as corrective actions, that PALMco “immediately cease charging customers variable rates in excess of the default service offer in Ohio”; “immediately re-rate all customers that were charged a variable rate from August 1, 2019 to [December 16, 2019]”; and “send a written notice to all customers on a variable rate contract that they will be re-rated and why.” *Id.* at p. 3. Neither the description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s fixed rate contracts.

For the same reason, PALMco’s introductory rates, and how those rates compared to the utility Standard Service Offer and the rates in place after the introductory period, is not relevant to the scope of this proceeding. Neither Staff’s description of the alleged non-compliance nor the proposed corrective actions relate to PALMco’s introductory rates.

PALMco also objects to this interrogatory to the extent that it seeks information regarding rates charged to non-residential customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Adm. Code 4901-1-11. PALMco’s small commercial and mercantile customers are irrelevant to OCC’s interests and beyond the scope of its intervention in this proceeding.

PALMco also objects that the contracts for customers whom PALMco has since re-rated, pursuant to the approved stipulation in Case No. 19-957-GE-COI, are irrelevant to this proceeding. PALMco “voluntarily re-rated all customers who enrolled between December 1, 2018, and April 15, 2019, and were charged a variable rate \* \* \* .” *In re the Commission’s Investigation into PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-957-GE-COI, Opinion and Order, ¶ 17 (Jan. 29, 2020). The Commission

has found that “customers who were potentially harmed” during that period were “made whole through refunds \* \* \* .” *Id.* ¶ 48. “PALMco has also reviewed and re-rated accounts in response to informal complaints brought to its attention by Staff” relating to customers who enrolled either before December 1, 2018, or after April 15, 2019. *Id.* ¶ 18. By September 17, 2019, PALMco had also “reimbursed up to \* \* \* \$85,00[0]” to customers who enrolled before December 1, 2018, or after April 15, 2019, and “made informal complaints \* \* \* .” *Id.* ¶ 49; *see also id.* ¶ 32. “Because the Stipulation provides redress for [these] customers,” *id.* ¶ 50, those customers’ contracts are irrelevant.

PALMco also objects that this interrogatory is unduly burdensome. Determining the introductory rate for each of its thousands of electric customers who had contracts with introductory rates; determining the Standard Service Offer rate for each electric utility for the months in question; comparing those two rates; and comparing the introductory rates to the initial rates in place after the end of the introductory period would take months in a normal time. And this is not a normal time. Obtaining responsive information would require visiting PALMco’s offices in Brooklyn, New York City. PALMco’s employees have not visited its Brooklyn office since March 2020, due to the COVID-19 pandemic. And PALMco is extremely wary of requiring any employee to risk his or her health, or the health of his or her family, to commute to the office to obtain documents with no obvious relevance to an investigation proceeding that the Supreme Court of Ohio may ultimately prevent from moving forward.

#### SUPPLEMENTAL RESPONSE

Subject to the General Objections and its original objections, PALMco will provide responsive residential customer information, if any, for the period between August 1, 2019, and December 16, 2020, after the Attorney Examiner issues an order waiving the rules governing disclosure of customer information.

## REQUEST FOR PRODUCTION OF DOCUMENTS

RPD-01-006                    Please provide copies of the signed contracts, Internet enrollment customer consent forms, and/or third-party verification (“TPV”) recordings for each of the electric and natural gas customer accounts associated with the customer contacts referenced in the PUCO Staff’s December 16, 2019 Notice of Probable Non-Compliance to the Company.

## RESPONSE

PALMco objects to this interrogatory because it is not aware of 51 customer contacts, as referenced in PUCO Staff’s December 16, 2019 Notice of Probable Non-Compliance.

PALMco also objects to this request for production of documents on the grounds that it is not relevant to the scope of this proceeding. Staff’s Notice of Probable Non-Compliance (filed in the docket for this proceeding on December 16, 2019) states (at p. 1) that “Staff believes that PALMco is charging variable rates that are unconscionably higher than the utilities’ standard offer and other variable rates available to customers.” Staff has not alleged that any PALMco customer was switched without the customer’s authorization (“slammed”), so PALMco’s signed contracts and TPV recordings (it has no Internet enrollment customer consent forms) are not relevant.

PALMco further objects to this request for production of documents to the extent that it seeks information regarding PALMco’s contracts with commercial customers. OCC “move[d] to intervene in this case on behalf of Ohio’s residential utility customers.” OCC Motion to Intervene at 2, citing R.C. Chap. 4911, R.C. 4903.221, and Ohio Admin. Code 4901-1-11. PALMco’s commercial contracts are irrelevant to OCC’s interests and beyond the scope of its intervention in this proceeding.

Additionally, PALMco objects to producing any document containing customer account numbers (for electric or natural gas customers) or any other “customer information” (for natural gas customers) without the customers’ consent or an order from the Commission to do so. *See* Ohio Admin. Code 4901:1-21-10(B) (electric); Ohio Admin. Code 4901:1-29-09(A)(1) (gas). PALMco will work cooperatively with OCC to obtain an order allowing such relevant, non-objectionable information to be produced.

Finally, PALMco objects to this request for production of documents because responding to it is unduly burdensome at this time due to the ongoing COVID-19 pandemic. Obtaining the responsive documents would require visiting PALMco’s offices in Brooklyn, New York City. PALMco’s employees have not visited its Brooklyn office since March 2020, due to COVID-19, and PALMco is extremely wary of requiring any employee to risk his or her health, or the health of his or her family, to commute to the office to obtain documents at this point in time when the information has no obvious relevance to an investigation proceeding that the Supreme Court of Ohio may ultimately prevent from moving forward. PALMco will produce relevant, non-objectionable documents when it is safe for the company to do so.

SUPPLEMENTAL RESPONSE

In addition to the General Objections and its original objections, PALMco objects to this request as overbroad and unduly burdensome because it seeks documents and information that exceed the temporal scope of the Second Investigation and seeks information irrelevant to the question of whether PALMco charged residential customers unconscionable variable rates. Subject to the foregoing objections and the general objections identified above, PALMco is identifying applicable documents and will produce responsive documents that it identifies, if any, after the Attorney Examiner issues an order waiving the rules governing disclosure of customer information.

Objections by,

/s/ Eric B. Gallon

Eric B. Gallon (0071465) (Counsel of Record)

Allen T. Carter (0085393)

Porter, Wright, Morris & Arthur LLP

Huntington Center

41 South High Street, Suites 2800-3200

Columbus, Ohio 43215

Tel: (614) 227-2190/4441

Fax: (614) 227-2100

Email: [egallon@porterwright.com](mailto:egallon@porterwright.com)

[acarter@porterwright.com](mailto:acarter@porterwright.com)

(willing to accept service by e-mail)

Matthew R. McGuire (PHV-22113-2020)

HUNTON ANDREWS KURTH LLP

951 E. Byrd Street

Richmond, VA 23219

Tel: (804) 344-8821 [mmcguire@huntonak.com](mailto:mmcguire@huntonak.com)

Christopher M. Pardo (98629)

HUNTON ANDREWS KURTH LLP

60 State Street, Suite 2400

Boston, MA 02109

Tel: (617) 648-2759

Fax: (617) 433-5022 [cpardo@HuntonAK.com](mailto:cpardo@HuntonAK.com)

*Counsel for PALMco Energy OH, LLC and  
PALMco Power Ohio, LLC*

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Palmco Energy OH, LLC'S and Palmco Power OH, LLC's First Supplemental Responses and Objections to the Office of the Consumers' Counsel's First and Second Set of Interrogatories and Requests for Production of Documents was served by electronic mail on the 22nd of September, 2020, to the following:

Counsel for the Office of the Ohio Consumers' Counsel

Amy Botschner O'Brien	<a href="mailto:amy.botschner.obrien@occ.ohio.gov">amy.botschner.obrien@occ.ohio.gov</a>
Angela D. O'Brien	<a href="mailto:angela.obrien@occ.ohio.gov">angela.obrien@occ.ohio.gov</a>
Christopher Healey	<a href="mailto:christopher.healey@occ.ohio.gov">christopher.healey@occ.ohio.gov</a>
Kimberly W. Bojko	<a href="mailto:bojko@carpenterlipps.com">bojko@carpenterlipps.com</a>

Counsel for the Public Utilities Commission of Ohio

John H. Jones	<a href="mailto:john.jones@ohioattorneygeneral.gov">john.jones@ohioattorneygeneral.gov</a>
Jodi J. Bair	<a href="mailto:jodi.bair@ohioattorneygeneral.gov">jodi.bair@ohioattorneygeneral.gov</a>
Robert Eubanks	<a href="mailto:robert.eubanks@ohioattorneygeneral.gov">robert.eubanks@ohioattorneygeneral.gov</a>

*/s/ Allen T. Carter*  
\_\_\_\_\_  
Allen T. Carter

**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 ) Case No. 19-2153-GE-COI  
Indra Energy’s Compliance with the )  
Ohio Administrative Code and )  
Potential Remedial Action. )

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**AFFIDAVIT OF KIMBERLY W. BOJKO IN SUPPORT OF MOTION TO COMPEL  
RESPONSES TO DISCOVERY**

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I, Kimberly W. Bojko, counsel for the Office of the Ohio Consumers’ Counsel (“OCC”) in the above-captioned case, being first duly sworn, depose and state that, based on knowledge and information, the following efforts have been made to resolve the differences with PALMco Power OH, LLC, d/b/a Indra Energy and PALMco Energy OH, LLC d/b/a Indra Energy (“PALMco”) from whom discovery is sought:

1. On December 27, 2019, OCC filed a Motion to Intervene in this proceeding in accordance with R.C. 4903.221 and Ohio Adm. Code 4901-1-11.
2. On January 14, 2020, OCC served its first set of discovery on PALMco.
3. Under Ohio Adm. Code 4901-1-19(A) and 4901-1-20(C), PALMco’s responses to OCC’s first set of discovery were due on February 3, 2020.
4. PALMco did not respond or object to OCC’s first set of discovery on February 3, 2020 when due. Instead, counsel for PALMco informed OCC via e-mail that PALMco would not be responding to OCC’s first set of discovery until the PUCO granted OCC’s intervention in the case. PALMco stated that its position was “non-negotiable.”

5. On February 14, 2020, OCC filed a Motion to Compel PALMco to respond to OCC's first set of discovery.

6. On February 14, 2020, OCC also served its second set of discovery on PALMco.

7. Under Ohio Adm. Code 4901-1-19(A) and 4901-1-20(C), PALMco's responses to OCC's second set of discovery were due on March 5, 2020.

8. PALMco did not respond or object to OCC's second set of discovery on March 5, 2020 when due. Counsel for PALMco also did not contact counsel for OCC regarding OCC's second set of discovery and objections thereto or request an extension of the due date.

9. On March 9, 2020, Assistant Consumers' Counsel Angela O'Brien contacted counsel for PALMco via e-mail to inquire as to when PALMco would be responding to OCC's second set of discovery.<sup>1</sup>

10. On March 10, 2020, counsel for PALMco responded via e-mail, stating that PALMco's "position regarding the second set of discovery is the same as the first."<sup>2</sup> Counsel for PALMco also stated that PALMco would not object if OCC made an oral motion to compel regarding the second set of discovery during the discovery conference scheduled for the case.<sup>3</sup>

11. On March 17, 2020, OCC filed a Second Motion to Compel PALMco to respond to its second set of discovery.

12. In an Entry dated April 6, 2020, the Attorney Examiner in this case granted both of OCC's motions to compel, and directed PALMco to comply with OCC's discovery requests.<sup>4</sup>

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<sup>1</sup> Exhibit 1 (March 9, 2020 11:49 AM e-mail from OCC counsel Angela O'Brien to PALMco counsel Mark Whitt and Lucas Fykes).

<sup>2</sup> *Id.* (March 10, 2020 12:35 PM e-mail from PALMco counsel Mark Whitt to OCC counsel Angela O'Brien).

<sup>3</sup> *Id.*

<sup>4</sup> Entry (Apr. 6, 2020) at ¶ 19.

13. Rather than follow the PUCO's directive to comply with OCC's discovery requests, PALMco filed a complaint seeking a Writ of Prohibition with the Supreme Court of Ohio on April 28, 2020.<sup>5</sup>

14. Since PALMco failed to respond to the PUCO's directive granting the motions to compel, OCC filed a Motion for Sanctions on May 7, 2020.

15. On July 24, 2020, PALMco's counsel sent an e-mail to the Attorney Examiners and the OCC indicating that PALMco was "working expeditiously to comply with OCC's outstanding requests."<sup>6</sup> In response, the Attorney Examiners requested an update on PALMco's compliance with discovery by the end-of-business on July 31, 2020.<sup>7</sup>

16. After end-of-business on July 31, 2020, PALMco indicated to the Attorney Examiners and parties that it had in fact served responses to OCC's discovery that day.<sup>8</sup> However, upon review, OCC determined that these responses and the corresponding document production were unresponsive, incomplete, and/or insufficient.

17. On August 4, 2020, I sent an e-mail to PALMco and the Attorney Examiners, indicating that PALMco's responses and the corresponding document production were unresponsive, incomplete, and/or insufficient.<sup>9</sup> That same day, PALMco filed a Motion to Stay the proceedings pending the outcome of its Writ of Prohibition filed with the Supreme Court of Ohio.

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<sup>5</sup> *State ex rel. PALMco Energy OH, LLC and PALMco Power OH, LLC v. Public Utilities Commission of Ohio*, Case No. 20-0564, Complaint in Prohibition (Apr. 28, 2020).

<sup>6</sup> Exhibit 2 (July 24, 2020 4:02 PM e-mail from PALMco counsel Matthew McGuire).

<sup>7</sup> *Id.* (July 27, 2020 11:20 AM e-mail from Attorney Examiner Sanyal).

<sup>8</sup> *Id.* (July 31, 2020 5:53 PM e-mail from PALMco counsel Matthew McGuire).

<sup>9</sup> *Id.* (August 4, 2020 8:24 AM e-mail from OCC counsel Kim Bojko).

18. On August 6, 2020, the Attorney Examiners denied the request for a stay, noting that the Supreme Court of Ohio had not issued any stay.<sup>10</sup> The Attorney Examiners also deferred a ruling on OCC's Motion for Sanctions, but noted "that failure to comply with the April 6, 2020 Entry regarding discovery" would subject PALMco "to the provisions of Ohio Adm.Code 4901-1-23(F)."<sup>11</sup>

19. On August 19, 2020, the Supreme Court of Ohio dismissed PALMco's Writ of Prohibition.

20. On August 20, 2020, I sent a follow-up e-mail to PALMco, specifically indicating the deficiencies in its responses and document production, and requesting that PALMco remedy the same through supplemental discovery responses.<sup>12</sup>

21. On September 11, 2020, PALMco's counsel replied to OCC's e-mail regarding the deficiencies and request for supplemental responses. PALMco raised many of the same baseless objections to OCC's first and second discovery requests as it had previously, and indicated that it would not comply with the requests as directed.<sup>13</sup>

22. Subsequently, on September 22, 2020, PALMco tendered some supplemental discovery responses and documents to OCC's first and second discovery requests.

23. On September 30, 2020, I sent an e-mail to PALMco, identifying numerous additional deficiencies in the supplemental responses and document production and challenging

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<sup>10</sup> Entry (August 6, 2020) at ¶ 21.

<sup>11</sup> *Id.*

<sup>12</sup> Exhibit 3 (August 20, 2020 5:17 PM e-mail from OCC counsel Kim Bojko).

<sup>13</sup> *Id.* (September 11, 2020 5:02 PM e-mail from PALMco counsel Allen Carter).

PALMco's objections.<sup>14</sup> I again requested that PALMco provide additional supplemental responses and additional information/documents responsive to OCC's discovery.

24. On October 13, 2020, PALMco's counsel replied via e-mail, reiterating its objections. Despite the issues I raised in my September 30, 2020 e-mail, PALMco indicated that it would not be providing supplemented responses or additional documents until the PUCO ruled on its waiver request.<sup>15</sup>

25. Also on October 13, 2020, PALMco filed a Motion to Establish a Procedural Schedule, requesting that the Commission establish an expedited schedule, providing for the following deadlines: the cut-off for discovery requests would be November 9, 2020; Staff Report would be due on November 16, 2020; testimony would be due on November 23, 2020; and a hearing would commence on December 7, 2020.<sup>16</sup> Despite PALMco's indication in its e-mail that it would not respond to OCC's requests until the PUCO ruled on its July 31, 2020 Motion for Waiver, PALMco failed to recognize the need for a ruling on the Motion for Waiver when requesting an accelerated procedural schedule.

26. On October 15, 2020, I sent an e-mail to PALMco's counsel, outlining the continued issues and concerns with PALMco's objections and deficient responses to OCC's discovery requests, as well as with PALMco's request for an abbreviated procedural schedule.<sup>17</sup> In this e-mail, I stated that OCC would be forced to seek PUCO intervention in the discovery dispute.

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<sup>14</sup> *Id.* (September 30, 2020 5:18 PM e-mail from OCC counsel Kim Bojko).

<sup>15</sup> *Id.* (October 13, 2020 4:05 PM e-mail from PALMco counsel Eric Gallon).

<sup>16</sup> Motion of PALMco Power OH, LLC and PALMco Energy OH, LLC to Establish Procedural Schedule (Oct. 13, 2020).

<sup>17</sup> Exhibit 3 (October 15, 2020 10:55 AM e-mail from OCC counsel Kim Bojko).

27. Despite OCC's reasonable efforts to resolve this discovery dispute, resolution cannot be achieved without the PUCO's intervention.

28. I attest that Exhibits 1, 2, and 3 attached to this Affidavit contains the true and accurate e-mail communications between OCC and PALMco.

STATE OF OHIO            )  
  ) SS:  
COUNTY OF FRANKLIN )

The undersigned, being of lawful age and duly sworn on oath, hereby certifies, deposes and state the following:

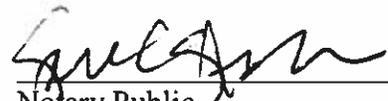
I have caused to be prepared the attached written affidavit for OCC in the above referenced docket. This affidavit is true and correct to the best of my knowledge, information and belief.

Further affiant sayeth naught.

  
\_\_\_\_\_  
Kimberly W. Bojko, Affiant

Subscribed and sworn to before me this 17<sup>th</sup> day of October 2020.



  
\_\_\_\_\_  
Notary Public

## O'Brien, Angela

---

**From:** Mark Whitt <whitt@whitt-sturtevant.com>  
**Sent:** Tuesday, March 10, 2020 12:35 PM  
**To:** O'Brien, Angela; Lucas Fykes  
**Cc:** Kimberly W. Bojko  
**Subject:** Re: PALMco - 19-2153-GE-COI - OCC's 2nd Set of Discovery Requests

Affidavit Exhibit

1

Sorry for the delay – I was called to Cleveland yesterday unexpectedly.

Our position regarding the second set of discovery is the same as the first. I understand a conference is scheduled for Thursday?. We won't object if you make an oral motion on Thursday for the motion to compel to also apply to set 2.

**Mark A. Whitt**

whittsturtevant LLP

The KeyBank Building  
88 E. Broad Street, Suite 1590  
Columbus, Ohio 43215  
614.224.3911 (direct)  
614.804.6034 (mobile)

[whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com)

---

**From:** "Angela.O'Brien@occ.ohio.gov" <Angela.O'Brien@occ.ohio.gov>  
**Date:** Monday, March 9, 2020 at 11:49 AM  
**To:** Mark Whitt <whitt@whitt-sturtevant.com>, Lucas Fykes <fykes@whitt-sturtevant.com>  
**Cc:** "Kimberly W. Bojko" <bojko@CarpenterLipps.com>  
**Subject:** FW: PALMco - 19-2153-GE-COI - OCC's 2nd Set of Discovery Requests

Hi Mark-

I just wanted to follow up with you regarding OCC's 2<sup>nd</sup> Set of Discovery in the above-referenced proceeding. When can OCC expect PALMco's responses?

Best regards,

Angela O'Brien



Angela O'Brien  
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel  
65 East State Street, 7<sup>th</sup> Floor  
Columbus, Ohio 43215-4213  
(614) 466-9531  
angela.obrien@occ.ohio.gov

**CONFIDENTIALITY NOTICE:**

This message may contain privileged and/or confidential information for intended recipients only. If you have received this communication in error, please notify me immediately by email and telephone.

**From:** Bingham, Debra <Debra.Bingham@occ.ohio.gov>

**Sent:** Friday, February 14, 2020 3:40 PM

**To:** Jones, John <John.Jones@ohioattorneygeneral.gov>; whitt@whitt-sturtevant.com; fykes@whitt-sturtevant.com

**Cc:** O'Brien, Angela <Angela.OBrien@occ.ohio.gov>; Healey, Christopher <Christopher.Healey@occ.ohio.gov>; bojko@carpenterlipps.com

**Subject:** PALMco - 19-2153-GE-COI - OCC's 2nd Set of Discovery Requests

Attached please find OCC's 2<sup>nd</sup> Set of Discovery Requests to PALMco in the subject case. If you have any questions, please contact our office.



Deb Bingham  
Administrative Assistant

Office of the Ohio Consumers' Counsel  
65 East State Street, 7<sup>th</sup> Floor  
Columbus, Ohio 43215-4213  
(614) 466-1311  
[debra.bingham@occ.ohio.gov](mailto:debra.bingham@occ.ohio.gov)

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**CAUTION:** This is an external email and may not be safe. If the email looks suspicious, please do not click links or open attachments and forward the email to [csc@ohio.gov](mailto:csc@ohio.gov) or click the Phish Alert Button if available.

## Jonathan Wygonski

---

**Subject:** FW: Case No. 19-2153-GE-COI

Affidavit Exhibit

2

**From:** Kimberly W. Bojko <[bojko@CarpenterLipps.com](mailto:bojko@CarpenterLipps.com)>

**Sent:** Tuesday, August 4, 2020 8:24 AM

**To:** McGuire, Matthew <[MMcGuire@hunton.com](mailto:MMcGuire@hunton.com)>

**Cc:** [Anna.Sanyal@puco.ohio.gov](mailto:Anna.Sanyal@puco.ohio.gov); [Angela.OBrien@occ.ohio.gov](mailto:Angela.OBrien@occ.ohio.gov); [Christopher.Healey@occ.ohio.gov](mailto:Christopher.Healey@occ.ohio.gov); [Jodi.Bair@ohioattorneygeneral.gov](mailto:Jodi.Bair@ohioattorneygeneral.gov); [greg.price@puco.ohio.gov](mailto:greg.price@puco.ohio.gov); [whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com); [fykes@whitt-sturtevant.com](mailto:fykes@whitt-sturtevant.com)

**Subject:** Re: Case No. 19-2153-GE-COI

Your Honors,

As indicated by Mr. McGuire, on Friday evening after the close of business, OCC did receive some responses to its discovery that was propounded on PALMco in January and February. While OCC is still in the process of reviewing PALMco's discovery responses and production of documents, OCC wanted to inform the attorney examiners that we do not believe that PALMco's responses received on Friday satisfy OCC's concerns, OCC's motions to compel, or the PUCO's entry granting the motions to compel.

We can provide a more detailed list of outstanding issues and concerns, but we wanted to provide you with a status update on the discovery from OCC's perspective given our discussion at the prehearing conference regarding the scheduling of the hearing and process moving forward. For example, of particular concern to OCC is PALMco's statement in its email and corresponding objections that PALMco cannot respond to certain discovery requests because PALMco lacks access to its physical offices in Brooklyn. Without debating the substance of the comment and associated objections, OCC obviously has concerns with establishing a procedural schedule when it is unknown when PALMco is able to access its building and provide the responsive documents. And, of course, as highlighted in Mr. McGuire's email, there is certain to be a dispute over what constitutes "relevant, non-privileged, and otherwise non-objectionable documents" after any responsive documents are in fact produced.

As required by the PUCO's rules, OCC will endeavor to work through any outstanding discovery issues with PALMco first, but wanted to raise OCC's timing concerns with you in light of the objections/information received on Friday evening.

Please let me know if you have any questions.

Thanks,

Kim

**Kimberly W. Bojko**

Carpenter Lipps & Leland LLP

Columbus ▪ New York ▪ Chicago

280 Plaza, Suite 1300

280 N. High Street

Columbus, OH 43215

(614) 365-4124

[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)

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On Jul 31, 2020, at 5:53 PM, McGuire, Matthew <[MMcGuire@hunton.com](mailto:MMcGuire@hunton.com)> wrote:

Attorney Examiners Sanyal and Price:

You requested a status update on discovery in this proceeding. Today, July 31, 2020, Palmco has served responses and objections for the outstanding discovery sought by OCC in this matter. As part of its discovery responses, Palmco has provided OCC with the documents that had previously been provided to Commission Staff. Again, the circumstances here are unique in light of COVID-19 and Palmco's lack of access to its physical building. To the extent relevant, non-privileged, and otherwise non-objectionable documents are able to be obtained going forward, Palmco will supplement its discovery responses.

Palmco again respectfully renews its request that the pending motion for sanctions be denied.

Respectfully,  
Matt McGuire

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**From:** [Anna.Sanyal@puco.ohio.gov](mailto:Anna.Sanyal@puco.ohio.gov) <[Anna.Sanyal@puco.ohio.gov](mailto:Anna.Sanyal@puco.ohio.gov)>  
**Sent:** Monday, July 27, 2020 11:20 AM  
**To:** McGuire, Matthew <[MMcGuire@hunton.com](mailto:MMcGuire@hunton.com)>; [Angela.OBrien@occ.ohio.gov](mailto:Angela.OBrien@occ.ohio.gov);  
[Christopher.Healey@occ.ohio.gov](mailto:Christopher.Healey@occ.ohio.gov); [bojko@CarpenterLipps.com](mailto:bojko@CarpenterLipps.com); [Jodi.Bair@ohioattorneygeneral.gov](mailto:Jodi.Bair@ohioattorneygeneral.gov);  
[greg.price@puco.ohio.gov](mailto:greg.price@puco.ohio.gov)  
**Cc:** [whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com); [fykes@whitt-sturtevant.com](mailto:fykes@whitt-sturtevant.com)  
**Subject:** RE: Case No. 19-2153-GE-COI

Matt:

Thanks for the proposal you've outlined below. At this point, the attorney examiners would like the parties to report back on the status of discovery by EOB Friday (7/31). Based on the responses, we will move forward with potentially continuing the hearing schedule.

Let me know if you have any questions.

Thanks, Anna

**Anna Sanyal**  
Public Utilities Commission of Ohio  
Legal Department  
Attorney Examiner  
(614) 644-7694  
[PUCO.ohio.gov](http://PUCO.ohio.gov)  
<image001.png>

<image002.png>

<image003.png>

<image004.png>

**From:** McGuire, Matthew <[MMcGuire@hunton.com](mailto:MMcGuire@hunton.com)>  
**Sent:** Friday, July 24, 2020 4:02 PM  
**To:** Sanyal, Anna <[Anna.Sanyal@puco.ohio.gov](mailto:Anna.Sanyal@puco.ohio.gov)>; O'Brien, Angela <[Angela.OBrien@occ.ohio.gov](mailto:Angela.OBrien@occ.ohio.gov)>;  
Healey, Christopher <[Christopher.Healey@occ.ohio.gov](mailto:Christopher.Healey@occ.ohio.gov)>; [bojko@CarpenterLipps.com](mailto:bojko@CarpenterLipps.com);  
[Jodi.Bair@ohioattorneygeneral.gov](mailto:Jodi.Bair@ohioattorneygeneral.gov); Price, Greg <[greg.price@puco.ohio.gov](mailto:greg.price@puco.ohio.gov)>  
**Cc:** [whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com); [fykes@whitt-sturtevant.com](mailto:fykes@whitt-sturtevant.com)  
**Subject:** Case No. 19-2153-GE-COI

All,

It was a pleasure meeting everyone yesterday. Thank you to the attorney examiners for allowing me to participate while my pro hac vice admission is pending before the Commission. As you all know, I've been recently retained by Palmco to help with this matter. The company is committed to meeting its obligations in this case, and has been consistently working with Staff to re-rate former customers whose issues have been brought to the company's attention. To date, Palmco has refunded hundreds of thousands of dollars to Ohio consumers under the existing joint stipulation and at the request of Staff. It has continued to go above and beyond the Stipulation during the difficult COVID-19 pandemic, and has continued to refund customers thousands of dollars after its licenses expired in February and March. Palmco has completely exited the Ohio market and no longer serves any customers in the state, so there is no risk of ongoing or future harm.

With respect to the pending discovery, Palmco is working expeditiously to comply with OCC's outstanding requests. Palmco will make an initial production in the next few days, and will communicate directly with OCC to provide them access to the information already provided to PUCO Staff. Palmco is diligently working to determine if there are other documents responsive to OCC's requests and to respond to the interrogatories. As we go forward, we respectfully ask that everyone bear in mind the unique circumstances presented here in light of COVID-19. The company has not had access to its physical building since March 2020, which fundamentally hinders its ability to access certain types of documents and information in a swift manner. Palmco will strive to provide relevant, non-privileged information that is requested, to the extent the discovery requests are not otherwise objectionable or the case otherwise stayed, but it may take some time depending on how the information is stored.

Going forward, Palmco would ask that the hearing dates be continued out at least 60 days both to give the Ohio Supreme Court more time to resolve the pending writ of prohibition as well as to give the company time to provide the requested discovery and the parties time to digest it. In light of the company's ongoing cooperation with Staff and commitment to fulfilling its discovery obligations, Palmco respectfully renews its prior request that the attorney examiners deny the pending motion for sanctions.

Respectfully,  
Matt McGuire

**HUNTON**  
ANDREWS KURTH

**Matthew R. McGuire**  
Counsel  
[mmcguire@HuntonAK.com](mailto:mmcguire@HuntonAK.com)  
p 804.344.8821

Hunton Andrews Kurth LLP  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, VA 23219

HuntonAK.com

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**Jonathan Wygonski**

---

**From:** Kimberly W. Bojko  
**Sent:** Thursday, October 15, 2020 10:55 AM  
**To:** Gallon, Eric B.; 'angela.obrien@occ.ohio.gov'; 'christopher.healey@occ.ohio.gov'  
**Cc:** 'McGuire, Matthew'; Carter, Allen T.  
**Subject:** RE: #EXT# Case No. 19-2153-GE-COI PALMco

Thank you for the email. We are disappointed in your response and your client's positions and reluctance to provide additional supplemental responses and additional information/documents in response to OCC's discovery to resolve the discovery dispute. We also disagree with your interpretation of OCC's positions. Providing data in redacted form is not inconsistent with OCC's prior positions taken in this case and other cases. Your response and delay in providing information (in redacted form) that you admit will have to be provided is particularly troublesome in light of the expedited procedural schedule that your client just proposed. By your own admission, we cannot move forward and complete our discovery until the PUCO rules on your waiver request, yet you have proposed a procedural schedule that does not recognize the need for a ruling on that motion and moves forward with the hearing regardless as to whether OCC ever receives the pertinent information that you have admitted OCC is entitled to receive upon granting of the motion.

Regrettably, it appears that we are at an impasse and our discovery dispute cannot be resolved without PUCO intervention.

Thanks,  
Kim

**Kimberly W. Bojko**  
CARPENTER LIPPS & LELAND LLP  
Columbus • Chicago • Washington D.C.  
280 Plaza, Suite 1300  
280 N. High Street  
Columbus, OH 43215  
(614) 365-4124  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)

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**From:** Gallon, Eric B. <EGallon@porterwright.com>  
**Sent:** Tuesday, October 13, 2020 4:05 PM  
**To:** Kimberly W. Bojko <bojko@CarpenterLipps.com>; 'angela.obrien@occ.ohio.gov' <angela.obrien@occ.ohio.gov>; 'christopher.healey@occ.ohio.gov' <christopher.healey@occ.ohio.gov>  
**Cc:** 'McGuire, Matthew' <MMcGuire@hunton.com>; Carter, Allen T. <ACarter@porterwright.com>  
**Subject:** RE: #EXT# Case No. 19-2153-GE-COI PALMco

Kim,

Thank you for your email of September 30<sup>th</sup>. Palmco stands by the objections and responses it provided in Mr. Carter's email dated September 11, 2020, and in Palmco's Supplemental Responses and Objections dated September 22, 2020,

including the objection to providing responsive data, information, or documents that pre-date August 1, 2019. However, Palmco would like to clear up a few points of apparent confusion, and provide additional information that may help resolve the remaining areas of disagreement.

With regard to point # 4 below: Palmco's Supplemental Responses and Objections included, as a reference, its prior responses and objections to OCC's discovery requests. Those prior responses and objections were followed by supplemental responses. Although Palmco previously objected to responding to OCC's discovery requests due to the ongoing COVID-19 pandemic, Palmco's supplemental responses agreed to provide responsive and available information once the Attorney Examiner issues an order waiving the rules governing disclosure of customer information. *See, e.g., Supplemental Responses to OCC INT-01-013, INT-02-001.* In other words, Palmco has agreed to provide additional information when the Commission allows it to do so, notwithstanding its concerns about the COVID-19 risks.

With regard to point # 3 below: Palmco filed a motion requesting a waiver of the customer-information protections in Ohio Adm.Code 4901:1-21-10 and 4901:1-29-09(A)(1) in July. Far from being a stalling tactic, the motion is necessary if Palmco is going to produce to OCC the information it has requested. The protections for customer information in Ohio Adm.Code 4901:1-29-09(A) extend to "any customer information," and not just customer account numbers or social security numbers. The Commission found a similar motion to be "reasonable" in an investigation proceeding just last year. *See In re Commission's Investigation into Verde Energy USA Ohio, LLC, Case No. 19-958-GE-COI, Entry (Aug. 30, 2019).* And although you now assert the motion is unnecessary, OCC previously authorized Palmco to inform the Commission that OCC did not object to the grant of the waiver. Where Palmco has been able to produce information that does not include customer-specific information and redact information that is customer-specific, it has done so, as in my email of September 24, 2020. But it is not feasible to provide useable, redacted responses to discovery that requests information identified or organized by account number (such as OCC INT-02-001, -003, -005) or that contains other customer-specific information (such as RPD-01-006). And it would be duplicative and inefficient, and introduce unnecessary expense, to produce redacted versions of discovery responses that Palmco fully expects to be able to provide in unredacted form once the Commission rules on its motion.

With regard to point # 2 below: Palmco has reiterated its objection to providing information regarding fixed rates. Notwithstanding that objection, Palmco has provided information regarding the number of its customers on fixed-rate contracts as of December 31, 2019 (*see Supplemental Responses to OCC INT-01-005 and -006*) and has agreed to provide other, additional information on fixed rates (*see Supplemental Responses to INT-01-013, INT-02-003, INT-02-005, and RPD-01-006*).

Respectfully,  
Eric Gallon

## **ERIC B. GALLON**

Porter Wright Morris & Arthur LLP  
[Bio / egallon@porterwright.com](mailto:egallon@porterwright.com)  
D: 614.227.2190 / F: 614.227.2100  
41 South High Street, Suites 2800 - 3200 / Columbus, OH 43215

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**From:** Kimberly W. Bojko <[bojko@CarpenterLipps.com](mailto:bojko@CarpenterLipps.com)>

**Sent:** Wednesday, September 30, 2020 5:18 PM

**To:** Carter, Allen T. <[ACarter@porterwright.com](mailto:ACarter@porterwright.com)>; Gallon, Eric B. <[EGallon@porterwright.com](mailto:EGallon@porterwright.com)>;

'angela.obrien@occ.ohio.gov' <angela.obrien@occ.ohio.gov>; 'christopher.healey@occ.ohio.gov'

<christopher.healey@occ.ohio.gov>

Cc: 'McGuire, Matthew' <MMcGuire@hunton.com>

Subject: RE: #EXT# Case No. 19-2153-GE-COI PALMco

Mr. Carter,

Thank you for your email dated September 11, 2020 and PALMco's subsequent supplemental responses provided on September 22, 2020. OCC has reviewed PALMco's First Supplemental Responses to OCC's Discovery Requests provided on September 22, 2020 and believes that, once again, PALMco has failed to provide responsive discovery to OCC. OCC is seeking information that is relevant and reasonably calculated to lead to the discovery of admissible evidence, and PALMco's objections have no basis in law.

In another attempt to resolve the discovery dispute without intervention from the PUCO, OCC is asking PALMco to review the following responses (which are in addition to our August 20, 2020 responses) to PALMco's objections and provide additional supplemental responses and/or responsive answers to OCC's requests.

1. The scope of this investigation is not limited to the period between August 2019 and December 2019.
  - a. At no point has the PUCO limited the scope of this investigation to the period that PALMco claims. The Staff simply reported the dates for which they received complaints. The absence of complaints from outside that period does not at all indicate PALMco was in compliance. Given that PALMco has repeatedly violated Commission directives and Ohio law, it is very likely that information outside those dates will lead to further admissible evidence of PALMco's wrongdoing. But, until the PUCO explicitly limits or narrows the investigation, OCC's discovery is reasonably calculated to lead to discovery of admissible evidence and should be answered and/or documents produced.
2. Fixed rates are relevant and discoverable.
  - a. Ohio Adm. Code 4901-1-16 enables the discovery of information beyond the immediate issue when that information is relevant to evaluating that issue. For example, in *Ohio Consumer's Council v. Pub. Util. Comm.*, the Court ruled that information regarding undisclosed side agreements was relevant to addressing whether a written stipulation was the product of serious bargaining. 111 Ohio St.3d 300, 2006-Ohio-5789, ¶¶ 77-86. Even though only the written stipulation faced review for reasonableness, any unwritten agreements could demonstrate unfair advantage, and therefore a lack of serious bargaining in the written agreement. *Id.* at ¶¶ 84-86. The issue is analogous here. The Staff has alleged that PALMco enticed customers with fixed introductory rates before signing them up for much more unconscionable variable rates. Although the fixed rates themselves may not be identified in the Staff letter as problematic or specifically under investigation by the Staff, PALMco's fixed rates are relevant to PALMco's solicitation/enrollment practices under investigation and are also necessary for comparison to the variable rates. Therefore, OCC's discovery regarding the fixed rates is reasonably calculated to lead to discovery of admissible evidence and should be answered and/or documents produced.
3. The motion to waive disclosure rules is an unnecessary stalling tactic.
  - a. The Ohio Administrative Code provisions cited by PALMco only prevent a CRNGS or CRES from disclosing customer account numbers or social security numbers, unless there is a proper order. There have been multiple such orders in this case. The Commission opened this investigation in December 2019, and the Attorney Examiner has repeatedly directed PALMco to comply with OCC's discovery requests in Entries dated August 4, 2020 and April 6, 2020. It is clear that the Commission has authorized disclosure. PALMco's motion is nothing more than a stalling tactic, evidenced by the fact that PALMco waited eight months to file this motion, and never filed a similar motion in its previous Commission Ordered Investigation. Nonetheless, if PALMco is truly concerned about producing the customer information absent a PUCO order, PALMco could produce such information in redacted form. Withholding all such information with no attempts to redact confidential-only information violates the PUCO's rules.
4. COVID-19 is not an excuse for failure to discover information.

- a. PALMco's failure to provide responsive information started long before and has continued long after COVID-19 has presented any rational barrier. PALMco's responses to OCC's Second Discovery Requests were due March 5, 2020, more than two weeks before New York City entered lockdown. PALMco cannot reasonably blame the pandemic for its own willing failure to provide responsive answers. At any rate, to the point any emergency has barred compliance, that emergency has now passed. New York State currently has fewer daily cases than either Ohio or Pennsylvania (where Indra also has offices according to its website). New York City began reopening on June 8, with all offices permitted to open by June 22. Currently, New York City is in Phase 4 of reopening, including gyms, bars, and hair salons. See <https://www.nytimes.com/article/new-york-phase-reopening.html>. With this information, PALMco has not demonstrated that it is barred or somehow prevented from obtaining documents from its New York (or any other offices), or that it is somehow unsafe to do so. The PUCO has many other regulated entities that are capable of responding to discovery requests during the pandemic and it is unclear why PALMco is somehow different or unique.

We look forward to receiving additional supplemental responses and additional information/documents to OCC's discovery within seven days. We would also be happy to discuss these concerns with you further. Please do not hesitate to contact me with questions.

Thanks,  
Kim

**Kimberly W. Bojko**  
CARPENTER LIPPS & LELAND LLP  
Columbus ▪ Chicago ▪ Washington D.C.  
280 Plaza, Suite 1300  
280 N. High Street  
Columbus, OH 43215  
(614) 365-4124  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)

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**From:** Carter, Allen T. <[ACarter@porterwright.com](mailto:ACarter@porterwright.com)>  
**Sent:** Friday, September 11, 2020 5:02 PM  
**To:** Kimberly W. Bojko <[bojko@CarpenterLipps.com](mailto:bojko@CarpenterLipps.com)>; Gallon, Eric B. <[EGallon@porterwright.com](mailto:EGallon@porterwright.com)>; 'angela.obrien@occ.ohio.gov' <[angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)>; 'christopher.healey@occ.ohio.gov' <[christopher.healey@occ.ohio.gov](mailto:christopher.healey@occ.ohio.gov)>  
**Cc:** 'McGuire, Matthew' <[MMcGuire@hunton.com](mailto:MMcGuire@hunton.com)>  
**Subject:** RE: #EXT# Case No. 19-2153-GE-COI PALMco

Hi Kim,

This email responds to your August 20, 2020 email to Matthew Maguire. PALMco has carefully considered OCC's objections to PALMco's responses and agrees to supplement its production as outlined below.

In your August 20, 2020 email, you outlined OCC's objections to PALMco's responses to OCC's First and Second Set of Discovery Requests. In sum, OCC objections were as follows: **OCC-INT-1-3** (different date range than requested); **OCC-INT-1-5** (different date range than requested); **OCC-INT-1-6** (different date range than requested); **OCC-INT-1-7** (objection to PALMco's response that requests are outside scope of proceedings); **OCC-INT-1-8** (objection to PALMco's

response that requests are outside scope of proceedings); **OCC-INT-1-13** (objection to PALMco's response that requests are outside scope of proceedings; no access to documents); **OCC-RPD-1-1** (objection to PALMco's response that requests are outside scope of proceedings); **OCC-RPD-1-6** (no access to documents); **OCC-INT-2-1** (objection to PALMco's response that requests are outside scope of proceedings; no access); **OCC-INT-2-2** (objection to PALMco's response that requests are outside scope of proceedings; no access); **OCC-INT-2-3** (objection to PALMco's response that requests are outside scope of proceedings; no access); **OCC-INT-2-4** (objection to PALMco's response that requests are outside scope of proceedings); **OCC-INT-2-5** (objection to PALMco's response that requests are outside scope of proceedings); **OCC-INT-2-6** (objection to PALMco's response that requests are outside scope of proceedings).

First, PALMco objects to the entirety of the Second Investigation. The Second Investigation covers the same alleged actions and violations investigated and resolved by agreement during the First Investigation, and PALMco's participation in the Second Investigation shall not be construed as recognizing or conceding the Commission's jurisdiction or authority to conduct the Second Investigation. By providing these responses, PALMco preserves, and does not waive, any and all rights available to it under all applicable agreements, statutes, regulations, rules, policies, and common law, including its right through the appeals process to dispute the Commission's authority to conduct the Second Investigation. Nonetheless, PALMco responds and will continue to cooperate with the Second Investigation in good faith.

Second, PALMco maintains its objection to the extent that any request seeks data, information, or documents that pre-date August 1, 2019. The Staff's December 16, 2019 Notice of Probable Non-Compliance specifically identifies alleged actions by PALMco between August 1, 2019, and December 16, 2019, and the Staff's proposed corrective actions related only to customer charges occurring after August 1, 2019. As such, PALMco's responses are limited to the period between August 1, 2019, and December 16, 2019.

Third, PALMco objects to any and all requests that seek information regarding the fixed rates PALMco charged to customers in Ohio. The Notice of Probable Non-compliance identifies alleged actions related only to PALMco's variable rate practices. The Notice contains a dozen references to the variable rates PALMco charged customers, but does not contain a single reference to the fixed rates. The Staff's Proposed Corrective Actions have no relation to fixed rates, and distinguish PALMco's alleged variable rates practices from its fixed rate practices: "1. Staff strongly recommends that PALMco immediately cease charging customers variable rates in excess of the default service offer in Ohio. . . . 2. PALMco should immediately re-rate all customers that were charged a variable rate from August 1, 2019, to present. . . . 3. PALMco should send written notice to all customers on a variable rate contract that they will be re-rated and why." As such, fixed rates are irrelevant, and discovery related to those rates could not be reasonably calculated to lead to the discovery of admissible evidence.

Subject to those general objections and the objections PALMco raised in its original response, PALMco agrees to supplement its prior responses as follows:

**OCC-INT-01-003:** PALMco will provide the weighted average variable rates for its electric and natural gas customers for each month between August and December 2019. Please see Indra Energy-12.6.2019 DR response.pdf.

**OCC-INT-01-005:** PALMco will provide OCC with the total number of its fixed and its variable electric customers in Ohio as of December 31, 2019.

**OCC-INT-01-006:** PALMco will provide OCC with the total number of its fixed and its variable natural gas customers in Ohio as of December 31, 2019.

**OCC-INT-01-012:** Subject to the foregoing objections, PALMco is investigating the answer to this interrogatory and will provide an answer the week of September 14, 2020.

**OCC-INT-01-013:** PALMco is investigating the answer to INT-01-012, and if the answer is affirmative, PALMco will supplement its answer with the data and documents that may be available to it and responsive, if any, after the Attorney Examiner issues an order waiving the rules governing disclosure of customer information.

**OCC-INT-02-001:** In addition to the general objections identified above and its original objections, PALMco objects to providing any information related to non-residential customers. Subject to PALMco's objections, PALMco will provide responsive residential customer information, if any, for the period between August 1, 2019, and December 16, 2020, after the Attorney Examiner issues an order waiving the rules governing disclosure of customer information.

**OCC-INT-02-002:** In addition to the general objections identified above and its original objections, PALMco objects to providing any information related to non-residential customers. Subject to PALMco's objections, PALMco will provide responsive residential customer information, if any, for the period between August 1, 2019, and December 16, 2020, after the Attorney Examiner issues an order waiving the rules governing disclosure of customer information.

**OCC-INT-02-003:** In addition to the general objections identified above and its original objections, PALMco objects to providing any information related to non-residential customers. Subject to PALMco's objections, PALMco will provide responsive residential customer information, if any, for the period between August 1, 2019, and December 16, 2020, after the Attorney Examiner issues an order waiving the rules governing disclosure of customer information.

**OCC-INT-02-005:** In addition to the general objections identified above and its original objections, PALMco objects to providing any information related to non-residential customers. Subject to PALMco's objections, PALMco will provide responsive residential customer information, if any, for the period between August 1, 2019, and December 16, 2020, after the Attorney Examiner issues an order waiving the rules governing disclosure of customer information.

**OCC-RPD-01-006:** In addition to the general objections identified above and its original objections, PALMco objects to this request as overbroad and unduly burdensome because it seeks documents and information that exceed to the temporal scope of the Second Investigation and seeks information irrelevant to the question of whether PALMco charged residential customers unconscionable variable rates. Subject to the foregoing objections and the general objections identified above, PALMco is identifying applicable documents and will produce responsive documents that it identifies, if any, after the Attorney Examiner issues an order waiving the rules governing disclosure of customer information.

Thanks,  
Allen

## ALLEN T. CARTER

Porter Wright Morris & Arthur LLP  
Bio / [acarter@porterwright.com](mailto:acarter@porterwright.com)  
D: 614.227.4441 / F: 614.227.2100  
41 South High Street, Suites 2800 - 3200 / Columbus, OH 43215

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**From:** Kimberly W. Bojko <[bojko@CarpenterLipps.com](mailto:bojko@CarpenterLipps.com)>

**Sent:** Friday, September 4, 2020 5:23 PM

**To:** Gallon, Eric B. <[EGallon@porterwright.com](mailto:EGallon@porterwright.com)>; 'angela.obrien@occ.ohio.gov' <[angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)>; 'christopher.healey@occ.ohio.gov' <[christopher.healey@occ.ohio.gov](mailto:christopher.healey@occ.ohio.gov)>

**Cc:** 'McGuire, Matthew' <[MMcGuire@hunton.com](mailto:MMcGuire@hunton.com)>; Carter, Allen T. <[ACarter@porterwright.com](mailto:ACarter@porterwright.com)>

**Subject:** RE: #EXT# Case No. 19-2153-GE-COI PALMco

Ok. Thanks.  
Kim

**Kimberly W. Bojko**  
CARPENTER LIPPS & LELAND LLP  
Columbus ▪ New York ▪ Chicago  
280 Plaza, Suite 1300  
280 N. High Street  
Columbus, OH 43215  
(614) 365-4124  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)

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**From:** Gallon, Eric B. <[EGallon@porterwright.com](mailto:EGallon@porterwright.com)>  
**Sent:** Friday, September 04, 2020 4:59 PM  
**To:** Kimberly W. Bojko <[bojko@CarpenterLipps.com](mailto:bojko@CarpenterLipps.com)>; 'angela.obrien@occ.ohio.gov' <[angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)>; 'christopher.healey@occ.ohio.gov' <[christopher.healey@occ.ohio.gov](mailto:christopher.healey@occ.ohio.gov)>  
**Cc:** 'McGuire, Matthew' <[MMcGuire@hunton.com](mailto:MMcGuire@hunton.com)>; Carter, Allen T. <[ACarter@porterwright.com](mailto:ACarter@porterwright.com)>  
**Subject:** RE: #EXT# Case No. 19-2153-GE-COI PALMco

Kim,

I apologize – the week has gotten away from me. I will get back to you on this next week. Have a good long weekend.

Sincerely,  
Eric

**ERIC B. GALLON**

Porter Wright Morris & Arthur LLP  
[Bio / egallon@porterwright.com](mailto:egallon@porterwright.com)  
D: 614.227.2190 / F: 614.227.2100  
41 South High Street, Suites 2800 - 3200 / Columbus, OH 43215

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**From:** Kimberly W. Bojko <[bojko@CarpenterLipps.com](mailto:bojko@CarpenterLipps.com)>  
**Sent:** Thursday, September 3, 2020 6:03 PM  
**To:** Gallon, Eric B. <[EGallon@porterwright.com](mailto:EGallon@porterwright.com)>; 'angela.obrien@occ.ohio.gov' <[angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)>; 'christopher.healey@occ.ohio.gov' <[christopher.healey@occ.ohio.gov](mailto:christopher.healey@occ.ohio.gov)>  
**Cc:** 'McGuire, Matthew' <[MMcGuire@hunton.com](mailto:MMcGuire@hunton.com)>; Carter, Allen T. <[ACarter@porterwright.com](mailto:ACarter@porterwright.com)>  
**Subject:** RE: #EXT# Case No. 19-2153-GE-COI PALMco

**#External Email#**

Hello, Eric. I just wanted to follow up on your email and see the status of PALMco's supplemental discovery responses to OCC's discovery requests.

Thanks,  
Kim

**Kimberly W. Bojko**

CARPENTER LIPPS & LELAND LLP  
Columbus • Chicago • Washington D.C.  
280 Plaza, Suite 1300  
280 N. High Street  
Columbus, OH 43215  
(614) 365-4124  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)

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**From:** Gallon, Eric B. <[EGallon@porterwright.com](mailto:EGallon@porterwright.com)>

**Sent:** Thursday, August 27, 2020 5:17 PM

**To:** Kimberly W. Bojko <[bojko@CarpenterLipps.com](mailto:bojko@CarpenterLipps.com)>; 'angela.obrien@occ.ohio.gov' <[angela.obrien@occ.ohio.gov](mailto:angela.obrien@occ.ohio.gov)>; 'christopher.healey@occ.ohio.gov' <[christopher.healey@occ.ohio.gov](mailto:christopher.healey@occ.ohio.gov)>

**Cc:** 'McGuire, Matthew' <[MMcGuire@hunton.com](mailto:MMcGuire@hunton.com)>; Carter, Allen T. <[ACarter@porterwright.com](mailto:ACarter@porterwright.com)>

**Subject:** RE: #EXT# Case No. 19-2153-GE-COI PALMco

Kim,

I hope this email finds you and your family well. My colleague Allen Carter and I entered an appearance in this matter yesterday, so we're responding to your email from August 20<sup>th</sup>. PALMco is reviewing its prior discovery responses and plans to supplement its responses. I will follow up with you next week.

Sincerely,  
Eric

**ERIC B. GALLON**

Porter Wright Morris & Arthur LLP  
[Bio / egallon@porterwright.com](mailto:egallon@porterwright.com)  
D: 614.227.2190 / F: 614.227.2100  
41 South High Street, Suites 2800 - 3200 / Columbus, OH 43215

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**From:** Kimberly W. Bojko <[bojko@CarpenterLipps.com](mailto:bojko@CarpenterLipps.com)>

**Sent:** Thursday, August 20, 2020 5:17 PM

**To:** McGuire, Matthew <[MMcGuire@hunton.com](mailto:MMcGuire@hunton.com)>

**Cc:** [Angela.OBrien@occ.ohio.gov](mailto:Angela.OBrien@occ.ohio.gov); [Christopher.Healey@occ.ohio.gov](mailto:Christopher.Healey@occ.ohio.gov)

**Subject:** FW: Case No. 19-2153-GE-COI PALMco

Mr. McGuire,

I am writing on behalf of OCC to object to the discovery responses provided to OCC on July 31, 2020 that were referenced in the below email to the Attorney Examiners.

First, PALMco provided a variety of incomplete or incorrect data and records in response to several of OCC's discovery requests. More specifically, in response to INTs 3, 5, and 6 in OCC's 1st Set of Discovery and INTs 1 and 2 in OCC's 2nd Set Discovery, PALMco furnished data and records covering different date ranges than those requested by OCC. For example, where OCC requested that variable rates be provided covering the period of April 2019 until January 2020, PALMCO provided variable rates from August 2019 until December 2019. Additionally, where OCC requested a list of customers served as of December 31, 2019, PALMco provided a list of customers served as of February 7, 2020—at the very end of its CRES certification.

Second, PALMco incorrectly objected to several discovery requests, claiming that the questions are beyond the scope of the proceedings. More specifically, PALMco objected to INTs 7, 8, and 1 in OCC's 1st Set of Discovery, and INTs 3, 4, 5, and 6 in OCC's 2nd Set of Discovery based on a claim of relevancy. PALMco claims that variable rates are the subject of this proceeding, not fixed rates. This objection without a further response is inappropriate, unreasonable, and violates the Commission's rules for discovery. PALMco's objection has thwarted reasonable discovery by intervening parties. Ohio Admin. Code 4901-1-16(B) provides that "any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Additionally, R.C. 4903.082 provides that all parties and intervenors "shall be granted ample rights of discovery" and that the rules of the public utilities commission "should be reviewed regularly by the commission to aid full and reasonable discovery by all parties."

Staff has alleged that PALMco charged very high rates and that customers complained about high bills. Staff provided examples of unconscionable rates in its letter dated December 16, 2019, which was the basis for the PUCO's second investigation. The Staff letter does not distinguish between variable and fixed rates. In fact, the PUCO stated: "Upon review, Staff's December 16, 2019 letter alleges a pattern of high customer charges that may be unconscionable and in violation of the Commission's regulations. As such, the Commission finds it appropriate to open a second investigation into PALMco." O&O at Paragraph 13 (March 11, 2020). Based on the PUCO Order opening the investigation, all rates are relevant or, at the very least, are reasonably calculated to lead to discovery of admissible evidence and should be produced.

Third, PALMco refused to supply certain documents in its possession in response to INT 13 and RPD 6 in OCC's 1st Set of Discovery, and INTs 1, 2, and 3 in OCC's 2nd Set of Discovery. PALMco claims it cannot access its building due to COVID. This objection without a further response is unreasonable and violates the Commission's rules for discovery. PALMco's objection has thwarted reasonable discovery by intervening parties. PALMco has not provided any further justification or support for its inability to provide the documents and has not provided a timeframe for when it will provide those documents. This proceeding will likely end before COVID does, and other companies have managed to provide discovery documents to parties in other cases amidst COVID. It is unclear why PALMco's situation is different or why PALMco should be treated differently. Additionally, OCC's discovery requests came far in advance of any pandemic related shutdown.

We look forward to receiving your supplemental responses and additional information/documents to OCC's discovery within seven days. We would also be happy to discuss these concerns with you further. Please do not hesitate to contact me with questions.

Thanks,

Kim

**Kimberly W. Bojko**

CARPENTER LIPPS & LELAND LLP  
Columbus ▪ New York ▪ Chicago  
280 Plaza, Suite 1300  
280 N. High Street  
Columbus, OH 43215  
(614) 365-4124  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)

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

Summary: Motion Third Motion to Compel Discovery and Renewed Motion for Sanctions by The Office of the Ohio Consumers' Counsel electronically filed by Mrs. Kimberly W. Bojko on behalf of The Ohio Consumers' Counsel