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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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2014 NOV -3 PM 3: 58

In the Matter of the Complaint of

KNK Energy, Inc.,

Complainant,

v.

Ohio Intrastate Energy, LLC,

Respondent,

Relative to Violations of Sections 4905.48,  
4905.54, and 4905.56, Revised Code.

PUCO

Case No. 12-2758-GA-CSS

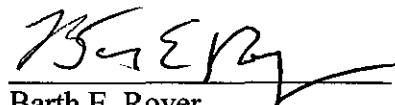
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MOTION FOR EXPEDITED PROCEDURAL SCHEDULE  
OF  
KNK ENERGY, INC

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Pursuant to the attorney examiner's June 17, 2014 entry in this docket, KNK Energy, Inc. ("KNK"), the complainant herein, hereby moves for an order establishing an expedited procedural schedule to permit this complaint to proceed to hearing at the earliest possible date for the reasons set forth in the accompanying memorandum in support.

Respectfully submitted,



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Ohio Intrastate Energy, LLC,	:	
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Relative to Violations of Sections 4905.48,	:	
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MEMORANDUM IN SUPPORT  
OF  
MOTION FOR EXPEDITED PROCEDURAL SCHEDULE  
OF  
KNG ENERGY, INC

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On June 20, 2014, respondent Ohio Intrastate Energy, LLC ("OIE") filed a request for a 60-day extension of the milestone dates of the procedural schedule previously established by the attorney examiner's April 17, 2014 entry in the above-referenced proceeding. In support of its request, OIE cited ongoing "settlement negotiations" and indicated that it anticipated receiving a settlement proposal from the complainant, KNG Energy, Inc. ("KNG"), before the end of June.

The attorney examiner continued this matter by entry of June 27, 2014. However, noting that this case has been pending for almost two years and that numerous continuances have previously been granted, the attorney examiner, rather than establishing a new procedural schedule, required that the parties submit status updates on July 24, 2014 and August 22, 2014 detailing the efforts made to resolve this matter. The attorney examiner further found that, if a

stipulation was not filed by August 22, 2014, an expedited schedule for the case to proceed to hearing would be established and that no further continuances will be granted except pursuant to a joint motion of the parties.

KNG submitted the its first required status update on July 24, 2014. In this update, KNG noted that, as indicated in the June 27, 2014 entry, OIE had previously requested 60-day extensions of the procedural schedule originally established by the attorney examiner's entry of January 28, 2014 on two separate occasions, February 18, 2014 and March 31, 2014. In support of these requests, OIE stated that OIE's managing member had suffered a serious medical emergency and that it was not known when he might recover to the extent necessary to participate in the proceeding. In view of these unfortunate circumstances, KNG did not oppose either of these continuances.

As recounted in OIE's June 20, 2014 request for another continuance, counsel for OIE contacted undersigned counsel for KNG before filing the request. OIE again advised that the managing member of OIE, who is apparently the only individual with decision-making authority for the respondent, was still not in a position to participate. Thus, undersigned counsel advised counsel for OIE that KNG would not oppose the latest request for a continuance. However, the as-filed request made no mention of the condition of the managing member, but, instead, cited the opportunity for settlement negotiations as the ground for the continuance, and, as indicated above, stated that OIE expected to receive a settlement proposal from KNG before the end of June.

As reported in its July 24, 2014 status update. KNG did, in fact, attempted to rekindle settlement discussions by transmitting an outline of suggested settlement terms to counsel for OIE on June 27, 2014. KNG went on to note in its update that, although its proposal contained a

reference to this proceeding, the proposal was designed to resolve all controversies between OIE and KNG, including a complaint filed by OIE against KNG in the Hancock County Court of Common Pleas seeking a declaratory judgment with respect to certain capacity rights OIE claimed to hold on a KNG-owned pipeline, as well as OIE's failure to take over the service to customers it had undertaken to serve in 2011, but which KNG has continued to serve on a temporary basis pursuant to the Commission's order in the Suburban abandonment case, Case No 08-946-GA-ABN. Because the overall resolution proposed by KNG would have rendered its complaint against OIE moot, KNG indicated to OIE that it would withdraw this complaint if its proposal were accepted. However, KNG emphasized in its status report that, at no time, had it suggested that it was willing to engage in separate negotiations regarding the very narrow issue raised by its complaint in this proceeding – *i.e.*, OIE's unlawful refusal to reinstall the blind plates at the North Baltimore station that it had removed in early 2012, notwithstanding that the stipulation approved by the Commission in the Suburban abandonment case required the installation of these blind plates to isolate KNG's pipeline from the regulation facilities at this station. Thus, to dispel the impression that may have been created by OIE's June 20, 2014 that the settlement discussions related solely to the resolution of this case, KNG clarified that it was not willing to settle this case except in the context of settlement that would resolve all the matters identified above.

In accordance with the attorney examiner's June 20, 2014 entry, KNG and OIE filed a joint status report and motion to continue the procedural schedule on August 22, 2014. In the memorandum accompanying the motion, KNG and OIE suggested that the interests of efficiency and economy would be best served by an order tolling the procedural schedule until a settlement was reached or until one of the parties advised the Commission that a settlement could not be

achieved. The memorandum further stated that "(i)f a party reports that that further settlement discussions will not be productive, the parties agree that, consistent with the attorney examiner's June 27, 2014 entry, an expedited procedural schedule should be established and that this matter should proceed to hearing." By entry of September 26, 2014, the attorney examiner continued the procedural schedule, but found that, if the parties had not reached a settlement by November 3, 2014, the parties should file a joint status update informing the attorney examiner of the status of the ongoing settlement discussions.

As noted above, KNG tendered the outline of settlement terms to OIE on June 27, 2014. Although KNG did not receive a response from OIE until August 14, 2014, KNG, nonetheless, was willing to indicate for purposes of the August 22, 2014 joint status report that discussions were still ongoing so as to avoid putting this case back on the litigation track as long as there was still the prospect of a settlement resolving all matter is issue between the parties. KNG responded to OIE's settlement outline on August 27, 2014. However, over two months have gone by, and OIE has yet to react to KNG's response.

KNG has nothing but sympathy for OIE's decision maker, and has, heretofore, basically allowed this proceeding, OIE's Hancock County complaint against KNG, and the remaining obligations under the Suburban abandonment case to be placed on hold in the hope that he would be able to participate in negotiating a mutually acceptable resolution of these matters. However, these matters cannot go on indefinitely.

Not only has the situation at the North Baltimore station that gave rise to this complaint not been resolved, but even more disturbing is the fact that KNG is now entering the fourth heating season as the temporary service provider to customers that OIE undertook to serve back in 2011. As noted in its July 24, 2014 status update, this untenable situation has been

exacerbated by the results of the most recent pipeline safety audit of the OIE lines KNG utilizes to provide this temporary service. Although KNG assumed responsibility for routine maintenance and repair of these facilities while providing temporary service, it now appears that an expenditure of at least \$132,000 will be required to address leaks and corrosion issues on these lines, a figure which could well increase depending upon what is discovered during the excavations.

In granting OIE's application for authority to operate as a natural gas distribution public utility in Case No. 11-3171-GA-CSS, the Commission found that OIE had the technical, managerial, and financial capabilities to provide natural gas service. However, upon information and belief, OIE, which has yet to deliver the first molecule of gas to any customer, has never generated any revenue, now has no employees, has closed the office it once maintained in McComb, and has sold its service truck. Thus, not only does KNG have serious doubts that OIE has the financial wherewithal to bring its lines into compliance with pipeline safety requirements, but OIE has no management decision-maker in place that can even discuss a settlement that would end the existing disputes between OIE and KNG, let alone resolve these matters.<sup>1</sup>

In view of these circumstances, and consistent with the earlier agreement of the parties, KNG respectfully moves for an order establishing an expedited procedural schedule to permit this case to move forward. In this connection, KNG notes that it has previously served written discovery upon OIE, with the understanding that the period for response would not commence until such time as a new procedural schedule was established. Thus, from KNG's perspective, an extended period for discovery is not required.

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<sup>1</sup> Indeed, OIE was cited in the Commission's August 20, 2014 finding and order in Case No. 14-01-AU-RPT for failing to file its annual report, and a review of the annual report filings on the Commission's website indicates that, despite having been granted an extension, it still has not done so.

KNG also notes that counsel representing OIE in this proceeding has indicated that its representation is limited to seeking continuances. Thus, OIE has not had substantive legal representation in this case since its former attorney withdrew in May of 2013. OIE was admonished during a settlement conference long before its decision maker was incapacitated that it was required to obtain counsel for this matter, but, to KNG's knowledge, OIE has not done so. Accordingly, KNG also requests that the order reinstating the procedural schedule require OIE to obtain counsel forthwith, and advise that the failure to do so may result in sanctions.

WHEREFORE, KNG respectfully requests that its motion for an order establishing an expedited procedural schedule be granted.

Respectfully submitted,

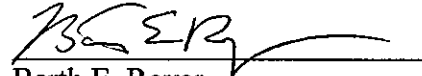


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served the following parties by U.S. mail, postage prepaid, and by electronic mail this 3<sup>rd</sup> day of November 2014.

  
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