

**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,)	Case No. 19-0957-GE-COI
LLC d/b/a Indra Energy's Compliance with)	
the Ohio Administrative Code and Potential)	
Remedial Actions for Non-Compliance.)	

**MOTION TO MODIFY PROCEDURAL SCHEDULE
AND REQUEST FOR EXPEDITED RULING**

Yesterday, April 17, 2019, the Commission issued an Entry opening this COI and setting a procedural schedule. The schedule does not give the target of the COI, PALMco Energy OH, LLC d/b/a Indra Energy and PALMco Power OH, LLC d/b/a Indra Energy (collectively, Indra) sufficient time to prepare for and defend the very serious allegations raised in the Entry. Indra respectfully requests an extension of the deadline for filing testimony from May 17, 2019, to May 31, 2019, and that the hearing be re-scheduled from May 24 to June 7, 2019. Indra also requests expedited treatment of this motion. There is "good cause" for this extension under O.A.C. 4901-1-13.

MEMORANDUM IN SUPPORT

Indra has supplied gas and electricity to Ohio consumers since 2010. Staff's April 16, 2019 letter (filed in this docket yesterday) asks the Commission to open a COI and suspend or revoke Indra's retail gas and electric certificates—*before* the investigation is concluded rather than after.

Indra is not challenging the Commission's authority to conduct this investigation. But if an investigation is to be conducted, it must comport with due process. Indra has the right to "notice . . . stat[ing] the matters complained of," "full and reasonable discovery," an

“entitle[ment] to be heard,” and the right to “process to enforce the attendance of witnesses.”

R.C. 4903.82; R.C. 4905.26.

The Entry schedules a hearing for May 24, 2019. Granting a hearing partially fulfills the Commission’s responsibility to ensure due process, but not fully. The Entry conveys a general notion of the intended scope of the investigation, but the specific “matters complained of” is not known, and cannot be known, until the Staff Report is filed on May 10. Under R.C. 4905.26, notice “of the matters complained of” must be served “not less than fifteen days before hearing.” The Entry gives Indra less than half that amount of time.

Plainly and simply, the current schedule does not give Indra enough time to prepare a defense. One must presume that the allegations raised by Staff are extensively documented, and that this documentation will accompany the Staff Report. Investigating 486 complaints will take time. Pre-filed testimony does not write itself. Out-of-state witnesses do not make testimony development any easier. The seriousness of this case does not lend itself to cutting corners on witnesses or testimony.

The current schedule would require Indra to tackle an even greater amount of work the following week. Indra will not know any intervenor’s position until testimony is filed on May 17. The next time an intervenor confines its testimony to issues raised in a Staff Report will be the first time; Indra fully expects that it will hear *something* for the first time on May 17 that it will need to address at the hearing on May 24. Indra may want to depose some of the intervenors. It will certainly serve written discovery. And it may be necessary to subpoena witnesses for hearing. The Commission lacks authority to enforce its own subpoenas, and no court is going to enforce a Commission subpoena issued less than a week before hearing. *See* R.C. 4903.04 (“If a person disobeys . . . a subpoena . . . , the court of common pleas of a county or a judge of such

court, on application of a commissioner, shall compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.”).

Instead of having only one week to respond to the Staff Report, Indra requests that it be given three. This would change the testimony deadline from May 17 to May 31. Moving the hearing from May 24 to June 7 would give Indra two weeks to take intervenor discovery and prepare for hearing instead of one. The net result of these scheduling changes would only “delay” the hearing two weeks (June 7 instead of May 24).

Indra recognizes that the Commission and Staff are also dealing with many other cases. If the dates mentioned above present conflicts, Indra is happy to discuss them. In the interest of full disclosure, Indra would note a conflict the week of June 9, when undersigned counsel will be on vacation (a pre-planned, non-refundable vacation at that).

Due to the compressed timeframe, Indra requests an expedited ruling on this motion.

Dated: April 18, 2019

Respectfully submitted,

/s/ Mark A. Whitt

Mark A. Whitt (0067996)

Rebekah J. Glover (0088798)

WHITT STURTEVANT LLP

The KeyBank Building, Suite 1590

88 East Broad Street

Columbus, Ohio 43215

Telephone: (614) 224-3946

Facsimile: (614) 224-3960

whitt@whitt-sturtevant.com

glover@whitt-sturtevant.com

(Counsel willing to accept service by email)

ATTORNEYS FOR PALMCO ENERGY
OH, LLC D/B/A INDRA ENERGY AND
PALMCO POWER OH, LLC D/B/A
INDRA ENERGY

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Commission of Ohio Docketing Information System on

4/18/2019 4:49:24 PM

in

Case No(s). 19-0957-GE-COI

Summary: Motion to Modify the Procedural Schedule and Request for Expedited Ruling electronically filed by Ms. Rebekah J. Glover on behalf of PALMco Energy OH, LLC d/b/a Indra Energy and PALMco Power OH, LLC d/b/a Indra Energy