

## THE PUBLIC UTILITIES COMMISSION OF OHIO

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 WITH THE OHIO  
ADMINISTRATIVE CODE AND POTENTIAL  
REMEDIAL ACTIONS FOR NON-  
COMPLIANCE.

CASE NO. 19-2153-GE-COI

### ENTRY

Entered in the Journal on August 6, 2020

{¶ 1} PALMco Power OH, LLC d/b/a Indra Energy (PALMco Power) is an electric services company as defined in R.C. 4928.01; is certified to provide competitive retail electric service (CRES) under R.C. 4928.08; and is subject to the jurisdiction of this Commission pursuant to R.C. 4928.16. Accordingly, PALMco Power is required to comply with the Commission's minimum CRES standards set forth in Ohio Adm.Code Chapter 4901:1-21.

{¶ 2} PALMco Energy OH, LLC d/b/a Indra Energy (PALMco Energy) is a retail natural gas supplier as defined in R.C. 4929.01; is certified to supply competitive retail natural gas service (CRNGS) under R.C. 4929.20; and is subject to the jurisdiction of this Commission pursuant to R.C. 4929.24. Accordingly, PALMco Energy is required to comply with the Commission's minimum CRNGS standards set forth in Ohio Adm.Code Chapter 4901:1-29.

{¶ 3} On March 10, 2010, the Commission granted PALMco Power's application for certification as a CRES provider in this state. *In the Matter of the Application of PALMco Power OH, LLC for Certification as a Competitive Retail Electric Service Provider*, Case No. 10-139-EL-CRS. PALMco Power timely filed renewal applications for certification as a CRES provider every two years pursuant to Ohio Adm.Code 4901:1-24-09, and each renewal application was automatically approved by the Commission pursuant to R.C. 4928.08. PALMco Power's most recent renewal application was filed on January 18, 2018; this renewal application also was automatically approved by the Commission pursuant to R.C. 4928.08. PALMco's CRES certificate was valid until March 8, 2020.

{¶ 4} Additionally, on March 8, 2010, the Commission granted PALMco Energy's application for certification as a CRNGS supplier in this state. *In the Matter of the Application of PALMco Energy OH, LLC for Certification as a Competitive Retail Natural Gas Supplier*, Case No. 10-138-GA-CRS. PALMco Energy timely filed renewal applications for certification as a CRNGS provider every two years pursuant to Ohio Adm.Code 4901:1-27-09, and each renewal application was automatically approved by the Commission pursuant to R.C. 4929.20. PALMco Energy's most recent renewal application was filed on January 16, 2018; this renewal application also was automatically approved by the Commission pursuant to R.C. 4929.20. PALMco's CRNGS certificate expired on February 14, 2020.

{¶ 5} R.C. 4928.16 and 4929.24 grant the Commission the authority to order any remedy or forfeiture provided under R.C. 4905.54 to 4905.60 and 4905.64, and to order restitution to customers and rescission of customer contracts.

{¶ 6} On April 16, 2019, Staff of the Commission's Service Monitoring and Enforcement Department (Staff) filed a letter in the certification dockets for PALMco Power and PALMco Energy (collectively, PALMco or Company), alleging that PALMco had engaged in misleading and deceptive practices to market and enroll customers as well as violating several requirements of Ohio Adm.Code Chapter 4901:1-21 and 4901:1-29. As a result, by Entry dated April 17, 2019, the Commission opened an investigation into PALMco. *In re PALMco Power OH, LLC dba Indra Energy & 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 (PALMco I), Entry (Apr. 17, 2019).

{¶ 7} On January 29, 2020, the Commission issued an Opinion and Order in *PALMco I*, adopting the joint stipulation and recommendation (stipulation) entered into by Staff and PALMco.

{¶ 8} On December 16, 2019, while *PALMco I* was still pending, Staff filed a letter in this case. Staff indicates that, between August 1, 2019, and December 10, 2019, the Commission's call center received 26 contacts regarding PALMco's electric rates and 25

contacts regarding PALMco's gas rates. Based on Staff's investigation and a review of other available rates for CRES and CRNGS, Staff believes that PALMco is charging unconscionably high rates to consumers in Ohio.

{¶ 9} On March 11, 2020, the Commission opened a second investigation into PALMco and directed the attorney examiner to issue a procedural schedule in this matter.

{¶ 10} By Entry dated April 6, 2020, the attorney examiner set a procedural schedule in this matter with a hearing scheduled to begin on August 24, 2020. The attorney examiner also granted the Office of the Ohio Consumers' Counsel's (OCC) pending motion to intervene, which OCC had filed on December 27, 2019. Finally, the attorney examiner granted OCC's motions to compel discovery dated February 14, 2020, and March 17, 2020, and directed PALMco to collaborate with OCC and exchange discovery pursuant to Ohio Adm.Code 4901-1-16.

{¶ 11} On April 28, 2020, PALMco filed a complaint in prohibition with the Supreme Court of Ohio in regard to this proceeding, alleging that the Commission does not have jurisdiction to regulate the rates charged by PALMco.

{¶ 12} On May 7, 2020, OCC filed a motion for sanctions pursuant to Ohio Adm.Code 4901-1-23(F). In the motion, OCC explains that the April 6, 2020 Entry directed PALMco to respond to outstanding discovery requests, but PALMco has not produced responses. Consequently, OCC requests the Commission to assess a forfeiture for non-compliance pursuant to R.C. 4905.54.

{¶ 13} On May 20, 2020, the Commission filed a motion to dismiss PALMco's complaint with the Supreme Court of Ohio.

{¶ 14} On May 22, 2020, PALMco filed a memorandum contra OCC's motion for sanctions. PALMco argues that it has not disregarded the Commission's directive; instead it has asserted its rights by seeking a writ of prohibition with the Supreme Court of Ohio, challenging the Commission's subject matter jurisdiction to proceed with the second

investigation into the Company. PALMco believes the Commission need not rule on OCC's motion, or take any other action in this proceeding, until the Supreme Court of Ohio decides the Commission has jurisdiction to proceed with the investigation.

{¶ 15} On May 29, 2020, OCC filed a reply to PALMco's memorandum contra. OCC notes that PALMco does not dispute its arguments regarding the requested sanctions. Further, OCC argues PALMco's filing with the Supreme Court of Ohio does not justify denying OCC's motion because PALMco did not file an interlocutory appeal of the April 6, 2020 Entry or wait to challenge an adverse final order from the Commission. Instead, OCC contends, PALMco is circumventing appropriate procedure by filing its complaint in prohibition with the Supreme Court. Therefore, OCC urges the Commission to take all necessary actions to enforce the April 6, 2020 Entry.

{¶ 16} The attorney examiners held a telephonic prehearing conference on July 23, 2020. During the conference, counsel for OCC indicated that they 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. The parties agreed to provide the attorney examiners an update with regard to the exchange of discovery on July 31, 2020.

{¶ 17} On July 31, 2020, via email, 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. PALMco notes that, due to the COVID-19 pandemic, it does not have access to its physical office building in Brooklyn, New York. To the extent relevant, non-privileged, and otherwise non-objectionable documents are obtained going forward, PALMco represents it will supplement its discovery responses.

{¶ 18} On August 4, 2020, counsel for OCC emailed the attorney examiners. OCC represents that it is in the process of reviewing PALMco's discovery responses and production of documents, but OCC expresses concern about the establishment of a revised procedural schedule at this time.

{¶ 19} On August 4, 2020, PALMco filed a motion for a temporary stay of this proceeding, including a stay of discovery, pending the Supreme Court of Ohio's resolution of the complaint in prohibition.

{¶ 20} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at [coronavirus.ohio.gov/](https://coronavirus.ohio.gov/).

{¶ 21} In light of the concerns raised by the issuance of the Executive Order, the attorney examiner finds that vacating the procedural schedule set by the April 6, 2020 Entry is reasonable. A new procedural schedule in this matter will be established by subsequent entry, with instructions for a hearing to be held using remote access technology. The attorney examiner notes that PALMco has filed a motion on August 4, 2020, to stay this proceeding pending the resolution of the complaint in prohibition at the Supreme Court of Ohio. However, at this time, no stay has been currently issued by the attorney examiner in this proceeding and discovery 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).

{¶ 22} It is, therefore,

{¶ 23} ORDERED, That the procedural schedule established by the April 6, 2020 Entry be vacated. It is, further,

{¶ 24} ORDERED, That a copy of this Entry be served upon all interested persons and parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

*/s/Anna Sanyal*

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By: Anna Sanyal  
Attorney Examiner

SJP/kck

**This foregoing document was electronically filed with the Public Utilities**

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

Summary: Attorney Examiner Entry ordering the procedural schedule established by the April 6, 2020 Entry be vacated. electronically filed by Kelli C. King on behalf of Anna Sanyal, Attorney Examiner, Public Utilities Commission of Ohio