**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission’s Investigation into PALMco Power OH, LLC, d/b/a Indra Energy and PALMco Energy OH, LLC d/b/a Indra Energy’s Compliance with the Ohio Administrative Code and Potential Remedial Action. | )  )  )  )  )  )  ) | Case No. 19-2153-GE-COI |

**MEMORANDUM CONTRA PALMCO’S MOTION TO ESTABLISH A PROCEDURAL SCHEDULE**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The latest twist in PALMco’s[[1]](#footnote-2) disregard for the public interest regulation of two State of Ohio agencies (OCC and PUCO) is its motion for an unreasonably restrictive procedural schedule. That schedule would severely prejudice OCC and its consumer protection recommendations for the PUCO’s consideration, by cutting off OCC’s “ample rights” to discovery under law.[[2]](#footnote-3)

The backdrop for PALMco’s motion is the concerns raised by the Staff of the Public Utilities Commission of Ohio (“PUCO”). The PUCO opened a second investigation into PALMco’s unfair, misleading, deceptive, and unconscionable acts and sales practices as a marketer. PALMco’s time and effort seem to be focused on preventing OCC from participating in the proceeding and obtaining through discovery the information necessary to prepare a case for consumer protection. There is no good cause for granting PALMco’s motion; PALMco’s proposed schedule should be denied.

Throughout this investigation, PALMco has continuously refused to respond adequately to OCC’s discovery requests, to cooperate with OCC’s good-faith efforts to resolve the discovery dispute, or to comply with the Attorney Examiners’ Entries[[3]](#footnote-4) directing it to “collaborate with OCC and exchange discovery pursuant to Ohio Adm. Code 4901-1-16.” This has resulted in OCC filing three motions to compel PALMco to respond to discovery.[[4]](#footnote-5) OCC’s positions have been thoroughly briefed in these pleadings, and they are incorporated here.

Despite the ongoing discovery dispute—or, perhaps, because of it—PALMco attempts another of its tactics by moving to establish a new procedural schedule. This comes with an ask of the PUCO to cut off discovery in less than two weeks, to order the Staff report due in less than three weeks, and to conduct a hearing in less than two months.

PALMco’s proposal would severely prejudice OCC and its ability to prepare a case for a consumer protection. PALMco proposes a discovery cut-off date of November 9, 2020 and a testimony filing date of November 23, 2020. That is unreasonable. If OCC serves discovery by PALMco’s proposed discovery cut-off date of November 9, 2020, OCC will not receive responses to that discovery before November 23, 2020 for use in testimony. The PUCO’s rules require responses to interrogatories and requests for production of documents within twenty days.[[5]](#footnote-6) Even if PALMco timely responds to OCC’s discovery issued on the discovery cut-off date, November 9, 2020, OCC will not be able to use those discovery responses in preparing testimony. OCC would have to issue any remaining discovery by October 30, 2020 (in two days) in order for any discovery responses to be reviewed and incorporated into the testimony (assuming, of course, that PALMco timely responds to OCC’s discovery, which has not been its practice to date).

Additionally, PALMco’s proposed discovery cutoff date of November 9, 2020 would preclude OCC from conducting any discovery on any testimony PALMco files on November 23, 2020, which would be unjust and unreasonable and thwart OCC’s reasonable participation in this case.

To be clear, OCC wants the second investigation against PALMco to move forward. And, in reality, much of this would have been solved for consumers by kicking PALMco out of the state for its bad acts, as OCC recommended. Consumers harmed by PALMco are entitled to justice sooner rather than later. However, given PALMco’s obstructive efforts and failure to comply with Attorney Examiners’ clear directives, the self-serving push to move forward (which really is moving backward) should be denied.

In order to protect consumers, the PUCO should deny PALMco’s motion for a procedural schedule and establish a more reasonable schedule that permits OCC its legal rights to the opportunity to receive, review, and conduct follow up discovery on its outstanding discovery requests to PALMco.

OCC proposes the following schedule: November 6, 2020, PALMco required to provide all outstanding responses to OCC’s first and second sets of discovery; December 18, 2020, deadline for serving discovery requests (excluding deposition notices); January 7, 2021, pre-hearing conference; January 14, 2021, Staff Report due; February 4, 2021, testimony due; February 23, 2021, hearing. In addition, the time for responding to discovery should be shortened to 7 days. This schedule will allow OCC enough time to prepare a case for consumer protection and assist the PUCO in developing a full record on which to base a decision.

Respectfully submitted,

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Ohio Consumers’ Counsel

*/s/ Angela D. O’Brien\_\_\_\_\_*

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Memorandum Contra was served on the persons stated below via electronic transmission, this 28th day of October 2020.

*/s/* *Angela D. O’Brien*

Angela D. O’Brien

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. “PALMco” refers to PALMco Power OH, LLC dba Indra Energy and PALMco Energy OH, LLC dba Indra Energy. [↑](#footnote-ref-2)
2. R.C. 4903.082. [↑](#footnote-ref-3)
3. April 6, 2020 Entry, at ¶19, August 6, 2020 Entry, at ¶10. [↑](#footnote-ref-4)
4. First Motion to Compel (Feb. 14, 2020); Second Motion to Compel (Mar. 17, 2020); Third Motion to Compel (Oct. 28, 2020). [↑](#footnote-ref-5)
5. Ohio Adm. Code 4901-1-19(A) and 4901-1-20(C). [↑](#footnote-ref-6)