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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**IN THE MATTER OF PACIFIC ENERGY
& MINING COMPANY**

Docket No. 18-2602-01

**DIVISION OF PUBLIC UTILITIES'
RESPONSE TO PEMC'S REQUEST TO
DENY AGENCY ACTION DUE TO LACK
OF JURISDICTION AND
SUPPLEMENTAL BRIEF**

Pursuant to R746-1-301(1) of the Public Service Commission of Utah (Commission), the Utah Division of Public Utilities (Division) files its Response (Response) to Pacific Energy & Mining Company's (PEMC) "Request to Deny Agency Action Due to Lack of Jurisdiction" (Request) and also responds to what PEMC termed a "Supplemental Brief in Support of Lack of Jurisdiction" (Supplemental Brief) filed June 6, 2018.¹ Legally and factually, PEMC's pipeline, defined here generally as its 16" pipeline that begins at the outlet of PEMC's processing plant and ends at the tie-in to

¹ Insofar as the Supplemental Brief restates or implies the Request's arguments, the Division incorporates its responses to the Request into its responses to the Supplemental Brief.

Northwest Pipeline Corporation's interstate natural gas transmission line, is an intrastate natural gas transmission line not a gathering line, and therefore it is subject to the Commission's jurisdiction pursuant to Utah Code Section 54-13-1 et seq., R746-409-1 et seq., and applicable federal laws and regulations. Accordingly, PEMC's Request should be found meritless and should be denied, allegations and relief sought in its Supplemental Brief should be found meritless and should be denied, and jurisdiction should be retained by the Commission.

INTRODUCTION

The Division will first discuss how the Commission has jurisdiction over intrastate natural gas transmission pipelines. Next, the Division will discuss the legal definition of a gathering line and contrast it to a transmission line. Specific facts will then be applied to demonstrate that PEMC's pipeline is a natural gas transmission line, not a gathering line, for pipeline safety purposes and is therefore subject to the Commission's jurisdiction. Finally, the Division will respond to individual assertions and allegations contained in PEMC's Request and in its Supplemental Brief. If the Division does not respond to a specific assertion or allegation, it is not to be taken as an admission by the Division.

UTAH'S AND THE COMMISSION'S JURISDICTION THROUGH PHMSA DELEGATION AND UTAH LAW

The Pipeline and Hazardous Materials Safety Administration (PHMSA) has delegated inspection and enforcement regarding safety standards for intrastate natural gas transmission pipelines to the State of Utah and Utah Pipeline Safety (UTPS). It is through this delegation and through Utah Code Section 54-13-1 et seq. and

accompanying rules that the Division initiated its April 12, 2018 Request for Agency Action on Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice) against PEMC. Additional details set forth in the Notice pertaining to jurisdiction and PHMSA's delegation of authority are incorporated here by reference.

**THE COMMISSION HAS JURISDICTION BECAUSE PEMC'S PIPELINE
IS AN INTRASTATE NATURAL GAS TRANSMISSION LINE,
NOT A GATHERING LINE**

As established below, PEMC's pipeline is a transmission line and the Commission has authority under Utah and federal law to establish and enforce safety standards upon it. Utah Code Section 54-13-2 states:

The commission is responsible for establishing safety standards and practices for intrastate pipeline transportation and shall make and enforce rules required by the federal Natural Gas Pipeline Safety Act to maintain state control of the regulation of intrastate pipeline transportation.

Section 54-13-3 states:

The commission shall adopt and enforce rules pursuant to Section 54-13-2 including rules which:

- (1) incorporate the safety standards established under the federal Natural Gas Pipeline Safety Act that are applicable to intrastate pipeline transportation; and
- (2) require persons engaged in intrastate pipeline transportation to:
 - (a) maintain records and to submit reports and information to the commission to enable the commission to determine whether the person is acting in compliance with this chapter or rules adopted under this chapter; and
 - (b) maintain a plan for inspection and maintenance of each pipeline facility that is available to the commission upon commission request.

Promulgated pursuant to the federal Natural Gas Pipeline Safety Act and related federal laws and adopted by Utah law as stated above and specifically by

Commission rule R746-409-1(B)(3),² 49 C.F.R. Part 192 establishes safety regulations applicable to natural gas pipelines.

Accordingly, the State of Utah, the Commission, and PHMSA use 49 C.F.R. Part 192 and related materials to determine if a pipeline is an onshore gathering line (sometimes subject to regulation), an offshore gathering line, or a transmission line.³ Succinctly put,

Under the Part 192 amendments adopted in 2006, PHMSA applies a multi-step framework for determining whether a pipeline is an onshore gas gathering line and, if so, whether the line is a regulated gathering line. Operators are required to use RP 80 to determine if a pipeline meets the definition of an “onshore gathering line.” RP 80 generally defines an onshore gas gathering line as a pipeline that transports gas from the “furthest downstream point in a production operation to the furthest downstream” point in gathering operation, which can be any one of five locations: a “gas processing plant, gas treatment facility, gas gathering compressor, point of commingling of gas from two or more fields, or point of connection of the gathering line to another pipeline.” Part 192 provides three limitations on these endpoints: (1) the endpoint may not extend beyond the first processing plant; (2) the point of commingling of gas may not

² R746-409-1 states:

A. Scope and Applicability -- Pursuant to Title 54, Chapter 13, the following rules shall apply to persons engaged in the transportation of gas as defined in CFR Title 49 Parts 191 and 192.

B. Adoption of parts of CFR Title 49 -- The Commission adopts and incorporates by this reference the following parts of CFR Title 49, effective September 1, 2017:

1. Part 190 with the exclusion of Part 190.223 which is superseded by Title 54, Chapter 13, Part 8, Violation of chapter -- Penalty;
2. Part 191;
3. Part 192;
4. Part 198; and
5. Part 199.

C. Persons engaged in the transportation of gas, including distribution of gas through a master-metered system, shall comply with the requirements of CFR Title 49, identified in Section R746-409-1(B), including all minimum safety standards.

³ The Federal Energy Regulatory Commission (FERC) uses the modified primary function test to determine whether a natural gas line is classified as gathering or transmission for purposes of FERC regulation. Gathering lines are not subject to FERC regulation while transmission lines are. See, e.g., National Fuel Gas Supply Corporation, 158 FERC P 62,251 (2017).

be from fields more than 50 miles from one another, and (3) the endpoint “may not extend beyond the furthestmost downstream compressor used to increase [pressure].”

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If a line is not a gathering line, it is a transmission line.⁵

PEMC’s pipeline at issue is classified as an intrastate natural gas transmission line because it begins transporting gas at the outlet of its processing plant. This gas is then delivered to Northwest Pipeline, a regulated interstate natural gas pipeline.⁶ Additionally, the portion of the line in question accepts gas from another producer from different production and processing facilities. Exhibit 1 is a depiction, for illustrative purposes, of the relevant facilities. Exhibit 2 is a Google Earth based aerial photograph with labeled relevant facilities.

In conclusion, PEMC’s pipeline is properly classified as an intrastate natural gas transmission line because it transports gas downstream of the last processing point and accepts processed gas from another producer from other production facilities. The pipeline and PEMC are subject to the Commission’s jurisdiction regarding applicable safety regulations and requirements as set forth by Utah law and regulations and federal law and regulations.

⁴“What Producers Need to Know about the Pipeline and Hazardous Materials Safety Administration and the Federal Energy Regulatory Commission – Jurisdiction and Changes Ahead,” James Curry, Rocky Mountain Mineral Law Foundation Special Institute, 2018 No. 2 RMMLF-INST7, 2018. (Internal citations omitted).

⁵ Part 192.3 defines “gathering line” by stating, “gathering line means a pipeline that transports gas from a current production facility to a transmission line or main.” That same definition section defines transmission line by stating, “Transmission line means a pipeline, other than a gathering line, that: (1) Transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center; (2) operates at a hoop stress of 20 percent or more of SMYS; or (3) transports gas within a storage field.”

⁶ PEMC’s pipeline also receives gas from the Blue Hill’s Processing Plant, located between PEMC’s processing plant and the Northwest Pipeline tie in.

SPECIFIC RESPONSES TO PEMC'S FACTUAL AND GENERAL ALLEGATIONS

PEMC's June 5, 2018 Request

Below please find the Division's responses to PEMC's factual and general allegations filed in its June 5, 2018 Request. Where possible, the Division has used the paragraph numbers set forth in PEMC's Request. Where there is no numbered paragraph, the Division provides a quotation from the Request to guide the Commission.

Numbered paragraphs

4. It is unclear which branch of the United States Government PEMC is referencing. PEMC's pipeline is on BLM land, but the BLM does not classify pipelines as gathering or transmission for pipeline safety purposes.

5. BLM is not the proper government agency to allow a pipeline company authorization under applicable safety laws to accept and transport gas for others.

7. BLM does not issue gathering or transmission permits relating to pipeline safety.

8. In 2013, PEMC contacted UTPS to determine if PEMC was regulated. See Exhibit 3 (Email dated August 30, 2013 from Mobashir Ahmad to Jimmy Betham). The Division was in communication with PEMC and PHMSA to determine the end point of PEMC's gathering system. See Exhibit 4 (Emails dated September 16, 17, and 23, 2013). As discussed above with more specificity, the end point of the gathering system determines where jurisdiction begins. Anything upstream from the end point is determined not to be jurisdictional. Existence of a compressor is one of the conditions that can be used to determine the end point of a gathering system.

9. The Division's decision to regulate PEMC's pipeline was not made unilaterally. The decision was made in conjunction with PEMC and PHMSA. PEMC at the time concurred with the Division's exercise of jurisdiction. See Exhibit 5 (Emails dated September 3, 16, 17, 23, and October 9, 2013).

10. PEMC agreed that the Division's regulation was proper. See Exhibit 5 (Emails dated September 3, 16, 17, 23, and October 9, 2013).

11. PEMC prepared the manual because it agreed its pipeline was jurisdictional. See Exhibit 5 (Emails dated September 3, 16, 17, 23, and October 9, 2013).

12. See Exhibit 6 (Letter dated April 8, 2014 from Jimmy Betham to Dan Green, Vice President of Operations for PEMC).

13. UTPS provided as much appropriate assistance as possible. See Exhibit 7 (Emails dated October 8, November 1, 19, 2013, and January 7, 2014).

14. See paragraph 13 above.

15. This occurred after the timeline of events set forth in the Notice, incorporated here by reference.

17. Having an operating manual and documenting maintenance and compliance are critical for pipeline safety.

Unnumbered paragraphs

PEMC makes many factually untrue and legally erroneously claims. Contrary to its assertion, PEMC has violated regulations as specified in the Notice.⁷ PEMC has not remedied all non-compliance items, and this lack of compliance is detailed in the Notice

⁷ Request at p.3.

and incorporated here by reference.⁸ PEMC's claims in its paragraph addressing "normal operation for oil and gas operators"⁹ are not germane to the issues before the Commission. Whether or not PEMC's gas is in interstate commerce is a different issue than whether the Commission has jurisdiction over PEMC's pipeline for pipeline safety purposes. For pipeline safety standards, the Division classifies PEMC's line as an intrastate natural gas transmission line subject to federal pipeline safety standards and Utah laws and regulations.

PEMC makes unfounded and unsupportable assertions that the "Divisions [sic] analysis above made no logical sense."¹⁰ During 2013, UTPS was in the process of determining jurisdiction (the end point of the gathering system.) and was in communication with PEMC and PHMSA during this process. A field visit was scheduled and conducted for verification of this end point. See Exhibit 4 (Emails dated September 16, 17, and 23, 2013). If there were (and there isn't) a compressor station at PEMC's pipeline's tie-in to Northwest Pipeline, an interstate natural gas transmission pipeline, according to an interpretation of API RP80, the end point of the gathering system would be moved to the outlet of the compressor and, under that interpretation, such configuration would render the system upstream of the compressor unregulated. That configuration does not exist here. PEMC's pipeline is a regulated intrastate natural gas transmission line.

⁸ Request at p. 3.

⁹ Request at p. 3.

¹⁰ Request at p.3.

The Request's claim that the Division reinterpreted its decision is incorrect.¹¹ Actually, PEMC contacted UTPS in 2013. See Exhibit 3 (Email dated August 30, 2013.) Pursuant to PEMC's request, UTPS conducted a system review in order to determine jurisdiction. See Exhibit 8 (Email dated September 23, 2013 from Jimmy Betham to Mobashir Ahmad). In determining that PEMC's line was jurisdictional, UTPS made use of state law, PHMSA-related regulations, PHMSA's previous interpretations, information given to it by PEMC, and its field verification. UTPS' determination of jurisdiction was communicated to PEMC and PHMSA at that time. See Exhibit 9 (Email dated September 23, 2013 from Jimmy Betham to Mobashir Ahmad and email dated September 23, 2013 from Al Zadeh to Jamerson Pender with PHMSA).

PEMC concurred with UTPS' determination and in correspondence indicated that PEMC would operate its pipeline as a transmission pipeline. See Exhibit 3 (Email dated September 3, 2013 from Mobashir Ahmad to Jimmy Betham). PEMC's agreement that its line was jurisdictional was also evident from the application for an operator identification number (OPID) it filed with PHMSA. See Exhibit 10 (OPID Assignment Request dated September 3, 2013). PEMC was aware of the fact that UTPS considered the pipeline downstream of the processing plant regulated. PEMC made no attempt to challenge jurisdiction at that time. PHMSA also agreed with UTPS' determination. See Exhibit 11 (Email dated October 9, 2013 from Jason Dunphy with PHMSA).

PEMC's argument that it is not a transmission pipeline because "The removal of liquids from the gas at the well processing plant and the resulting gas, does not meet

¹¹ Request at pp. 4-5.

the generally accepted standards for 'dry' gas being transported by transmission companies" confuses production with gathering.¹² Gathering lines start at the end of production and extend, in the case of PEMC's system, to the outlet of the processing plant. Indeed, the Division is not claiming jurisdiction over PEMC's gathering system up to the outlet of the processing plant.

Similarly, PEMC's allegations that the "Division's attempt to insert itself into regulating a gas gathering system," "will result in every gas gathering system in the State of Utah being regulated as a Transmission line" are factually and legally incorrect.¹³ As demonstrated, PEMC's pipeline is properly classified as a transmission line not a gathering system. Only pipelines that can properly be classified as transmission lines, or as regulated gathering lines,¹⁴ will be subject to the Commission's jurisdiction. The Division is not extending PHMSA's or the Commission's jurisdiction. The Division is complying with applicable federal regulations and state law and regulations.

PEMC claims that UTPS's assertion of jurisdiction is tied to the Obama administration and that "This attempt to extend Divisions [sic] jurisdiction is unwarranted and against the spirit and intent of the Federal Government regulations"¹⁵ are factually and legally incorrect. The Division and UTPS abide by applicable law, and do not pick and choose what to enforce depending upon the party in power.

¹² Request at p. 5.

¹³ Request at p. 5.

¹⁴ Regulated gathering lines must meet specific criteria and that classification is not relevant here.

¹⁵ Request at p. 5.

Lastly, PEMC without cause or merit seeks that the “Division be ordered to reimburse PEMC for its costs in responding to Divisions [sic] unlawful requests as well as unnecessary fees that PEMC had to pay.”¹⁶ The Division’s actions have been legally sound, in compliance with law and regulations, and PEMC fails to make even a colorable claim supporting its reimbursement request. PEMC’s request for reimbursement should be denied.

PEMC’s June 6, 2018, “Supplemental Brief in Support of Lack of Jurisdiction.”

To the extent that the Supplemental Brief repeats or alludes to PEMC’s arguments in its Request, the Division hereby incorporates those responses. The Division rebuts “new” arguments as follows.

With regard to statements attributed to Division Director Chris Parker in the KSL.com article, attached as Exhibit 12, it is the nature of the pipeline, whether it is gathering or transmission, that became an issue in 2013 and has remained an issue to the present day. For the reasons stated above, the Division believes there is no doubt PEMC’s pipeline is an intrastate natural gas transmission line.

The Division also disputes the Supplemental Brief’s statements claiming the use of the terms “Nearby entities, including schools and cities’, was only made to sensationalize and justify the Division’s unlawful intrusion to assert jurisdiction.”¹⁷ The Division denies this allegation. As shown in the Notice, the “nearby entities, including schools and cities,” comes from the regulation PEMC violated. Furthermore, PEMC’s

¹⁶ Request at p. 6.

¹⁷ Supplemental Brief at p. 2. (Emphasis in the original).

assertion for the purposes at hand that the “Federal definition of a distance to a city that requires regulation is 300 feet” is unsupported and incorrect. Although PEMC provides no citation, it appears to be confusing Public Awareness Plans with the Transmission Integrity Management Plan High Consequence Area determination.¹⁸ The Public Awareness Plan’s notification requirements are not determined by distance, but by the county in which the pipeline operates. The Division also denies that PEMC’s assertion that “[a]ll the necessary public awareness Program [sic] were done even though it is not a requirement for a Gathering System.”¹⁹ The Division is not aware of any public awareness programs done by PEMC.

PEMC’s allegations and requests for relief are unwarranted and unsupported and should be denied.

CONCLUSION

PEMC misapplies and misstates the facts and the law by claiming its pipeline is a gathering system not subject to the Commission’s jurisdiction. PEMC’s Request should be denied and the allegations it makes in its Supplemental Brief should be found meritless and the relief sought there unwarranted.

Buried within its Request, PEMC makes the disturbing statement that the Division’s Notice “concerns the preparation of an operating manual and certain paper

¹⁸ See API RP 1162 Section 2.1 and 49 C.F.R. Parts 192.616 and 195.440 regarding Public Awareness Plans and 49 C.F.R Part 192.905 regarding an operator’s identification of a high consequence area and the calculation of the potential impact radius (PIR) associated with the potential failure of a pipeline. It is possible that PEMC is referencing its PIR of approximately 303 feet on each side of the subject pipeline.

¹⁹ Supplemental Brief at p. 3.

work issues, none of which are compromising the safety of the gathering system.”

Public safety is at the heart of the Division’s actions and the Commission’s jurisdiction.

For reasons of public safety, this docket should continue.

RESPECTFULLY SUBMITTED this 20th day of June 2018.

A handwritten signature in cursive script, reading "Patricia E. Schmid", written over a horizontal line.

Patricia E. Schmid
Attorney for the Division
of Public Utilities

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing Division of Public Utilities' Response to PEMC's Request to Deny Agency Action Due to Lack of Jurisdiction and Supplemental Brief to be served this 20th day of June 2018 by email and/or USPS mail, postage prepaid, to the following:

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