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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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

**Docket No. 18-2602-01**

**UTAH DIVISION OF PUBLIC UTILITIES'  
RESPONSE TO PEMC'S MOTION FOR  
FORMAL DISCOVERY**

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On August 27, 2018 Pacific Energy & Mining Company (PEMC) filed its "Motion for Formal Discovery" (Motion). Pursuant to Public Service Commission of Utah (Commission) rule R746-1-301, the Division of Public Utilities (Division) files this response to the Motion (Response). PEMC's Motion should be denied.

**I. BACKGROUND<sup>1</sup>**

The original scheduling order in this case was issued April 16, 2018. There, June 22, 2018 was set as the discovery cutoff date and July 19, 2018 was set as the hearing date. Subsequently, pursuant to a request from PEMC's president Mr. Tariq Ahmad citing his medical issues, the hearing set for July 19<sup>th</sup> was cancelled. Efforts

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<sup>1</sup> See the Commission's docket sheet for a full recital of filings made in this docket.

amongst the parties to determine a mutually agreeable hearing date, which naturally would lead to a discovery cutoff date, were not successful. PEMC did not respond to the Division's last email seeking scheduling information before the Commission issued its August 9, 2018 Order Denying PEMC's Motion to Dismiss for Lack of Jurisdiction, and Notice of Hearing. The August 9, 2018 order set September 25, 2018 as the hearing date.

On August 10, 2018, PEMC filed notices with the Commission indicating it, through its non-attorney president Mr. Ahmad, would be taking the deposition of two specified Division employees on a certain date. That same day, PEMC filed miscellaneous motions and requests for interrogatories, admissions, and production of documents with the Commission.<sup>2</sup>

On August 15, 2018, the Division sent its first set of data requests to PEMC.

On August 17, 2018, the Division filed a request for a protective order concerning the deposition notices. That same day, PEMC filed a "Motion to Remove Counsel for Division Request for Sanctions."

On August 20, 2018, the Division filed responses not only to certain of PEMC's miscellaneous motions filed on August 10<sup>th</sup> but also to PEMC's August 17<sup>th</sup> request for

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<sup>2</sup> In a filing made with the Commission and served on the Division entitled "Notice of Deposition of Jimmy Betham," PEMC requested the Division to "set forth answers to the following interrogatories, requests for admissions, and requests for production of documents, and serve a sworn copy upon the undersigned within twenty-eight days of service hereof." Note that that same day PEMC also filed another pleading entitled Notice of Deposition of Jimmy Betham that did seek to depose Mr. Betham, and a Corrected Notice of Deposition changing the time of Mr. Betham's deposition from 2:00 a.m. to 2:00 p.m. To avoid confusion to the greatest extent possible, the Division will refer to PEMC's request for interrogatories, admissions, and documents as "Notice of Deposition of Jimmy Betham [formal discovery]." The Division believes that the requests contained in the Notice of Deposition of Jimmy Betham [formal discovery] are formal discovery requests propounded under Rules 26 – 37 of the Utah Rules of Civil Procedure, not data requests pursuant to R746-1-501(1) and thus the Protective Order and R746-1-501 relieve the Division of any duty to respond.

recusal. Also, on August 20, 2018, Utah attorney Terry R. Spencer filed with the Commission his notice of appearance on behalf of PEMC.<sup>3</sup> On August 20, 2018, the Commission issued a protective order (Protective Order) in this docket stating, “The DPU is protected from any requirement to comply with a formal discovery request from PEMC unless or until the PSC has granted a motion to allow PEMC to engage in formal discovery.”<sup>4</sup>

On August 27, 2018, PEMC filed its Motion for Formal Discovery, including a draft order, prompting the Division to file this Response.

On August 29, 2018, the Commission issued its “Notice that Motion to Request Reconsideration is Deemed Denied, Order Denying Motions to Stay and Invitation to Propose Alternative Hearing Date.”<sup>5</sup>

## II. ARGUMENT

### PEMC’S MOTION FOR FORMAL DISCOVERY SHOULD BE DENIED

The Commission should deny the Motion because formal discovery is not warranted or required. PEMC has made no attempt to engage in informal discovery as set forth in the Commission rule R746-1-501(1). R746-1-501 states:

(1) Parties shall attempt to complete informal discovery through written requests for information and records (data requests).

(2) If a party considers informal discovery pursuant to Subsection R746-1-501(1) to be insufficient, the party may move the Commission for formal discovery according to

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<sup>3</sup> Because Mr. Spencer’s entry of appearance did not request that the Division continue to serve PEMC’s Mr. Ahmad, Mr. Green, and Mr. Nugent, the Division is not serving them, but willingly will resume service upon them pursuant to instructions from Mr. Spencer.

<sup>4</sup> Protective Order at p. 2.

<sup>5</sup> Consistent with the August 27, 2018 order, Division’s Counsel and PEMC’s counsel’s office have been in contact but no agreement has been reached regarding an acceptable alternative date.

Rules 26 through 37 of the Utah Rules of Civil Procedure  
with the following exceptions and modifications . . .

PEMC has made no attempt to pursue informal discovery – a condition precedent to requesting formal discovery. Without an attempt to conduct informal discovery through data requests, it is unreasonable for PEMC to state that it “considers informal discovery . . . to be insufficient.”<sup>6</sup> Contrast PEMC’s Motion with motions filed by Rocky Mountain Power (RMP) in August 2017 in Docket No. 14-035-114. There, RMP filed motions including requests for formal discovery, noting it had sought information through data requests pertaining to claims made by two other parties. RMP states those two parties objected to the data requests and refused to provide the information. PEMC’s Motion make no such representation and sets forth no such facts. The Motion should be denied.

Furthermore, formal discovery is not required here and PEMC’s Motion should be denied. Formal discovery is not required to satisfy due process in administrative hearings. Denying the Motion does not deny PEMC its due process rights applicable to administrative hearings. PEMC has had ample opportunity to pursue informal discovery in this proceeding and, as demonstrated above, has not shown that the data request process is insufficient. It has not shown it has tried the data request process.

In Petro-Hunt, LLC v. Department of Workforce Services, the Utah Court of Appeals stated, “While it is true that ‘every person who brings a claim . . . at a hearing held before an administrative agency has a due process right to receive a fair trial in

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<sup>6</sup> Motion at p. 1.

front of a fair tribunal' ...we cannot say that this fairness requirement necessarily includes a constitution right to formal discovery in administrative proceedings.”<sup>7</sup>

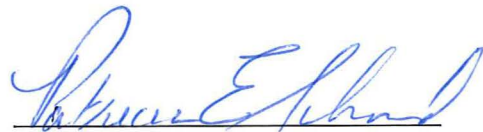
PEMC has had more than four and a half months to seek information through data requests. Its opportunity to seek information began April 12, 2018 when the Division filed its pleadings giving rise to this docket. However, PEMC did not seek any information from the Division until August 10, 2018, and then sought formal discovery rather than utilizing the data result process specified in R746-1-501(1). For the foregoing reasons, the Motion should be denied.

### III. CONCLUSION

The Division seeks an efficient process and a timely hearing, particularly given that the Division has been pursuing this matter since the fall of 2016. The Division believes that pipeline safety is important to public safety.

As shown above, PEMC's Motion is without merit and its request for formal discovery should be denied.

DATED this 4<sup>th</sup> day of September 2018.

  
Patricia E. Schmid  
Attorney for the Utah Division  
of Public Utilities

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<sup>7</sup> 197 P.3d 107, 111 (Ut. Ct. App. 2008). Internal citation omitted. The Division explicitly recognizes that the Petro-Hunt court cited the Salt Lake Citizens Congress case wherein the Court held that the Commission's decision to deny discovery was arbitrary and capricious. However, the situation in Citizens Congress is distinguishable from the situation at hand. Here, the Division is not urging the Commission to deny discovery or to prevent a hearing on the evidence as the Commission did in the Citizens case, but instead is arguing that discovery take place consistent with Commission rules and that data requests (yet unasked) are sufficient.

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing **UTAH DIVISION OF PUBLIC UTILITIES' RESPONSE TO PEMC'S MOTION FOR FORMAL DISCOVERY** to be served this 4<sup>th</sup> day of September 2018 by email and/or USPS mail, postage prepaid, to the following:

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