

PATRICIA E. SCHMID (#4908)
JUSTIN C. JETTER (#13257)
Assistant Attorney Generals
Counsel for the DIVISION OF PUBLIC UTILITIES
SEAN D. REYES (#7969)
Attorney General of Utah
160 E 300 S, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857
Telephone (801) 366-0380
pschmid@agutah.gov
jjetter@agutah.gov

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

Docket No. 18-999-10

**UTAH DIVISION OF PUBLIC UTILITIES'
REQUEST FOR AGENCY ACTION
ON NOTICE OF PROBABLE
VIOLATION, PROPOSED CIVIL
PENALTY, AND PROPOSED
COMPLIANCE ORDER AGAINST
PACIFIC ENERGY MINING COMPANY**

Pursuant to Utah Code Ann. §§ 54-4a-1 et seq., 54-13-1 et seq., and 63G-4-201, the Utah Division of Public Utilities (Division) hereby files this Request for Agency Action on Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order against Pacific Energy Mining Company (PEMC) with the Public Service Commission of Utah (Commission) in connection with PEMC's 21.19 mile 16-inch steel intrastate natural gas pipeline running from the outlet of PEMC's processing plant near the intersection of Ruby Ranch Road and Power Line Road to the TD Williams' tap near the south side of the Archview Resort northwest of Moab, Utah.

The Division requests that the Commission: (1) find that beginning November 4, 2016, PEMC violated and continues to violate, as described more particularly below, Utah Code Ann. §§ 54-13-2 and 54-13-3 and Commission rule R746-409-1 et seq.; (2) assess PEMC civil penalties up to the amount of \$1,000,000 pursuant to Utah Code Ann. § 54-13-8 and R746-409-6; (3) issue a Compliance Order pursuant to R746-409-6 directing PEMC (a) to take specific corrective action to comply with Utah Code Ann. §§ 54-13-2 and 54-13-3 and R746-409-1 et seq. or (b) cease operation of its intrastate pipeline identified above; and (4) order such other relief as the Commission deems appropriate.

The Division's specific concerns are presented in and supported by its Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (collectively, Notice) attached as Exhibit A and incorporated herein.

I. JURISDICTION AND LEGAL AUTHORITY

Pursuant to delegation from the U.S. Department of Transportation, the State of Utah regulates, inspects, and enforces intrastate gas pipeline safety requirements.¹ These requirements include certain documentation provisions, such as O&M procedural manuals, emergency plans, public awareness, and prevention of accidental ignition.

The Commission has jurisdiction over this matter pursuant to Title 54, Chapter 13 of the Utah Code. Furthermore, pursuant to Utah Code Ann. § 54-13-3:

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

- (1) incorporate the safety standards established under the federal Natural Gas Pipeline Safety Act¹ that are applicable to intrastate pipeline transportation; and

¹Utah's authority is described at:

https://primis.phmsa.dot.gov/comm/FactSheets/States/UT_State_PL_Safety_Regulatory_Fact_Sheet.htm

(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.²

Consistent therewith, in R746-409-1 et seq. the Commission sets forth certain rules pertaining to the transportation of intrastate natural gas and compliance with documentation requirements.

II. BACKGROUND

On November 1-4, 2016, the Division's Pipeline Safety Section (UTPS) conducted an O&M Inspection, No. 20161101CH, and a records and field audit (Audit) for PEMC. During the inspection, 13 non-compliance items were found. Although one non-compliance item has been corrected, neither the UTPS nor the Attorney General's Office has received notice of the correction made for each of the remaining 12 non-compliance items.

Consequently, through letters and emails from UTPS and the Attorney General's Office PEMC was directed to provide such documentation and/or remedy non-compliant activities.

1. By letter dated November 21, 2016, UTPS sent PEMC a notice of probable violations outlining 13 non-compliance items and requiring PEMC's response by December 23, 2016. PEMC did not respond by the due date.

² Internal citation omitted.

2. Email correspondence from January 5, 2017 through February 2, 2017 between UTPS and PEMC discussed the past due response.³
3. Email correspondence dated March 22, 2017 from UTPS to PEMC reminded PEMC of the past due items.⁴ Email correspondence dated March 22, 2017 from PEMC to UTPS indicated Dan Green, Vice President of Operations, with PEMC would be back April 1st, and would take care of outstanding items.⁵
4. By letter dated May 16, 2017, UTPS sent PEMC a warning letter requiring a response by May 24, 2017. PEMC sent its response dated May 25, 2017 with status updates stating: (1) the documents were being prepared and would be completed by June 30 or July 31, 2017, and (2) that Emergency Plan training was underway, and verification would be sent to UTPS when completed.
5. By letter dated June 23, 2017 UTPS advised PEMC that the proposed corrections were reviewed, and a follow-up inspection was scheduled for July 31-August 2, 2017.
6. On August 3-4, 2017, the follow-up inspection, No. 20170803JB, was conducted. This follow-up inspection verified that non-compliance item #10, "192.745 Valve maintenance: Transmission lines," had been corrected. The follow-up inspection also verified that the remaining 12 non-compliance items were still pending.
7. By letter dated August 14, 2017, UTPS outlined the remaining non-compliance items with a required response date of September 11, 2017.
8. On September 5, 2017, the UTPS inspector was included on a group email between Dan Green and Ricky Krebs, General Manager for MISTRAS Group, Inc., showing they were trying to locate the records. No records were provided.
9. By certified letter dated January 5, 2018, the Utah Attorney General's Office issued to PEMC its "Final Warning Letter – Corrective Action or Notice of Corrective Action Taken Required." See Exhibit B. PEMC's response to the Attorney General's Office and to UTPS was due February 20, 2018, and as of the date of this filing, no response has been received.

³ Email correspondence involved UTPS' Chien Hwang and PEMC's Dan Green.

⁴ Email correspondence from UTPS' Connie Hendricks to PEMC's Dan Green.

⁵ Email correspondence from PEMC's Dan Green to UTPS' Connie Hendricks.

Consequently, due to PEMC's repeated disregard of applicable pipeline safety statutes and rules, the Commission should grant the relief requested below.

III. REQUEST FOR AGENCY ACTION

The attached and incorporated Notice details and supports the Division's Request. Based on information contained in the Notice, the Division requests that the Commission:

A. Find Violations

The Division requests that the Commission find that PEMC has violated Utah Code Ann. § 54-13-1 et seq. and Commission Rule R746-409-1 et seq. concerning each of the following federal regulations in conjunction with the listed audit results:⁶

1. **49 C.F.R.192.605(b) Procedural manual for operations, maintenance, & emergencies (b) (8);**
2. **49 CFR 192.605 Procedural manual for operations, maintenance, & emergencies (c) (4);**
3. **49 CFR 192.615 Emergency plans (b) (2);**
4. **49 CFR 192.615 Emergency plans (b) (3);**
5. **49 CFR 192.615 Emergency plans (c);**
6. **49 CFR 192.616 Public awareness (e) & (f);**
7. **49 CFR 192.616 Public awareness (g);**
8. **49 CFR 192.616 Public awareness (h);⁷**

⁶PEMC has corrected one violation found during the Audit. That violation was formerly listed as violation #10 and was **192.745 Valve maintenance: Transmission lines:** Each transmission line valve that might be required during any emergency must be inspected and partially operated at intervals not exceeding 15 months, but at least once each calendar year. *No documentation of valve maintenance/testing available.* Documentation has been made available, so no further action is required concerning this item.

⁷During the audit, PEMC also failed to provide the program and evaluation results as requested, violating 49 C.F.R. § 192.616(i) which states, "The operator's program documentation and evaluation results must be available for periodic review by appropriate regulatory agencies." Because this violation was not

9. **49 CFR 192.706 Transmission lines: Leakage surveys;**
10. **49 CFR 192.751 Prevention of accidental ignition;**
11. **49 CFR 192.227/229 Qualification of welders and welding operators / Limitations on welders and welding operators; and**
12. **49 CFR 192.243 Nondestructive testing.**

Additional information, including the requirements of each regulation, what was required to be evaluated during the Audit, and PEMC's response, is found in the NOPV section of the Notice, Exhibit A.

B. Impose Civil Penalty

The Division requests that pursuant to Utah Code Ann. § 54-13-8 and R746-409-6 the Commission impose upon PEMC civil penalties of up to \$1,000,000.

Utah Code Ann. § 54-13-8 states:

(1) Any person engaged in intrastate pipeline transportation who is determined by the commission, after notice and an opportunity for a hearing, to have violated any provision of this chapter or any rule or order issued under this chapter, is liable for a civil penalty of not more than \$100,000 for each violation for each day the violation persists.

(2) The maximum civil penalty assessed under this section may not exceed \$1,000,000 for any related series of violations.

Utah Code Ann. § 54-13-8 lists factors to be considered by the Commission when

included in the audit report, it is not being classified as a violation here, but it is listed as a corrective action in the proposed compliance order. The proposed compliance order requires that PEMC's PNAME state PEMC will make its operator's program documentation and evaluation reports available for periodic review by appropriate regulatory agencies.

determining the amount of the penalty. In determining the recommended penalty, the Division considered the factors set forth in the statute. In particular, the recommended penalty was selected because the Division concluded that PEMC did not make “any good faith in attempting to achieve compliance.” Despite both UTPS and the Attorney General’s Office repeatedly informing PEMC of what needed to be corrected, PEMC remains noncompliant and in operation. During the course of this docket, the Division will seek additional information to present to the Commission regarding the appropriate civil penalty. The Commission may assess a civil penalty in addition to issuing a Compliance Order.⁸

C. Issue Compliance Order

Pursuant to Utah Code Ann. §§ 54-13-2 and 54-13-3 and R746-409-6, the Division requests that the Commission order PEMC to take the specific corrective actions stated in the Proposed Compliance Order or cease use of its intrastate pipeline identified above. A Proposed Compliance Order is incorporated into the Notice. A Compliance Order may be issued in addition to imposing civil penalties.⁹

D. Order Additional Relief as Appropriate

The Division further requests that the Commission order such other relief as it deems appropriate.

IV. CONCLUSION

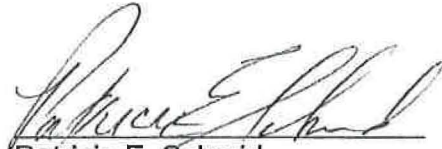
The Division requests that the Commission: (1) find that PEMC violated and continues to violate, as specified above, Utah Code Ann §§ 54-13-2 and 54-13-3, and Commission rule R746-409-1 et seq. as the rule existed from November 4, 2016 to the

⁸ Id.

⁹ Id.

present time; (2) assess PEMC civil penalties up to the amount of \$1,000,000 pursuant to Utah Code Ann. § 54-13-8 and R746-409-6; (3) issue a Compliance Order pursuant to Utah Code Ann. §§ 54-13-2 and 54-13-3 and R746-409-6 as described above mandating that PEMC (a) must take specific corrective action to comply with Utah Code Ann. §§ 54-13-2 and 54-13-3 and R746-409-1 et seq. or (b) cease operating its intrastate natural gas pipeline identified above; and (4) order such other relief as the Commission deems appropriate.

DATED this 12th day of April 2018.



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

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing Utah Division of Public Utilities Request for Agency Action to be served this 12th day of April 2018 by email and/or USPS mail, postage prepaid, to the following:

Dan Green
Vice President of Operations
Pacific Energy & Mining Company
3550 Barron Way, Suite 13A
Reno, NV 89511
Dfgreen1@dslextreme.com

Rodney Nugent
Registered Agent – PEMC
17 West Main Street
P.O. Box 149
Green River, UT 84525

Chris Parker, Director, Division of Public Utilities
Chrisparker@utah.gov

Al Zadeh, Pipeline Safety Lead
azadeh@utah.gov

DPU Data Request
DPUdatarequest@utah.gov



EXHIBIT "A"



GARY HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

State of Utah
Department of Commerce
Division of Public Utilities

FRANCINE GIANI
Executive Director

THOMAS BRADY
Deputy Director

CHRIS PARKER
Director, Division of Public Utilities

NOTICE OF PROBABLE VIOLATION, PROPOSED CIVIL PENALTY, AND PROPOSED COMPLIANCE ORDER

VIA EMAIL AND CERTIFIED MAIL – RETURN RECEIPT REQUESTED

April 12, 2018
Mr. Dan Green
Vice President of Operations
Pacific Energy & Mining Company
3550 Barron Way, Suite 13A
Reno, NV 89511

Dear Mr. Green:

Pacific Energy & Mining Company (PEMC) has failed to correct deficiencies found by the Utah Pipeline Safety Section (UTPS) of the Utah Division of Public Utilities (Division) in its November 1-4, 2016 O&M Inspection, No. 20161101CH, and a records and field audit (Audit) of PEMC's 21.19 mile 16-inch steel intrastate natural gas pipeline running from the outlet of PEMC's processing plant near the intersection of Ruby Ranch Road and Power Line Road to the TD Williams' tap near the south side of Archview Resort northwest of Moab, Utah (Pipeline). As detailed below, PEMC has failed to comply with applicable statutes and regulations in connection with its operation of its Pipeline. This letter constitutes PEMC's Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (collectively, Notice).

Based on the Audit and information available to the UTPS and the Division, it appears that PEMC has committed probable violations of the Public Service Commission of Utah's (Commission) statutes pertaining to pipeline safety found at Utah Code Ann.

§ 54-13-1 et seq., the Commission's rules found at R746-409-1 et seq., and the federal Pipeline Safety Regulations, Title 49, Code of Federal Regulations adopted by the Utah Commission in Utah Code Ann. §§ 54-13-2 and 54-13-3 and R746-409-1 et seq.

The Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order comprising the Notice are discussed individually below. In addition, the Proposed Compliance Order is attached and made part of this Notice.

PROBABLE VIOLATIONS

1. **49 C.F.R. § 192.605(b)(8) Procedural manual for operations, maintenance & emergencies states:**

(b) Maintenance and normal operations. The manual required by paragraph (a)¹ of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations.

*** * ***

(8) Periodically reviewing the work done by operator personnel to determine the effectiveness, and adequacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found.

During the Audit, UTPS requested PEMC's records pertaining to the periodic review and modification requirements listed above. PEMC failed to provide documentation to UTPS such that UTPS could verify that PEMC periodically reviewed its personnel's work regarding normal operations to determine the

¹ 49 CFR 192.605 Paragraph (a) states:

General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

effectiveness and adequacy of the procedures and additionally PEMC failed to provide documentation that procedures were modified when deficiencies were found. No documentation was available or provided.

Consequently, through letters from UTPS and the Attorney General's Office PEMC was directed to provide such documentation (Timeline):

1. By letter dated November 21, 2016, UTPS sent PEMC a notice of probable violations outlining 13 non-compliance items and requiring

PEMC's response by December 23, 2016. PEMC did not respond by the due date.

2. Email correspondence from January 5, 2017 through February 2, 2017 between UTPS and PEMC discussed the past due response.²
3. Email correspondence dated March 22, 2017 from UTPS to PEMC reminded PEMC of the past due items³. Email correspondence dated March 22, 2017 from PEMC to UTPS indicated Dan Green, Vice President of Operations, with PEMC would be back April 1st and would take care of outstanding items.⁴
4. By letter dated May 16, 2017, UTPS sent PEMC a warning letter requiring a response by May 24, 2017. PEMC sent its response dated May 25, 2017 with status updates stating: (1) the documents were being prepared and would be completed by June 30 or July 31, 2017, and (2) that Emergency Plan training was underway, and verification would be sent to UTPS when completed.
5. By letter dated June 23, 2017 UTPS advised PEMC that the proposed corrections were reviewed, and a follow-up inspection was scheduled for July 31- August 2, 2017.

² Email correspondence involved UTPS' Chien Hwang and PEMC's Dan Green.

³ Email correspondence from UTPS' Connie Hendricks to PEMC's Dan Green.

⁴ Email correspondence from PEMC's Dan Green to UTPS' Connie Hendricks.

6. On August 3-4, 2017, the follow-up inspection, No. 20170803JB, was conducted. This follow-up inspection verified that non-compliance item #10, "192.745 Valve maintenance: Transmission lines," had been corrected. The follow-up inspection also verified that the remaining 12 non-compliance items were still pending.
7. By letter dated August 14, 2017, UTPS outlined the remaining non-compliance items with a required response date of September 11, 2017.
8. The UTPS inspector was included on a group email dated September 5, 2017, between Dan Green and Ricky Krebs, General Manager for MISTRAS Group, Inc. showing they were trying to locate the records. No records were provided.
9. By certified letter dated January 5, 2018, the Utah Attorney General's Office issued to PEMC its "Final Warning Letter – Corrective Action or Notice of Corrective Action Taken Required." See Exhibit B. PEMC's response to the Attorney General's Office and to UTPS was due February 20, 2018, and as of the date of this filing, no response has been received.

To date, neither UTPS nor the Attorney General's Office has received notice that PEMC has provided such documentation to UTPS.

2. **49 C.F.R. § 192.605(c)(4) Procedural manual for operations, maintenance & emergencies states:**
 - (c) **Abnormal operation. For transmission lines, the manual required by paragraph (a) of this section must include procedures for the following to provide safety when operating design limits have been exceeded:**

* * *

- (4) **Periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found.**

During the Audit, UTPS requested PEMC's records pertaining to the review

and corrective actions requirements stated above. PEMC failed to provide documentation to UTPS such that UTPS could verify that PEMC periodically reviewed its personnel's responses concerning abnormal operations to determine effectiveness as required above and to verify that PEMC took corrective action regarding deficiencies. No documentation was available or provided.

Consequently, through letters from UTPS and the Attorney General's Office, PEMC was directed to provide such documentation. See the Timeline above.

To date, neither UTPS nor the Attorney General's Office has received notice that PEMC has provided such documentation to UTPS.

3. 49 C.F.R. § 192.615(b)(2) Emergency plans states:

(b) Each operator shall:

* * *

(2) Train the appropriate operating personnel to assure that they are knowledgeable of the emergency procedures and verify that the training is effective.

During the Audit, UTPS requested documentation pertaining to the verification of training and the effectiveness of such training as listed above. PEMC failed to provide documentation to UTPS such that UTPS could verify PEMC's compliance with the training requirements concerning emergency procedures concerning operating personnel's knowledge and the effectiveness of the training as established above. No documentation was available or provided to verify training and/or training effectiveness.

Consequently, through letters from UTPS and the Attorney General's Office, PEMC was directed to provide such documentation. See the Timeline above.

To date, neither UTPS nor the Attorney General's Office has received notice that PEMC has provided such documentation to UTPS.

4. 49 C.F.R. § 192.615(b)(3) Emergency plans states:

(b) Each operator shall:

* * *

(3) Review employee activities to determine whether the procedures were effectively followed in each emergency.

During the Audit, UTPS requested documentation allowing UTPS to determine if employee activities were reviewed to determine if procedures were effectively followed for each emergency. PEMC failed to provide documentation to UTPS such that UTPS could verify PEMC's compliance with the review requirements established above. No documentation was available or provided to verify whether procedures were effectively followed.

Consequently, through letters from UTPS and the Attorney General's Office, PEMC was directed to provide such documentation. See the Timeline above.

To date, neither UTPS nor the Attorney General's Office has received notice that PEMC has provided such documentation to UTPS.

5. 49 C.F.R. § 192.615(c) Emergency plans states:

(c) Each operator shall establish and maintain liaison with appropriate fire, police, and other public officials to:

- (1) Learn the responsibility and resources of each government organization that may respond to a gas pipeline emergency;**
- (2) Acquaint the officials with the operator's ability in responding to a gas pipeline emergency;**
- (3) Identify the types of gas pipeline emergencies of which the operator notifies the officials; and**
- (4) Plan how the operator and officials can engage in mutual assistance to minimize hazards to life or property.**

During the Audit, UTPS requested information concerning the establishment and maintenance of liaisons and satisfaction of the other requirements listed above. PEMC failed to provide documentation to UTPS such that UTPS could verify that the required liaisons had been established and maintained. PEMC failed to provide documentation that it had learned the responsibilities and resources of each governmental operation that may respond to a gas pipeline emergency. PEMC failed to provide documentation that it had acquainted the

officials with PEMC's ability in responding to a gas pipeline emergency. PEMC failed to provide documentation that it had identified the types of gas pipeline emergencies of which it notifies the officials. PEMC failed to provide documentation of its plan for PEMC and the officials to engage in mutual assistance to minimize hazards to life or property. No documentation was available or provided

Consequently, through letters from UTPS and the Attorney General's Office, PEMC was directed to provide such documentation. See the Timeline above.

To date, neither UTPS nor the Attorney General's Office has received notice that PEMC has provided such documentation to UTPS.

6. 49 C.F.R. § 192.616(e) and (f) Public awareness state:

(e) The program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations.

(f) The program and the media used must be as comprehensive as necessary to reach all areas in which the operator transports gas.

During the Audit, UTPS requested documentation concerning PEMC's public awareness program requirements stated above. PEMC failed to provide documentation to UTPS such that UTPS could verify that the program included activities to inform the affected municipalities, school districts, businesses, and residents of pipeline facility locations. Additionally, PEMC failed to provide documentation to UTPS that such program and media used were as comprehensive as necessary to reach all areas in which PEMC transports gas. No documentation was available or provided.

Consequently, through letters from UTPS and the Attorney General's Office, PEMC was directed to provide such documentation. See the Timeline above.

To date, neither UTPS nor the Attorney General's Office has received notice that PEMC has provided such documentation to UTPS.

7. 49 C.F.R. § 192.616(g) Public awareness states:

(g) The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.

During the Audit, UTPS requested access to PEMC's Procedural Manual for Operations, Maintenance and Emergencies (PMOME) to audit PEMC's compliance with the language requirements set forth above. UTPS discovered that PEMC's PMOME did not include the requirement that the program must be conducted in English and other languages as specified above.

Consequently, through letters from UTPS and the Attorney General's Office, PEMC was directed to include the language requirements as stated above in its PMOME. See the Timeline above.

To date, neither UTPS nor the Attorney General's Office has received notice that information has been added to the PMOME to satisfy the above requirements.

8. 49 C.F.R. § 192.616(h-i) Public awareness states:

(h) Operators in existence on June 20, 2005, must have completed their written programs no later than June 20, 2006. The operator of a master meter or petroleum gas system covered under paragraph (j) of this section must complete development of its written procedure by June 13, 2008. Upon request, operators must submit their completed programs to PHMSA or, in the case of an intrastate pipeline facility operator, the appropriate State agency.

(i) The operator's program documentation and evaluation results must be available for periodic review by appropriate regulatory agencies.

During the Audit, UTPS requested access to PEMC's PMOME to audit PEMC's compliance with the requirements concerning a written program as stated above. During the Audit, UTPS discovered that an effectiveness review was not addressed in the PMOME. Thus, PEMC failed to provide documentation to UTPS evidencing compliance with the requirement of effectiveness regarding its written procedure and submitting the same to

UTPS.

Consequently, through letters from UTPS and the Attorney General's Office, PEMC was directed to address the effectiveness review requirement in its PMOME⁵. See the Timeline above.

To date, neither UTPS nor the Attorney General's Office has received notice that PEMC has included the effectiveness review requirement in its PMOME.

9. 49 C.F.R. § 192.706 Transmission lines: Leakage surveys states:

Leakage surveys of a transmission line must be conducted at intervals not exceeding 15 months, but at least once each calendar year. However, in the case of a transmission line which transports gas in conformity with § 192.625 without an odor or odorant, leakage surveys using leak detector equipment must be conducted—

(a) In Class 3 locations, at intervals not exceeding 7 ½ months, but at least twice each calendar year; and

(b) In Class 4 locations, at intervals not exceeding 4 ½ months, but at least four times each calendar year.

During the Audit, UTPS requested documentation to verify that the leak survey requirements listed above were satisfied. UTPS discovered that there was no documentation of leak surveys available to verify the compliance with the above requirements.

Consequently, through letters from UTPS and the Attorney General's Office, PEMC was directed to provide such documentation. See the Timeline above.

⁵During the audit, PEMC also failed to provide the program and evaluation results as requested, violating 49 C.F.R. § 616(i) which states, "The operator's program documentation and evaluation results must be available for periodic review by appropriate regulatory agencies. Because this violation was not included in the audit report, it is not being classified as a violation here, but it is listed as a corrective action in the proposed compliance order. The proposed compliance order requires that PEMC's PNOME state PEMC will make its operator's program documentation and evaluation reports available for periodic review by appropriate regulatory agencies.

To date, neither UTPS nor the Attorney General's Office has received notice that PEMC has provided such documentation to UTPS.

10. C.F.R. § 192.751 Prevention of accidental ignition states:

Each operator shall take steps to minimize the danger of accidental ignition of gas in any structure or area where the presence of gas constitutes a hazard of fire or explosion, including the following:

(a) When a hazardous amount of gas is being vented into open air, each potential source of ignition must be removed from the area and a fire extinguisher must be provided.

(b) Gas or electric welding or cutting may not be performed on pipe or on pipe components that contain a combustible mixture of gas and air in the area of work.

(c) Post warning signs, where appropriate.

During the Audit, UTPS requested access to PEMC's PMOME to audit PEMC's compliance with the above requirements. UTPS discovered that PEMC's PMOME did not address steps to minimize the danger of accidental ignition as required above. There was no documentation available or provided to verify compliance.

Consequently, through letters from UTPS and the Attorney General's Office, PEMC was directed to address the prevention of accidental ignition requirements stated above in its PMOME. See the Timeline above.

To date, neither UTPS nor the Attorney General's Office has received notice that PEMC has included the prevention of accidental ignition requirements in its PMOME.

11. 49 C.F.R. § 192 227/229 Qualification of welders and welding operators/Limitations on welders and welding operators states:

192 C.F.R. § 227:

(a) Except as provided in paragraph (b) of this section, each welder or welding operator must be qualified in accordance with section 6, section 12, Appendix A or Appendix B of API Std 1104 (incorporated by reference, see § 192.7), or section IX of the ASME Boiler and Pressure Vessel Code (ASME BPVC) (incorporated by reference, see § 192.7). However, a welder or welding operator qualified under an earlier edition than the listed in § 192.7 of this part may weld but may not requalify under that earlier edition.

(b) A welder may qualify to perform welding on pipe to be operated at a pressure that produces a hoop stress of less than 20 percent of SMYS by performing an acceptable test weld, for the process to be used, under the test set forth in section I of Appendix C of this part. Each welder who is to make a welded service line connection to a main must first perform an acceptable test weld under section II of Appendix C of this part as a requirement of the qualifying test.

192 C.F.R. § 229:

(a) No welder or welding operator whose qualification is based on nondestructive testing may weld compressor station pipe and components.

(b) A welder or welding operator may not weld with a particular welding process unless, within the preceding 6 calendar months, the welder or welding operator was engaged in welding with that process.

(c) A welder or welding operator qualified under § 192.227(a)—

(1) May not weld on pipe to be operated at a pressure that produces a hoop stress of 20 percent or more of SMYS unless within the preceding 6 calendar months the welder or welding operator has had one weld tested and found acceptable under either section 6, section 9, section 12 or Appendix A of API Std 1104 (incorporated by reference, see § 192.7). Alternatively, welders or welding operators may maintain an ongoing qualification status by performing welds tested and found acceptable under the above

acceptance criteria at least twice each calendar year, but at intervals not exceeding 7 ½ months. A welder or welding operator qualified under an earlier edition of a standard listed in § 192.7 of this part may weld, but may not re-qualify under that earlier edition; and,

(2) May not weld on pipe to be operated at a pressure that produces a hoop stress of less than 20 percent of SMYS unless the welder or welding operator is tested in accordance with paragraph (c)(1) of this section or re-qualifies under paragraph (d)(1) or (d)(2) of this section.

(d) A welder or welding operator qualified under § 192.227(b) may not weld unless—

(1) Within the preceding 15 calendar months, but at least once each calendar year, the welder or welding operator has re-qualified under § 192.227(b); or

(2) Within the preceding 7 ½ calendar months, but at least twice each calendar year, the welder or welding operator has had—

(i) A production weld cut out, tested, and found acceptable in accordance with the qualifying test; or

(ii) For a welder who works only on service lines 2 inches (51 millimeters) or smaller in diameter, the welder has had two sample welds tested and found acceptable in accordance with the test in section III of Appendix C of this part.

During the Audit, UTPS requested documentation to verify PEMC's compliance with the above requirements. PEMC advised UTPS that there was no required welder documentation available because, according to PEMC, such records were stored in Reno, NV. PEMC said that it would check and follow up with UTPS with additional information.

Consequently, through letters from UTPS and the Attorney General's Office, PEMC was directed to provide such documentation. See the Timeline above.

To date, neither UTPS nor the Attorney General's Office has received notice that PEMC has provided such documentation to UTPS.

12. 49 C.F.R. § 192.243 Nondestructive testing states:

(a) Nondestructive testing of welds must be performed by any process, other than trepanning, that will clearly indicate defects that may affect the integrity of the weld.

(b) Nondestructive testing of welds must be performed:

(1) In accordance with written procedures; and

(2) By persons who have been trained and qualified in the established procedures and with the equipment employed in testing.

(c) Procedures must be established for the proper interpretation of each nondestructive test of a weld to ensure the acceptability of the weld under § 192.241(c).

(d) When nondestructive testing is required under §192.241(b), the following percentages of each day's field butt welds, selected at random by the operator, must be nondestructively tested over their entire circumference:

(1) In Class 1 locations, except offshore, at least 10 percent.

(2) In Class 2 locations, at least 15 percent.

(3) In Class 3 and Class 4 locations, at crossings of major or navigable rivers, offshore, and within railroad or public highway rights-of-way, including tunnels, bridges, and overhead road crossings, 100 percent unless impracticable, in which case at least 90 percent. Nondestructive testing must be impracticable for each girth weld not tested.

(4) At pipeline tie-ins, including tie-ins of replacement sections, 100 percent.

(e) Except for a welder or welding operator whose work is isolated from the principal welding activity, a sample of each welder or welding operator's work for each day must be nondestructively tested, when nondestructive testing is required under § 192.241(b).

(f) When nondestructive testing is required under § 192.241(b), each operator must retain, for the life of the pipeline, a record showing by milepost, engineering station, or by geographic feature, the number of girth welds made, the number nondestructively tested, the number rejected, and the disposition of the rejects.

During the Audit, UTPS requested documentation to verify PEMC's compliance with the above requirements regarding nondestructive testing. PEMC advised UTPS that there was no nondestructive testing documentation available because, according to PEMC, such records were stored in Reno, NV. PEMC said that it would check and follow up with UTPS with additional information.

Consequently, through letters from UTPS and the Attorney General's Office, PEMC was directed to provide such documentation. See the Timeline above.

To date, neither UTPS nor the Attorney General's Office has received notice that PEMC has provided such documentation to UTPS.

PROPOSED CIVIL PENALTY

The Division proposes that the Commission find PEMC liable for a civil penalty of up to \$ 1,000,000, the maximum penalty allowable by law, for PEMC's violations commencing November 4, 2016, and continuing to the date of this Notice.

Under R746-409-6, the Commission may impose civil penalties upon PEMC. Utah Code Ann. § 54-13-8, states that if the Commission finds after notice and an opportunity for hearing that PEMC has violated any provision of Chapter 54-13-1 et seq. or R746-409-1 et seq., PEMC is liable for civil penalties. Utah Code Ann. § 54-13-8 provides that the Commission can order that PEMC is "liable for a civil penalty of not more than \$100,000 for each violation for each day the violation persists" [and that] ... [t]he maximum civil penalty assessed under this section may not exceed \$1,000,000 for any related series of violations."

Utah law sets forth how penalties for violations shall be calculated. Utah Code Ann

§ 54-8-13(4) states:

- (4) In determining the amount of the penalty, the commission shall consider:
- (a) the nature, circumstances, and gravity of the violation; and
 - (b) with respect to the person found to have committed the violation:
 - (i) the degree of culpability;
 - (ii) any history of prior violations;
 - (iii) the effect on the person's ability to continue to do business;
 - (iv) any good faith in attempting to achieve compliance;
 - (v) the person's ability to pay the penalty; and
 - (vi) any other matter, as justice may require.

The Division has reviewed the circumstances and sought supporting documents involved in this case. In making its civil penalty recommendation, the Division has assessed PEMC's conduct and capabilities as set forth in the statute set forth above. The Division found that PEMC had not made any effort to comply, despite repeated reminders and this, among other things such as PEMC's failure to perform maintenance of its Pipeline, failure to keep required records, and failure to have qualified people to maintain the line supports the Division's recommendation at this time for the maximum available fine. In connection with the Request for Agency Action, the Division will conduct discovery to aid it in applying the statutory considerations set forth above to update its penalty recommendation to the Commission.

In addition to imposing a Civil Penalty, the Commission may issue a Compliance Order.

PROPOSED COMPLIANCE ORDER

The Division proposes that the Commission issue PEMC a Compliance Order pursuant to applicable statutes, including Utah Code Ann. § 54-13-1 et seq., R746-409-1 et seq., United States Code § 60118, and applicable rules pertaining to Proposed Violation Item Nos. 1-12.as set forth above

Please refer to the enclosed Proposed Compliance Order, which is made a part of this Notice. The Proposed Compliance Order sets forth specific actions

that PEMC must take to bring it into compliance with applicable statutes and regulations associated with the NOPV stated above

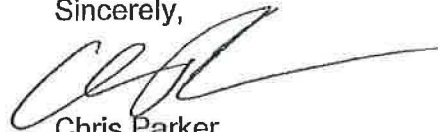
In addition to issuing a Compliance Order, the Commission may impose civil penalties.

RESPONSE TO THIS NOTICE

Documents, material, and information PEMC submits are subject to being made publicly available pursuant to Utah's Government Access and Records Management Act (GRAMA). If PEMC believes that all or a portion of what it provides qualifies for confidential or protected treatment under GRAMA, PEMC must submit the documents in compliance with Utah Code Ann. § 63G-2-101 et seq.

If PEMC has questions, please contact Patricia E. Schmid, Assistant Attorney General for the Division, at (801) 366-0380.

Sincerely,



Chris Parker,
Director, Utah Division of
Public Utilities

Enclosure: Proposed Compliance Order

cc: Rodney Nugent, Registered Agent – PEMC (w/ enclosure)
Al Zadeh, Lead, Pipeline Safety (w/ enclosure)
Patricia E. Schmid, Utah Attorney General's Office (w/ enclosure)

**PROPOSED COMPLIANCE ORDER FOR PACIFIC ENERGY & MINING COMPANY
PERTAINING TO ITS NATURAL GAS PIPELINE NEAR MOAB, UTAH**

Pursuant to Utah Code Ann. § 54-13-1 et seq. and Public Service Commission of Utah (Commission) Rule R746-409 and in particular R746-409-6, the Utah Division of Public Utilities (Division) proposes that the Commission issue a Compliance Order to Pacific Energy & Mining Company (PEMC) incorporating the following remedial requirements to ensure PEMC's compliance with certain pipeline safety regulations identified in the accompanying Notice of Proposed Violation (Notice) concerning PEMC's operation of its 21.19 mile 16-inch steel intrastate natural gas pipeline running from the outlet of PEMC's processing plant near the intersection of Ruby Ranch Road and Power Line Road to the TD Williams' tap near the south side of the Archview Resort northwest of Moab, Utah. The Division also proposes that within 60 days of the final order in this docket, PEMC be ordered to file with the Commission and provide to Utah Pipeline Safety (UTPS) (1) written documentation of steps taken to satisfy the Compliance Order and (2) certification that the Compliance Order Items have been completed. The Division proposes that the Compliance Order incorporate the following:

1. In regard to Item Number 1 of the Notice, 49 C.F.R. § 192.605(b)(8) Procedural manual for operations, maintenance and emergencies, pertaining to PEMC's failure to maintain and provide adequate records concerning PEMC's periodic review of its operator personnel's work regarding normal operations to determine the effectiveness and adequacy of the procedures and pertaining to PEMC's additional failure to keep adequate records demonstrating that PEMC modified procedures when deficiencies were found, PEMC must prepare and maintain appropriate records demonstrating compliance with the above requirements.
2. In regard to Item Number 2 of the Notice, 49 C.F.R. § 192.605(c)(4) Procedural manual for operations, maintenance and emergencies, pertaining to PEMC's failure to maintain and provide documentation concerning PEMC's periodic review of its personnel's responses concerning abnormal operations to determine effectiveness as required above and to verify that PEMC took corrective action regarding deficiencies, PEMC must prepare and maintain appropriate records demonstrating compliance with the above requirements.
3. In regard to Item Number 3 of the Notice, 49 C.F.R. § 192.615(b)(2), Emergency plans, pertaining to PEMC's failure to maintain and provide documentation of PEMC's training and verification of its operating personnel concerning the knowledge of emergency procedures and verification that such training is effective, PEMC must prepare and maintain appropriate records demonstrating compliance with the above requirements.
4. In regard to Item Number 4 of the Notice, 49 C.F.R. § 192.615(b)(3), Emergency plans, pertaining to PEMC's failure to maintain and provide documentation that PEMC reviewed its employees' activities to determine if PEMC's procedures

were effectively followed for each emergency, PEMC must prepare and maintain appropriate records demonstrating compliance with the above requirements.

5. In regard to item Number 5 of the Notice, 49 C.F.R. § 192.615(c), Emergency plans, pertaining to PEMC's failure to maintain and provide documentation demonstrating its establishment and maintenance of liaison with appropriate fire, police, and other public officials regarding emergency plans, PEMC must prepare and maintain appropriate records demonstrating compliance with all the required elements in 49 C.F.R. § 192.615(c).
6. In regard to Item Number 6 of the Notice, 49 C.F.R. § 192.616(e) and (f), Public awareness, pertaining to PEMC's failure to maintain and provide documentation that PEMC complied with the public awareness requirements, PEMC must prepare and maintain appropriate records demonstrating compliance with the above requirements.
7. In regard to Item Number 7 of the Notice, 49 C.F.R. § 192.616(g), Public awareness, pertaining to PEMC's failure to have the language requirements addressed in its Procedural Manual for Operations, Maintenance and Emergencies (PMOME), PEMC must add the required regulatory language to its PMOME.
8. In regard to Item Number 8 of the Notice, 49 C.F.R. § 192.616(h) Public awareness, pertaining to PEMC's failure to have the required effectiveness review addressed in PEMC's PMOME, PEMC must add the effectiveness review to its PMOME. In addition, although the subsection was not cited in the audit report, pursuant to 49 C.F.R. § 192.616(i), "the operator's program documentation and evaluation reports must be available for periodic review by appropriate regulatory agencies." PEMC did not comply with this requirement and must add to its PMOME that it will make its operator's program documentation and evaluation reports available for periodic review by appropriate regulatory agencies.
9. In regard to Item Number 9 of the Notice, 49 C.F.R. § 192.706 Transmission Lines: Leakage surveys, PEMC failed to maintain and provide documentation demonstrating its compliance with conducting leak surveys. PEMC must prepare and maintain appropriate documentation demonstrating compliance with the above requirements.
10. In regard to Item Number 10 of the Notice, 49 C.F.R. § 192.751 Prevention of accidental ignition, PEMC failed to address this requirement in its PMOME. PEMC must include the above requirement in its PMOME.
11. In regard to Item Number 11 of the Notice, 49 C.F.R. § 192.227/229 Qualification of welders and welding operators/Limitations on welders and welding operators, PEMC failed to have the required documentation at its pipeline site but stated

instead that the required documentation was located in Reno, Nevada. PEMC must make this required documentation available to its personnel for operations, maintenance, and repairs and to UTPS during inspections.

12. In regard to Item Number 12 of the Notice, 49 C.F.R. § 192.243 Nondestructive testing, PEMC failed to have the required documentation at its pipeline site but stated instead that the required documentation was located in Reno, Nevada. PEMC must make this required documentation available to UTPS during inspections.
13. PEMC must complete the above items and prepare records to document the results within 60 days of the Final Order.
14. Within 90 days of the Final Order, PEMC must file with the Commission and provide to UTPS written documentation of the steps taken to satisfy the Compliance Order and certification that the Compliance Order items have been completed.
15. It is requested (not mandated) that PEMC maintain documentation of the safety improvements costs associated with fulfilling this Compliance Order and submit the total to UTPS. Furthermore, it is requested that PEMC reports the total cost associated with preparation/revision of plans procedures, studies and analyses.