
Pacific Energy & Mining Company

DOCKET NO. 18-2602-01

ORDER

ISSUED: January 18, 2019

Procedural Background

On April 12, 2018, the Division of Public Utilities (DPU) filed with the Public Service Commission of Utah (PSC) a request for agency action in this docket against Pacific Energy & Mining Company (PEMC).¹ The DPU alleges that, in 2016, the DPU's Pipeline Safety division conducted an operations and maintenance inspection and a records and field audit of PEMC and found 13 safety violations.² According to the DPU, only one of the violations has been corrected, leaving 12 remaining safety violations unresolved.³ For these remaining violations, the DPU requests the following remedies: (1) a finding that PEMC is and has been in violation of the PSC's Pipeline Safety Rule R746-409 *et seq.* since November 4, 2016; (2) an assessment of a civil penalty of up to \$1,000,000, pursuant to Utah Code Ann. § 54-13-8 and the remedies provision in R746-409-6; (3) issuance of an order, requiring PEMC to (a) come into compliance with R746-409 *et seq.* or (b) cease operation of its intrastate pipeline; and (4) other such relief as the PSC deems appropriate.⁴

¹ See 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, filed April 12, 2018.

² See *id.* at 3.

³ See *id.*

⁴ See *id.* at 2.

On May 15, 2018, PEMC filed a response to the DPU's request.⁵ This filing does not address the specific remedies requested in the DPU's filing.⁶

On May 24, 2018, the DPU filed a reply noting the inadequacies of PEMC's response and stating an intention to pursue its request for agency action before the PSC.⁷

On August 20, 2018, a notice of appearance of counsel was filed on behalf of PEMC.⁸ Also, on August 20, 2018, the DPU made a filing in which it emphasized, in part: "By initiating this docket, the [DPU] sought to remedy the public safety risk resulting from PEMC's inactions and seeks expeditious resolution to protect the public safety. The [DPU] is seeking to remedy PEMC's noncompliance discovered in a 2016 audit - nearly two years [ago]."⁹

On September 25, 2018, the PSC's presiding officer held a hearing wherein the parties agreed to file with the PSC, either individually or jointly, a status report on the resolution of issues in the docket by November 23, 2018.¹⁰ On November 21, 2018, the DPU filed an individual status report noting, in part, that it had not received "a draft of the revised Policy and Procedural manual [from PEMC as expected]."¹¹ PEMC did not file an individual report, and did not contradict the information filed in the DPU's report.

⁵ See Pacific Energy & Mining Company Response to Agency Action Against Pacific Energy & Mining Company, filed May 15, 2018.

⁶ See *id.*

⁷ See Utah Division of Public Utilities' Final Reply to Pacific Energy [&] Mining Company's Response, filed May 24, 2018.

⁸ See Notice of Appearance of Terry R. Spencer for Pacific Energy & Mining Company, filed August 20, 2018.

⁹ DPU filing at 3, filed August 20, 2018.

¹⁰ See Notice of Status Report Filing, issued September 26, 2018.

¹¹ See Status Report from the Utah Division of Public Utilities, filed November 21, 2018.

On December 18, 2018, the PSC's presiding officer held a hearing in this docket.¹² After the hearing, PEMC filed a copy of a May 16, 2016 Order Granting Motion for Preliminary Injunction by the Seventh Judicial District Court in Case No. 160700016. This Order states, in part: ". . .[PEMC is] not allowed to shut in the lateral pipeline . . . without seeking leave of the court unless there is an immediate threat to the public safety."¹³

Findings of Fact and Conclusions of Law

The DPU and PEMC appeared at the PSC's December 18, 2018 hearing and both were represented by counsel.¹⁴ Both parties put forth testimony and had the opportunity to cross-examine the other side's witness(es). The DPU's requested remedies were more specific at hearing than those stated in its request for agency action. At hearing, the DPU requested the following relief: 1) an order requiring PEMC to cure the violations within 30-60 days;¹⁵ 2) a civil penalty of \$100,000;¹⁶ and 3) a suspension of PEMC's pipeline operations.¹⁷ It appears from the record in this docket that PEMC had no advance notice of these refinements in DPU's request for relief. Accordingly, we conclude it will aid our deliberations to allow PEMC an additional opportunity to respond to the specific recommendations the DPU offered at hearing.

¹² See Amended Notice of Hearing, issued December 4, 2018.

¹³ Order Granting Motion for Preliminary Injunction at 3, ¶ 2, dated May 16, 2016 (Case No. 160700016).

¹⁴ See Transcript of December 18, 2019 Hearing at 5:11-13, 19-20.

¹⁵ See *id.* at 28:24-25; 29:1-4. See also *id.* at 45:16-22.

¹⁶ See *id.* at 30:12-15. See also *id.* at 45:16-22.

¹⁷ See *id.* at 31:3-6. See also *id.* at 45:16-22.

ORDER

Based on the foregoing, we request the following of the parties:

1. Within twenty (20) days of this order, PEMC shall file with the PSC: 1) a status report identifying the alleged violations asserted by DPU it has cured to date and its schedule for curing all remaining alleged violations, 2) a response to the DPU's proposed civil penalty of \$100,000, and 3) comments concerning the DPU's proposed suspension of PEMC's pipeline operations and the relevance, if any, of the Seventh District Court's Order Granting Motion for Preliminary Injunction in Case No. 160700016.
2. Within ten (10) days of PEMC's status filing, the DPU shall file a response addressing each of the issues outlined above.

DATED at Salt Lake City, Utah, January 18, 2019.

/s/ Melanie A. Reif
Presiding Officer

Approved and confirmed January 18, 2019, as the Order of the Public Service
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#306292

CERTIFICATE OF SERVICE

I CERTIFY that on January 18, 2019, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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