

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES
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Chief Criminal Deputy

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Brian L. Tarbet
Chief Civil Deputy

April 3, 2019

VIA ELECTRONIC FILING

Public Service Commission of Utah
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, UT 84111

Attention: Gary Widerburg
Commission Secretary

RE: Docket No. 18-2602-01 Pacific Energy & Mining Company
Division's Response to Commission's Action Request dated March 26, 2019

Dear Mr. Widerburg:

The Division of Public Utilities (Division) hereby submits its electronic filing in response to the Public Service Commission of Utah's (Commission) March 26, 2019 Action Request.

In addition to this cover letter, the Division's response includes a letter from the Attorney General's Office; the Division's memorandum with appendices, the affidavit of Jimmy Betham, and the service list.

If you have any questions, please contact me at (801) 366-0380 or pschmid@agutah.gov.

Sincerely,

Patricia E. Schmid
Attorney for the Division of
Public Utilities

Enclosures

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Attention: Gary Widerburg
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RE: Docket No. 18-2602-01 Pacific Energy & Mining Company
Division's Response to Commission's Action Request dated March 26, 2019

Dear Mr. Widerburg:

On March 25, 2019, Pacific Energy & Mining Company (PEMC) filed a letter "Pursuant to the Order of the hearing officer dated January 18, 2019" (Letter). On March 26, 2019, the Public Service Commission of Utah (Commission) issued an Action Request, due date ASAP, to the Utah Division of Public Utilities (Division) requesting its response to these three questions:

- 1) Which of the probable violations identified by the DPU in this case have been resolved to the DPU's satisfaction.
- 2) Whether the DPU has received and reviewed the documents referenced in PEMC's March 25, 2019 correspondence, and the DPU's assessment of these items.
- 3) Whether the DPU continues to support the remedies identified by the DPU at the December 18, 2018 hearing (i.e., a \$100,000 civil penalty and suspension of pipeline operations) or, other such remedies, in light of PEMC's filing.¹

¹ Action Request at p. 1.

The Division's response to Commission Questions 1 and 2 and a partial answer to Question 3 is contained in Attachment 1. Question 3 is also addressed below.

The Division continues to support the remedies it sought at the December 18, 2018, hearing. PEMC's actions, and inactions, continue to warrant imposition of a \$100,000 civil penalty and suspension of pipeline operations until compliance is achieved. PEMC's actions since the hearing in this matter reinforce the need for these remedies. PEMC has not only failed to comply, but it failed to timely respond to the Commission's order, evincing a disregard for the regulatory process.² It seems that PEMC continues to fail to recognize the seriousness of its noncompliance. Attachment 1 details the documents and responses from PEMC and the reasons why 11 of the 12 Items identified in the Division's Request for Agency Action (Request) remain uncured. The Division's comments in Attachment 1 concerning the receipt and analysis of the material provided by PEMC will not be repeated here.

PEMC's submissions demonstrate it lacks the knowledge and discipline to operate the pipeline in compliance with applicable regulations. PEMC's continued inability and either its ignorance or unwillingness to comply necessitates swift action, particularly because the Division's attempts at assisting with compliance have already occupied more than two years since the relevant inspection. Because nothing the Division or the Commission has done to date has resulted in adequate corrective action by PEMC, it appears that the necessary next

² Division's counsel had been informed by PEMC's counsel that he had major surgery scheduled on January 22, 2019, and Division's counsel agreed to let the Commission know that PEMC's counsel was indisposed should an order issue during that time instructing PEMC to respond. Because the Order was issued several days before the scheduled surgery giving PEMC the opportunity to respond and the Order used the term "requests," Division's counsel did not alert the Commission of PEMC's counsel's scheduled surgery. To the Division's knowledge, PEMC's counsel did not request an extension of time to respond to the Order but instead PEMC submitted its response, requested by February 4th pursuant to the terms of the Order, almost seven weeks later, on March 25th.

step is for the Commission to impose a penalty and suspend pipeline operation. Without a substantial penalty and an order to cease pipeline operations, the Division fears nothing will change, and PEMC will continue to ignore its obligations under applicable Federal and Utah statutes and regulations, as well as its obligations to its employees, entities which deliver gas to the pipeline, and to the public at large.

“Fine”³

PEMC’s claims that a “fine” is not needed fail when these claims are given even the slightest scrutiny. Each of the four reasons PEMC gives is flawed, and its narrative is unpersuasive. It remains appropriate for the Commission to issue a penalty against PEMC in the amount of \$100,000.

First, PEMC makes two claims, and the Division will address each in turn. PEMC claims, “Pacific has operated its pipeline in a safe manner.”⁴ If compliance with pipeline safety laws is any measure of pipeline safety, this is not true. By definition, PEMC has not operated the pipeline in a safe manner – it has, willfully or negligently, remained out of compliance for over two years despite repeated Division warnings. Attachment 1 details PEMC’s noncompliance. Next, PEMC claims, “there have been no complaints.”⁵ This is not true. The Division—the state authority for pipeline safety—has complained repeatedly and sought redress, first from PEMC and now from the Commission. Whether or not PEMC has received other complaints is

³ The Division notes that PEMC “contests the need for a **fine** . . . ” See Letter pp. 1, 2, and 3 (emphasis added). The Division has requested that PEMC be assessed a penalty, as provided by applicable Utah law, not a fine. However, inaccuracy notwithstanding, the Division will use the word “fine” where it was used by PEMC in the Letter.

⁴ Letter at p. 2.

⁵ Letter at p. 2.

irrelevant. What is relevant is that PEMC was, and is, out of compliance. A penalty in the amount the Division requested is still warranted.

Second, PEMC alleges, "All the reports and records which the Division required were completed."⁶ This statement is incorrect, as detailed in Attachment 1. Despite the large number of pages PEMC provided the Division, only Item 12 identified in the Request was resolved by PEMC's documents. The other 11 Items remain outstanding. Details concerning PEMC's failure to cure are found in Attachment 1. The penalty request by the Division remains appropriate.

Third, PEMC states, "The completed reports and records were in Reno, Nevada and have now [sic] available for inspection in Green River, Utah."⁷ Parts of this statement are incorrect. PEMC previously said that certain required records were absolutely unavailable, not just located in Reno. As to whether the appropriate records are available in Green River, the Division does not know if any additional records have been made available in Green River since the Division's last visit.

Fourth, PEMC then represents, "Copies of all required documents have been provided to the Division."⁸ As set forth in Attachment 1, this statement is untrue except concerning Item 12, which has been cured.

Finally, PEMC addresses its financial situation in its narrative.⁹ PEMC states, "Pipeline operates at a loss, thus a fine would be detrimental to the operation of the Pipeline as Pacific

⁶ Letter at p. 2.

⁷ Letter at p. 3.

⁸ Letter at p. 3.

⁹ Letter at p. 3.

would ask the court permission to shut down the Pipeline.” Months ago, PEMC provided the Division with, apparently unaudited, financial information that seemed to represent that PEMC was operating at a loss. The Division took this information into account when formulating its penalty recommendation. Despite operating at a loss, PEMC continues to operate and, presumably, has money to pay for representation in this and other legal proceedings.¹⁰ The fact that PEMC states a fine would require it to “ask the court permission to shut down the pipeline”¹¹ heightens the Division’s concern that PEMC is incapable of correcting the deficiencies and operating the pipeline in a safe manner, and that PEMC has the resources to deal with an emergency.

Court Order

With regard to the court order, the Division declines to opine on its effect other than to make these few comments. First, generally the field of pipeline safety has been preempted by the federal government, with certain exceptions allowing the states, in particular circumstances, to impose requirements that are consistent with, and sometimes may exceed, federal law. Second, the court order notes that leave from the court to shut down the pipeline is required except in the event of an “immediate threat to public safety.” And third, PEMC should seek the advice of its counsel regarding the effect of the court order. There is no injunction on pipeline safety regulators who were not party to the proceeding from which the order arose.

¹⁰ A quick Westlaw search reveals that PEMC has been involved in litigation in the past.

¹¹ Letter at p. 3.

PEMC asserts that shutting down pipeline operations would be detrimental to other operators and “will result in a cessation of all oil and gas operations resulting in royalty loss to the State of Utah, taxes to the County, and cessation of royalties to the Federal Government.”¹² The Division recognizes the seriousness of its request that the Commission order the pipeline to cease operations. The Division did not come to the conclusion to make this request lightly, but only after working with PEMC for more than two years with PEMC nonetheless remaining noncompliant. While shutting down the pipeline may be a high price to pay, given PEMC’s long-lasting failure to make reasonable efforts to comply with safety laws, at this point the cost of shutting down the pipeline seems appropriate. If operating a safe, legally compliant pipeline is uneconomical, the Commission is under no obligation to ensure the enterprise’s continuance.

As Attachment 1 demonstrates, PEMC mischaracterizes the issues raised by the Division as ones that only “concern [sic] record keeping . . .”¹³ PEMC’s inability or refusal to comprehend that the Division’s concerns are with PEMC’s operation and maintenance policies and procedures and documentation of the same to demonstrate safe operation of the pipeline further causes the Division to believe that PEMC lacks the wherewithal to operate the pipeline safely and correctly. Despite PEMC’s assertion that “There is not a need to order a shutdown of the Pipeline,” each failure of PEMC to correct deficiencies makes it more painfully obvious that the pipeline does indeed need to be shut down.

¹² Letter at p. 3.

¹³ Letter at p.3.

Conclusion

The Division lacks confidence that PEMC has the capability and desire to operate the pipeline safely and in compliance with applicable regulations. At this point, ordering PEMC once again to come into compliance, will be insufficient. The Division urges the Commission to penalize PEMC in the amount of \$100,000 for noncompliance and to order pipeline operations to cease until PEMC has complied with all pipeline safety regulations.

Dated this 3rd day of April 2019



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



GARY HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

State of Utah

Department of Commerce
Division of Public Utilities

FRANCINE GIANI CHRIS PARKER
Executive Director Director, Division of Public Utilities

ATTACHMENT 1

Action Request Response

To: Utah Public Service Commission

From: Utah Division of Public Utilities

Chris Parker, Director

Al Zadeh, Senior Pipeline Safety Engineer

Jimmy Betham, Pipeline Safety Engineer

Connie Hendricks, Office Specialist II

Date: April 3, 2019

Re: Docket No. 18-2602-01 – Division's Action Request Response

I. ACTION REQUEST

In its Action Request dated March 26, 2019, the Public Service Commission of Utah (Commission) requested that the Utah Division of Public Utilities (Division or DPU) review Pacific Energy and Mining's (PEMC) March 25, 2019, correspondence to the Commission (Letter). The Commission requested that the Division provide comments on the following three questions:

- 1) Which of the probable violations identified by the DPU in this case have been resolved to the DPU's satisfaction.
- 2) Whether the DPU has received and reviewed the documents referenced in PEMC's March 25, 2019 correspondence, and the DPU's assessment of these documents.
- 3) Whether the DPU continues to support the remedies identified by the DPU at the December 18, 2018 hearing (i.e., a \$100,000 civil penalty and suspension of pipeline operations) or, other such remedies, in light of PEMC's filing.

II. DISCUSSION

A. COMMISSION QUESTION 1: WHICH OF THE PROBABLE VIOLATIONS IDENTIFIED BY THE DPU IN THIS CASE HAVE BEEN RESOLVED TO THE DPU'S SATISFACTION.

Only Item 12, which concerns nondestructive testing, from the Division's Request for Agency Action (Request) has been resolved to the Division's satisfaction. The remaining 11 Items listed in the Request remain unresolved, although Items 6, 7, and 8 have been partially resolved.

B. COMMISSION QUESTION 2: WHETHER THE DPU HAS RECEIVED AND REVIEWED THE DOCUMENTS REFERENCED IN PEMC'S MARCH 25, 2019 CORRESPONDENCE, AND THE DPU'S ASSESSMENT OF THESE DOCUMENTS.

The Division reviewed all submissions received from PEMC to see if they pertained to the 2016 Inspection (which gave rise to the Request), the 2018 Inspection (which found three carry over Items from the 2016 Inspection and two new items), or both. Submissions received from PEMC since the hearing are noted in Appendix B. The Division's assessment is below.

1. Letter's "Revised Policy and Procedural Manual Section"

a. Revised Policy and Procedural Manual (RPPM) Section Point 1¹ – "The revised Policy and Procedures Manual was completed and filed with the Division."

This statement is incorrect. PEMC submitted its Policy and Procedures (P&P) manual to the Division on December 17, 2018. The P&P manual was reviewed by the Division and was found incomplete and noncompliant. For example, instead of submitting records and documentation to cure the probable violations from the 2016 Inspection, PEMC submitted its updated P&P manual

¹ "Items" in this response track the numbered items in the Division's Request. "Points" refer to specific statements in PEMC's Letter.

without accompanying records or documentation to show it has complied with the procedures in its manual.

Furthermore, this P&P manual is not specific to PEMC's pipeline.² The P&P manual does not contain certain information specifically related to its system which would bring it into compliance. For example, the P&P manual doesn't address the process for how PEMC will conduct its effectiveness review. Other deficiencies are discussed below in RPPM Section Point 2.

This P&P manual contains information not relevant to its system. As an example, what is found on P&P manual page 33 No. 20, National Registry of Pipeline and LNG Operators Notification, does not apply to its pipeline and is not likely to apply in the future. It appears on p. 42 that PEMC cut and pasted from another manual - Paradox Pipeline Patrolling & Leak Survey Record. It is unclear if the P&P manual is for both PEMC's unregulated gathering line and its regulated transmission line. Also, on page 54 "v." discusses valve maintenance for distribution systems, and there is not a distribution system in the technical sense. On p. 54 "w," the P&P manual also addresses "caulked bell and spigot joints" and "cast iron." The DPU is not aware that PEMC has cast iron in its system.

Documents PEMC provided the Division after December 17, 2018 do not bring the P&P manual into compliance or cure Items from the Request, except for Item 12.

Therefore, the P&P manual is noncompliant.

b. RPPM Section Point 2 – "All violations stated by the Division have been cured and duly filed with the Division. "

This representation in PEMC's Letter is inaccurate. As stated above, only Item 12 has been cured. The Division's analysis concerning uncured Items 1-11 and cured Item 12 is lengthy and so it is attached as Appendix B.

² "PEMC's pipeline" refers to the pipeline it operates as discussed in the pleadings.

c. RPPM Section Point 3 – “A copy of the filings by Pacific Energy & Mining Co., in response to Notice of Possible Violation dated January 2, 2019 and Pacific Energy's response dated January 3, 2019.”

The Division's January 2, 2019 Notice of Possible Violations (2019 NOPV) pertains to PEMC's 2018 audit, UTPS inspection No. 20180430JB. The 2019 NOPV included three continuing violations from the 2016 audit as well as two new violations related to the 2019 NOPV. These documents do not resolve Items 1-11 from the Division's Request.

d. RPPM Section Point 4 – “2018 Annual Report was filed.”

PEMC provided the Division with a copy of PEMC's "2018 Annual Report." This is the report PEMC files with the Pipeline and Hazardous Materials Safety Administration (PHMSA) and it does not resolve any outstanding Items.

e. RPPM Point 5 - “Pipeline Mapping System was completed and filed. “

PEMC provided the Division with a copy of a map, but it is irrelevant to this proceeding. PEMC needed to submit a shape file of its pipeline centerline geographic information system data to the National Pipeline Mapping System (NPMS). The Division confirmed with PHMSA that this data was not submitted by the required deadline, so PEMC's submission to PHMSA remains incomplete. PHMSA has not yet reviewed the late submission. It is possible that PEMC may have filled out the application to NPMS and attached a pdf copy of its pipeline map, which is not an acceptable format. This pertains to the 2019 NOPV only. This does not resolve any outstanding Items.

f. RPPM Section Point 6 - “Public Awareness Program Notices were sent to all agencies as required by the Division. “

PEMC’s response partially corrects Item No. 6 in the Request. Although PEMC sent notifications to certain audiences, it did not provide documentation showing how it determined the stakeholder audience as required in API RP 1162 Section 5.5 Identify Stakeholder Audiences. Also, mapping provided should show the minimum coverage area along the pipeline right of way (ROW) as prescribed in API RP 1162 Section 5.5.1 Table 1. PEMC’s determination process must be included in the operator's written Public Awareness Program (PAP). This probable violation remains open until the required documentation is provided. PEMC has not yet done this.

g. RPPM Section Point 7 - Public Awareness Document was translated and placed on Pacific Energy Website.

PEMC’s PAP document was not required to be placed on the operator’s website. Placing the PAP on a website does not cure Item No. 8 in the Request. This probable violation remains open until the required documentation is provided. PEMC has not yet done this.

h. RPPM Section Point 8 – “A Public Awareness Notice was published in English and Spanish for the annual Public Awareness meeting to be held on February 2, 2019 in Green River, Utah.”

PEMC’s Public Awareness document must be distributed according to its plan and received by its stakeholder audience. Publishing the PAP does not comply with the process of finding non-English speaking population along the pipeline ROW. Although PEMC made notifications available to certain listed audiences, it did not provide documentation showing how it determined the non-English speaking population in the operator’s area as required in API RP 1162 Section 2.1 Public Education. Also, PEMC’s determination process must be

included in the operator's written Public Awareness Program. In publishing the PAP, PEMC assumes the audience will be visiting the company website regularly but it does not allow for feedback. Therefore, this does not cure Item No. 8. This probable violation remains open until the required documentation is provided. PEMC has not yet done this.

i. RPPM Section Point 9. – “Copies of Records were sent from the Pacific Energy office in Reno, Nevada to the Green River Office as required by the Division.”

Only Item 12 from the Request has been resolved by the Division receiving and having access to these records in Green River; the Division also disputes that all necessary records were sent to the Green River Office. On December 17, 2018, PEMC provided nondestructive testing records to the Division and the Division also reviewed the records in Green River. Other than Item 12, this does not resolve any outstanding issues.

j. RPPM Section Point 10 – “Leak detection patrol reports were completed and are in Green River for inspection.”

PEMC did not provide leak detection patrol records in its PEMC's December 17, 2018 submittal or afterwards. PEMC's P&P manual had procedures to perform what it called an annual leak survey along the transmission line. What PEMC characterized as leak surveys do not comply with regulations. PEMC had trouble performing the task and recording it. Also, PEMC did not use an appropriate instrument to perform this leak survey. The instrument was not an approved device for the task; no records were made. This does not resolve any outstanding issues.

2. Letter's "Fine" Section

a. Fine Section Point 1 – “Pacific has operated its pipeline in a safe manner, there have been no complaints.”

PEMC does not reference any specific documents in this point. As explained in this response, other communications from the Division, the Request and other pleadings, and at the hearing, if compliance with pipeline safety laws is any measure of pipeline safety, the Division does not believe that PEMC has operated its pipeline in a safe manner. The Division, at least, has complained that PEMC is not operating the pipeline in a safe manner.

b. Fine Section Point 2 – “All reports and records which the Division required were complete.”

This statement is not correct. See the discussion above.

c. Fine Section Point 3 – “The completed reports and records were in Reno, Nevada and have now [sic] available for inspection at Green River, Utah.”

The Division does not know if all completed reports and records were in Reno. The Division disputes that all required reports and records are available for inspection at Green River.

d. Fine Section Point 4 – “Copies of all required documents have been provided to the Division.”

This statement is not correct. See the discussion above.

e. Fine Section – Closing Paragraph

The Division received certain, seemingly unaudited, financial statements from PEMC. These statements appear to show that PEMC, at least for those specific times, was operating at a loss. The Division had reviewed these financial records when it made its recommendation. The Division has concerns about

PEMC continuing to operate. These concerns are discussed below in response to Commission Question 3.

3. Letter's "Court Order" Section

The Division has received a copy of the Court Order. Issues raised in this section will be discussed in the Division's answer to Commission Question 3 addressing remedies. A separate filing from the Attorney General's Office will address the Court Order.

The Division still believes suspension of pipeline operations is warranted. PEMC has not shown that it operates, or can operate, in compliance with regulations. PEMC says that it must continue to operate so that gas can continue to be produced and so that royalties and taxes can be paid. PEMC's failure to comply compromises safety and its continued operation is not appropriate.

C. COMMISSION QUESTION 3: WHETHER THE DPU CONTINUES TO SUPPORT THE REMEDIES IDENTIFIED BY THE DPU AT THE DECEMBER 18, 2018 HEARING (I.E., A \$100,000 CIVIL PENALTY AND SUSPENSION OF PIPELINE OPERATIONS) OR, OTHER SUCH REMEDIES, IN LIGHT OF PEMC'S FILING.

The Division continues to seek the remedies as stated in the December 18, 2018, hearing including imposition of the \$100,000 civil penalty and suspension of pipeline operations, as well as a Commission order forcing PEMC to resolve outstanding issues. After consideration of the statements PEMC provided at the hearing, documents provided to the Division, and the statements in the Letter, the Division has concluded that nothing PEMC has provided or stated changes the Division's position.

The Division has reviewed the documentation submitted by PEMC. For eleven of the twelve Items, the provided information is insufficient to cure the probable violations. Only one Item has been cleared based on the information PEMC provided on or after December 17, 2018. Resolving only one Item is insufficient to persuade the Division that a lower penalty and continued pipeline operation would be appropriate.

PEMC's claim that it operates at a loss and "thus a fine would be detrimental to the operation of the Pipeline as Pacific would ask the court permission to shut down the pipeline" (PEMC Letter at p. 2) does not change the Division's position that the civil penalty and suspension of pipeline operations are still appropriate. The Division had certain, seemingly unaudited, financial statements from PEMC when the Division made its recommendation at the hearing. Because despite the Division's and Commission's actions PEMC remains noncompliant, a penalty and suspension of pipeline operations may be necessary to get PEMC's attention and to have the issues corrected. The fact that PEMC may have to go to court should not excuse its compliance with pipeline safety requirements.

III. CONCLUSION

The Division is concerned with natural gas pipeline safety in the State of Utah. The Division does not have confidence the pipeline is safe or is being operated in a safe manner. Because PEMC has demonstrated throughout this docket that it does not understand the required federal and state regulations, and that it appears not to take such violations seriously, Commission action is needed. That action should include imposing a fine and suspending operations until compliance occurs. The Division requests an expeditious resolution in this matter as the outstanding violations are over two years old and PEMC failed even to respond to the Commission January 18, 2019, Order in a timely manner.

APPENDIX A

List of PEMC's Submissions to the Division

1. Email from PEMC dated January 7, 2019, with an attached letter from PEMC dated January 3, 2019. This was PEMC's response to a Notice of Probable Violation sent by the Division on January 2, 2019, regarding Inspection No. 20180430JB relating to the Division's 2018 audit of PEMC (2019 NOPV). The 2019 NOPV found three probable violations that were carried over from the inspection responsible for the Request. The 2019 NOPV also found two additional probable violations that were unrelated to the 2016 Inspection. This is the first of two emails from PEMC dated January 7th.

2. Email from PEMC dated January 7, 2019 (related materials received via USPS). The materials were Cathodic Protection and Rectifier Reports from Mr. Tariq Ahmad, PEMC President. The documents are not attached. This is the second of two emails from PEMC received January 7th.

3. Electronic filing from PEMC to the Commission dated January 11, 2019, served on the Division. This is a copy of the court order PEMC filed pursuant to Commission direction at the hearing. This is the first of two emails from PEMC (one from PEMC's counsel) received January 11, 2019.

4. Email from Mr. Spencer, Ph.D., dated January 11, 2019, seeking information about Mr. Betham's pipeline inspector training in Oklahoma. This is the second of two emails from PEMC (this one from its counsel) received January 11, 2019.

5. Email from PEMC consisting of a cover letter dated January 30, 2019 (with related materials received via USPS). The materials were: PEMC's Authorization for Maintenance and Repair Record; PEMC Cathodic Protection Rectifier Inspection Report; PEMC External Corrosion Inspection Report; PEMC Paradox Pipeline Patrol Report; PEMC Public Notice

Posting in Moab Sun Newspaper; PEMC Reports Cover Letter Dated 1_30_19 Received 2_4_19; and PEMC Valve Maintenance Testing Record.

6. Email from Mr. Spencer, Ph.D., dated March 12, 2019, with attached letter regarding the inspector training of Mr. Zadeh, Mr. Betham, and Mr. Hwang.

7. Email from Mr. Spencer, Ph.D., dated March 23, 2019, with attached letter containing PEMC's response to the Commission's January 18, 2019 Order.

APPENDIX B

Letter's RPPM Section Point 2 – “All violations stated by the Division have been cured and duly filed with the Division. “

This representation in PEMC's Letter is inaccurate. As stated in the Division's response to **Commission Issue 1**, only Item 12 has been resolved. Unresolved Items 1-11 and resolved Item 12 are discussed below. Item numbers correspond with the item numbers in the Request.

Item 1 - 49 C.F.R. § 192(605)(b)(8) – Procedural manual for operations, maintenance and emergencies

This would require the operator to have prescriptive procedures in its P&P manual for reviewing the work done by its personnel and collection of relevant information. This procedure and documentation must be adequate enough to facilitate evaluation of what was performed. This ensures constant review and improvement of an operator's P&P manual. The operator must show analysis has been performed to determine the adequacy of a procedure and, if found to be inadequate, made appropriate modifications. The analysis may include incident data, near miss data, meetings to discuss the procedures, job safety analysis, etc., and should include documentation showing the analysis, discussions, etc., that determined the procedure was adequate or inadequate.

For example, the P&P manual doesn't address the process for how PEMC will conduct its effectiveness review. This would require the operator to oversee its field personnel and document its field evaluations in order to comply with 49 C.F.R. §192.605(b)(8). This would require the operator to have completed evaluation forms showing that this type of work was done, or forms to be used going forward, or other method of compliance.

Also, PEMC has not provided records or documentation to show it has completed analysis of its procedures to determine if procedure is adequate and whether modifications are needed. If modifications are needed, the documentation must be provided to show how the modification was made in the management process.

PEMC has not yet done this.

Item 2 -49 C.F.R. § 192.605(c)(4) – Procedural manual for operations, maintenance and emergencies

The operator's operations and maintenance procedures for abnormal operations must include a process to evaluate effectiveness and include defined actions if the procedures are found to have deficiencies. The operator must be able to show documentation that this review is being performed and the results of the

review. The procedure modifications must reflect revisions to correct any deficiencies determined in the review process. The operator can use a variety of methods to determine the effectiveness of the procedures, including root cause analysis, post-event reports, discussions in safety meetings, evaluation of close-call reports, and table-top or live drills. Refinement of the procedures to improve efficiency must not compromise safety.

PEMC has not yet done this.

Item 3 – 49 CFR § 192.615(b)(2) – Emergency plans

The pipeline operator must train the appropriate personnel on all possible emergencies that may occur on its system based on have complete emergency procedures that, at a minimum, cover all of the prescribed topics in the regulations but elaborate on the specific actions the operator will take in the event of an emergency. In addition to the core emergency plan that includes actions that must be taken for any emergency, the operator must have site-specific procedures based on the specifics of each facility at the various locations on the pipeline system. For example, emergency response to a possible incident in a compressor station requires a different response than in a valve station or a regulating facility. The operator also must make sure that its personnel is knowledgeable about the emergency procedures and verify that the training is effective, have a process to evaluate the effectiveness of the procedures, and make modifications and/or improvements when needed.

PEMC has not yet done this.

Item 4 – 49 CFR § 192.615(b)(3) – Emergency plans

In order to ensure adequacy of the training and emergency response procedures, an operator should review emergency response activities after any real emergencies. Emergency exercises may be used as part of the emergency plan training. The emergency exercises may include a wide range of activities ranging from tabletop exercises to live drills. The scope of the exercises may vary from a localized emergency to a disaster involving company-wide involvement. These exercises should include a process designed to evaluate the procedures and make changes to improve the operator's response. One method operators use to review performance, make appropriate changes, and verify that supervisors maintain a thorough knowledge, is by critiquing the performance of emergency exercises. All simulated and real emergencies should be self-critiqued, with deficiencies identified and recommendations made and followed up on. §192.615(b).

PEMC has not yet done this.

Item 5 – 49 CFR § 192.615(c) – Emergency plans

Emergency response often involves local first responders. For this reason each operator shall establish and maintain liaison with appropriate fire, police and other public officials. This is to ensure each party is aware of each other's capabilities and that emergency responders are familiar with the type of expected emergencies that can happen on a particular pipeline system. It is important for the operator to identify these entities and keep an ongoing liaison. Documentation must be kept concerning a good faith attempt, and include who was invited, who attended, and topics discussed. Appropriate materials must be sent to the public officials that were invited but did not attend. The operator should make reasonable attempts to conduct face-to-face meetings with local public officials.

PEMC has not yet done this.

Item 6 - 49 CFR §192.616(e & f) – Public awareness

This response partially corrects Item No. 6 in the Request. Although PEMC sent notifications to certain audiences, it did not provide documentation showing how it determined the stakeholder audience as required in API RP 1162 Section 5.5 Identify Stakeholder Audiences. Also, mapping provided should show the minimum coverage area along the pipeline ROW as prescribed in API RP 1162 Section 5.5.1 Table 1. PEMC's determination process must be included in the operator's written Public Awareness Program. This probable violation remains open until the required documentation is provided.

PEMC has not completely resolved this Item.

Item 7 – 49 CFR 192.616(g) – Public awareness

Although PEMC made notifications available to the above listed audience, it did not provide documentation showing how it determined the non-English speaking population in the operator's area as required in API RP 1162 Section 2.1 Public Education. Also, PEMC's determination process must be included in the operator's written Public Awareness Program.

PEMC has not completely resolved this Item.

Item 8 – 49 CFR §192.616(h) – Public awareness

The Public Awareness (PAP) document was not required to be placed on the operator's website. Placing the PAP on a website does not cure Item No. 8 in the Request.

PEMC has not yet completely resolved this Item.

Item 9 – 49 CFR 192.706 – Transmission lines: Leakage surveys

PEMC's P&P manual needs to contain detailed procedures on leak surveys. PEMC's P&P manual lacked details on what type of detection instrumentation should be used and record keeping. No procedures were included. Documentation demonstrating compliance with conducting leak surveys must be maintained. No leak survey documentation existed for leak surveys, if any, performed in the last two or three years.

What PEMC characterized as leak surveys do not comply with regulations. PEMC's P&P manual had procedures to perform an annual leak survey along the transmission line. PEMC had trouble performing the task and recording it. Also, PEMC did not use an appropriate instrument to perform this leak survey. The instrument was not an approved device for the task; no records were made.

PEMC has not yet done this.

Item 10 – 49 CFR § 192.751 – Prevention of accidental ignition

Accidental ignition is a serious safety hazard during some O&M procedures and welding or cutting. PEMC's P&P manual needs to contain requirements that 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; that 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; and that warning signs must be posted, where appropriate.

Also, welding activity occurred when Fidelity tied its pipeline into PEMC's pipeline. PEMC's prevention of accidental ignitions procedures requires that a hot work permit be given or executed. Shutting down the pipeline and reducing the pressure may be required.

PEMC has not yet done this.

Item 11 – 49 CFR 192.227/229 – Qualification of welders and welding operators/Limitations on welders and welding operations

On August 30, 2017, PEMC sent a letter to Striegel (the construction contractor), requesting records of pipeline welding records from 2008 when the pipeline was completed. Striegel was unable to secure any records of the qualification of welders. These records were not available or provided. PEMC needed to identify and qualify a welding procedure and welder qualifications that are suitable for its pipeline material.

PEMC has not yet done this.

Item 12 – 49 CFR § 192.243 – Nondestructive testing

As mentioned above, on December 17, 2018, PEMC provided nondestructive testing records (NDT). These records cure Item 12 in the Request.

This Item has been resolved.

EXHIBIT 1
AFFIDAVIT OF JIMMY BETHAM

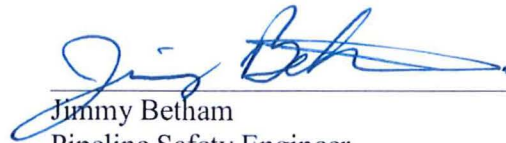
I, Jimmy Betham, being first duly sworn on oath, state that the following answers are true and correct to the best of my knowledge, information, and belief:

1. I am over twenty-one (21) years of age, a resident of Utah County, State of Utah, and I have personal knowledge of the statements set forth herein.
2. I participated in the preparation of the Division's memorandum entitled Division's Action Request Response, and the statements therein are true and correct to the best of my knowledge, information, and belief.
3. I make the statements herein of my own free will and volition; I am competent to testify to the matters set forth, and if called upon to testify in an administrative or court proceeding, my testimony would be consistent with the statements herein.
4. I am a Pipeline Engineer for the Utah Division of Public Utilities.
5. My employment duties and responsibilities include inspecting intrastate natural gas pipelines to assess compliance with relevant Federal and State law and regulations.
6. As a result of my employment duties and responsibilities, I am familiar with Pacific Energy & Mining Company and its operation of the pipeline.

I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

DATED this 3rd day of April 2019.


State of Utah
County of Washington



Jimmy Betham
Pipeline Safety Engineer
Utah Division of Public Utilities

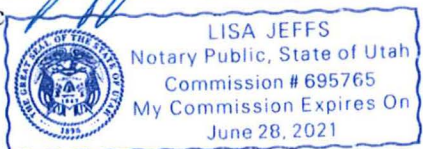
SUBSCRIBED AND SWORN TO THIS 3rd day of April 2019, before me, Lisa Jeffs, by Jimmy Betham.

My commission expires 6/28/21



Notary Public

LISA JEFFS
Notary Public, State of Utah
Commission # 695765
My Commission Expires On
June 28, 2021



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Division response to the Commission's Action Request, consisting of a cover letter; a letter from the Attorney General's Office; a memorandum from the Division with the affidavit of Jimmy Betham, attachments, and appendices, and this service list, all filed today, was emailed on 3 April 2019 to the following in Utah Docket No. 18-2602-01.

BY Electronic-Mail:

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Utah Division of Public Utilities