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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

Docket No. 18-2602-01

**UTAH DIVISION OF PUBLIC
UTILITIES' RESPONSE TO BOTH
PEMC'S MOTION TO STRIKE AND ITS
AMENDED MOTION TO STRIKE (ALSO
CONTAINING REQUEST FOR
RESCISSION OF ORDER)**

Pacific Energy & Mining Company filed two motions to strike the Division of Public Utilities' (Division) "Response to Pacific Energy & Mining Company's (PEMC) Motion to Reconsider Order dated April 10, 2019" (Division's Response). PEMC filed its "Motion to Strike Utah Division of Public Utilities Opposition to Pacific's Motion to Reconsider" (Motion) with a date of May 3, 2019. PEMC then filed another motion, also dated May 3, 2019, entitled "(Amended) Pacific Energy & Mining Company Motion to Strike Utah Division of Public Utilities Opposition to Pacific's Motion to Reconsider (Amended Motion)," which in addition to

the motion to strike contained a new request that the “Commission should rescind its order dated May 2, 2019.”¹

Even a cursory look reveals that the assertions in the Motion and the Amended Motion are incorrect. Insofar as the motions seek to strike the Division’s Response, the Motion and the Amended Motion should be denied. The Commission should not strike the Division’s Response.

I. BACKGROUND

A brief recital of certain events, orders, and responses follows. This list is not comprehensive.

On December 18, 2018, the Commission held a hearing in this docket where both the Division and PEMC were represented by counsel, each presented witnesses, and each cross examined opposing parties’ witnesses.

On January 18, 2019, the Commission issued an order requiring PEMC to file a response within 20 days. That order required the Division make a filing within 10 days of PEMC’s filing.

PEMC responded to the January order on March 25, 2019, by filing a two page letter claiming that all violations had been cured, stating that all records were available, contesting that a “fine” was appropriate, and claiming that no pipeline “shutdown” was needed.

On March 26, 2019, the Commission issued an Action Request to the Division, with a due date of “A.S.A.P.”

The Division responded to the Action Request on April 4, 2019. The Division’s response established that the violations (except for violation 12) remained uncured and that the Division continued to support the requested \$100,000 penalty and suspension of pipeline operations.

¹ Amended Motion at p. 4. The Division is not addressing the Amended Motion’s request to rescind the May 1, 2019 order.

On April 10, 2019, the Commission issued its order (April Order) finding that PEMC had failed to cure 11 violations of pipeline safety regulations. As a result of these violations, the Commission imposed a \$100,000 penalty upon PEMC and ordered PEMC to suspend pipeline operations 60 days after the date of the April Order.

On April 12, 2019, PEMC filed its motion seeking reconsideration of the Commission's April Order.²

On April 29, 2019, the Division filed its response to PEMC's motion for reconsideration.

On May 1, 2019, the Commission issued its order denying PEMC's motion to reconsider the April 10, 2019 order.

PEMC filed its Motion and Amended Motion both dated May 3, 2019 (Motions).

The Division notes that on May 7, 2019, PEMC filed the "Affidavit of Tariq Ahmad" and the "Affidavit of Dana F. Green."³

Through this filing, the Division responds to the Motions insofar as they seek to strike the Division's Response.

II. ARGUMENT

The Division's Response Complied with Applicable Rules and Should Not Be Stricken

PEMC's arguments fail, and no credible support exists for granting PEMC's requests to strike the Division's Response. The Division's Response was timely filed under the Commission's specific rules establishing filing deadlines. Also, contrary to PEMC's claims, the timetable, name, and content requirements of Rule 7 of the Utah Rules of Civil Procedure

² The Division notes that PEMC did not serve the Division with this request as required by Commission rules and that the request lacked the Commission required certificate of service. The Division learned of PEMC's request for reconsideration only when the Commission emailed it to a list of parties maintained by the Commission.

³ These affidavits were filed on a stand-alone basis, unaccompanied by an explanation or a pleading. If the Commission considers these affidavits in making any decision, the Division reserves the right to make appropriate motions before the Commission and requests permission to provide the Commission with additional information.

(URCP Rule 7) are inapplicable here. Under Utah Code § 54-13-1 et seq. and Commission rule R746-409, Commission rules found at Subsection R746-1 govern. PEMC's requests in its Motion and Amended Motion to strike the Division's Response should be denied.

A. The Division's Response Was Timely Filed Under Commission Rules

PEMC's argument that the Division's Response was not filed timely under Commission rule R746-1-301 is faulty. PEMC incorrectly asserts that the Division's Response was due April 26, 2019.⁴ Under Commission rules, the Division's Response was due April 29, 2019, and it was timely filed.

PEMC filed its "Motion to Reconsider Order dated April 10, 2019" on April 12, 2019. Under Commission rule R746-1-301, the Division had 15 days in which to file its response. To compute time, pursuant to Commission rule R746-1-106, the Commission adopted Utah Code §§ 68-3-7 and 68-3-8.⁵ Utah Code § 68-3-7 states:

- (1) A person shall compute the period of time provided by law to perform an act by:
 - (a) excluding the first day; and
 - (b) except as provided in Subsection (2), including the last day.
- (2) If the last day is a legal holiday, a Saturday, or a Sunday, then a person shall:
 - (a) exclude the day described in this Subsection (2) from the time computation described in Subsection (1); and
 - (b) compute the period of time to include the end of the next day that is not a legal holiday, a Saturday, or a Sunday.

Thus, April 12, 2019, the day PEMC filed its motion for reconsideration, was excluded when calculating the response period. Fifteen days from April 13, 2019 was April 27, 2019. Because April 27, 2019 was a Saturday, the Division's filing deadline became Monday, April 29, 2019.

⁴ See Amended Motion at pp. 3-4.

⁵ These provisions apply unless superseded by the Commission, which has not happened here. Utah Code § 68-3-8 specifically addresses computing time when a holiday is involved and is inapplicable to determining the filing deadline for the Division's Response.

Monday, April 29, 2019, was the day the Division filed and its filing was timely under the Commission's rules.

Further, given PEMC's lack of service to the Division, it is not altogether clear that even the April 29, 2019 deadline applies. Nevertheless, the Division treated April 29, 2019 as the deadline.

B. URCP Rule 7 Does Not Apply

Also incorrect is PEMC's assertion that the Division's Response should be stricken because it did not comply with URCP Rule 7's timeline, name, and content requirements.⁶ Utah Code § 54-13-3 empowers the Commission to adopt rules pertaining to its pipeline safety responsibilities. Pursuant to Commission rule R746-409-6A, "the Commission's Administrative Procedures Act Rule, Subsection R746-1, shall govern and control proceedings before the commission regarding pipeline safety, with the exception of the additional remedies and procedures specified herein." No additional remedies and procedures change the deadline, title, form, and content requirements pertaining the Division's Response.

Through Commission statutes and rules, URCP Rule 7 is made inapplicable here. Commission rule R746-409A establishes that the Commission's rules in Subsection R746-1 apply here. The Commission's rules pertaining to its deadlines, form, and content supersede URCP Rule 7 pursuant to Commission rule R746-1-105.⁷ Commission rules R746-1-301 and R746-1-106 establish a deadline for filing responses to motions. Through Commission rules R746-1-202 and R746-1-203, the Commission establishes rules pertaining to the form and content of pleadings. The Division's Response was timely and appropriately filed.

⁶ See Motion at pp. 2-3 and Amended Motion at pp. 2-3.

⁷ See Utah Code § 54-43 1 et seq. In particular, see Utah Code § 54-13-5 which states "The commission . . . shall make and enforce rules required by the federal Gas Pipeline Safety Act to maintain state control over the regulation of interstate pipeline transportation."

The Motion and the Amended Motion should be denied insofar as they request that the Division's Response be stricken. There is no credible support for PEMC's assertions.

III. CONCLUSION

PEMC's arguments fail and there is no cause to strike the Division's Response. The Division's Response was timely filed within the 15 days prescribed by Commission rule R746-1-301 as calculated pursuant to Commission rule R746-1-106. URCP Rule 7, with its filing deadlines and name and content requirements, does not apply here. Specific Commission rules, R746-1-301, R746-1-202, and R746-1-203, address Commission filing deadlines and requirements and supersede Rule 7. Insofar as they request that the Division's Response be stricken, PEMC's Motion and Amended Motion should be denied.

DATED this 10th day of May 2019.



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' RESPONSE TO PEMC'S MOTION TO STRIKE AND ITS AMENDED MOTION TO STRIKE (ALSO CONTAINING REQUEST FOR RESCISION OF ORDER)** to be served this 10th day of May 2019, by email and/or USPS mail, postage prepaid, to the following:

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A handwritten signature in blue ink, appearing to read "Patricia E. Schmid", is written over a horizontal line.