
Pacific Energy & Mining Company

DOCKET NO. 18-2602-01

ORDER DENYING DEAD HORSE MOTION
FOR PSC TO SET ASIDE ITS ORDER
DENYING REHEARING

ISSUED: March 24, 2020

BACKGROUND

On January 31, 2020, the Public Service Commission of Utah (PSC) issued its Compliance Review Order (formerly known as “Second Hazardous Facility Order”)¹ in this docket. On February 20, 2020, Dead Horse Oil Company (“Dead Horse”) filed a Motion for Rehearing (“DH Motion”), and on March 6, 2020, the Division of Public Utilities (DPU) filed its Response Opposing Dead Horse Oil Company’s Motion for Rehearing. On March 11, 2020, we issued our Order Denying Dead Horse Oil Company’s Motion for Rehearing (“Order Denying Rehearing”). On March 12, 2020, Dead Horse filed a motion for the PSC to set aside the PSC’s Order Denying Rehearing on the basis that said order “violated [Rule 746-1-301]” (“DH Motion for PSC to Set Aside Order”).² On March 17, 2020, the DPU filed its Response Opposing Dead Horse Oil Company’s Motion for PSC to Set Aside its Order, and Dead Horse filed its Reply Brief to Opposition by Division.

For the reasons set forth in this order, we deny the DH Motion for PSC to Set Aside Order. Judicial review of our Order Denying Rehearing is available pursuant to Utah Code Ann. § 63G-4-401, within 30 days after March 11, 2020.

¹ The PSC changed the name of its “Second Hazardous Facility Order” to “Compliance Review Order” in its Order Denying Dead Horse Oil Company’s Motion for Rehearing, issued March 11, 2020.

² Dead Horse Oil Company Motion for PSC to Set Aside its Order Dated March 11 2020 For Violating Rule 746-1-301, at 2.

DH MOTION TO SET ASIDE PSC ORDER

In the DH Motion for PSC to Set Aside Order, Dead Horse contends that the Order Denying Rehearing, was “against [Utah Admin. Code R746-1-301 as Dead Horse had until [the] 16th of March to file a reply brief, [and that the] PSC’s denial violated the above Rule thus depriving Dead Horse its due process.” We disagree.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Utah Code Ann. § 54-1-2.5 states, “[e]xcept as specifically provided to the contrary in Chapter 7, Hearings, Practice, and Procedure, the [PSC] shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act [UAPA], in its adjudicative proceedings.” Chapter 7 of Title 54, Hearings, Practice and Procedure, as well as Title 63G, Chapter 4 of the UAPA, therefore set forth the practices and procedures to be used by the PSC in any docket, including this one. Utah Code Ann. § 54-7-15, titled “Review or rehearing by commission – Application – Procedure – Prerequisite to court action – Effect of commission decisions” contains the specific provisions that apply in post-hearing proceedings. To assist in the implementation of this statute, the PSC created Utah Admin. Code R746-1-801, titled “Post-hearing Proceedings,” which sets forth the procedures for filings that are made after the PSC issues its decision in a docket after reviewing the evidence that is presented in pre-filed testimony, as well as the evidence presented at the evidentiary hearing (“Post-Hearing Rules”). Thus, the Post-Hearing Rules apply to all of the pleadings that were filed after we issued our Compliance Review Order in this docket.

The Post-Hearing Rules state, in part: “[p]roceedings on review shall be in accordance with Utah Code Section 54-7-15.” Among other things, Utah Code Ann. § 54-7-15 establishes an important legal standard that “[a]ny application for rehearing not granted by the [PSC] within 20 days is denied.”³ We conclude that the 20-day deadline is a jurisdictional requirement related to the right to seek judicial review of a PSC order, and that we do not have authority or jurisdiction to modify or extend that deadline. Utah Code Ann. § 63G-4-301 also applies to the PSC’s review of a PSC order before judicial review. This statute states that an aggrieved party may request agency review or rehearing by filing a written request with the PSC within 30 days after the issuance of an order. Dead Horse met the statutory deadline when it filed the DH Motion on February 20, 2020, 20 days from January 31, 2020, when the PSC issued the Compliance Review Order.

After considering, and in response to the DH Motion, we issued our Order Denying Rehearing, within the time frame (20 days) required by Utah Code Ann. § 54-7-15(2)(c). If we had not issued the Order Denying Rehearing on March 11, 2020, within 20 days after Dead Horse filed the DH Motion, then the DH Motion would have been denied by operation of the statute. No laws under Utah Code Ann. §§ 54-7-15 or 63G-4-301, nor any Post-Hearing Rules, provide further opportunity for Dead Horse to file a request for the PSC to reconsider its decisions.⁴ Rather, Dead Horse exhausted its administrative remedies when it filed the DH Motion on February 20, 2020. We recognize our laws do not afford Dead Horse another opportunity to file any other pleading, and note that the outcome is dictated by statute and we do

³ Utah Code Ann. § 54-7-15(2)(c).

⁴ Utah Admin. Code R746-1-301 does not apply to post-hearing proceedings.

not have jurisdiction or authority to modify them. We conclude that under Utah Code Ann. § 63G-4-401(3)(a), our Order Denying Rehearing constitutes final agency action for which a party seeking judicial review must do so within 30 days after the date our Order Denying Rehearing was issued, March 11, 2020, in which we stated, at p. 8:

Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

While no party has asked us to treat the DH Motion for PSC to Set Aside Order as modifying that time frame, for the sake of clarity we conclude we do not have jurisdiction or authority to do so.

ORDER

We deny the DH Motion for PSC to Set Aside Order.

DATED at Salt Lake City, Utah, March 24, 2020.

/s/ Yvonne R. Hogle
Presiding Officer

Approved and Confirmed March 24, 2020, 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#312788

CERTIFICATE OF SERVICE

I CERTIFY that on March 24, 2020, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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* Documents previously mailed to this address have been returned to the PSC as undeliverable.

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