

Pacific Energy & Mining Company	<p style="text-align: center;"><u>DOCKET NO. 18-2602-01</u></p> <p style="text-align: center;"><u>ORDER DENYING PEMC'S MOTION TO DISMISS FOR LACK OF JURISDICTION, AND NOTICE OF HEARING</u></p>
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ISSUED: August 9, 2018

PROCEDURAL BACKGROUND

On April 12, 2018, the Division of Public Utilities (DPU) filed a Request for Agency Action concerning Pacific Energy & Mining Company (PEMC), alleging numerous violations of Utah's natural gas pipeline safety standards and practices and proposing penalties be assessed therefor.<sup>1</sup> The DPU asserts the Public Service Commission of Utah (PSC) has jurisdiction over this matter pursuant to Utah Code Ann. § 54-13-3.<sup>2</sup>

On June 5, 2018, PEMC filed a motion to dismiss (Motion), claiming the PSC lacks jurisdiction over this dispute.<sup>3</sup> On June 6, 2018, PEMC filed a brief supporting its Motion.<sup>4</sup>

On June 20, 2018, the DPU filed its response to PEMC's Motion.<sup>5</sup>

PEMC did not file a reply, and the deadline to do so has elapsed.

The Motion is now ripe for a decision.

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<sup>1</sup> 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.

<sup>2</sup> See *id.* at 2.

<sup>3</sup> See Pacific Energy & Mining Company Request to Deny Agency Action Due to Lack of Jurisdiction, filed June 5, 2018.

<sup>4</sup> See Pacific Energy & Mining Company Supplemental Brief in Support of Lack of Jurisdiction, filed June 6, 2018.

<sup>5</sup> See Division of Public Utilities' Response to PEMC's Request to Deny Agency Action Due to Lack of Jurisdiction and Supplemental Brief, filed June 20, 2018.

PARTY POSITIONS

**PEMC**

PEMC argues the PSC lacks jurisdiction over the 16-inch gas pipeline (the subject pipeline) that begins at the outlet of PEMC's processing plant where gas is dehydrated and compressed and ends at the interconnection to the Williams - Northwest Pipeline interstate natural gas transmission line. According to PEMC, jurisdiction is improper because the subject pipeline is an unregulated natural gas gathering system. PEMC further contends its gas gathering activity does not become regulated until its gas reaches the Northwest Pipeline transmission line, where it enters interstate commerce. Because the PSC assertedly lacks authority to regulate its activity, PEMC contends this docket should be dismissed for lack of jurisdiction.

PEMC cites Williams & Meyers, Manual of Oil & Gas Terms (3d ed.), a legal treatise, to support its claim that the subject pipeline constitutes a "gathering system."<sup>6</sup> According to Williams & Meyers, a "gathering system" is defined as:

[t]he gathering lines, pumps, auxiliary tanks (in the case of oil), and other gathering equipment used to move oil or gas from the well site to the main pipeline for eventual delivery to the refinery or consumer as the case may be. In the case of gas, the gathering system includes the processing plant (if any) in which the gas is prepared for market.<sup>7</sup>

PEMC asserts the DPU is improperly asserting regulatory authority, because PEMC is engaged in gas gathering, not intrastate natural gas transmission. PEMC claims:

The term gathering system includes the processing plant furthermore, the term well site to the main pipeline is the determining factor, here the main pipeline is Northwest, not the gathering system. Eventual delivery to the consumer is at the

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<sup>6</sup> *Supra* n.3 at 4.

<sup>7</sup> *Id.*

transfer point at the end of the gathering line, not the beginning as the [DPU] has insisted.<sup>8</sup>

....

The removal of liquids from the gas at the well processing plant and the resulting gas, does not meet the generally accepted standards for “dry” gas being transported by transmission companies. PEMC is not a transmission company, rather it gathers the gas and delivers the same to the gas meter at its own property and equipment before it is transferred to Northwest Pipeline.<sup>9</sup>

PEMC also requests an order: (i) enjoining the DPU from making misrepresentations to the press, (ii) requiring the DPU to correct statements it allegedly made to the press, and (iii) requiring payment of damages from the DPU for PEMC’s costs of defending its position in this docket.

## **DPU**

The DPU asserts jurisdiction is proper because the subject pipeline is an intrastate natural gas transmission pipeline, not a gathering line, subject to PSC jurisdiction pursuant to PSC statutes (Utah Code Ann. § 54-13-1 *et seq.*) and rules (Utah Admin. Code R746-409-1 *et seq.*), and federal laws and regulations. According to the DPU,

PEMC’s pipeline at issue is classified as an intrastate natural gas transmission line because it begins transporting gas at the outlet of its processing plant. This gas is then delivered to Northwest Pipeline, a regulated interstate natural gas pipeline. Additionally, the portion of the line in question accepts gas from another producer from different production and processing facilities....<sup>10</sup>

The DPU argues that it is PEMC’s processing plant’s placement on PEMC’s system that makes the subject pipeline jurisdiction of the PSC, because it is the end point of a gathering system that determines where PSC jurisdiction begins under the Pipeline and Hazardous Materials Safety

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Supra* n.5 at 5 (footnote omitted).

Administration (PHMSA) and “[a]nything upstream from the end point is determined not to be jurisdictional.”<sup>11</sup> An October 9, 2013 e-mail from PHMSA, which the DPU submitted with its response, concurs with the DPU’s determination that the approximately 22 miles of pipe extending from the gas plant to the delivery point with Northwest Pipeline is a transmission line.<sup>12</sup>

The DPU’s opposition includes an aerial photograph showing PEMC’s processing plant from which a 16-inch pipeline begins and then ends at the interconnection to the Williams - Northwest Pipeline interstate natural gas transmission line. The DPU also includes a diagram of PEMC’s entire system.

According to the DPU, PHMSA delegated inspection and enforcement of safety standards for intrastate natural gas transmission pipelines to the State of Utah through the DPU’s pipeline safety section. The DPU explains that it relied on this delegation of authority together with the statutes and rules above when filing its request for agency action. Thus, for these reasons, the DPU argues PEMC’s Motion should be denied as meritless.

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<sup>11</sup> *Id.* at 6.

<sup>12</sup> *See id.*, DPU Exhibit 11 – E-mail from Jason Dunphy, General Engineer, Pipeline and Hazardous Materials Safety Administration, to Al Zadeh, Division of Public Utilities (Oct. 9, 2013, 4:46 PM).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

**I. PSC authority over intrastate pipelines.**

In 2004, the U.S. Department of Transportation (DOT) created PHMSA.<sup>13</sup> PHMSA's primary role is monitoring operator compliance of pipeline facilities.<sup>14</sup> Under 49 U.S.C. §§ 60105-60106 (2012), States may assume safety authority over intrastate gas and hazardous liquid pipelines through a certificate and agreement with PHMSA.<sup>15</sup> In Utah, the State governs intrastate gas pipeline safety. *See generally* 49 U.S.C. § 60108 (2012), *and* Transportation, 49 C.F.R. §§ 192.901-192.951 (2017).

In 1989, the Utah Legislature recognized its authority over intrastate gas pipelines by enacting Utah Code Ann. § 54-13-2. Section 54-13-2 states: "The [PSC] is responsible for establishing safety standards and practices for intrastate pipeline transportation and shall make and enforce rules required by the federal Natural Gas Pipeline Safety Act to maintain state control over the regulation of intrastate pipeline transportation." Utah Code Ann. § 54-13-2 (2010). In conformance with PSC authority over intrastate pipelines, the PSC adopts and enforces rules.<sup>16</sup> The PSC or its agents, such as the DPU,<sup>17</sup> may inspect and examine intrastate pipelines to ensure conformance with Utah statute and rules.<sup>18</sup> Anyone found in violation of Title

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<sup>13</sup> *See* Norman Y. Mineta Research and Special Programs Improvement Act, Pub. L. No. 108-426 (2004). DOT's Research and Special Programs Administration preceded PHMSA. *See id.*

<sup>14</sup> *See* PHMSA, available at: <https://www.phmsa.dot.gov/regulatory-compliance/phmsa-enforcement>.

<sup>15</sup> *See id.*, available at: <https://www.phmsa.dot.gov/working-phmsa/state-programs/state-programs-overview>.

<sup>16</sup> *See* Utah Code Ann. § 54-13-3 (Supp. 2017). *See also* Utah Admin. Code R746-409.

<sup>17</sup> *See, e.g.*, Utah Code Ann. § 54-4a-1(1)(d) (2010).

<sup>18</sup> *See id.* § 54-13-4 (2010).

54, Chapter 13, after notice and hearing, “is liable for a civil penalty of not more than \$100,000 for each violation for each day the violation persists [not to exceed \$1,000,000].”<sup>19</sup>

Based on the foregoing, the PSC concludes that it has jurisdiction over intrastate pipelines within Utah.

## **II. PEMC’s annual reports concerning the subject pipeline.**

In conformance with 49 C.F.R. § 191.13 (2017), PEMC is required to file an annual report with PHMSA,<sup>20</sup> with a copy filed contemporaneously with the PSC and the DPU under Utah Admin. Code R746-409-4(C). Since at least 2014, PEMC has filed a copy of its PHMSA annual report with the PSC.<sup>21, 22</sup> To date, the PSC has PEMC’s PHMSA annual reports for calendar years 2013-2017.<sup>23</sup> These reports essentially mirror each other. Parts H and I of each form report 21.19 miles of 16-inch intrastate onshore transmission pipeline facilities in Utah and 0 miles of gathering pipe, totaling 21.19 miles of pipe.<sup>24</sup> Part K of each form reports PEMC’s 21.19 miles of transmission pipe has a Specified Minimum Yield Strength (SMYS) of “[g]reater than or equal to 30% SMYS but less than or equal to 40% SMYS[.]”<sup>25</sup>

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<sup>19</sup> *Id.* § 54-13-8(1) (Supp. 2017). *See also id.* § 54-13-8(2).

<sup>20</sup> *See* 49 C.F.R. § 191.13, available at: <https://www.law.cornell.edu/cfr/text/49/191.13>.

<sup>21</sup> *See* Annual Report of Pacific Energy & Mining Co., filed April 3, 2014 (Docket No. 14-999-08), available at: <https://pscdocs.utah.gov/misc/14docs/1499908/252481AnnRepPacEnerMin4-3-2014.pdf>; 2014 Annual Report of Pacific Energy & Mining Co. (PEMC), filed March 23, 2015 (Docket No. 15-999-08), available at: <https://pscdocs.utah.gov/misc/15docs/1599908/264827AnnRepPEMC20143-23-2015.pdf>; PHMSA Annual Report for PEMC 2015, filed March 18, 2016 (Docket No. 16-999-08), available at: <https://pscdocs.utah.gov/misc/16docs/1699908/2725312015PHMSAAnnRepPEMC3-18-2016.pdf>; PHMSA Annual Report for Pacific Energy and Mining Company, filed August 3, 2017 (Docket No. 17-999-08), available at: <https://pscdocs.utah.gov/misc/17docs/1799908/295738PHMSAAnnRepPacEnerMinCo8-3-2017.pdf>; and PHMSA 2017 Annual Report for Pacific Energy & Mining Company, filed May 14, 2018 (Docket No. 18-999-08), available at: <https://pscdocs.utah.gov/misc/18docs/1899908/302062PHMSA2017AnnRepPacEnerMin5-14-2018.pdf>.

<sup>22</sup> While neither party references PEMC’s annual reports in their filings, we take administrative notice of them.

<sup>23</sup> *See supra* n.21.

<sup>24</sup> *See id.*

<sup>25</sup> *Id.*

Under 49 C.F.R. § 192.3 (2017), which Utah Admin. Code R746-409-1(B)(3) incorporates by reference, a “[g]athering line means a pipeline that transports gas from a current production facility to a transmission line or main.”<sup>26</sup> According to PEMC’s reports it operates 0 miles of gathering pipe.<sup>27</sup>

49 C.F.R. § 192.3 also states, in part, a “[t]ransmission line means a pipeline, other than a gathering line, that . . . operates at a hoop stress of 20 percent or more of SMYS....”<sup>28</sup> PEMC reports it is operating 21.19 miles of intrastate onshore transmission pipeline in Utah.<sup>29</sup> PEMC also reports its 21.19 miles of pipeline is 30-40 percent of SMYS.<sup>30</sup> These reports refute PEMC’s assertions in this docket; namely, that 1) it is engaged in gas gathering, and 2) its pipeline does not constitute intrastate transmission.

For the reasons expressed above, we conclude PEMC’s 2013-2017 PHMSA annual reports speak for themselves. We conclude the reports directly contradict PEMC’s arguments asserted in its Motion; namely, that the subject pipeline is a gas gathering line, not an intrastate natural gas transmission line.

### **III. PEMC’s failure to file a response.**

The DPU argues in its June 20, 2018 response that jurisdiction is proper because PEMC is operating an intrastate natural gas transmission pipeline, which DPU claims begins at the outlet of PEMC’s processing facility and ends at the interconnection to Williams - Northwest

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<sup>26</sup> 49 C.F.R. § 192.3, available at: <https://www.law.cornell.edu/cfr/text/49/192.3>.

<sup>27</sup> See *supra* n.21.

<sup>28</sup> *Supra* n.26.

<sup>29</sup> See *supra* n.21.

<sup>30</sup> See *supra* n.25.

Pipeline interstate natural gas transmission line. In contrast, PEMC asserts in its Motion that its entire pipeline is an unregulated gathering line until it interconnects to Williams - Northwest Pipeline as interstate commerce. As noted in the procedural background section above, PEMC failed to file a reply to the DPU's response and the time for doing so has elapsed. Accordingly, we conclude the DPU's argument regarding where PEMC's intrastate transmission pipeline begins and ends is unrefuted. *Cf.* Utah R. Civ. P. 56(e)(2) ("If a party . . . fails to properly address another party's assertion of fact . . . , the [decision-making body] may . . . consider the fact undisputed[.]").

We also conclude that PEMC is operating an intrastate natural gas transmission pipeline in the location described by the DPU, and not an onshore gathering pipeline, for these reasons:

1) As explained above (*see supra* section II), PEMC's annual reports state PEMC is operating 21.19 miles of intrastate onshore transmission pipeline in Utah with a SMYS of 30-40 percent and 0 miles of gathering pipe;

2) 49 C.F.R. § 192.8 (2017) addresses how onshore gathering lines are determined subject to certain limitations which, in this docket, specifically relate to the subject pipeline's processing plant and compressor station.<sup>31</sup> Additionally, 49 C.F.R. § 192.7 (2017) incorporates by reference the API Recommended Practice 80 (API RP 80).<sup>32</sup> API RP 80 is intended to provide users with a practical guide for determining when the definition of onshore gas

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<sup>31</sup> See 49 C.F.R. § 192.8, available at: <https://www.law.cornell.edu/cfr/text/49/192.8>.

<sup>32</sup> See 49 C.F.R. § 192.7, available at: <https://www.law.cornell.edu/cfr/text/49/192.7>.

gathering, as set forth in 49 C.F.R. § 192, is met and to ensure appropriate and consistent application of the gas gathering line definition.<sup>33</sup>

Concerning PEMC's processing plant, 49 C.F.R. § 192.8(a)(2) specifically states: "The endpoint of gathering . . . under . . . API RP 80 . . . may not extend beyond the first downstream natural gas processing plant, unless the operator can demonstrate, using sound engineering principles, that gathering extends to a further downstream plant."<sup>34</sup> Further, regarding PEMC's compressor, 49 C.F.R. § 192.8(a)(4) explicitly states: "The endpoint of gathering . . . under . . . API RP 80 . . . may not extend beyond the furthestmost downstream compressor used to increase gathering line pressure for delivery to another pipeline."<sup>35</sup> As applied to the subject pipeline, this means PEMC's endpoint of any gathering is the outlet of its natural gas processing plant (see supra n.5, Exhibit 2) where there is also a compressor used to increase gathering line pressure for delivery to another pipeline (see supra n.3 at 1). Therefore, anything beyond PEMC's natural gas processing plant is intrastate natural gas transmission until the line interconnects to Williams - Northwest Pipeline, an interstate natural gas pipeline; and

3) PEMC did not provide any analysis, as required by 49 C.F.R. § 192.8, to demonstrate that all or a part of its pipeline is an onshore gathering line.<sup>36</sup>

Accordingly, for the reasons stated above, we conclude PEMC is engaged in intrastate natural gas transmission starting at the outlet of PEMC's processing facility and ending at the interconnection to Williams - Northwest Pipeline, and PEMC is not operating an onshore

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<sup>33</sup> See API RP 80 § 1.1, available at: <https://law.resource.org/pub/us/cfr/ibr/002/api.80.2000.pdf>.

<sup>34</sup> *Supra* n.31.

<sup>35</sup> *Id.*

<sup>36</sup> See *supra* n.31.

gathering pipeline at and in between the same beginning and ending points; thus, we reject PEMC's assertion that it is operating a gathering line and not an intrastate transmission line as a basis for denying jurisdiction in this docket.

**IV. PEMC's request for an injunction and damages.**

PEMC asks the PSC to: (i) enjoin the DPU from speaking to the press, (ii) require the DPU to correct prior statements allegedly made to the press, and (iii) award PEMC costs for defending its position in this docket. PEMC cites no statute, rule, or law that permits the PSC to grant the relief requested, and we are aware of none. Accordingly, and because we ultimately deny PEMC's Motion (thus making its costs claim moot), we deny PEMC's request.

ORDER

Based on the foregoing findings of fact and conclusions of law, the PSC denies PEMC's Motion.

NOTICE OF HEARING

The PSC will conduct a hearing in this docket on **Tuesday, September 25, 2018, beginning at 10:00 a.m.** The hearing will be held in the **Fourth Floor Hearing Room 403, Heber M. Wells Building, 160 East 300 South, Salt Lake City, Utah.** All parties must have their witnesses in attendance and prepared to testify.

If the parties do not wish to pursue this matter to hearing, or if this matter resolves before the scheduled hearing, the parties shall notify the PSC, in writing, no later than **Thursday, September 20, 2018.**

DOCKET NO. 18-2602-01

- 11 -

Individuals wishing to participate in the hearing by telephone should contact the PSC two days in advance at (801) 530-6716 or (toll free) 1-866-PSC-UTAH (1-866-722-8824) to receive a bridge number and participant passcode. Participants attending by telephone should then call the bridge number five minutes before the hearing, entering the passcode followed by the # sign to ensure participation.

In accordance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during the hearing should notify the PSC at 160 East 300 South, Salt Lake City, Utah, 84114, (801) 530-6716, at least three working days prior to the hearing.

DATED at Salt Lake City, Utah, August 9, 2018.

/s/ Melanie A. Reif  
Presiding Officer

Approved and Confirmed August 9, 2018, 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#303869

CERTIFICATE OF SERVICE

I CERTIFY that on August 9, 2018, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

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

By Electronic-Mail:

Dan Green ([Dfgreen1@dslextreme.com](mailto:Dfgreen1@dslextreme.com))  
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Administrative Assistant