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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

Docket No. 18-2602-01

**MOTION TO ESTABLISH PEMC'S
RESPONSE DATE TO THE DIVISION'S
FIRST SET OF DATA REQUESTS AND
REQUEST FOR EXPEDITED
CONSIDERATION**

Because there is no order establishing a due date for response to data requests, the Division requests that the Commission order PEMC to respond to the Division's 1st Set of Data Requests (Data Requests) no later than September 17, 2018 and seeks expedited consideration of this motion. The proposed due date is more than 30 days after the Division served the Data Requests upon PEMC. Expedited consideration of this motion is warranted due to the pending hearing date.

I. BACKGROUND¹

The original scheduling order in this case was issued April 16, 2018. There, June 22, 2018 was set as the discovery cutoff date and July 19, 2018 was set as the hearing date. Subsequently, pursuant to a request from PEMC's president Mr. Tariq Ahmad citing his medical issues, the hearing set for July 19th was cancelled. Efforts amongst the parties to determine a mutually agreeable hearing date, which naturally would lead to a discovery cutoff date, were not successful. PEMC did not respond to the Division's last email seeking scheduling information before the Commission issued its August 9, 2018 Order Denying PEMC's Motion to Dismiss for Lack of Jurisdiction, and Notice of Hearing. The August 9, 2018 order set September 25, 2018 as the hearing date.

On August 10, 2018, PEMC filed notices with the Commission indicating it, through its non-attorney president Mr. Ahmad, would be taking the deposition of two specified Division employees on a certain date. That same day, PEMC filed miscellaneous motions and requests for interrogatories, admissions, and production of documents with the Commission.²

¹ See the Commission's docket sheet for a full recital of filings made in this docket.

² In a filing made with the Commission and served on the Division entitled "Notice of Deposition of Jimmy Betham," PEMC requested the Division to "set forth answers to the following interrogatories, requests for admissions, and requests for production of documents, and serve a sworn copy upon the undersigned within twenty-eight days of service hereof." Note that that same day PEMC also filed another pleading entitled Notice of Deposition of Jimmy Betham that did seek to depose Mr. Betham, and a Corrected Notice of Deposition changing the time of Mr. Betham's deposition from 2:00 a.m. to 2:00 p.m. To avoid confusion to the greatest extent possible, the Division will refer to PEMC's request for interrogatories, admissions, and documents as "Notice of Deposition of Jimmy Betham [formal discovery]." The Division believes that the requests contained in the Notice of Deposition of Jimmy Betham [formal discovery] are formal discovery requests propounded under Rules 26 – 37 of the Utah Rules of Civil Procedure, not data requests pursuant to R746-1-501(1) and thus the Protective Order and R746-1-501 relieve the Division of any duty to respond.

On August 15, 2018, the Division sent its Data Requests to PEMC.

On August 17, 2018, the Division filed a request for a protective order concerning the deposition notices. That same day, PEMC filed a “Motion to Remove Counsel for Division Request for Sanctions.”

On August 20, 2018, the Division filed responses not only to certain of PEMC’s miscellaneous motions filed on August 10th but also to PEMC’s August 17th request for recusal. Also, on August 20, 2018, Utah attorney Terry R. Spencer filed with the Commission his notice of appearance on behalf of PEMC.³ On August 20, 2018, the Commission issued a protective order (Protective Order) in this docket stating, “The DPU is protected from any requirement to comply with a formal discovery request from PEMC unless or until the PSC has granted a motion to allow PEMC to engage in formal discovery.”⁴

On August 27, 2018, PEMC filed its Motion for Formal Discovery, including a draft order, prompting the Division to file this Response.

On August 29, 2018, the Commission issued its “Notice that Motion to Request Reconsideration is Deemed Denied, Order Denying Motions to Stay and Invitation to Propose Alternative Hearing Date.”⁵

³ Because Mr. Spencer’s entry of appearance did not request that the Division continue to serve PEMC’s Mr. Ahmad, Mr. Green, and Mr. Nugent, the Division is not serving them, but willingly will resume service upon them pursuant to instructions from Mr. Spencer.

⁴ Protective Order at p. 2.

⁵ Consistent with the August 27, 2018 order, Division’s Counsel and PEMC’s counsel’s office have been in contact but no agreement has been reached regarding an acceptable alternative date.

II. ARGUMENT

PEMC SHOULD BE ORDERED TO RESPOND TO THE DIVISION'S DATA REQUESTS NO LATER THAN SEPTEMBER 17, 2018

No order exists establishing a due date for responses to data requests. The Division served PEMC with the Data Requests on August 15, 2018. The Division requests that the Commission order PEMC to serve its data request responses upon the Division no later than September 17, 2018. September 17, 2018 is more than 30 days after the Division served its Data Requests upon PEMC.

The April 2018 initial scheduling order in this docket contained a discovery cutoff date of June 2018. After the initial hearing date of July 19, 2018 was cancelled, the parties, as stated above in more detail, could not agree upon a new hearing date (and related discovery cutoff date) prior to the issuance of the Commission's August 9, 2018 order establishing, inter alia, September 25th as the replacement hearing date.


On August 15, 2018, the Division served its Data Requests upon PEMC. Because the Commission's August 9th order and its August 27th, 2018 order did not establish a discovery cutoff date, the Division now requests that the Commission order PEMC to respond to the Data Requests no later than September 17, 2018.

Typically, Commission scheduling orders establish a data request timetable, with the response window shortening as the hearing date draws near. Accordingly, given that the Data Requests were served upon PEMC 19 days prior to this filing and that the hearing is currently scheduled for September 25th, the Division requests that the Commission order PEMC to answer the Data Requests no later than September 17, 2018. Due to the quickly approaching hearing date, the Division requests expedited consideration of its request.

III. CONCLUSION

For the reasons set forth above, the Division requests that the Commission order PEMC to respond to the Division's Data Requests no later than September 17, 2018, and good cause exists for expedited consideration of this motion.

DATED this 4th day of September 2018.



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' MOTION TO ESTABLISH PEMC'S RESPONSE DATE TO THE DIVISION'S FIRST SET OF DATA REQUESTS AND REQUEST FOR EXPEDITED CONSIDERATION** to be served this 14th day of September 2018 by email and/or USPS mail, postage prepaid, to the following:

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