

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Pacific Energy & Mining Company

DOCKET NO. 18-2602-01

ORDER ON REVIEW

ISSUED: May 2, 2019

On April 10, 2019, the Public Service Commission of Utah (PSC) issued a Hazardous Facility Order (“Order”) in this docket. On April 12, 2019, Pacific Energy & Mining Company (PEMC), filed a motion to reconsider the Order (“Motion”). On April 29, 2019, the Division of Public Utilities (DPU) filed a response to PEMC’s motion. We consider PEMC’s motion under Utah Code Ann. §§ 54-7-15 and 63G-4-301. We decline to modify or reconsider our Order.

- 1. PEMC’s motion primarily attempts to supplement the factual record but does not offer a justification for late presentation of any new evidence or provide a basis to reconsider any of our findings of fact.**

As an initial legal matter, we conclude the Motion does not meet the marshaling requirement of Utah Admin. Code R746-1-801. That marshaling requirement exists to help preserve the integrity of our administrative processes, and it requires a party to “marshal the record evidence that supports the [PSC’s] challenged finding.” The Motion fails to even identify what findings of the PSC it purports to challenge. Instead, the Motion attempts to supplement the record by referring to and attempting to rebut numerous statements the DPU made in its April 4, 2019 response to a PSC Action Request.

PEMC has made no attempt to identify whether its factual assertions in its Motion differ in any material way from PEMC’s factual assertions during the December 18, 2018 hearing or in any of PEMC’s other filings in this docket. To the extent PEMC’s Motion contains new evidence, PEMC does not represent or argue such evidence was “newly discovered” and “could

not, with reasonable diligence, have been discovered and produced at the [hearing].” Utah R. Civ. P. 59(a)(4).¹

Additionally, we conclude that our proceeding has provided multiple opportunities for PEMC to provide evidence to contest the DPU’s alleged violations and that due process would be frustrated if we modified the findings of fact in our Order based on any new factual assertions contained within PEMC’s Motion. PEMC had ample opportunity to present evidence, cross-examine DPU witnesses, object to evidence, and make motions at hearing. Discovery and motion practice occurred before the hearing, and PEMC was given an opportunity to supplement the factual record after the hearing, which we considered notwithstanding PEMC making that filing significantly beyond the due date. The Motion does not allege that any new evidence exists that it could not reasonably have discovered and presented in a timely fashion.

Our Order made findings of fact based on substantial evidence that PEMC committed 11 pipeline safety violations. The Motion simply does not provide us with a basis to rehear or reconsider those findings.

2. PEMC’s allegations about the qualifications of Mr. Chien Hwang do not provide a basis to reconsider or modify our Order.

The Motion contains several references to PEMC’s allegation that former DPU employee Mr. Chien Hwang was not qualified to conduct inspections of PEMC’s facilities. Nowhere in this proceeding has PEMC made any motion to exclude or strike any evidence based on the qualifications of Mr. Hwang. Mr. Hwang did not testify at the December 18, 2018 hearing, and

¹ The Utah Rules of Civil Procedure are persuasive authority in proceedings before the PSC unless otherwise provided for in statute, rule, or order. Utah Admin. Code R746-1-105.

PEMC did not object to the admission into evidence of four exhibits containing statements of Mr. Hwang.² Accordingly, we decline to reconsider our Order based on PEMC's allegations regarding Mr. Hwang's qualifications.

3. We decline to reconsider or modify our Order.

For the reasons discussed in this order on review, we decline to reconsider or modify our Order. Pursuant to Utah Code Ann. § 54-7-15(2)(c), PEMC's Motion is denied.

DATED at Salt Lake City, Utah, May 2, 2019.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#308076

Notice of Opportunity for Judicial Review

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 and 63G-4-403 and with the Utah Rules of Appellate Procedure.

² See Transcript of December 18, 2018 Hearing at 12:16, 21:1.

CERTIFICATE OF SERVICE

I CERTIFY that on May 2, 2019, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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