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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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

**Docket No. 18-2602-01**

**(AMENDED)  
PACIFIC ENERGY & MINING  
COMPANY MOTION TO STRIKE  
UTAH DIVISION OF PUBLIC  
UTILITIES OPPOSITION TO PACIFIC'S  
MOTION TO RECONSIDER**

Pacific Energy & Mining Co. ("Pacific"), by and through its counsel of record, respectfully moves the court to strike the response to Pacific's Motion to reconsider Order dated April 10, 2019 and for Commission to rescind its order dated May 2, 2019.

**STATEMENT OF REQUESTED RELIEF**

Pacific requests that the Commission to strike Utah Division of Public Utilities ("Division") Response to Pacific's Motion to reconsider and to rescind it order dated May 2, 2019.

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## **STATEMENT OF FACTS**

On April 12, 2019 Pacific filed its motion to reconsider Commissions order dated April 10, 2019. The motion was based upon the following facts:

1. Newly discovered evidence dated March 19, 2019 provided by the United States Government proving that inspector Chien Hwang was not qualified to conduct the inspection in 2016;
2. That the inspection done by Mr. Hwang be stricken from the record;
3. That the Division misled the Commission by failing to inform the Commission that the letter dated January 2, 2019 from the Division to Pacific listed only two carryover violations from 2016.
4. That Pacific had timely responded to each of the alleged violations;

On April 29, 2019, Division filed its response to Pacific's Motion.

On May 1, 2019 the Commission denied Pacific's Motion.

## **ARGUMENT**

### **I. THIS COMMISSION SHOULD STRIKE DIVISION'S RESPONSE MEMORANDUM**

Rule 7 of the Utah Rules of Civil Procedure provides that " A nonmoving party may file a memorandum opposing the motion within 14 days after the motion is filed. The nonmoving party must title the memorandum substantially as: "Memorandum opposing motion [short phrase describing the relief requested]." The memorandum must include under appropriate headings and in the following order:

UTAH R. CIV. P. 7. The Rule also states that a reply "memorandum must include under appropriate headings and in the following order:

(d)(1)(A) a concise statement of the party's preferred disposition of the motion and the grounds supporting that disposition;

(d)(1)(B) one or more sections that include a concise statement of the relevant facts claimed by the nonmoving party and argument citing authority for that disposition; and

(d)(1)(C) objections to evidence in the motion, citing authority for the objection.

(d)(2) If the non-moving party cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum.

**Name and content of reply memorandum.**

Rule 7 of the Utah Rules of Civil Procedure provides: "Within 7 days after the memorandum opposing the motion is filed, the moving party may file a reply memorandum, which must be limited to rebuttal of new matters raised in the memorandum opposing the motion."

**Rule 746-1 of the Administrative Code Public Service Commission Administrative Procedures Act Rule**

Rule 746-1-301:

Unless otherwise ordered by the Commission, briefing on a motion shall be as follows:

(1) Any response shall be filed within 15 days of the service date of the motion.

(2) Any reply shall be filed within 10 days of the service date of the response.

Division failed to follow the time limit set by Rule 7 and 746-1-301 as it filed its response untimely on April 29, 2019. Its response under both was due on April 26, 2019.

**II. THIS COMMISSION SHOULD RESCIND ITS ORDER DATED MAY 2, 2019**

Commission violated Pacific's right to file a reply memorandum within 7 days pursuant to Rule 7 of Utah Rules of Civil Procedure or the extended 10 day limit as allowed by Rule 746-1-301(2) . Thus violating Pacific's Due Process rights.

Commission made its order 2 days after the Division filed its untimely response to Pacific's Motion.<sup>1</sup> Commission's order is dated May 2, 2019 merely 6 days after the untimely response filed by the Division.

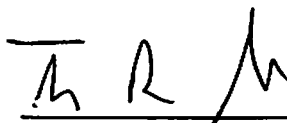
**CONCLUSION**

As set forth in the Statement of Facts, Division's response to Pacific's motion was untimely and outside the limit of Rule 7 and Rule 746-1-301 (1).

Commission violated Rule 746-301-2 and Rule 7 by failing to allow Pacific to file a reply brief as allowed pursuant to the Rules.

Therefore, Commission should strike the Response as failing to meet Rule 7 and 746-301(1) requirements and rescind its order dated May 2, 2019 for violating Rule 746-301(2) and Rule 7 of the Utah Rules of Civil Procedure.

DATED: May 3, 2019

  
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s/ Terry R. Spencer  
Attorney for Pacific

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<sup>1</sup> Pacific had filed a motion to recuse counsel for Division on August 17, 2018 for improper contacts with the administrative law judge. Motion was denied.