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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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

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

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

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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.

**STATEMENT OF REQUESTED RELIEF**

Pacific requests that the Commission to strike Utah Division of Public Utilities ("Division") Response to Pacific's Motion to reconsider.

**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 that 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; (a) on April 29, 2019, Division filed its response to Pacific's Motion; and (b) on May 1, 2019 the Commission denied Pacific's Motions.

## **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.**

(e)(1) 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 7.

Commission violated Pacific's right to file a reply memorandum within 7 days of the untimely response filed by Division's counsel as required by Rule 7 of the Utah Rules of Civil Procedure, as it made a decision within two days after receiving Division untimely response.<sup>1</sup>

As set forth in the Statement of Facts, Division's response to Pacific's motion was untimely and outside the limit of Rule 7. Division's response was due on April 26, 2019. Division's response was thus untimely filed. Therefore, Commission should strike the Response as failing to meet Rule 7 requirements.

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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.

