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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF UTAH

IN THE MATTER OF:

Docket: 18-2602-01

PACIFIC ENERGY & MINING CO.,

A Nevada Corporation.

PACIFIC ENERGY & MINING CO.'S
(PEMC'S) REPLY BRIEF TO THE
RESPONSE FILED BY THE DIVISION
TO PEMC'S MOTION TO STRIKE AND
NOTICE OF COMMISSION'S FAILURE
TO FOLLOW THE RELEVANT RULES

Pacific Energy & Mining Co. ("PEMC"), by and through its counsel of record, Terry R. Spencer, of the Law Office of Spencer & Collier, PLLC, respectfully submits its Reply Memorandum to Division's Opposition to PEMC's Motion to Strike, and and request for the Public Service Commission to rescind its Order dated May 2, 2019.

STATEMENT OF FACTS

1. On April 12, 2019 Pacific filed its motion to reconsider Commissions order dated April 10, 2019. The motion was based upon the following facts: Newly discovered evidence, located on March 19, 2019, which was provided by the United States Government, demonstrates that Division employee, Pipeline Inspector Chien Hwang, was not qualified to conduct the pipeline inspection completed in 2016.

2. Thus, the pipeline inspection completed by Pipeline Inspector Hwang, be stricken from the record.

3. It appears that the Division may have inadvertently misled the Commission by failing to inform the Commission that the Division's letter, dated January 2, 2019, to PEMC listed only two "carryover" violations from 2016.

4. That PEMC had timely responded to each of the Division's alleged violations as follows:

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

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

ARGUMENT

5. **Lack of Service**: The Division, in its responsive pleading, alleges that PEMC failed to file a "proof of service" with its Motion. The Division's factual filing is again contrary to the facts contained in the Docket, as the proof of service, allegedly missing, is attached to the Motion that was filed with the Commission. See Motion to Strike, page 4. Thus, the Division's incorrect factual statement may have is inadvertently mislead the Commission.

6. **Division's Opposition is Contrary to the Applicable Rules**: Pursuant to R746-1-105, the Utah Rules of Civil Procedure and relevant case law interpreting these Rules is persuasive authority in the Commission's adjudications unless otherwise provided by: (a) Title 63G, Chapter 4, Administrative Procedures Act; (b) Utah Administrative Code R746; or/or (c) an Order of the Commission.

7. PEMC is informed and believes that the Utah Rules of Civil Procedure are incorporated in the Rules, as stated above, when a specific administrative rule under R746 is silent. R746 is silent on the issue of submission of Reply Briefs, and thus, the Rules of Civil Procedure govern this issue.

8. R746-1-202, Title of Pleadings, states in pertinent part as follows:

(1) This Subsection R746-1-202 does not apply to Complaints.

(2) A person that files a pleading shall include the following information in the title:

- (a)(i) name and bar number of attorney preparing the pleading; or*
- (ii) if no attorney is involved, name of the person signing the pleading;*
- (b) address, telephone number, and e-mail address of the person identified in Subsection.*
- (c) nature of the request;*
- (d) description of the action or relief requested;*
- (e) type of pleading; and*
- (f) docket number, if known.*

See attached.

9. None of provisions of R746-1-202 address the form and content of the Response to a Motion.

10. R746-1-301, Motions, states in pertinent part as follows:

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.*

11. Because the Rules are silent on the content of a responsive pleading, such as a Reply, the Commission should utilize the Utah Rules of Civil Procedure. Here Division failed to follow Rule 7 of the Utah Rules of Civil Procedure, Rule 7 provides 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.*

12. Division's opposition failed to follow the Rule. Divisions response was also

untimely. If Division's argument is accepted, the Division could make-up its own rules as it goes along, without any relationship to either due process or Utah Rules of Civil Procedure or the Commission's own rules. Simply put, Division must follow the Rules laid out by State of Utah, and it has failed to do so.

13. Division failed to address PEMC's Due Process Violations. Commission violated PEMC's Due Process rights, by making its decision in violation of Rule 746-1-301(2), by making a ruling without allowing PEMC's to file its Reply Brief within ten (10) days of the Division's service of its Response. The sworn declarations by Tariq Ahmad and Dan Green addressed the issues that were raised by the Division, in its misleading filing with the Commission.

14. 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."

15. Rule 746-1 of the Administrative Code, Public Service Commission Administrative Procedures Act Rule 746-1-301 provides as follows:

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

Unless otherwise ordered by the Commission, briefing on Motions 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.

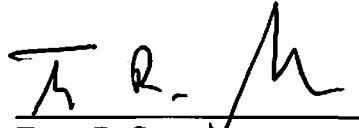
16. The Division failed to follow the time limit set by both Rule 7 and 746-1-301, as it filed its response untimely on April 29, 2019. Its Response under both was due on April 26, 2019.

CONCLUSION

As set forth in the Statement of Facts, Division's response to PEMC's Motion was untimely and outside the limit set by both Rule 7 and R746-1-301(1). The Commission failed to follow either R746-301(2) and/or Rule 7 of the Utah Rules of Civil Procedure by failing to allow PEMC to timely

file its Reply Brief or Memorandum prior to entering its decision. Therefore, Commission should strike the Division's Response, as it failed to meet either Rule 7 or R746-301(1) requirements and rescind its Order dated May 2, 2019.

DATED: May 15, 2019.




Terry R. Spencer
Attorney for PEMC

CERTIFICATE OF SERVICE

I caused the foregoing to be delivered to the Public Service Commission, with a copy to the Division as follows:

Patricia Schmid, Esq.

On the 16th day of May, 2019.



Terry R. Spencer
Attorney for PEMC