
Pacific Energy & Mining Company

DOCKET NO. 18-2602-01
ORDER DENYING MOTION TO STRIKE

ISSUED: May 17, 2019

BACKGROUND

On April 10, 2019, the Public Service Commission of Utah (PSC) issued a Hazardous Facility Order in this docket. Pacific Energy & Mining Company (PEMC) filed a motion to reconsider that Hazardous Facility Order on April 12, 2019, and the Division of Public Utilities (DPU) responded to that motion on April 29, 2019. On May 2, 2019, we issued an Order on Review in which we declined to reconsider or modify the Hazardous Facility Order. On May 3, 2019, PEMC filed a motion to strike the DPU's April 29, 2019 response, and amended that motion on May 6, 2019. PEMC filed two affidavits on May 7, 2019, the DPU responded to PEMC's motion to strike on May 10, 2019, and PEMC filed a reply in support of its motion to strike on May 16, 2019.

For the reasons we articulate in this order, we deny PEMC's motion to strike. Judicial review of our Order on Review is available pursuant to Utah Code Ann. § 63G-4-401, within 30 days after May 2, 2019.

PEMC'S MOTION TO STRIKE

In PEMC's motion to strike, PEMC outlines some facts and asserts that both the DPU and the PSC violated various provisions of Rule 7 of the Utah Rules of Civil Procedure.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

We conclude that agency review or rehearing of our Hazardous Facility Order was available pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15. We indicated as such in the Hazardous Facility Order at the conclusion of the order in a paragraph under the heading “Notice of Opportunity for Agency Review or Rehearing.”¹

Utah Code Ann. § 54-7-15 is specific to proceedings of the PSC. It contains various provisions that must be exhausted before seeking judicial review of a PSC order, and establishes a legal standard that “[a]ny application for rehearing not granted by the [PSC] within 20 days is denied.”² We conclude that the 20-day deadline is a jurisdictional requirement related to the right to seek judicial review of a PSC order, and that we do not have authority or jurisdiction to modify or extend that deadline.

Utah Code Ann. § 63G-4-301 also applies to the PSC’s review of a PSC order prior to judicial review. This statute applies because a statute, Utah Code Ann. § 54-7-15, “permit[s] parties to [a PSC] adjudicative proceeding to seek review of an order by the [PSC].”³ Under Utah Code Ann. § 63G-4-301(2)(a), we conclude that any party must be allowed at least 15 days to respond to a request for review or rehearing because of the statutory phrase “whichever is longer” used in that subsection. We have mirrored that 15-day response time in Utah Admin. Code R746-1-301, which is applicable to any motion filed in a PSC proceeding.

¹ Hazardous Facility Order at 31.

² Utah Code Ann. § 54-7-15(2)(c).

³ Utah Code Ann. § 63G-4-301(1)(a). Accordingly, Utah Code Ann. § 63G-4-302 does not apply to PSC orders because it only applies where review under Utah Code Ann. § 63G-4-301(1)(a) “is unavailable.”

Because of these statutory timeframes, we conclude that the response timeframes contained within Rule 7 of the Utah Rules of Civil Procedure are inapplicable to PEMC's motion to reconsider our Hazardous Facility Order. The Utah Rules of Civil Procedure are persuasive authority in PSC proceedings unless they are superseded by some other statute or rule.⁴

We find that the DPU's response to PEMC's motion to reconsider our Hazardous Facility Order was filed within the 15-day timeframe established by Utah Code Ann. § 63G-4-301(2)(a). Because the deadline fell on a Saturday, pursuant to Utah Code Ann. § 68-3-7, the due date was the following Monday, April 29, 2019. We find that the DPU's response was properly filed on that date.

We also find that our Order on Review was issued within the timeframe required by Utah Code Ann. § 54-7-15(2)(c). If we had not issued the Order on Review within 20 days after PEMC's motion to reconsider our Hazardous Facility Order, then PEMC's motion would have been denied by operation of statute. We recognize the statutory structure does not afford PEMC a final reply in support of its motion. That outcome is dictated by statute and we conclude we do not have jurisdiction or authority to modify it.

We conclude that under Utah Code Ann. § 63G-4-401(3)(a), our Order on Review constitutes final agency action for which a party seeking judicial review must do so within 30

⁴ R746-1-105 only lists Utah Code Title 63G, Chapter 4, Administrative Procedures Act, as a statute that may supersede the Utah Rules of Civil Procedure in a PSC proceeding. We have concluded in this order that with respect to PEMC's motion to reconsider our Hazardous Facility Order, the Utah Rules of Civil Procedure are superseded by both a provision of the Administrative Procedures Act (Utah Code Ann. § 63G-4-301), and by a statute specific to the PSC (Utah Code Ann. § 54-7-15). Even though we did not articulate it in R746-1-105, we conclude that Utah Code Ann. § 54-7-15 supersedes the Utah Rules of Civil Procedure in PSC proceedings on its face. We conclude that there is no authority for either our administrative rules or the Utah Rules of Civil Procedure to modify the requirements of that statute.

days after the date our Order on Review was issued, May 2, 2019. While no party has asked us to treat PEMC's motion to strike as modifying that timeframe, for the sake of clarity we conclude that we do not have jurisdiction or authority to do so.

ORDER

We deny PEMC's motion to strike the DPU's April 29, 2019 response to PEMC's April 12, 2019 motion to reconsider our Hazardous Facility Order.

DATED at Salt Lake City, Utah, May 17, 2019.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#308358

CERTIFICATE OF SERVICE

I CERTIFY that on May 17, 2019, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By U.S. Mail:

Rodney Nugent
Registered Agent—PEMC
17 West Main 149
PO Box 149
Green River, UT 84525

By Electronic-Mail:

Dan Green (dfgreen1@dslextreme.com)
Tariq Ahmed (taroil@yahoo.com)

Terry R. Spencer, Ph.D. (terry@spencerandcollier.com)
Spencer & Collier, PLLC
Attorney for PEMC

Patricia Schmid (pschmid@agutah.gov)
Justin Jetter (jjetter@agutah.gov)
Robert Moore (rmoore@agutah.gov)
Steven Snarr (stevensnarr@agutah.gov)
Assistant Utah Attorneys General

dpudatarequest@utah.gov
Division of Public Utilities

By Hand-Delivery:

Office of Consumer Services
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111

Administrative Assistant