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Department of Commerce Division of Public Utilities

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Division's Action Request Response

To: Public Service Commission of Utah

From: Utah Division of Public Utilities

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Date: September 6, 2019

Re: **Docket No. 18-2602-01 – Division's Response to the Commission's
August 22, 2019 Action Request**

I. Introduction and Summary of Conclusions and Recommendations

A. Introduction

The Division of Public Utilities and its Pipeline Safety Staff (collectively the Division or DPU) file this action request response to the Public Service Commission of Utah's (Commission or PSC) August 22, 2019 action request (Action Request) concerning the Interim Pipeline Monitoring Program (Interim Program) filed by Pacific Energy & Mining Company (PEMC) on August 21, 2019 for the Paradox Pipeline (Pipeline).¹ The Action Request instructed the Division

¹ The first page of the Interim Program was entitled "Paradox Pipeline Grand County Utah Interim Pipeline Monitoring Program August 20, 2019" and the second page was entitled "Pacific Energy and Mining Co. Interim Pipeline Monitoring Program." The certificate of service called the Interim Program "PEMC's Paradox Pipeline Interim Pipeline Monitoring Program."

“to provide analysis, evaluation results, and the basis for conclusions and recommendations” regarding PEMC’s Interim Program.

B. Summary of Conclusions and Recommendations

The Division has reviewed PEMC’s Interim Program and has found it does not include all of the minimum recommendations for an interim program set forth the Division’s August 1, 2019 Response.² In addition, the Interim Program is insufficient, incomplete, and noncompliant with applicable pipeline safety regulations.

Therefore, the Division recommends and requests that the Commission order the Pipeline to be deactivated by October 14, 2019 pursuant to 49 CFR Part 192.727 - Abandonment or deactivation of facilities. In addition if the Pipeline is not deactivated by October 14, 2019 the Division recommends and requests that the Commission impose the maximum penalty pursuant to Utah Code Ann. Section 54-13-8 until the Pipeline has been deactivated consistent with 49 CFR Part 192.727.

II. Background

On July 26, 2019, the Commission issued a notice to the Division (Notice) stating, inter alia, “If the DPU believes circumstances exist that render the pipeline imminently unsafe or that injunctive relief from a court of appropriate jurisdiction is otherwise necessary, the DPU may file a request with the PSC to seek such relief, outlining the actions the DPU believes a court should compel PEMC to take to render the pipeline compliant.”³

On August 1, 2019, the Division responded to the Notice (Division’s August 1, 2019 Response) by requesting that the Commission order “PEMC; its successor, the current operator (believed to be Dead Horse Oil Company LLC) or the owner of the Pipeline (believed to be JMD Resources Inc. and Entrada Enterprises LLC) to cause a regulatory compliant monitoring plan for the

² Nor did the Interim Program explain its omissions.

³ See the Notice at pp. 1-2.

Pipeline for the duration of this shut in phase to be filed with the Commission no later than August 21, 2019.”⁴ In its response, the Division stated that “This monitoring plan at a minimum should include periodic leak surveys, patrolling and monitoring of the cathodic system”⁵ and that “Without an appropriate plan, including the leak survey, the Division is concerned the pressurized pipeline poses an unacceptable risk to public safety.”⁶ The Division also noted that the Pipeline was still subject to the relevant requirements set forth in 49 CFR Part 192 and industry standards.⁷

In its August 2, 2019 “Notice of Motion and Accelerated Time to Respond” the Commission stated “any interested party that wishes to file a response to the Motion must do so on or before Monday, August 12, 2019. The DPU may file a reply on or before Monday, August 19, 2019.”⁸

On August 12, 2019 Dan Green, consultant to PEMC, filed a notice stating he would file a monitoring plan on behalf of PEMC by August 21, 2019.

On August 22, 2019, PEMC’s counsel filed its Interim Program, emailing it to the Commission, the Division, and the Division’s attorney.⁹ This Interim Program consisted of two pages, including a chart apparently to be used for record keeping. PEMC’s filed Interim Program is appended as Attachment 1.

Also on August 22, 2019, the Commission issued the Action Request to the Division.

On August 29, 2019 PEMC caused to be filed with the Commission a letter dated August 22, 2019 from PEMC to Northwest Pipeline Corporation (an interstate natural gas transmission pipeline which interconnects with the Pipeline) stating that “this is to confirm that Paradox Pipeline will not be placed in production for a minimum of 6 months it may extend to

⁴ See the Division’s August 1, 2019 Response at p. 2. Also, on August 21, 2019, Dead Horse was issued an operator identification number for the Pipeline from the Pipeline and Hazardous Materials Safety Administration.

⁵ See the Division’s August 1, 2019 Response at p. 2.

⁶ See the Division’s August 1, 2019 Response at p. 3.

⁷ See the Division’s August 1, 2019 Response at p. 3.

⁸ See the Notice at p. 1.

⁹ The Interim Program was attached to a certificate of service dated August 20, 2019 but received by the Division via email August 21, 2019 at approximately 5:28 p.m. which, according to Commission rule R746-1-204 means it was filed August 22, 2019. It was posted to the Commission’s website docket sheet on website August 22, 2019.

24 months.” The letter also stated, “Dead Horse Oil Company is currently in the process of engineering transfer of the compressor station upstream of the Greentown interconnect as to reduce the operating pressure in the Pipeline. This change in operation may take some time.”

III. General Comments

The Interim Program is incomplete and insufficient. In its response to the Notice, the Division proposed that the Commission order PEMC to file an Interim Program to supplement, not replace the operator's regular duties under 49 CFR Parts 191 and 192. Not only is the Interim Program insufficient as a stand-alone process, nowhere does the Interim Program indicate that it only supplements, not supplants, those regular duties.

Furthermore, the Interim Program does not include all the tasks recommended by the Division when it recommended an interim program. The Interim Program lacks a baseline leak survey (49 CFR Part 192.706 – Transmission lines: Leakage survey) and proper cathodic protection monitoring (49 CFR Part 192.465 – External corrosion control: Monitoring) as recommended by the Division in its Response. The Interim Program's item number 2 – “Check for leaks at all valve sets” and item number 4 – “Check and record rectifier readings” fall short of providing a complete and compliant method to monitor leaks and cathodic protection levels. The Division believes that the Interim Program will not detect low-volume leaks or problems with the cathodic protection system. In addition, the Interim Program lacks procedures for patrolling the Pipeline as the Division recommended in its Response. Furthermore, the Interim Program lacks specific operations and maintenance (O&M) procedures related to its proposed activities and lacks response procedures in case any safety issue is discovered.

Additionally, the Interim Program also does not require that the listed tasks be performed by individuals or entities/contractors/consultants (49 CFR Part 192 Subpart N – Qualification of Pipeline Personnel) who have obtained “operator qualification” (OQ) to perform these tasks.¹⁰ Part of the OQ Program requires the operator's field personnel or contractor to have records of

¹⁰ See Division's August 1, 2019 Response at p. 3.

their knowledge, skills, and abilities to perform specific covered task to maintain and operate the intrastate natural gas transmission pipeline in a safe manner.

IV. Review of Specific Items Listed on PEMC's Interim Program¹¹

The Division's detailed analysis of the Interim Program follows.

- 1. Monitor and record pressures at the following locations: ¹²**
 - a. Pig Launcher (Pacific Gas Plant)**
 - b. Blue Hills Interconnect**
 - c. Pig Receiver (Northwest Pipeline)**

This provision is inadequate and noncompliant with safety regulations. Recording pressure gauge readings on a regular basis to ascertain the system's pressure at certain points is good practice, but it does not replace leak detection survey requirements as prescribed in 49 CFR

Part 192.706 – Transmission lines: Leakage survey. The operator must provide criteria for the detection, grading, and control of gas leakage and related records. In addition, this item lacks response procedures or references to the operator's O&M and Emergency Plans in case of loss of pressure, release of gas, or in the event of an abnormal operating condition.

- 2. Check for leaks at all valve sets;¹³**

This provision is inadequate and noncompliant with safety regulations. This item lacks procedures and details of how valve set leak detection surveys will be conducted. There is no

¹¹ The Division's discussion follows the numbering PEMC used in its filed Interim Program.

¹² See Interim Program at p. 1.

¹³ See Interim Program at p. 1.

mention of qualifications of individuals performing the surveys, or the type of instrumentation to be used. There is also no mention of checking the system for leaks beyond the valve sets.

During the July 16, 2019 meeting attended by the Division, PEMC's attorney, and Mr. Dan Green,¹⁴ an owner of the Pipeline and consultant for PEMC, Mr. Green said that he had performed a Pipeline leak survey with a rented instrument. However, without operator qualification records the Division is unable to ascertain whether Mr. Green was qualified to operate a leak detection instrument or conduct a pipeline leak survey. Without a baseline leak survey conducted in accordance with 49 CFR Part 192.706 – Transmission lines: Leakage survey the Interim Program's proposed item number 2 – "Check for leaks at all valve sets" falls short of providing a complete monitoring for leaks.

3. Open partially and close all main valves;¹⁵

A pipeline operator is required to perform these tasks once a year, and while the Division did not object to PEMC properly performing them more often as part of the Interim Program, they must also be performed in the future as required. The Interim Program lacked required procedures for performing these tasks and future commitments. In addition, these tasks must be performed by qualified individuals. In the past, PEMC has used a third party contractor to perform these tasks.

4. Check and record rectifier readings;¹⁶

This provision is inadequate and noncompliant with safety regulations. The cathodic protection level on a pipeline is measured by the readings of pipe to soil potentials as prescribed in 49 CFR Part 192 subpart I – Requirements for Corrosion Control. Rectifier readings must also be supplemented with pipe to soil potential readings. The most recent pipe to soil potential readings were conducted on February 22, 2018 by Anode Systems Company out of Grand Junction,

¹⁴ The Division appreciates Mr. Green's willingness to discuss compliance and hopes his efforts will continue, but to date they fall short of providing reasonable assurance that public safety is protected.

¹⁵ Interim Program at p. 1.

¹⁶ Interim Program at p. 1. Oversimplifying, a rectifier delivers direct current to a pipeline to stop corrosion.

Colorado. A new round of cathodic monitoring is past due by more than three months in accordance with 49 CFR Part 192.465 – External corrosion control: Monitoring, which requires these surveys to be conducted once a year not exceeding 15 months. Also, there is no mention of the qualifications of the individuals performing the surveys or the type of instrumentation to be used.

Remedial action is required whenever it is determined that the cathodic protection or other installed corrosion control methods are not operating effectively. Operators are required to take prompt remedial action to correct deficiencies indicated by monitoring. Remedial action should correct the deficiency before the next monitoring cycle required by Part 192.465. If remedial action cannot be completed prior to the next scheduled monitoring cycle, the operator should document the actions taken to correct the deficiency and the expected timeframe for completion.

5. Check locks on all valves.

The Division did not object to PEMC including checking the locks on all valves as part of the Interim Program.

V. Lengthy History of Noncompliance

Given that the Division's attempt at securing interim protections has not been successful and it is now close to three months after the Pipeline shut down, there is simply no justification for continued operation of the Pipeline without full compliance. A reasonably diligent pipeline operator or owner would have complied by now, especially given the length of time the Division sought compliance before pursuing enforcement. Furthermore, the Division urges the Commission to impose substantial penalties because the Pipeline remains in violation of pipeline safety laws. Absent significant additional penalties and a deactivation order, it is not evident that compliance will ever be achieved.

Even the briefest look at the Commission's website docket sheet for this case and at the parties who have been served with filings and orders reveals that PEMC has a history of noncompliance and repeatedly and consistently submits insufficient documents, policies, and procedures while

proclaiming them compliant. Other entities such as Dead Horse, JMD Resources, and Entrada have either been served filings and Commission orders or their principals seem to be related to the principals, consultants, or others associated with PEMC.¹⁷ Those other entities also have failed to bring the Pipeline into compliance and did not file interim plans of their own.

VI. Recommendations

The Interim Program failed to comply with applicable safety regulations and did not include tasks such as a base line leak survey, evaluation of the cathodic protection system, or Pipeline patrols as recommended by the Division. An interim program was envisioned to decrease pipeline safety concerns while the Pipeline is shut in but still is packed with pressurized natural gas. What PEMC provided is insufficient.

The Pipeline remains out of compliance nearly three months after the Pipeline was shut in and more than one year after the Division filed its enforcement action. PEMC and others have been given numerous opportunities to comply but have constantly and consistently failed to comply or failed to act. Absent definite Commission action, the Division has no confidence that PEMC, Dead Horse, JMD, and/or Entrada has the ability or desire to comply. The Division's suggestion of an interim plan and PEMC's filing did not bring the Pipeline meaningfully closer to compliance. Rounds of filings by PEMC, and the lack of filings by others, and review, analysis, and instructions by the Division have not moved the Pipeline towards full compliance.¹⁸ Allowing even more rounds of plans to be filed and requiring the Division again and again to review and critique such filings will not result in compliance.

Because PEMC has once again failed to provide compliant procedures, and still has not cured the 11 outstanding violations and because other involved entities such as Dead Horse, JMD

¹⁷ Recent mailings to Rodney Green, Registered Agent for PEMC and Dead Horse, have been returned with a forwarding address in Nevada. The Division has sent those returned mailings to Mr. Nugent at his forwarding address in Nevada.

¹⁸ With the exception that there are now only 11 violations remaining out of the original 13 violations.

Resources, and Entrada have not provided any compliant procedures or cured the 11 outstanding violations, the Division urges the Commission to take swift and decisive action.

Therefore, the Division recommends and requests that the Commission order the Pipeline to be deactivated by October 14, 2019 pursuant to 49 CFR Part 192.727 – Abandonment or deactivation of facilities. In addition if the Pipeline is not deactivated by October 14, 2019 the Division recommends and requests that the Commission impose the maximum penalty pursuant to Utah Code Ann. Section 54-13-8 until the Pipeline has been deactivated consistent with 49 CFR Part 192.727.

VII. Conclusions

For the reasons stated above, the Division urges the Commission to take decisive action and order deactivation of the Pipeline by October 14, 2019 pursuant to 49 CFR Part 192.727 – Abandonment or deactivation of facilities and impose penalties pursuant to Utah Code Ann. Section 54-13-8 as set forth above.

Finally, the Division notes that it is not waiving its right to pursue appropriate ongoing or new enforcement actions, including seeking penalties, against PEMC, Dead Horse, the owners of the Pipeline, or other responsible entities.