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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

Docket No. 18-2602-01

**DIVISION OF PUBLIC UTILITIES'
MOTION CONCERNING PHYSICAL
PRESENCE OF WITNESSES IN THE
HEARING ROOM WITH REQUESTED
EXPEDITED RESPONSE AND
REPLY SCHEDULE**

The Division of Public Utilities (Division) respectfully submits this motion (Motion) requesting that the Public Service Commission of Utah (Commission) order parties to comply with Rule 43 of the Utah Rules of Civil Procedure, made applicable here by Commission Rule R746-1-105, if parties' witnesses will not be physically present in the hearing room at the December 2019 hearing. Specifically, the Division requests that the Commission order parties to seek advance permission from the Commission and make a showing of good cause to the Commission in order to receive a Commission order allowing witnesses to provide testimony by "contemporaneous transmission" if witnesses will not be physically present in the hearing room.

If such a request is made and granted, the Division requests that the Commission impose appropriate safeguards. This Motion also requests that the Commission order an expedited response schedule.

I. Background

The November 18, 2019 filings by Dead Horse Oil Company LLC (Dead Horse and the Dead Horse Filing respectively) and Pacific Energy & Mining Company (PEMC and the Spencer Filing respectively) included witness lists. The witness list in the Dead Horse Filing list included the Division's counsel, Patricia E. Schmid. In its December 10, 2019 filing, the Division noted that Ms. Schmid, as Division litigation counsel, is not subject to being called as a witness in this case.

II. Argument

Rule 43 of the Utah Rule of Civil Procedure, applicable to Commission proceedings pursuant to R746-105, states "In all trials, the testimony of witnesses shall be taken in open court, unless otherwise provided by these rules, the Utah Rules of Evidence, or a statute of this state. For good cause and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location."

A provision often referred to as the "accommodation provision" of typical Commission scheduling orders should not be used as a means to circumvent these rules. The accommodation provision is directed at "individuals" and "participants," not "parties."¹ Also, the specific Scheduling Order and Notice of Hearing issued October 18, 2019 in this docket states, "All parties must have their witnesses in attendance and prepared to testify."²

¹ See, e.g., the Commission's Amended Notice of Hearing issued in this docket on December 4, 2018. <https://pscdocs.utah.gov/gas/18docs/18260201/30575018260201anoh12-4-2018.pdf>.

² See <https://pscdocs.utah.gov/gas/18docs/18260201/31041218260201soanoh10-18-2019.pdf> at p. 3.

While Commission may allow “contemporaneous transmission” upon a showing of good cause, the Division notes that not having witnesses physically present in the hearing room but instead testifying via telephone, for example, may present difficulties including if documents need to be provided to “remote telephone” witnesses during the hearing as well as ensuring that the remote witness is not being improperly assisted or coached. In addition, a remote telephone witness denies the Commission the opportunity to observe the demeanor of that witness. If the Commission permits witnesses to testify via “contemporaneous transmission,” such as via telephone the Division requests that the Commission impose appropriate safeguards. For these and other good reasons, the Division submits this motion concerning the physical presence of witnesses.

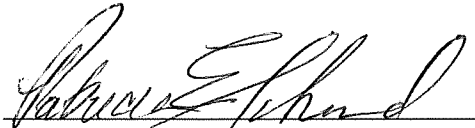
III. Request for Expedited Responses

In light of the relatively short time between the filing of this Motion and the hearing date, the Division requests that the Commission issue an order requiring parties to submit expedited responses and replies.

IV. Conclusion

The Division respectfully requests that the Commission grant this Motion including the request for a shortened response time.

Submitted this 11th day of December 2019.


Patricia E. Schmid
Attorney for the Utah Division
of Public Utilities