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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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**Pacific Energy & Mining Company**

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

**DIVISION OF PUBLIC UTILITIES’  
RESPONSE OPPOSING DEAD HORSE  
OIL COMPANY’S MOTION FOR PSC TO  
SET ASIDE ITS ORDER**

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The Division of Public Utilities (Division) submits its response opposing the “Dead Horse Oil Company Motion for PSC to Set Aside Its Order Dated March 11 [sic] 2020 for Violating Rule 746-1-301” (Response, Dead Horse, and Motion to Set Aside, respectively). Dead Horse requests that the Public Service Commission of Utah (Commission) rescind its March 11, 2020 order and grant Dead Horse the right to “file a reply brief.”<sup>1</sup> The Motion to Set Aside is without merit and should be denied.

Applicable statutes, Commission rules, and even a prior Commission order in this same docket make it clear that Dead Horse does not have the right to file a reply to the Division’s

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<sup>1</sup> See Motion to Set Aside at p. 2.

response to Dead Horse's Motion for Rehearing. Dead Horse has not been deprived of due process.

On February 20, 2020, Dead Horse filed its "Motion for Rehearing" of the Second Hazardous Facility Order.<sup>2</sup> On March 6, 2020, the Division filed its response opposing that motion. On March 11, 2020, the Commission issued its "Order Denying Dead Horse Oil Company's Motion for Rehearing."<sup>3</sup> On March 12, 2020, Dead Horse filed this Motion to Set Aside.

No applicable statute provides Dead Horse the right to file a reply to the Division's response to Dead Horse's Motion for Rehearing. The pertinent provision of the Utah Administrative Procedure Act, Utah Code Ann. § 63G-4-301, grants only the right to request rehearing and the right to file a response to that request.<sup>4</sup> No right to file a reply is granted. The right to request rehearing and to file a response are also explicitly set forth in the "Notice of Opportunity for Agency Review or Rehearing" on page 32 of the Second Hazardous Facility Order.

Similarly, no Commission rule provides Dead Horse the right to file a reply concerning its Motion for Rehearing. Although Dead Horse captioned its February 20, 2020 filing a "motion," R746-1-301 granting the right to file a reply to a "motion" is not applicable. It is the substance and the timing of a pleading, not its title, that defines how a pleading is legally classified and treated. Notwithstanding its title, Dead Horse's February 20, 2020 pleading is a request for rehearing, not a motion governed by R746-1-301. Accordingly, R746-1-105 governs and supersedes R746-1-301.

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<sup>2</sup> See Order Denying Dead Horse Oil Company's Motion for Rehearing at p. 1.

<sup>3</sup> In its March 11, 2020 order, the Commission changed the title of the Second Hazardous Facility Order to the "Compliance Review Order."

<sup>4</sup> See also Utah Code Ann. § 54-7-15.

Additionally, in this exact docket, in May 2019 the Commission issued an order denying PEMC's motion to strike and addressing the Commission's order on review regarding its April 10, 2019 hazardous facility order.<sup>5</sup> Applying the statutes and rules discussed above, the Commission's May 17, 2019 Order Denying Motion to Strike states, "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."<sup>6</sup>

For the reasons set forth above, no grounds support granting Dead Horse's requested relief. The Commission's March 11, 2019 "Order Denying Dead Horse Oil Company's Motion for Rehearing" should not be set aside. Dead Horse does not have a right to file a reply concerning its Motion for Rehearing and its claim that it was denied due process fails. The Division urges the Commission to deny the Motion to Set Aside.

Submitted this 17<sup>th</sup> day of March 2020.

/s/  
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<sup>5</sup> See the May 17, 2019 order for procedural details.

<sup>6</sup> See Commission's May 17, 2019 order in this docket at p. 3.

## CERTIFICATE OF SERVICE

I certify that on March 17, 2020, I caused a true and correct copy of the foregoing **Division of Public Utilities' Response Opposing Dead Horse Oil Company's Motion for PSC to Set Aside It's Order**, to be filed with the Public Service Commission and served by the Utah Division of Public Utilities to the following in Utah Docket No. **18-2602-01** as indicated below:

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