

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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| Pacific Energy & Mining Company | <u>DOCKET NO. 18-2602-01</u> <u>HAZARDOUS FACILITY ORDER</u> |
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ISSUED: April 10, 2019

On January 18, 2019, after the Public Commission of Utah’s (PSC) presiding officer held a hearing in this docket,¹ the PSC issued an order directing Pacific Energy & Mining Company (PEMC): “Within twenty (20) days of this order, PEMC shall file with the PSC: 1) a status report identifying the alleged violations asserted by [the Division of Public Utilities (DPU)] it has cured to date and its schedule for curing all remaining alleged violations, 2) a response to the DPU’s proposed civil penalty of \$100,000, and 3) comments concerning the DPU’s proposed suspension of PEMC’s pipeline operations and the relevance, if any, of the Seventh District Court’s Order Granting Motion for Preliminary Injunction in Case No. 160700016.”² After PEMC’s 20-day deadline elapsed, it filed a response on March 25, 2019, stating in part that “[a]ll violations stated by the [DPU] have been cured[;] . . . [there is no] need for a fine[;] . . . [and] [t]here is no[] . . . need to order a shutdown[.]”³ Upon receiving PEMC’s response, the PSC issued an action request to the DPU on March 26, 2019, requesting the DPU “review [PEMC’s] March 25, 2019 [response] to the PSC and provide comment on:

- 1) Which of the probable violations identified by the DPU in this case have been resolved to the DPU’s satisfaction[;]
- 2) Whether the DPU has received and reviewed the documents referenced in PEMC’s March 25, 2019 correspondence, and the DPU’s assessment of th[o]se documents[; and]

¹ See Amended Notice of Hearing, issued December 4, 2018.

² Order at 4, issued January 18, 2019.

³ See Correspondence from Pacific Energy & Mining Company, filed March 25, 2019.

- 3) Whether the DPU continues to support the remedies identified by the DPU at the December 18, 2018 hearing (i.e., a \$100,000 civil penalty and suspension of pipeline operations) or, other such remedies, in light of PEMC's filing.⁴

On April 4, 2019, the DPU filed a response.⁵ In sum, the DPU's response states that it "continues to support the remedies it sought at the December 18, 2018 . . . hearing. . . .PEMC has not only failed to comply [(with the exception of Item 12)], but it failed to timely respond to the [PSC's] order, evincing a disregard for the regulatory process."⁶

Procedural Background

On April 12, 2018, the DPU filed with the PSC a request for agency action in this docket against PEMC.⁷ The DPU alleged that, in 2016, the DPU's Pipeline Safety section conducted an operations and maintenance inspection and a records and field audit of PEMC and found 13 probable safety violations.⁸ The DPU also stated, through its counsel, that it sent to PEMC a final warning letter on January 5, 2018.⁹ According to the DPU, one of the violations has been corrected, leaving 12 remaining safety violations unresolved.¹⁰ The DPU alleges PEMC violated the remaining federal safety regulations, listed below, and that those violations are in breach of

⁴ See Action Request, issued March 26, 2019.

⁵ See Division's Response to [PSC's] Action Request dated March 26, 2019, filed April 4, 2019. We appreciate the DPU's quick turnaround to our action request and note, where applicable, the DPU's responses help inform our decision in this docket.

⁶ *Id.* at 2.

⁷ See Utah Division of Public Utilities' Request for Agency Action on Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order Against Pacific Energy [&] Mining Company, filed April 12, 2018. Attached to this filing is the DPU's letter, entitled "Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order." See *id.* at Exhibit A.

⁸ See *id.* Request for Agency Action at 3.

⁹ See *id.* at 4.

¹⁰ See *id.* at 3.

Title 54, Chapter 13 of the Utah Code, Natural Gas Pipeline Safety, and Utah Administrative Code R746-409, Pipeline Safety:

1. 49 C.F.R. § 192.605(b)(8),¹¹ which requires “[t]he manual [of written procedures for conducting operations and maintenance activities and for emergency response] required by paragraph (a) of this section must include procedures for the following, if applicable, to provide safety during maintenance and operations . . . [including] [p]eriodically reviewing the work done by operator personnel to determine the effectiveness, and adequacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found.”
2. 49 C.F.R. § 192.605(c)(4),¹² which requires “[p]eriodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found.”
3. 49 C.F.R. § 192.615(b)(2),¹³ which requires “[e]ach operator shall . . . [t]rain the appropriate operating personnel to assure that they are knowledgeable of the emergency procedures and verify that the training is effective.”
4. 49 C.F.R. § 192.615(b)(3),¹⁴ which requires “[e]ach operator shall . . . [r]eview employee activities to determine whether the procedures were effectively followed in each emergency.”
5. 49 C.F.R. § 192.615(c),¹⁵ which requires “[e]ach operator shall establish and maintain liaison with appropriate fire, police, and other public officials[.]”
6. 49 C.F.R. § 192.616(e), (f),¹⁶ which requires “[t]he program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations. The program and the media used must be as comprehensive as necessary to reach all areas in which the operator transports gas.”

¹¹ This provision is available at: <https://www.law.cornell.edu/cfr/text/49/192.605>.

¹² *See id.*

¹³ This provision is available at: <https://www.law.cornell.edu/cfr/text/49/192.615>.

¹⁴ *See id.*

¹⁵ *See id.*

¹⁶ These provisions are available at: <https://www.law.cornell.edu/cfr/text/49/192.616>.

7. 49 C.F.R. § 192.616(g),¹⁷ which requires “[t]he program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator’s area.”
8. 49 C.F.R. § 192.616(h),¹⁸ which requires “[o]perators in existence on June 20, 2005, must have completed their written programs no later than June 20, 2006. The operator of a master meter or petroleum gas system covered under paragraph (j) of this section must complete development of its written procedure by June 13, 2008. Upon request, operators must submit their completed programs to PHMSA or, in the case of an intrastate pipeline facility operator, the appropriate State agency.”
9. 49 C.F.R. § 192.706,¹⁹ which requires “[l]eakage surveys of a transmission line must be conducted at intervals not exceeding 15 months, but at least once each calendar year. However, in the case of a transmission line which transports gas in conformity with § 192.625 without an odor or odorant, leakage surveys using leak detector equipment must be conducted[.]”
10. 49 C.F.R. § 192.751,²⁰ which requires “[e]ach operator shall take steps to minimize the danger of accidental ignition of gas in any structure or area where the presence of gas constitutes a hazard of fire or explosion[.]”
11. 49 C.F.R. §§ 192.227-229,²¹ which sets forth qualifications of and limitations on welders and welding operators.
12. 49 C.F.R. § 192.243,²² which sets forth nondestructive testing requirements.

See DPU’s Request for Agency Action on Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order Against Pacific Energy [&] Mining Company at 5-6, filed April 12, 2018.²³

¹⁷ *See id.*

¹⁸ *See id.*

¹⁹ This provision is available at: <https://www.law.cornell.edu/cfr/text/49/192.706>.

²⁰ This provision is available at: <https://www.law.cornell.edu/cfr/text/49/192.751>.

²¹ These provisions are available at: <https://www.law.cornell.edu/cfr/text/49/192.227>, <https://www.law.cornell.edu/cfr/text/49/192.229>.

²² This provision is available at: <https://www.law.cornell.edu/cfr/text/49/192.243>.

²³ The DPU also cited PEMC for non-compliance of 49 C.F.R. § 192.745(a) (which requires “[e]ach transmission

For these alleged violations, the DPU requested the following remedies: (1) a finding that PEMC is and has been in violation of the PSC’s Pipeline Safety Rule R746-409 *et seq.* since November 4, 2016; (2) an assessment of a civil penalty of up to \$1,000,000, pursuant to Utah Code Ann. § 54-13-8 and the remedies provision in R746-409-6; (3) issuance of an order, requiring PEMC to (a) come into compliance with Utah Code Ann. §§ 54-13-2 and -3 and R746-409 *et seq.* or (b) cease operation of its intrastate pipeline; and (4) other such relief as the PSC deems appropriate.²⁴

On May 15, 2018, PEMC filed a response to the DPU’s request.²⁵ PEMC’s filing did not address the specific remedies requested in the DPU’s filing.²⁶

On May 24, 2018, the DPU filed a reply noting the inadequacies of PEMC’s response and stating an intention to pursue its request for agency action before the PSC.²⁷ In this filing, the DPU asserts “PEMC’s responses are, at best, inadequate, and demonstrate an incomplete

line valve that might be required during any emergency must be inspected and partially operated at intervals not exceeding 15 months, but at least once each calendar year[.]”), but did not pursue that alleged violation in its request for agency action. *Compare*, DPU [Hearing Exhibit No. 1] at 2, ¶ 10 (Non-compliance letter to PEMC, from DPU, Nov. 21, 2016) with, *supra* n.7 at 5-6 (making no allegation concerning 49 C.F.R. § 192.745(a) and noting; “PEMC has corrected one violation found during the Audit. That violation was formerly listed as violation . . . [of] 192.745 Valve maintenance: Transmission lines[.]”).

Additionally, the DPU cited PEMC for 49 C.F.R. § 192.243, which sets forth nondestructive testing requirements. However, the DPU represented in its April 4, 2019 response that this violation is now resolved.

²⁴ *See supra* n.7 at 2.

²⁵ *See Pacific Energy & Mining Company Response to Agency Action Against Pacific Energy & Mining Company*, filed May 15, 2018. In part, PEMC claimed in this filing that it had purchased the transmission line from a third party who either provided no documentation or is unable now to provide documentation satisfying the DPU’s concerns with respect to violations 11 (welder certification) and 12 (nondestructive testing). *See id.* at 10-11. *See also infra* n.29 at 1 (“The Paradox Pipeline . . . was built in 2008 by Delta Petroleum[.] . . . In 2010[.] [PEMC] acquired the Greentown Oil and Gas field[.]”).

²⁶ *See Pacific Energy & Mining Company Response to Agency Action Against Pacific Energy & Mining Company*, filed May 15, 2018.

²⁷ *See Utah Division of Public Utilities’ Final Reply to Pacific Energy [&] Mining Company’s Response*, filed May 24, 2018.

knowledge or application of applicable pipeline regulations and requirements. The [r]esponse failed to demonstrate that the identified deficiencies had been corrected. Moreover, the [r]esponse's proposed actions are insufficient to bring PEMC into compliance with the relevant regulations. In addition, the [r]esponse contained no assertions of mitigating circumstances affecting PEMC's compliance in the past, or in the future."²⁸

On June 5, 2018, PEMC filed a motion to dismiss (Motion), claiming the PSC lacks jurisdiction over this dispute.²⁹ On June 6, 2018, PEMC filed a brief supporting its Motion.³⁰ On June 20, 2018, the DPU filed its response to PEMC's Motion.³¹ PEMC did not file a reply.³² On August 9, 2018, the PSC issued an Order denying PEMC's Motion and noticing this matter for hearing.³³ As stated in our Order:

[T]he PSC . . . has jurisdiction over intrastate pipelines within Utah. . . .PEMC's 2013-2017 PHMSA annual reports . . . directly contradict PEMC's arguments asserted in its Motion; namely, that the subject pipeline is a gas gathering line, not an intrastate natural gas transmission line. . . .PEMC is engaged in intrastate natural gas transmission starting at the outlet of PEMC's processing facility and ending at the interconnection to Williams - Northwest Pipeline, and PEMC is not operating an onshore gathering pipeline at and in between the same beginning and ending points; thus, we reject PEMC's assertion that it is operating a gathering line and not an intrastate transmission line as a basis for denying jurisdiction in this docket.³⁴

²⁸ *Id.* at 2.

²⁹ *See* Pacific Energy & Mining Company Request to Deny Agency Action Due to Lack of Jurisdiction, filed June 5, 2018. For ease of reference, we refer to this filing as PEMC's motion to dismiss (Motion).

³⁰ *See* Pacific Energy & Mining Company Supplemental Brief in Support of Lack of Jurisdiction, filed June 6, 2018.

³¹ *See* Division of Public Utilities' Response to PEMC's Request to Deny Agency Action Due to Lack of Jurisdiction and Supplemental Brief, filed June 20, 2018.

³² *See* Order Denying PEMC's Motion to Dismiss for Lack of Jurisdiction, and Notice of Hearing at 1, issued August 9, 2018.

³³ *See id.*

³⁴ *Id.* at 6, 7, 9-10.

On August 20, 2018, counsel for PEMC filed a notice of appearance.³⁵ Also, on August 20, 2018, the DPU filed a response in which it emphasized, in part: “By initiating this docket, the [DPU] sought to remedy the public safety risk resulting from PEMC’s inactions and seeks expeditious resolution to protect the public safety. The [DPU] is seeking to remedy PEMC’s noncompliance discovered in a 2016 audit - nearly two years [ago].”³⁶

On September 25, 2018, the PSC’s presiding officer held a hearing wherein the parties agreed to file with the PSC, either individually or jointly, a status report on the resolution of issues in the docket by November 23, 2018.³⁷ On November 21, 2018, the DPU filed an individual status report noting, in pertinent part, that it had not received “a draft of the revised Policy and Procedural manual [from PEMC as expected].”³⁸ PEMC did not file an individual report, and did not contradict the information filed in the DPU’s report.

On December 18, 2018, the PSC’s presiding officer held a hearing in this docket.³⁹ The DPU and PEMC appeared at the PSC’s December 18, 2018 hearing and both were represented by counsel.⁴⁰ The DPU testified that PEMC was first cited in 2016⁴¹ for 13 noncompliance issues.⁴² The DPU testified to each of the 13 violations cited and what PEMC was required to do to cure those violations.⁴³ The DPU testified PEMC had rectified 1 of the 13 violations cited

³⁵ See Notice of Appearance of Terry R. Spencer for Pacific Energy & Mining Company, filed August 20, 2018.

³⁶ DPU filing at 3, filed August 20, 2018, available at:

<https://pscdocs.utah.gov/gas/18docs/18260201/304019DPURspPEMCMot08-20-2018.pdf>.

³⁷ See Notice of Status Report Filing, issued September 26, 2018.

³⁸ Status Report from the Utah Division of Public Utilities, filed November 21, 2018.

³⁹ See Amended Notice of Hearing, issued December 4, 2018.

⁴⁰ See Transcript of December 18, 2018 Hearing at 5:11-13, 19-20.

⁴¹ See DPU Exhibit No. 1 at 1.

⁴² See *supra* n.40 at 11:10-18.

⁴³ See *id.* at 12:19-25 to 19:1-21.

(i.e., valve maintenance), leaving 12 violations outstanding.⁴⁴ The DPU later clarified that PEMC had also rectified another violation (i.e., nondestructive testing requirement) post-hearing, leaving 11 ongoing violations remaining.⁴⁵

PEMC testified that it is trying to gather the documents the DPU has requested and that it was short-handed for a while.⁴⁶ PEMC entered a copy of the papers as an exhibit, marked “Binder, Procedural Manual for Operations, Maintenance[, and] Emergencies.”⁴⁷ The DPU acknowledged receiving a large number of documents from PEMC the day before the hearing and supplemental papers on the day of the hearing.⁴⁸

Regarding the specific regulations the DPU asserted PEMC violated, the testimony was as follows:

⁴⁴ *See id.* at 30:23-25 to 31:1-2. *See also id.* at 42:22-25; 43:1-4; 78:18-25.

⁴⁵ *See supra* n.5.

⁴⁶ *See supra* n.40 at 83:14-20.

⁴⁷ *Id.* at 4. *See also id.* at 84.

⁴⁸ *See id.* at 7:7-13 (statement from DPU’s counsel); 69:8-14 (statement from DPU’s counsel); 90:9-13 (PEMC’s testimony).

1. 49 C.F.R. § 192.605(b)(8).

The DPU testified on cross-examination that “[it’s] looking mostly for documentation.... It[’s] . . . the documentation and records that we were requiring.”⁴⁹ PEMC admitted on cross-examination that it did not provide this documentation.⁵⁰

After hearing, PEMC filed a reply asserting it had cured this violation,⁵¹ but the DPU refuted PEMC’s assertion in its response supported by affidavit averring this violation remains unresolved.⁵² The DPU responded that it reviewed the manual PEMC submitted and determined it incomplete and noncompliant. According to the DPU,

...[the] manual is not specific to PEMC’s pipeline. ...[It] does not contain certain information specifically related to [PEMC’s] system[.] ...For example, [it] doesn’t address the process for how PEMC will conduct its effectiveness review. ...Th[e] . . . manual . . . contains [irrelevant information] to [PEMC’s] system . . . [and] appears . . . [to be a] cut and paste[] from another manual[.] ...[In short, the manual provided to the DPU by PEMC the day before the December 18, 2018 hearing does not cure any of the alleged violations], except for Item 12. Therefore, the . . . manual is noncompliant.⁵³

Further, regarding this specific violation, the DPU explained what PEMC needs to do to comply with the corresponding regulation.⁵⁴ According to the DPU, “PEMC has not yet done this.”⁵⁵

⁴⁹ *Id.* at 36:19, 24-25.

⁵⁰ *See id.* at 86:15-16.

⁵¹ *See supra* n.3.

⁵² *See supra* n.5.

⁵³ *Id.*, Attachment 1 at 3.

⁵⁴ *See id.*, Appendix B at 1.

⁵⁵ *Id.*

2. 49 C.F.R. § 192.605(c)(4).

The DPU testified on cross-examination that “the [required] manual . . . must include procedures . . . to provide safety when operating design limits have been exceeded.”⁵⁶ “And that’s when responding to investigating and correcting the cause of [the] unintended closures of valves or shutdowns, increase or decrease in pressure or flow rate outside normal operating limits, loss of communication, operation of any safety device and any other feasible malfunction of the component, deviation from normal operation or personal error [that] may result in a hazard to person[s] or property.”⁵⁷ “With my discussions with . . . PEMC [personnel], I was told that the line was shut in several times due to water content issues, and because of that discussion, that’s part of an abnormal operation which [PEMC] had to document and record. And there was nothing in place in [PEMC’s] procedure that documented and recorded that that was performed.”⁵⁸

PEMC testified during cross-examination that it “added language . . . [but didn’t address abnormal operations because it experienced none].”⁵⁹

After hearing, PEMC filed a reply asserting it had cured this violation,⁶⁰ but the DPU refuted PEMC’s assertion in its response supported by affidavit averring this violation is still

⁵⁶ *Supra* n.40 at 37:22-25.

⁵⁷ *Id.* at 38:1-8.

⁵⁸ *Id.* at 38:9-15.

⁵⁹ *Id.* at 86:17-24.

⁶⁰ *See supra* n.3.

unresolved.⁶¹ The DPU explained what PEMC needs to do to comply with the corresponding regulation.⁶² According to the DPU, “PEMC has not yet done this.”⁶³

3. 49 C.F.R. § 192.615(b)(2).

The DPU testified on cross-examination that “[this] paragraph [relates to] . . . training of [PEMC’s] field personnel [who] respond to an emergency. . . . [T]he training [is required] to be recorded and documented[.]”⁶⁴ PEMC admitted on cross-examination that it had failed to complete this requirement.⁶⁵

After hearing, PEMC filed a reply asserting it had cured this violation,⁶⁶ but the DPU refuted PEMC’s assertion in its response supported by affidavit averring this violation is not yet resolved.⁶⁷ The DPU explained what PEMC needs to do to comply with the corresponding regulation.⁶⁸ According to the DPU, “PEMC has not yet done this.”⁶⁹

4. 49 C.F.R. § 192.615(b)(3).

The DPU testified on cross-examination that “[this paragraph relates to] review[ing] the employee’s activities in relation to[,] if there was an emergency, how effective their training was. This [training] can be [performed via] tabletop or . . . mockup. [For example,] . . . if there was a gas leak in the middle of [PEMC’s] pipeline, how would [employees] respond[?] . . . [PEMC’s]

⁶¹ *See supra* n.5.

⁶² *See id.*, Appendix B at 1-2.

⁶³ *Id.* at 2.

⁶⁴ *Supra* n.40 at 38:18-21.

⁶⁵ *See id.* at 86:25; 87:1-8.

⁶⁶ *See supra* n.3.

⁶⁷ *See supra* n.5.

⁶⁸ *See id.*, Appendix B at 2.

⁶⁹ *Id.*

effectiveness review would [evaluate] . . . how [employees] reacted . . . and how [they could] . . . better improve th[e] process to limit. . . response time. . . There are . . . [pipeline] consortiums that [PEMC] can be a part of [that offer] mock drills, and that . . . team up with other pipeline operators[.]”⁷⁰

PEMC testified it has performed to no emergency drill.⁷¹ The DPU acknowledged PEMC had not completed this requirement because there had been no emergency.⁷²

After hearing, PEMC filed a reply asserting it had cured this violation,⁷³ but the DPU refuted PEMC’s assertion in its response supported by affidavit averring this violation remains unresolved.⁷⁴ The DPU explained what PEMC needs to do to comply with the corresponding regulation.⁷⁵ According to the DPU, “PEMC has not yet done this.”⁷⁶

5. 49 C.F.R. § 192.615(c).

The DPU testified on cross-examination that “[this] is an important aspect [of PEMC’s] emergency plan because you have to maintain . . . relationship[s] . . . with fire, police[,], and public officials.”⁷⁷

PEMC admitted on cross-examination that it had failed to complete this requirement.⁷⁸ PEMC also testified that it had not contacted the Bureau of Land Management (BLM) or the

⁷⁰ *Supra* n.40 at 39:4-13, 17-21.

⁷¹ *See id.* at 71:6-7.

⁷² *See id.* at 87:9-10.

⁷³ *See supra* n.3.

⁷⁴ *See supra* n.5.

⁷⁵ *See id.*, Appendix B at 2.

⁷⁶ *Id.*

⁷⁷ *Supra* n.40 at 39:25; 40:1-3.

⁷⁸ *See id.* at 87:23-25; 88:1-7.

Department of Transportation (DOT) concerning PEMC's emergency plan.⁷⁹ Further, PEMC acknowledged that while the DOT is addressed in its manual, the BLM is not.⁸⁰

After hearing, PEMC filed a reply asserting it had cured this violation,⁸¹ but the DPU refuted PEMC's assertion in its response supported by affidavit averring this violation remains unresolved.⁸² The DPU explained what PEMC needs to do to comply with the corresponding regulation.⁸³ According to the DPU, "PEMC has not yet done this."⁸⁴

6. 49 C.F.R. § 192.616(e), (f).

The DPU testified that no public awareness plan was available at the time of its inspection.⁸⁵ The DPU testified on cross-examination that "[this] is part of [PEMC's] public awareness program . . . to advise any nearby municipalities, school districts[,] and businesses or residents along the pipeline."⁸⁶ PEMC admitted at hearing that it had no public awareness plan in place.⁸⁷

After hearing, PEMC filed a reply asserting it had cured these violations,⁸⁸ but the DPU refuted PEMC's assertion in its response supported by affidavit averring these violations are not yet resolved.⁸⁹ The DPU explained what PEMC had done and what was still needed to be done

⁷⁹ *See id.* at 96:16-25; 97:8-10.

⁸⁰ *See id.* at 97:15-20.

⁸¹ *See supra* n.3.

⁸² *See supra* n.5.

⁸³ *See id.*, Appendix B at 3.

⁸⁴ *Id.*

⁸⁵ *Supra* n.40 at 15:21-25; 16:1-5.

⁸⁶ *Id.* at 41:1-4.

⁸⁷ *See id.* at 76:7-10.

⁸⁸ *See supra* n.3.

⁸⁹ *See supra* n.5.

to comply with the corresponding regulations.⁹⁰ According to the DPU, “PEMC has not completely resolved this Item.”⁹¹

7. 49 C.F.R. § 192.616(g).

The DPU testified on cross-examination that “[this requires PEMC] to conduct [its public awareness] program in English and . . . non-English[.] . . . [This would involve PEMC] submitting pamphlets in . . . Spanish[, for example,] to . . . [the] ‘stakeholder audience.’”⁹² Given PEMC’s admission at hearing that it had no public awareness plan, it is intuitive that PEMC also remains in violation of subsection (g).

After hearing, PEMC filed a reply asserting it had cured this violation,⁹³ but the DPU refuted PEMC’s assertion in its response supported by affidavit averring this violation is not yet resolved.⁹⁴ The DPU explained what PEMC had done and what action was still needed to comply with the corresponding regulation.⁹⁵ According to the DPU, “PEMC has not completely resolved this Item.”⁹⁶

8. 49 C.F.R. § 192.616(h).

The DPU testified that this provision requires PEMC to provide an “effectiveness review [of] their public awareness program. . . , and [PEMC has] not provided [that information].”⁹⁷

⁹⁰ *See id.*, Appendix B at 3.

⁹¹ *Id.*

⁹² *Supra* n.40 at 41:16-17, 21-23.

⁹³ *See supra* n.3.

⁹⁴ *See supra* n.5.

⁹⁵ *See id.*, Appendix B at 3.

⁹⁶ *Id.*

⁹⁷ *Supra* n.40 at 16:21-25; 17:1-2.

After hearing, PEMC filed a reply asserting it had cured this violation,⁹⁸ but the DPU refuted PEMC's assertion in its response supported by affidavit averring this violation is not yet resolved.⁹⁹ The DPU explained that placing information on PEMC's website does not resolve this issue.¹⁰⁰ According to the DPU, "PEMC has not yet completely resolved this Item."¹⁰¹

9. 49 C.F.R. § 192.706.

The DPU testified on cross-examination that "[a] leak survey . . . needs to be conducted on an annual basis."¹⁰² PEMC admitted on cross-examination that "the leak test has to be done."¹⁰³

After hearing, PEMC filed a reply asserting it had cured this violation,¹⁰⁴ but the DPU refuted PEMC's assertion in its response supported by affidavit averring this violation is still outstanding.¹⁰⁵ The DPU explained what PEMC needs to do to comply with the corresponding regulation.¹⁰⁶ According to the DPU, "PEMC has not yet done this."¹⁰⁷

10. 49 C.F.R. § 192.751.

The DPU testified that if a leak was identified along the gas line, the operator is required to take certain steps according to its procedure to prevent any accidental ignition.¹⁰⁸ An operator must have an accidental ignition prevention procedure in place and document that the steps have

⁹⁸ See *supra* n.3.

⁹⁹ See *supra* n.5.

¹⁰⁰ See *id.*, Appendix B at 3.

¹⁰¹ *Id.*

¹⁰² *Supra* n.40 at 42:15-16.

¹⁰³ *Id.* at 94:9-10.

¹⁰⁴ See *supra* n.3.

¹⁰⁵ See *supra* n.5.

¹⁰⁶ See *id.*, Appendix B at 4.

¹⁰⁷ *Id.*

¹⁰⁸ See *supra* n.40 at 17:18-21.

been completed to ensure the procedure is being followed.¹⁰⁹ PEMC admitted at hearing that it failed to provide documentation of steps in place to minimize accidental ignition.¹¹⁰

After hearing, PEMC filed a reply asserting it had cured this violation,¹¹¹ but the DPU refuted PEMC's assertion in its response supported by affidavit averring this violation remains unresolved.¹¹² The DPU explained what PEMC needs to do to comply with the corresponding regulation.¹¹³ According to the DPU, "PEMC has not yet done this."¹¹⁴

11. 49 C.F.R. §§ 192.227-229.

The DPU testified on cross-examination that "[this provision requires PEMC to provide] the qualification of welders and . . . welders' procedures . . . use[d] to weld the pipeline."¹¹⁵ PEMC testified that it does not "have . . . the qualification[s] of the individual welders. When [PEMC] contacted [the company that should have the information, PEMC was told the company doesn't] keep records that old[.]"¹¹⁶

After hearing, PEMC filed a reply asserting it had cured these violations,¹¹⁷ but the DPU refuted PEMC's assertion in its response supported by affidavit averring these violations are not

¹⁰⁹ *See id.* at 17:21-24.

¹¹⁰ *See id.* at 79:11-19.

¹¹¹ *See supra* n.3.

¹¹² *See supra* n.5.

¹¹³ *See id.*, Appendix B at 4.

¹¹⁴ *Id.*

¹¹⁵ *Supra* n.40 at 43:18-20.

¹¹⁶ *Id.* at 72:7-11.

¹¹⁷ *See supra* n.3.

yet resolved.¹¹⁸ The DPU explained what PEMC needs to do to comply with the corresponding regulations.¹¹⁹ According to the DPU, “PEMC has not yet done this.”¹²⁰

12. 49 C.F.R. § 192.243.

The DPU testified on cross-examination that “[this requires PEMC to provide] nondestructive testing or . . . radiographic film or . . . x-rays of the pipeline for each weld that was performed.”¹²¹ At hearing, PEMC admitted it had not provided documentation of x-rays of each weld along PEMC’s pipeline.¹²²

After hearing, PEMC filed a reply asserting it had cured this violation,¹²³ and the DPU concurred.¹²⁴

The DPU requested remedies more specific at hearing than those stated in its request for agency action. At hearing, the DPU requested the following relief: 1) an order requiring PEMC to cure the violations within 30-60 days;¹²⁵ 2) a civil penalty of \$100,000;¹²⁶ and 3) a suspension of PEMC’s pipeline operations.¹²⁷ The DPU testified that it is requesting a \$100,000 civil penalty to ensure that “public safety [is] . . . the highest priority” and, to ensure that priority is carried out, that “[PEMC] operate[s] [its] pipeline using techniques that do not pose a risk . . . to life or property.”¹²⁸ The DPU testified that because PEMC has not provided the requested

¹¹⁸ See *supra* n.5.

¹¹⁹ See *id.*, Appendix B at 4.

¹²⁰ *Id.*

¹²¹ *Supra* n.40 at 44:6-8.

¹²² See *id.* at 79:20-25.

¹²³ See *supra* n.3.

¹²⁴ See *supra* n.5, Appendix B at 5.

¹²⁵ See *supra* n.40 at 28:24-25; 29:1-4. See also *id.* at 45:16-22; 47:11-18.

¹²⁶ See *id.* at 30:12-15. See also *id.* at 45:16-22.

¹²⁷ See *id.* at 31:3-6. See also *id.* at 45:16-22.

¹²⁸ *Id.* at 30:12-22.

“records and documentation . . . we deem [the fine amount appropriate] . . . because the safety of human life and property [are] at risk.”¹²⁹ The DPU testified that without adequate records it cannot properly assess the danger posed by the pipeline facility.¹³⁰

The DPU testified that it is also requesting suspension of PEMC’s pipeline operations, consistent with Title 54 of the Utah Code Ann. and Utah Admin. Code R746-409-6(B), because PEMC “is operating with techniques that are hazardous to [human] life and property.”¹³¹ The DPU testified that “[t]his pipeline is near Moab. . . . There are a few businesses that are within the vicinity of [PEMC’s] safety buffer zone of the pipeline. . . . During our field inspection [the DPU found] Canvas Up Campground . . . near [the] safety buffer zone. . . . [T]here’s a Moab airport. There is a gas station that’s near that area. And[,] because it’s in Moab, there’s a high volume of outdoor recreational vehicles that . . . come across the [right-of-way] of [PEMC’s] pipeline.”¹³²

Regarding shutting in the line, PEMC testified that Westco, another pipeline operator, which produces about 1400 barrels of oil a day, obtained a court order that would make shutting in the line difficult.¹³³ PEMC testified that “if the pipeline is shut down, both the BLM and SITLA use[] the royalties. And the field can’t produce without shipping the natural gas off.”¹³⁴ PEMC also testified that it “loses money every month.”¹³⁵

¹²⁹ *Id.* at 48:1-6.

¹³⁰ *See id.* at 47:20-25; 48:1-6; 55:15-20.

¹³¹ *Id.* at 31:3-18.

¹³² *Id.* at 40:3, 15-24.

¹³³ *See id.* at 98:18-25; 99:1-9. *See also id.* at 108:1-4.

¹³⁴ *Id.* at 108:4-6. According to PEMC’s testimony, “the total amount of natural gas that goes through this pipeline is about 200 MCF per day, which is less than an average well in Uintah County. So there’s hardly any gas in this pipeline. [PEMC] do[esn’t] have that much gas.” *Id.* at 108:7-11.

¹³⁵ *Id.* at 65:20-21.

Concerning the requested length of the suspension, the DPU testified that it should be long enough to allow PEMC to correct the violations cited.¹³⁶ Based on the DPU's testimony, PEMC's timeliness in curing the violations should have a direct impact on the length of the recommended suspension.¹³⁷

On cross-examination, the PSC's administrative law judge asked PEMC "what can you do to assure the [PSC] that a suspension is not necessary?"¹³⁸ PEMC testified that "the leak test has to be done. And we know that [PEMC] doesn't have any backup . . . if there's an emergency. . . , and [PEMC is] trying to get [help with these things via a third-party] contract[.]"¹³⁹ The PSC's administrative law judge also asked PEMC: "What can you do to assure the [PSC] that you are operating a safe pipeline today?"¹⁴⁰ PEMC responded, "we conduct . . . outside cathodic review. We conduct outside valve maintenance. We bring in . . . outside corrosion control for internal corrosion. We run a cleaning pig every quarter And we operate in a safe manner. . . [W]e haven't had any leaks. We haven't had any emergencies. It's not saying it never will happen. But we recognize we have to put down a baseline for the leak detection to show that there [are] no leaks [going] forward."¹⁴¹

No testimony was offered that PEMC had a prior history of violations that predate those alleged in the DPU's request for agency action filed with the PSC on April 12, 2018.

¹³⁶ See generally, *id.* at 59:10-15.

¹³⁷ See generally, *id.* at 59:16-19.

¹³⁸ *Id.* at 91:8-9.

¹³⁹ *Id.* at 94:9-16. According to PEMC's testimony, it is in the process of hiring a "contractor to take it over." *Id.* at 109:15. Once hired, the third-party contractor will "run and maintain th[e] [pipe]line." *Id.* at 113:8-9.

¹⁴⁰ *Id.* at 94:25; 95:1.

¹⁴¹ *Id.* at 95:2-7, 10-14.

After the hearing, PEMC filed a copy of a May 16, 2016 Order Granting Motion for Preliminary Injunction by the Seventh Judicial District Court in Case No. 160700016. This Order states, in part: “. . . [PEMC is] not allowed to shut in the lateral pipeline . . . without seeking leave of the court unless there is an immediate threat to the public safety.”¹⁴²

Findings of Fact and Conclusions of Law

As referenced above, PEMC filed a response after the 20-day deadline set forth in our January 18, 2019 order expired, and the DPU filed a reply to PEMC’s response on April 4, 2019. The DPU’s response contends nothing has changed since the PSC held a hearing in this docket on December 18, 2018, except for compliance with Item 12, and this position is supported by an affidavit of a pipeline engineer who also testified for the DPU at the December 18, 2018 hearing; thus, the DPU stands by its recommendations that the PSC fine PEMC in the amount of \$100,000 and order PEMC to suspend its intrastate pipeline operation.

Based on the DPU’s complaint, PEMC’s responses thereto, the testimony at hearing, and the parties’ post-hearing filings, we find that, as of our hearing held on December 18, 2018, PEMC failed to cure twelve (12) violations of 49 C.F.R. § 192 governing pipeline safety, asserted by the DPU to violate Title 54, Chapter 13 of the Utah Code, and the PSC’s Pipeline Safety Rule R746-409.¹⁴³ We also find that since the hearing occurred in this docket, PEMC has corrected one of the twelve violations (i.e., Item 12), leaving eleven unresolved violations remaining.

¹⁴² Order Granting Motion for Preliminary Injunction at 3, ¶ 2, dated May 16, 2016 (Seventh Judicial District Court, Grand County; Case No. 160700016). A copy of the order, which was filed by PEMC in this docket, is available at: <https://pscdocs.utah.gov/gas/18docs/18260201/306112MiscCorresPEMC1-2-2019.pdf>.

¹⁴³ See *supra* n.2.

Pursuant to Utah Code Ann. § 54-13-2, the PSC is responsible for establishing and carrying out safety standards for intrastate pipelines. Further, in accordance with this authority, the PSC makes and enforces pipeline safety rules required by federal law. *See* Utah Code Ann. § 54-13-2. One of the rules the PSC is required to adopt and enforce relates to an intrastate pipeline’s responsibility to maintain and submit reports to enable the PSC to determine whether the pipeline is in compliance with applicable statute and rules. *See* Utah Code Ann. § 54-13-3(2)(a). Related to this, the PSC is also required to establish rules to ensure intrastate pipelines maintain a plan for inspection and maintenance of each pipeline facility that is available upon the PSC’s request. *See* Utah Code Ann. § 54-13-3(2)(b).

Similarly, pursuant to the PSC’s rulemaking authority set forth in Utah Code Ann. § 54-13-3, the PSC has established R746-409-1 of the Utah Administrative Code, which adopts and incorporates by reference 49 C.F.R. §§ 190, 192, among other C.F.R. provisions, addressing pipeline safety. *See* Utah Admin. Code R746-409-1. Importantly, as it relates to this docket, the PSC’s authority extends to finding pipeline safety violations under 49 C.F.R. § 192 and imposing corrective action orders for such violations, pursuant to 49 C.F.R. § 190,¹⁴⁴ including ordering a corrective action.¹⁴⁵ As it relates to ordering a corrective action, 49 C.F.R. § 190.233(a) states: “Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other appropriate action.”¹⁴⁶ Further, as defined in 49 C.F.R. § 192.3, a “[p]ipeline facility” includes “new and existing pipelines, rights-of-way, and any

¹⁴⁴ This provision is available at: <https://www.law.cornell.edu/cfr/text/49/part-190/subpart-B>.

¹⁴⁵ This provision is available at: <https://www.law.cornell.edu/cfr/text/49/190.233>.

¹⁴⁶ *Id.*

equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.”

The DPU’s request for agency action and its testimony at hearing requested a hazardous facility order pursuant to Utah Administrative Code R746-409-6.¹⁴⁷ This rule provides: “[i]f the [PSC] finds, after notice and a hearing, that a particular intrastate pipeline facility is hazardous to life or property, it may issue a Hazardous Facility Order requiring the owner or operator of the intrastate pipeline facility to take corrective action. ...Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action as may be appropriate.” Utah Admin. Code R746-409-6(B). As previously determined in our August 9, 2018 Order, “PEMC is operating an intrastate natural gas transmission pipeline[.]”¹⁴⁸ Thus, we have jurisdiction over its facility.¹⁴⁹

¹⁴⁷ See *supra* n.7 at 2. See also *supra* n.40 at 31:3-10.

¹⁴⁸ *Supra* n.32 at 8.

¹⁴⁹ See *id.* at 6.

A. *Whether PEMC violated 49 C.F.R. § 192.*

As stated above, the DPU asserts PEMC violated 12 separate provisions of 49 C.F.R.

§ 192. *See supra* at 2-4. Based on the DPU's request for agency action alleging 12 violations of 49 C.F.R. § 192, and the testimony at hearing, we find PEMC violated the following 49 C.F.R.

§ 192 provisions:

1. 49 C.F.R. § 192.605(b)(8), for failing to establish and periodically review its operations and maintenance manuals, and to document and record those manuals for inspection by the DPU.¹⁵⁰
2. 49 C.F.R. § 192.605(c)(4), for failing to perform reviews of any abnormal conditions that have existed in the pipeline, and to document and record that information for inspection by the DPU.¹⁵¹
3. 49 C.F.R. § 192.615(b)(2), for failing to train its personnel about its emergency plan, and to document and record that training for inspection by the DPU.¹⁵²
4. 49 C.F.R. § 192.615(b)(3), for failing to review its employees' activities in an emergency planning mock drill or other exercise, and to document and record that training for inspection by the DPU.¹⁵³
5. 49 C.F.R. § 192.615(c), for failing to maintain liaisons with emergency (e.g., fire, police, and public) officials, and to document and record those meetings for inspection by the DPU.¹⁵⁴
6. 49 C.F.R. § 192.616(e), (f), for failing to establish a public awareness program for its operator to contact cities, schools, businesses, and residents along its pipeline and right-of-way, and to document and record that program for inspection by the DPU.¹⁵⁵

¹⁵⁰ *See supra* n.40 at 12:24-25; 13:1-2.

¹⁵¹ *See id.* at 13:18-22.

¹⁵² *See id.* at 14:10-15.

¹⁵³ *See id.* at 14:21-25; 15:1-3.

¹⁵⁴ *See id.* at 15:8-17.

¹⁵⁵ *See id.* at 15:22-25; 16:1-5.

7. 49 C.F.R. § 192.616(g), for failing to provide its public awareness program in a language, other than English, which is understood in the area that the facility operates, and to document and record that program for inspection by the DPU.¹⁵⁶
8. 49 C.F.R. § 192.616(h), for failing to provide an effective review of its public awareness program, and to document and record that information for inspection by the DPU.¹⁵⁷
9. 49 C.F.R. § 192.706, for failing to perform an annual leak survey along its transmission line, and to document and record that information for inspection by the DPU.¹⁵⁸
10. 49 C.F.R. § 192.751, for failing to take steps to minimize accidental ignition of gas along its pipeline, and to document those measures for inspection by the DPU.¹⁵⁹
11. 49 C.F.R. §§ 192.227-229, for failing to set forth qualifications of and limitations for welders and welding operators, and document that information for inspection by the DPU.¹⁶⁰
12. 49 C.F.R. § 192.243 for failing to keep nondestructive testing records, and to make those records available for inspection by the DPU.¹⁶¹

B. Whether PEMC has Cured the Violations.

PEMC testified to having provided a manual to the DPU the day before hearing.¹⁶² We provided PEMC an opportunity post-hearing to address whether its manual cures the violations alleged. Well after that deadline elapsed, PEMC filed a response asserting it had cured all the violations alleged by the DPU. The DPU replied and averred through its December 18, 2018

¹⁵⁶ See *id.* at 16:10-16.

¹⁵⁷ See *id.* at 16:21-25; 17:1-2.

¹⁵⁸ See *id.* at 17:4-11.

¹⁵⁹ See *id.* at 17:17-24; 18:1-2.

¹⁶⁰ See *id.* at 18:4-10.

¹⁶¹ See *id.* at 18:24-25; 19:1-5.

¹⁶² See *id.* at 69:8-14. See also *id.* at 7:7-13 (DPU's counsel referencing the manual).

witness that “[o]nly Item 12, which concerns nondestructive testing . . . has been resolved to the [DPU’s] satisfaction.”¹⁶³ The DPU also stated: “The remaining 11 [i]tems . . . remain unresolved[.]”¹⁶⁴ Based on the evidence presented during the hearing and post-hearing, we find PEMC has failed to cure all but Item 12 above and, thus, PEMC remains in violation of 49 C.F.R. § 192 concerning Items 1-11 listed above.

C. Whether, or to What Extent, PEMC Should be Fined.

An intrastate pipeline operator who is determined by the PSC, after notice and opportunity for hearing, to have violated any provision of Title 54, Chapter 13 of the Utah Code, or any of the related rules set forth in Utah Admin. Code R746-409 governing pipeline safety, may be fined \$100,000 for each violation, per day, or no more than \$1,000,000 for any series of violations. *See* Utah Code Ann. § 54-13-8(1)-(2). In determining the amount of penalty, the PSC must consider:¹⁶⁵

(a) the nature, circumstances, and gravity of the violations;

In considering the nature, circumstances, and gravity of the violations, we note that the DPU began non-compliance action against PEMC in 2016¹⁶⁶ and, since that time, based on the record we are able to find that PEMC has corrected only two of thirteen violations.¹⁶⁷ In addition, the gravity of the violations weigh heavy here, as they all involve pipeline safety issues, which, if left unresolved, could lead to catastrophic consequences involving human life and

¹⁶³ *Supra* n.5, Attachment 1 at 2.

¹⁶⁴ *Id.*

¹⁶⁵ *See* Utah Code Ann. § 54-13-8(4)(a)-(b)(i)-(vi).

¹⁶⁶ *See* Letter from Chien Hwang, Pipeline Safety Engineer, to Dan Green, Vice President of Operations, PEMC (Nov. 21, 2016). This letter was admitted at hearing as “DPU Exhibit No. 1.”

¹⁶⁷ *See supra* n.5 at 4. *See also supra* at 21.

property.¹⁶⁸ While PEMC argues the violations are only technical, recordkeeping violations, the violations at issue are the legal requirements for PEMC to demonstrate safe operations.

Therefore, we conclude PEMC's violations have grave health and safety implications.

(b) with respect to the person found to have committed the violations:

(i) the degree of culpability: This is uncontested, but for PEMC's claim that it purchased the transmission line from a third party who either provided no documentation or is unable now to provide documentation satisfying the DPU's concerns with respect to violation 11 (welder certification).¹⁶⁹

(ii) any history of prior violations: The record does not support a prior history of violations,¹⁷⁰ but the record does support that non-compliance is a long-standing issue with PEMC.¹⁷¹

(iii) the effect on the person's ability to continue to do business: At hearing, PEMC claimed it was operating at a loss every month.¹⁷² The DPU responds that it took this information into account when recommending the proposed civil penalty amount of \$100,000.¹⁷³

(iv) any good faith in attempting to achieve compliance: With the exception of PEMC engaging a contractor to perform valve maintenance,¹⁷⁴ providing a manual to the DPU the day before the hearing,¹⁷⁵ and satisfying Item 12 to the DPU's satisfaction (and partially but not fully satisfying

¹⁶⁸ See, e.g., *supra* n.40 at 55:19-20.

¹⁶⁹ See *supra* at 16.

¹⁷⁰ See *supra* at 6.

¹⁷¹ See *supra* at 2-4.

¹⁷² See *supra* n.40 at 65:20-21. PEMC testified that "[t]he pipeline is run at loss . . . because [PEMC is under] a court order. [PEMC was] hoping to drill some more wells and increase production, [but] that hasn't happened." *Id.* at 113:13-15.

¹⁷³ See *supra* n.5 at 5.

¹⁷⁴ See *supra* at 8, 19.

¹⁷⁵ See *supra* at 8.

Items 6, 7, and 8), the record is devoid of any evidence of good faith in attempting to achieve compliance. Indeed, as noted above, PEMC was given the opportunity post-hearing to file a status report identifying the alleged violations asserted by the DPU it has cured to date and its schedule for curing all remaining alleged violations; however, PEMC failed to file any such report in a timely manner, which may evince or otherwise reflect PEMC's disregard for important regulatory safeguards intended to protect itself, its employees, and the public generally. Further, while PEMC testifies to having provided a manual to the DPU the day before hearing, the DPU responded that it reviewed the manual and determined it incomplete and noncompliant. According to the DPU, the manual "is not specific to PEMC's pipeline. ...[It] does not contain certain information specifically related to [PEMC's] system[.] ...For example, [it] doesn't address the process for how PEMC will conduct its effectiveness review. ...Th[e] . . . manual . . . contains [irrelevant information] to [PEMC's] system . . . [and] appears . . . [to be a] cut and paste[] from another manual[.] ...[In short, the manual does not cure the alleged violations], except for Item 12."¹⁷⁶ Thus, we find the manual unavailing as evidence of PEMC's good faith except for satisfaction of Item 12.

(v) the person's ability to pay the penalty: (See (iii) above).

(vi) any other matter, as justice may require: The DPU and the PSC have given PEMC significant time to come into compliance or to propose a plan for coming into compliance.

However, we find that PEMC has failed in both regards. Further, we find unavailing and deeply concerning from a public, health, safety, and welfare perspective, PEMC's argument that we

¹⁷⁶ *Supra* n.5, Attachment 1 at 3.

essentially overlook its pipeline safety violations in favor of concerns over lost royalties.

Therefore, we conclude that fairness and justice weigh against PEMC and weigh heavily in favor of invoking the penalty proposed.

Based on our consideration of all the factors above, as well as our prior Order,¹⁷⁷ we conclude that a fine of \$100,000 should be assessed against PEMC.

D. Whether PEMC's Pipeline Operations Should be Suspended.

As set forth above, the PSC may issue a hazardous facility order “if the [PSC] finds, after notice and a hearing, that a particular intrastate pipeline facility is hazardous to life or property[.]” Utah Admin. Code R746-409-6(B).

(a) whether PEMC was provided notice and a hearing:

The DPU's request for agency action cited the rule on hazardous facilities, and its testimony at hearing expressly requested a hazardous facility order from the PSC.¹⁷⁸ The PSC held a hearing in this matter on December 18, 2018¹⁷⁹ at which PEMC was afforded an opportunity to put on testimony and cross-examine the DPU's witnesses.¹⁸⁰ Further, the PSC extended additional opportunity to PEMC post-hearing to respond to the DPU's request.¹⁸¹ Therefore, we find that PEMC was given adequate notice and opportunity in this docket to respond to the DPU's requested suspension and, more specifically, a hazardous facility order.

(b) whether PEMC's facility is hazardous to life or property:

¹⁷⁷ See *supra* n.2.

¹⁷⁸ See *supra* n.7 and n.40 at 31:5-18.

¹⁷⁹ See *supra* n.1.

¹⁸⁰ See *supra* at 7.

¹⁸¹ See *supra* at 1, 20.

The DPU testified that suspension is appropriate because “[PEMC] is operating [its intrastate pipeline facility] with techniques that are hazardous to life and property.”¹⁸² The DPU testified that without adequate records it cannot adequately assess the danger posed by the pipeline facility.¹⁸³ Further, the DPU testified that “[t]his pipeline is near Moab. . . . There are a few businesses that are within the vicinity of [PEMC’s] safety buffer zone of the pipeline. . . . During our field inspection [the DPU found] Canvas Up Campground . . . near [the] safety buffer zone. . . . [T]here’s a Moab airport. There is a gas station that’s near that area. And, because it’s in Moab, there’s a high volume of outdoor recreational vehicles that . . . come across the [right-of-way] of [PEMC’s] pipeline.”¹⁸⁴ While PEMC argues the violations are only technical, recordkeeping violations, the violations at issue are the legal requirements for PEMC to demonstrate safe operations.

Accordingly, based on the DPU’s testimony above, and consistent with Utah Admin. Code R746-409-6(F), we find that PEMC’s violations create a facility that is hazardous to life or property. *See* Utah Admin. Code R746-409-6(F)(1).

Consistent with Utah Admin. Code R746-409-6(F)(2), we find the relevant facts that form the basis for our finding that the pipeline is hazardous to life or property are set forth above. Further, we find PEMC has failed to demonstrate any reasonable justification for not suspending its pipeline operation.

¹⁸² *See supra* n.40 at 31:16-18. *See also id.* at 47:20-25; 48:1-6.

¹⁸³ *See id.* at 47:20-25; 48:1-6; 55:15-20.

¹⁸⁴ *Id.* at 40:3, 15-16, 18-24.

The legal bases for our order, as required by Utah Admin. Code R746-409-6(F)(3), include Utah Code Ann. § 54-13-3 (rules for natural gas pipeline safety), Utah Admin. Code R746-409-6 (remedies for intrastate pipeline safety violations), and the 11 remaining unresolved pipeline safety violations under 49 C.F.R. § 192. *See supra* at 21-22.

Consistent with Utah Admin. Code R746-409-6(F)(4), the nature and description of the particular corrective action required is as follows: PEMC shall suspend its pipeline operation until it demonstrates to the PSC that it has materially remedied the violations in its control. We expect PEMC to consult with the DPU prior to making that filing.

Lastly, as required by Utah Admin. Code R746-409-6(F)(5), PEMC shall suspend its pipeline operation within sixty (60) days of this order, and PEMC may not recommence operation until it successfully petitions the PSC to discontinue the order to cease operations. We allow this lengthy period prior to suspending operations to give PEMC the opportunity to notify its business partners and allow them to make necessary arrangements.

ORDER

Based on the foregoing, we issue the following Hazardous Facility Order:

- A. Within sixty (60) days of this order, PEMC shall cease operation of its pipeline and it may not recommence operation until it successfully petitions the PSC to discontinue the order to cease operations; and
- B. PEMC shall pay a civil penalty in the amount of \$100,000, payable to the State of Utah, within 120 days of the date of this order.

DATED at Salt Lake City, Utah, April 10, 2019.

/s/ Melanie A. Reif
Presiding Officer

Approved and confirmed April 10, 2019, as the Order of the Public Service Commission
of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#307555

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this written order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on April 10, 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

Erika Tedder (etedder@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