

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**



**Coyote Creek Mining Company, L.L.C.
Permit NACC-1302
Application**

Case No. RC-13-850

OAH File No. 20140505

ORDER ON LATE-FILED EXHIBITS

On February 6, 2015, counsel for Casey Voigt (“Voigt”) submitted a request to have two aerial infrared photographs of the permit area and the Public Service Commission’s May 16, 2013, Coyote Creek Alluvial Valley Floor Study Investigative Report admitted into the record as late-filed exhibits. The documents sought to be admitted as late-filed exhibits are documents that had been requested by Mr. Voigt prior to the hearing, but due to an oversight, were not disclosed to Mr. Voigt until the final day of the hearing on January 2, 2015. At the hearing, the parties agreed that after Mr. Voigt had an opportunity to examine these documents, a determination would be made as to whether the documents should be submitted as late-filed exhibits.

In addition to requesting that the exhibits be admitted as late-filed exhibits, Mr. Voigt further requests that he be afforded the opportunity to submit affidavits from his experts as rebuttal to the late-filed exhibits since he did not have an opportunity for his experts to review the documents and respond to them at the hearing. Mr. Voigt proposes that Coyote Creek Mining Company, L.L.C. (“Coyote Creek”) and Public Service Commission (“PSC”) advisory counsel then be allowed to cross-examine the affiants or submit their own responsive affidavits or filing.

On February 9, 2015, counsel for Coyote Creek responded to Mr. Voigt’s request. Coyote Creek does not oppose submission of the infrared photographs or the May 16th report into

the record as late-filed exhibits. Coyote Creek does object to allowing Mr. Voigt to submit affidavits from his expert witnesses to address the exhibits.

Oral argument on Mr. Voigt's request was held telephonically on February 11, 2015, at 3:00 p.m. Derrick Braaten appeared on behalf of Mr. Voigt. J.J. English was present with Mr. Braaten but did not participate in the argument. Brian Bjella appeared on behalf of Coyote Creek. Blaine Johnson was present with Mr. Bjella but did not participate in the argument. Illona Jeffcoat Sacco represented PSC advisory staff. Jim Deutsch was also present on behalf of advisory staff and participated briefly in the argument.


Having considered the written submissions of the parties, the arguments presented at the oral argument, and the applicable statutory provisions and administrative rules, it is hereby ORDERED that:

1. The two infrared photographs shall be admitted into the record as late-filed exhibits to be marked as Voigt Exhibit 18 and Voigt Exhibit 19. The Public Service Commission's May 16, 2013, Coyote Creek Alluvial Valley Floor Study Investigative Report shall be admitted into the record as a late-filed exhibits to be marked as Voigt Exhibit 20.
2. Mr. Voigt shall have until 5:00 p.m. on February 20, 2015, to file any affidavits from his expert witnesses as rebuttal to the referenced late-filed exhibits. The affidavits shall be limited in scope and address only the content of the late-filed exhibits identified as Voigt Exhibits 18-20. Information contained in the affidavits beyond the scope of the late-filed exhibits shall not be considered. Mr. Voigt may submit affidavits only from those expert witnesses that testified on his behalf at the public hearing in this matter.

3. Coyote Creek shall have until 5:00 p.m. on February 27, 2015, to file an affidavit from any of its witnesses, or other responsive document, to address any affidavits submitted by Mr. Voigt's expert witnesses. Alternatively, within this time-frame, Coyote Creek may seek leave to cross-examine any expert witness of Mr. Voigt who has submitted an affidavit.
4. PSC advisory staff may at any time prior to 5:00 p.m. on February 27, 2015, submit an affidavit from any appropriate staff member addressing the extent to which any of the late-filed exhibits (Voigt Exs. 18-20) were relied upon, if at all, in determining whether to issue Permit NACC-1302.

Dated at Bismarck, North Dakota, this 12th day of February 2015.

State of North Dakota
Public Service Commission

By: 

Wade C Mann
Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501
Telephone: (701) 328-3260

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Coyote Creek Mining Company
Permit NACC-1302
Application

Case No. RC-13-850
OAH File No. 20140505

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the **ORDER ON LATE-FILED EXHIBITS** was mailed, inside mail, at the State Capitol, on the 12 day of February, to:

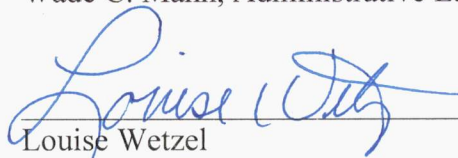
Illona Jeffcoat-Sacco
Executive Secretary
Public Service Commission
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0480

and that true and correct copies of the above document was mailed, regular mail, on the 12 day of February 2015, to

Brian Bjella
Crowley Fleck
P O Box 2798
Bismarck, ND 58502-2798

Derrick Braaten
Baumstark Braaten
109 North 4th Street – Suite 100
Bismarck, ND 58501

OFFICE OF ADMINISTRATIVE HEARINGS
Wade C. Mann, Administrative Law Judge



Louise Wetzel