

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA

Coyote Creek Mining Company, L.L.C.
Renewal No. 1, Permit NACC-1302
Revision No. 9, Permit NACC-1302
Applications

Case No. RC-19-189
Case No. RC-19-190

**COYOTE CREEK MINING COMPANY, L.L.C.'S OPPOSITION TO
MOTION TO CONTINUE FORMAL HEARING**

[¶1] Coyote Creek Mining Company, L.L.C. (“CCMC”) filed an Application for Renewal of Permit to Engage in Surface Coal Mining and Reclamation Operations (“Renewal Application”) on May 23, 2019 (Docket No. 1 in Case No. RC-19-189) and an Application for Revision of Permit to Engage in Surface Coal Mining and Reclamation Operations (“Revision Application”) on May 20, 2019 (Docket No. 1 in Case No. RC-19-190. (hereinafter collectively referred to as the “Applications”). Both Applications relate to Coyote Creek’s request to renew Surface Coal Mining Permit No. NAAC-1302 (“Permit”) to allow Coyote Creek to continue to operate its mine within the existing permit area until October 22, 2024. (Docket No. 2 in Case No. RC-19-189 and Docket No. 4 in Case No. RC-19-190). The mine includes lands that Casey Voigt and Julie Voigt (“Voigts”), with the assistance of counsel, leased to an affiliate of CCMC for coal mining.

[¶2] The North Dakota Public Service Commission (“PSC”) issued a Notice of Receipt of Renewal and Revision Applications on July 10, 2019. (Docket No. 2 in Case No. RC-19-189 and Docket No. 4 in Case No. RC-19-190). Pursuant to N.D. Cent. Code § 38-14.1-18, the Voigts exercised their right to provide written comments and objection to the Applications on August 26, 2019 and requested an informal conference. Typically, an informal conference must be held within thirty days of the request for informal conference but CCMC stipulated with the Voigts and PSC

advocacy staff to all the informal conference to take place after the thirty-day deadline. (Docket No. 5 in Case No. RC-19-189 and Docket No. 10 in Case No. RC-19-190). The informal conference was eventually held on October 8, 2019 and the Commission approved CCMC's Applications on October 21, 2019. (Docket No. 60 in Case No. RC-19-189 and Docket No. 68 in Case No. RC-19-190). The Voigts, through counsel, filed a Formal Hearing Request on November 20, 2019, to address their concerns about reclamation, reclamation liability, dust control, water erosion, alluvial valley floors, and road closures and access, the same issues addressed at the informal conference on October 8th. (Docket No. 64 in Case No. RC-19-189 and Docket No. 75 in Case No. RC-19-190) The formal hearing is currently set to commence on December 16, 2019.

[¶3] Counsel for the Voigts are now requesting a continuance, claiming that they will have inadequate time to prepare for the formal hearing that they requested. The basis of their request appears to be the fact that they have a trial scheduled to begin on December 9, 2019, that could possibly last until December 12, 2019. They note that the notice of this trial was issued on August 20, 2018. Counsel for the Voigts were aware of this trial date when the Commission approved CCMC's Applications on October 21, 2019, nearly two months before the upcoming formal hearing date. They were aware of the trial date when they filed their request for formal hearing on November 20, 2019, nearly a month before the hearing date and a month after their earliest opportunity to file the request. Despite this knowledge, counsel for the Voigts incredibly make claim that they will be prejudiced by the December 16th hearing date because "[a]t best" they will only have three days to prepare. Nothing prevented the Voigts from beginning to prepare nearly two months ago, after the Commission approved the Applications or even nearly a month ago when they filed their Formal Hearing Request. Nobody has prevented counsel for the Voigts from preparing for the hearing prior to December 13, 2019.

[¶4] The topics identified in the Formal Hearing Request and listed in the Notice of Formal Hearing are the same topics that the Voigts identified and presented at the informal conference on October 8, 2019. These are not new issues. The Voigts now have three counsel of record on this case and have had the ability to prepare for the upcoming hearing over the last two months. Their argument that they are prejudiced because they only have three days to prepare for their requested hearing is disingenuous and incredibly misleading. To the extent that they intend to wait until December 13th to prepare as they suggest in their request, they will have created their own prejudice.

[¶5] N.D. Cent. Code § 38-14.1-30(3)(a) provides that the hearing must take place within thirty days of the Voigts' formal request. The Voigts knew of the statutory timing requirement when they requested the formal hearing and have had the ability to prepare for the upcoming hearing since at least that date. All of the parties have busy calendars and the statutory requirements apply to all parties. There is no prejudice to any party and the current hearing date should stand.

Dated this 9th day of December, 2019.

Respectfully submitted,

Coyote Creek Mining Company, L.L.C.

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