

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

Coyote Creek Mining Company, LLC  
Renewal 1 to Permit NACC-1302  
Application

Case No. RC-19-189

Coyote Creek Mining Company, LLC  
Revision 9 to Permit NACC-1302  
Application

Case No. RC-19-190

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**ORDER DENYING MOTION TO CONTINUE FORMAL HEARING**

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On May 20 and 22, 2019, Coyote Creek Mining Company, LLC (CCMC) filed with the Public Service Commission (Commission) applications for Revision No. 9 and Renewal No. 1 to Surface Coal Mining Permit NACC-1302 for its Coyote Creek Mine south of Zap in Mercer County.

Casey and Julie Voigt (Voigts) requested an informal conference on the revision and renewal applications. The informal conference was held on October 8, 2019. On October 21, 2019, the Commission conditionally approved Revision No. 9, subject to the right of any person that is or may be adversely affected to request a formal hearing, and approved Renewal No. 1.

On November 20, 2019, the Voigts filed a request for a Formal Hearing with the Commission. The Voigts' request included concerns regarding reclamation, reclamation liability, dust control, water erosion, alluvial valley floors, and road closures and access.

On November 21, 2019, the Commission issued a Notice of Formal Hearing scheduling the hearing to commence at 9:00 a.m. on December 16, 2019 in the Commission's Hearing Room in the State Capitol Building.

On December 6, 2019, the Voigts filed a Motion to Continue Formal Hearing. The Voigts' motion requests that the hearing be postponed until either December 19 or December 20,

2019. In the motion, the Voigt's legal counsel, Attorney Derrick Braaten, states he and attorney JJ England will be unable to adequately prepare for this hearing due to a previously scheduled four-day jury trial beginning December 9, 2019 in LaMoure County. Mr. Braaten's supporting declaration indicates that the LaMoure County trial was scheduled on August 20, 2018 and he fully expects the trial to last the entire four days. Mr. Braaten further indicated that he and Mr. England have been representing the Voigts in matters involving CCMC since 2014. Mr. Braaten states that if the continuance is not granted Attorney Carey Goetz will have to handle the hearing preparations and she is not familiar with this case.

CCMC filed an Opposition to Motion to Continue Formal Hearing on December 9, 2019. CCMC points out that under N.D.C.C. § 38-14.1-30(3)(a), the formal hearing must take place within thirty days of the request for formal hearing. CCMC argues that the thirty-day time period for hearing is mandatory.

The Commission requested that hearing be held, as scheduled, on December 16, 2019, unless otherwise agreed to by the parties. The Commission's recommendation points out that under the publication requirements, a notice of hearing must be published at least once a week for two successive weeks prior to the hearing. N.D.C.C. § 38-14.1-30(3)(e). In no event may notice be published less than five days prior to the hearing.

It's unclear why the Voigts did not request a continuance right after the Notice of Formal Hearing was issued on November 21, 2019. Counsel for the Voigts presumably knew of the conflict with the LaMoure County trial at that time. Waiting until 10 days before the hearing to request a continuance has made it unworkable to continue the hearing given the statutory hearing time frames and notice provisions contained in N.D.C.C. ch. 38-14.1.

Additionally, at a prehearing conference held on December 6, 2019, Mr. Braaten indicated that he anticipates the issues to be addressed at the formal hearing to be the same as the

informal conference. Mr. Braaten indicated that he did not expect any new evidence to be presented at the formal hearing. Therefore, the undersigned ALJ finds that the potential harm to the Voigts in denying this motion to be minimal given the status of the case.

After considering the Motion to Continue Formal Hearing and supporting documents, CCMC's opposition, and the Commission's recommendation, the Voigts' Motion to Continue Formal Hearing is **DENIED**.

Dated at Bismarck, North Dakota, this 10 day of December 2019.

State of North Dakota  
Public Service Commission

By: Hope L Hogan  
Hope L Hogan  
Administrative Law Judge  
Office of Administrative Hearings  
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CERTIFICATE OF SERVICE

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The undersigned certifies that the original of the **ORDER DENYING MOTION TO CONTINUE FORMAL HEARING** was mailed, inside mail, at the State Capitol, on the 10 day of December 2019, to:

John Hamre  
Public Service Commission  
600 East Boulevard Avenue  
Bismarck, ND 58505-0480

and that true and correct copies of the above document were sent by electronic mail and mailed, regular mail, on the 10 day of December 2019, to:

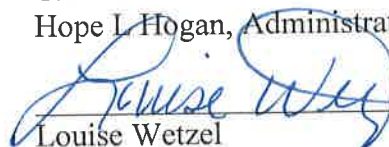
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and that a true correct copy of the above document was mailed, inside mail, at the State Capitol on the 10 day of December 2019, to:

John Schuh  
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OFFICE OF ADMINISTRATIVE HEARINGS  
Hope L. Hogan, Administrative Law Judge

  
Louise Wetzel