

**UtahAmerican Energy, Inc.**



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**RECEIVED**

**JUL 27 2017**

**DIV. OF OIL, GAS & MINING**

Dana Dean, P.E.  
Associate Director  
Utah Division of Oil, Gas and Mining  
1594 West North Temple, Suite 1210  
PO Box 145801  
Salt Lake City, UT 84114

Re: Request for Comment on Technical Directive 007

Dear Associate Director Dean:

On behalf of the UtahAmerican Energy, Inc. ("UEI"), and pursuant to Utah Code Ann. § 63G-3-302, we join with the Utah Mining Association in requesting an opportunity for comment and hearing on the Division's Technical Directive 007 Calculation Guidelines for Determining Coal Mining Reclamation Bond Amounts ("Tech Directive 007"). UEI is significantly impacted by the Division's changes to its coal program bonding policy as set forth in Tech Directive 007. By letter dated July 18, 2017, the Division informed UEI and other coal operators of the immediate implementation of these bonding policy changes without opportunity for public review or comment. We understand that these changes are taken in response to OSMRE's ten-day notice (TDN) issued in early 2016 regarding state bonding policy. The State of Utah successfully defended its program against the TDN, and OSMRE issued a "no further action warranted" decision on October 11, 2016. While dismissing the TDN, however, OSMRE identified "minor programmatic" issues with the Utah's bonding policies. The State apparently has agreed to change its policy without vetting these changes with the coal operators, the surety industry, or the public at large.

Immediate implementation of Tech Directive 007 raises both procedural and policy concerns. The Division's implementation of this guidance requires immediate reclamation bond increases, essentially as a "rule" under the Utah Administrative Rulemaking Act. See Utah Code 63G-3-102(17) (defining "rule"). In accordance with the Act, UEI joins with UMA to request a hearing within 30 days of the Division's July 18, 2017 notification letter. Tech Directive 007 should not take effect until the Division has held the requested hearing and has considered comment. Utah Code Ann. § 63G-3-302(2)(b).

Among the changes is a requirement for a formal bond release application before reducing the bond for the removal of minor structures. This will require additional time and expense, including an agency site inspection, public notice, and an opportunity for hearing. In addition, the State is changing its policy regarding the application of inflation factors. The Division will substitute a flexible approach to application of the RS Means cost data, previously

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limited to demolition costs. RS Means will now be used for all construction activities which will substantially increase reclamation bonding costs. Further, the Division has eliminated its 5% window which previously provided that a bond adjustment would not be required until the new bond calculation exceeded the previous estimate by 5%. Such changes seem significant and deserve full vetting with all stakeholders. We would appreciate a red-line of the proposed changes to Tech Directive 007 to facilitate industry review and comment.

On behalf of UEI, we ask the Division to allow stakeholders to review the draft Tech 007 bonding policy and comment on the new policy which has the force and effect of a rule. Until consideration of these comments, the Division should refrain from implementing new Tech Directive 007.

Sincerely,

A handwritten signature in black ink that reads "David W. Hibbs". The signature is written in a cursive style with a large initial "D".

David Hibbs